

**PARLIAMENT OF VICTORIA**

**PARLIAMENTARY DEBATES  
(HANSARD)**

**LEGISLATIVE COUNCIL  
FIFTY-SIXTH PARLIAMENT  
FIRST SESSION**

**Thursday, 25 February 2010**

**(Extract from book 2)**

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The Honourable Justice MARILYN WARREN, AC

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

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

**Select Committee on 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 Elasmarr 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*): Mrs Petrovich and Mr Viney. (*Assembly*): Ms Duncan, Mrs Fyffe, Mr Ingram, Ms Lobato, Mr Pandazopoulos and Mr Walsh.

**Family and Community Development Committee** — (*Council*): Mr Finn 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 Elasmarr, 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

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**FIFTY-SIXTH PARLIAMENT — FIRST SESSION**

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Mr DAMIAN DRUM

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Broad, Ms Candy Celeste	Northern Victoria	ALP	Lovell, Ms Wendy Ann	Northern Victoria	LP
Coote, Mrs Andrea	Southern Metropolitan	LP	Madden, Hon. Justin Mark	Western Metropolitan	ALP
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Darveniza, Ms Kaye Mary	Northern Victoria	ALP	O'Donohue, Mr Edward John	Eastern Victoria	LP
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Eideh, Mr Khalil M.	Western Metropolitan	ALP	Peulich, Mrs Inga	South Eastern Metropolitan	LP
Elasmr, Mr Nazih	Northern Metropolitan	ALP	Pulford, Ms Jaala Lee	Western Victoria	ALP
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Kavanagh, Mr Peter Damian	Western Victoria	DLP	Thornley, Mr Evan William <sup>2</sup>	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
			Vogels, Mr John Adrian	Western Victoria	LP

<sup>1</sup> Appointed 3 February 2009

<sup>2</sup> Resigned 9 January 2009



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**Thursday, 25 February 2010**

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

## **CHILDREN'S COURT OF VICTORIA**

**Report 2008–09**

**Hon. J. M. MADDEN (Minister for Planning) presented report by command of the Governor.**

**Laid on table.**

## **SUPREME COURT JUDGES**

**Report 2008–09**

**Hon. J. M. MADDEN (Minister for Planning) presented report by command of the Governor.**

**Laid on table.**

## **ENVIRONMENT AND NATURAL RESOURCES COMMITTEE**

**Approvals process for renewable energy projects in Victoria**

**Mr VINEY (Eastern Victoria) presented report, including appendices, extracts from proceedings and minority report, together with transcripts of evidence.**

**Laid on table.**

**Ordered that report be printed.**

**Mr VINEY (Eastern Victoria) — I move:**

That the Council take note of the report.

I will speak briefly on this report given the program we have today. The committee inquired into a range of issues associated with the process for developing renewable energy projects in Victoria. In particular the committee was asked to look at things like obstacles facing investors, the planning systems and structure, how other Australian jurisdictions work in these areas and the opportunity to reduce the risk for investors. The committee looked at a range of things including likely drivers for renewable energy in the future.

The committee received a significant number of submissions, and it carefully went through the process

of considering them and hearing evidence. The report includes a considerable number of recommendations that are designed to provide some assistance to the Victorian government and to local government on how these processes, particularly planning and approval processes, can be enhanced to provide greater opportunities for the development of renewable energy in Victoria.

A considerable amount of work was undertaken by the staff and all members of the committee. I would like to thank the staff, the chair, the deputy chair and other members of the committee for their good work.

**Mrs PETROVICH (Northern Victoria) —** As a member of the Environment and Natural Resources Committee I would also like to make a contribution on the report into the approvals process for renewable energy projects in Victoria. The report focuses primarily on the introduction of wind turbines and the planning processes around their implementation. We had submissions from many people on a range of issues, including solar energy and photovoltaic waste to energy, but I must say that wind energy has been the hero of the Brumby government and the focus has been on that source of energy. It is unfortunate that some solar trials in Victoria, including a project at Bridgwater, have not been successful because of a lack of funding, which is a great shame.

Coalition members of the committee put forward a minority report, and from the outset I would like to express my thanks to all committee members and the staff who worked cooperatively on the report. However, the coalition has come up with a slightly different focus. The coalition is keen to ensure that Victoria is provided with alternative sustainable and renewable energy sources. With continued growth we need to make sure that these projects are properly planned and developed, because many of them are large, many are in rural areas and many have been put in the farming zone. It will be increasingly important to engage with and consult local residents to ensure that their views are heard and their lives, livelihoods and their environment, which is directly impacted, are protected.

A wind atlas was produced in 2003 by the former Minister for Water and Minister for the Environment, John Thwaites. That was a preliminary phase which identified suitable sites for wind turbines across the state of Victoria.

It was proposed that there was going to be a further consultation phase with councils and communities.

**Mr Koch** interjected.

**Mrs PETROVICH** — You are right, Mr Koch, there was subsequently no consultation. In many respects local government has been chopped out of the planning process. It has been given responsibility for issuing permits for developments under 30 megawatts but the conversation was never really had with it as to how to handle that process. We heard through our investigations that the state planning policies around that have been inadequate and that local councils are not very well equipped to handle the planning processes because this phase was chopped out.

The really sad part about what has occurred is that in many cases those people who have been approached by the energy companies to have wind farms on their properties have been ostracised. The issue has divided communities and pitted landowner against landowner. In our investigation we saw some very sad cases of communities that have been completely split and people and family members who used to be very close and very good friends who are now not speaking to each other or are moving out of the area.

In cases where wind energy is desired by those communities, we support development occurring, but there are many issues around these turbines which we have not answered or touched on in this report, and I am disappointed that has not occurred.

On the negative impacts on health and wellbeing and the amenity of those communities, there is anecdotal evidence of people suffering health effects from these turbines. You have to remember that these turbines are enormous — they are often 180 metres tall — and are very imposing in a rural environment.

There is also no environment effects statement (EES) required for these things. We have heard that in the areas around Portland where there are broilga breeding grounds the departments which are heading these panels and the referral authorities for some of these issues are unaware of the local conditions and biodiversity, and again the communities are not being consulted.

We need to establish clear guidelines. That would assist in the development of constructive relationships between residents and wind farm proponents, but that is not the direction the main body of the report takes. The difference between coalition members and the rest of the committee on this inquiry is that the recommendation to give full ministerial approval is not supported by our minority report. Our recommendation proposes that the local council be the planning authority

for wind power plants. To facilitate that there needs to be proper engagement with communities. I believe an EES would normally be required to assess the impact of a development and to protect our biodiversity and that assessment should be carried out.

I will not speak for much longer because we have a busy day ahead of us. This is an important report but we have a long way to go. This report is a start, but I hope that some significance is given to the minority report in future because we have gone the wrong way.

We saw recently that the Minister for Planning has approved a 20 per cent increase in the height of wind turbines and the installation of strobe lighting on the tops of turbines at Bald Hills without any consultation with those communities or councils. It was just done and the first the community heard about it was a report in the newspaper. That is riding roughshod over communities; it is divisive and bad for people's health, and is the reason the coalition members of the committee put together this minority report.

**Motion agreed to.**

## ECONOMIC DEVELOPMENT AND INFRASTRUCTURE COMMITTEE

### State government taxation and debt

**Mr TEE (Eastern Metropolitan)** presented interim report, including appendices.

**Laid on table.**

**Ordered to be printed.**

**Mr TEE (Eastern Metropolitan)** — I move:

That the Council take note of the report.

In doing so, I wish to make a few remarks. This is an important investigation that the committee is engaged in. It goes to the issue of state government taxation and debt. I suspect there is general agreement that individuals, companies and the community would prefer to pay less tax, but there is a tension that services need to be paid for and, as we move towards an ageing population, greater demand will be put on government services, particularly in the health area.

This report and the work that is being done focuses on the issue of taxation; the impact of taxation; and the impact of debt on areas such as competitiveness, development, sustainability, unemployment, job creation and small business. It goes to the heart of some of the issues in taxation and debt. The committee has

done some work and has provided an interim report which summarises some of the main issues, but the committee is clear that it will continue to work, seeking further submissions and evidence, prior to providing its final report in September. In doing so it has highlighted some of the areas where submissions have been received and some of the issues raised as part of that process. I look forward to the ongoing work of the committee.

**Motion agreed to.**

## PAPERS

### Laid on table by Clerk:

Office of Police Integrity — Report on Information Security and the Victoria Police State Surveillance Unit, February 2010 (in lieu of that tabled on 4 February 2010).

Ombudsman — Ombudsman's recommendations: Report on their implementation, February 2010.

## MEMBERS STATEMENTS

### Floods: Mallacoota

**Mr P. DAVIS** (Eastern Victoria) — Areas of the East Gippsland township of Mallacoota were inundated from the weekend of 14 and 15 February after the area received more than 100 millimetres of rain in three days, causing a rapid significant rise in the level of Mallacoota Inlet. Rising waters in the inlet flooded Lakeside Drive, a main road in Mallacoota, in three places, covering the new \$1.6 million shared pathway that has been built around the inlet and forcing the closure of the local tourism information centre.

The main wharf was covered knee-deep in water, posing considerable danger to holidaying children. Holidaymakers had to be moved out of part of the camping park on the shore of the inlet, and the flooding meant that boats were unable to be launched. Quite a number of tourists decamped and left town. Word of the flood spread quickly and led to the cancellation of visitor bookings. We therefore had a situation involving danger, a risk of damage to local infrastructure and substantial loss of business to Mallacoota's tourism-based economy.

It was a situation requiring urgent action to open the Mallacoota entrance and allow the water to drain out to sea. While the Mallacoota and District Business and Tourism Association secured an immediate response from the East Gippsland Shire Council, as the land manager responsible for the entrance, it triggered a

bureaucratic stalling reaction from government-related agencies. The shire lined up a contractor to open the sandbar across the entrance last Wednesday, but the East Gippsland Catchment Management Authority told him not to proceed. There was also some reticence to act on the part of the Department of Sustainability and Environment and Parks Victoria. The present position is that any one of these organisations, along with a fifth agency, Gippsland Ports, can exercise a veto on opening the entrance, or at least cause the work to be delayed. In the meantime, Mallacoota endured almost a week of flooding until general agreement was reached on Friday and machinery moved in to open the entrance on Saturday. In fact, it would not have been done until this week but for the persistent hounding by the tourism association and the shire. They have encountered the same problem every few years over the past decade.

This leads me to put it to the Minister for Environment and Climate Change that he act to introduce a streamlined process to enable the shire to act as the lead authority and initiate prompt remedial action in the event of future floods at Mallacoota.

### Healthy Mothers, Healthy Babies program

**Ms MIKAKOS** (Northern Metropolitan) — Recently the Minister for Health announced over \$473 000 over the next four years for the Healthy Mothers, Healthy Babies program based at the Plenty Valley community health centre in Epping. This program will support local mothers in the growing outer suburbs of Melbourne's north. The program will complement current maternal and child health services and will focus on supporting women during pregnancy through the promotion of healthy behaviours. Women will also be able to better access a range of services — which may include antenatal, health, welfare, housing and education services — during pregnancy and after birth.

### Northern Hospital: funding

**Ms MIKAKOS** — On a similar note, I would like to thank the Brumby government for almost \$300 000 for an equipment boost for the Northern Hospital which will provide vital, state-of-the-art medical technology. The funding will buy two foetal monitoring cardiocographs, which are used for monitoring maternal and foetal conditions in the delivery suite during childbirth, a laparoscopic tower in the operating suite, and five replacement ventilators in the intensive care unit. This is a most welcome investment at the Northern Hospital after 2030 babies were born there in 2008–09 financial year, the most in the hospital's history. The \$2.5 million expansion of maternity

services at the Northern Hospital is under way and will deliver an additional six maternity beds; it is due for completion later this year. On behalf of my constituents, I am grateful for the Brumby government's commitment to delivering additional maternity support services and medical equipment to Melbourne's growing outer suburbs. I welcome both of these announcements.

### **Ultimate Fighting Championship**

**Mr ATKINSON** (Eastern Metropolitan) — I rise on this occasion to throw my voice behind those people who argue that the Ultimate Fighting Championship ought to be banned completely. It is not a question of whether these events are held in cages or not, the fact is they do not belong in a civilised society. They are not entertainment; they are an absolute affront to any citizen who is interested in promoting sport, watching sport and encouraging people to participate in genuine sporting pursuits. I throw my weight behind those people from the Australian Medical Association who are concerned about this particular event. Fortunately it was not held in our state, because they did not like the fact they could not hold the fighting in a cage under our rules in this state. I think it needs to go further: cage or no cage, this sort of fighting event ought not to be encouraged. It sends a very mixed signal to young people in the community. At a time when we talk of concerns about violence in our community, to then go and promote this type of entertainment event is an absolute disgrace.

### **Rock Eisteddfod Challenge: funding**

**Mr DRUM** (Northern Victoria) — I want to thank the over 800 students and teachers at Bendigo Senior Secondary College who took time out from their busy day last week to seek out and sign a petition condemning the government for not adequately funding the Rock Eisteddfod Challenge for 2010. The Victorian government currently puts in \$100 000 plus GST but it was made aware last year that unless this amount was increased to \$200 000 the Rock Eisteddfod would be threatened and unlikely to take place this year. The Victorian government's contribution to the Rock Eisteddfod was higher 15 years ago than it is today. The Brumby government refused to act on this issue. Now it wants to blame other states because they are not getting involved in this fantastic event.

As soon as the coalition was made aware of the funding shortfall and the cancellation consequences, it made a direct announcement that in government it would increase funding to appropriate levels.

After the government refused to act last year and again this year, simply expecting the students, the schools and therefore the families to shoulder the increases in the costs of production, it did as it always does; it assessed the damage, took a political view on this issue, and worked out how it could do a backflip without appearing to be acting in its own interests. I expect the Brumby government will in fact find the additional \$100 000, not because all of a sudden it wants to support the students and teachers involved in the Rock Eisteddfod but simply because it wants the students and teachers involved in it to go away and shut up.

### **Vindaloo against Violence**

**Ms HARTLAND** (Western Metropolitan) — Vindaloo against Violence was the idea of Mia Woodrup, and it was taken up yesterday by 17 000 people, and I was one of those, along with my colleagues. Geraldine Brooks, a former Brimbank councillor and Greens candidate for Derrimut, organised a local event at the Ardeer park. Fifty people turned up. Geraldine organised this by ringing friends, emailing and leafleting 300 houses close to the park, and Geraldine tells me it was a fantastic event.

I also see in the *Age* today that the Aangan Courtyard, near my home — and a great place to eat — had 200 people book, and so they actually had to be served in three sittings. The manager, Shivka Mayo, said the show of support made her feel proud to live in Australia. This was a great event, and proves that one person — and I congratulate Mia Woodrup for her work — can have a huge impact, giving us a simple way of saying that violence is not acceptable ever.

### **Port Campbell community centre: redevelopment**

**Ms TIERNEY** (Western Victoria) — Earlier this morning I had the great pleasure of joining Joe Helper, the Minister for Agriculture, at an early breakfast meeting with Corangamite shire councillors and their chief executive officer. But it was last Thursday that I had enormous pleasure in announcing a state government allocation of \$225 000 from the Small Towns Development Fund for the redevelopment of the Port Campbell community centre. It is part of a \$300 000 project which has been driven by the Port Campbell Recreational Reserve Committee of Management and supported by the Port Campbell playgroup, Port Campbell cricket club and the Corangamite shire family day care service.

This is yet another fine example of the Brumby Labor government working closely with communities and

local government to deliver first-class infrastructure which caters for the needs of those who live in rural and regional Victoria. I would like to thank the reserve committee for its tireless efforts in securing this important community space, and I look forward to returning to Port Campbell to join the local community in celebrating the realisation of its vision.

### **Women: Warrnambool round table**

**Ms TIERNEY** — Last Wednesday night I was delighted to host a women's round table in Warrnambool, which provided women from Geelong, Colac, Timboon, Terang, Warrnambool, Camperdown and Hamilton an opportunity to meet with the Minister for Women's Affairs, Maxine Morand, to discuss issues they and other women face in their communities. Much was learnt and exchanged, with new links being forged. It was apparent that much more will be achieved by women in our communities in the west and south-west of Victoria. I take this opportunity to thank each and every woman who attended and participated in the forum, and I particularly wish to thank Rochelle Hine for her assistance and her ongoing commitment and sheer hard work for women in the West.

### **Benjeroop irrigation museum**

**Ms BROAD** (Northern Victoria) — On Monday, 15 February, I was pleased to visit the very small but energetic community of Benjeroop to announce a grant from the Brumby Labor government of \$291 625 to the Gannawarra Shire Council to transport, restore and display an enormous Hornsby suction gas engine and a Robison 20-inch centrifugal pump, historically used for irrigation on the Murray River. Once restored it is believed it will be the only one in the southern hemisphere to run on gas produced from red gum coal, and it is expected that it will become a powerful tourist attraction for the community of Benjeroop.

I would like to take this opportunity to place on the record my congratulations to the donors of this machinery from a New South Wales property at Cobramunga on the Murray River, as well as the community of Benjeroop and the shire, which have worked very well together in order to get this project to this stage. The project in total will cost \$389 500, and I am very pleased that the Brumby Labor government is providing some 75 per cent of the cost of this project and helping to create this irrigation museum for a very important industry in northern Victoria.

### **ABCD Parenting Young Adolescents**

**Mr SOMYUREK** (South Eastern Metropolitan) — Earlier this month I had the pleasure of representing the Minister for Children and Early Childhood Development, Minister Morand, at the launch of the Sudanese language version of the ABCD Parenting Young Adolescents program at the South Eastern Region Migrant Resource Centre. The ABCD program enables migrant and refugee families to adapt parenting strategies to maintain family bonds and reduce their children's risk-taking behaviour as they adjust to life in Australia. It also promotes the wellbeing of young people and their parents by enhancing protective factors within the home. Developed by the Parenting Research Centre in conjunction with the South Eastern Region Migrant Resource Centre and members of the Sudanese community in Dandenong, the program aims to strengthen family relationships and promote adolescent wellbeing.

### **Economy: performance**

**Mr SOMYUREK** — On another matter, I congratulate the government on its dexterous handling of the economy during the global financial crisis. One indicator of the strength of the economy is construction work figures, and the latest construction work figures released by the Australian Bureau of Statistics show that construction work in Victoria has grown three times as fast as the national average, rising by 12.5 per cent, compared to 3.9 per cent nationally. These figures vindicate the government's strategy to stimulate the economy and fill the void in private investment left by the global financial crisis.

### **Sandringham College: 4 Steps for Life**

**Ms HUPPERT** (Southern Metropolitan) — On 18 February I had the great pleasure of accompanying the Minister for Health and the member for Mordialloc in the other place as well as representatives of Ambulance Victoria to the Highett campus of Sandringham College for the launch of a pilot program aimed at providing school students with skills to respond to cardiac arrest. The 4 Steps for Life program will provide students with the information and confidence required for them to assist people who are experiencing cardiac arrest in our community. It was with great pleasure that I attended a year 9 class and saw the students being instructed by Ambulance Victoria representatives, with the assistance of a 'pillow pal' which has the outline of a body on it, and learning some really basic skills which will help save people's lives in our community.

Each year more than 3000 Victorians suffer a cardiac arrest and we have one of the highest rates of survival to hospitalisation: over 50 per cent. This is partly due to the number of people in the community who have received training from Ambulance Victoria.

### **Malvern electorate: boundaries**

**Ms HUPPERT** — On another matter I would like to offer some assistance to the member for Malvern in the other place, in the form of a *Melway* and a copy of a map of his electoral boundaries. Mr O'Brien has been delivering material authorised by him and with his photo on it, to Queens Parade, Charles Street and Bath Road, Glen Iris, near the corner of Warrigal and Toorak roads, all of which are located in the electorate of Burwood, some kilometres from the Malvern electorate. As I said, I am quite happy to provide my colleagues opposite and in the other house with a map showing their electoral boundaries.

### **Coptic Christians: demonstration**

**Mr KAVANAGH** (Western Victoria) — On 14 January I joined the march of about 6000 Coptic Christians through the city. The march was organised to mourn and protest the murder of six Coptic Christians in Egypt at the beginning of the year. Mrs Peulich and I both addressed the march on its conclusion at the front steps of the Parliament. I told the marchers that we had emphatically, if implicitly, supported a fundamental principle that people are entitled to peacefully practise any religion of their choice or no religion, without fear of being bombed, burned, bashed or murdered.

I further observed that this principle will become ever more important in the future as people of different religious traditions live together in Europe and Asia as they never have before. Respect for the religious freedom of others is the only basis for peaceful coexistence and I call on every government, political party and individual to emphatically support and emphasise this principle at every opportunity.

### **Coptic Christians: Age report**

**Mr KAVANAGH** — On a related matter, the *Age* newspaper had a report stating that Mrs Peulich addressed the Coptic crowd. My complaint to the journalist from the *Age* was ignored entirely and the *Age* did not publish a letter of correction or any other correction. This is extremely disappointing, because in my view, upon refusal to correct it, what was originally an inadvertent mistake became a deliberate lie.

### **Western Health: funding**

**Mr EIDEH** (Western Metropolitan) — Two weeks ago I had the pleasure of joining the Minister for Health, Daniel Andrews, at Sunshine Hospital for the announcement of an additional \$2 million boost for Western Health. I am pleased to say that residents in my electorate will soon have access to even better health services thanks to the Brumby Labor government.

Western Health will be at the forefront of new technology with the latest diagnostic and treatment equipment, including a new mammography unit, as part of the Brumby Labor government's 2009–10 targeted equipment program. This \$2 million boost will fund the latest high-cost medical equipment and is in addition to the \$73.5 million redevelopment of Sunshine Hospital, which includes new university teaching and research facilities, radiotherapy services and a refurbishment of the emergency department.

I am happy to say that building works are progressing as planned, and construction will be completed later this year. This will include a new four-bunker radiotherapy facility to treat cancer patients — the first public radiotherapy service in Melbourne's west. This will reduce the need for cancer patients to travel long distances for treatment and will allow them to access the best possible care and treatment.

This latest boost for Western Health is just one of the ways the Brumby Labor government is committed to ensuring all Victorians have access to the best quality health care and treatment no matter where they live.

### **Jubilee Park, Woodford: redevelopment**

**Ms PULFORD** (Western Victoria) — On 16 February I was pleased to announce that the Brumby Labor government has been able to provide \$132 500 to rejuvenate Jubilee Park in Woodford, near Warrnambool. I would like to congratulate the community of Woodford, and in particular the Woodford Primary School, which has developed a worthy project for the whole community's benefit — very much a grassroots project. It was initiated by the primary school and has progressed through local government and to the state government. The school community in particular is to be commended.

I would especially like to congratulate Friends of Jubilee Park Woodford — Dave Clift, Tricia Blakeslee, Steve Giblin, Ken Wines, Peter Carrucan, Craig Hamilton, Alison Elliott and Brenda Boyd. I also thank

Warrnambool City Council for the integral role it played in facilitating this project.

In addition to the revitalisation of the park there will be two 25 000-litre water tanks placed in the area, with improved tracks and access for the Country Fire Authority to improve safety in the event of bushfire.

All involved are to be congratulated on this great project that will both improve the public open space and make the community safer in the event of fire.

## STATEMENTS ON REPORTS AND PAPERS

### **Auditor-General: *Managing Offenders on Community Corrections Orders***

**Mrs KRONBERG** (Eastern Metropolitan) — I am pleased to rise to comment on the Victorian Auditor-General's report, *Managing Offenders on Community Corrections Orders*.

In his opening remarks the Auditor-General presents the government's argument that community corrections orders provide a range of benefits — financial and social — and that they can be cost-effective compared to the imprisonment of offenders. The argument is that offenders on community corrections orders are able to maintain links with their community by retaining their employment, social networks and accommodation. The ideal scenario is for offenders to undertake programs designed to address their behaviour and reduce the likelihood of their reoffending.

We all find the principle of diversionary programs to be laudable, particularly for young offenders, because members of society and decision-makers in government certainly do not want young offenders to be imprisoned where they might come up against the harshest examples of the criminal mindset. Everybody is aiming for rehabilitation in order to avoid recidivism. In particular, we want young offenders to be fully rehabilitated so that they do not commit offences again.

It is against this background that I applaud the comments the Auditor-General has made — and I will refer to some of his points — because the present system does not provide a means of managing the outcomes of community corrections orders, despite their laudable aims.

Community correctional services (CCS) within Corrections Victoria is responsible for managing offenders on community orders. Its primary purpose is to enhance community safety, primarily through a range of offender management processes and services.

These include risk and need assessments, program referrals and supervision to ensure offenders are complying with the conditions of their orders.

I would like to include a piece of information that came to me last year. It concerns a young man, a juvenile offender, on a community corrections order. As part of that order he was asked to paint a school fence. He sought to avoid living up to that obligation under the tenets of the order. Ironically — and I think in a salutary lesson to this government — the offender did not paint the fence at school; his father did. The management and the oversight of how these orders are evaluated is a stark reminder, once again, that this government does not have systems in place to give the necessary information to people who are required to report on these things.

The Victorian Auditor-General's report stresses that whilst there is a prevailing evidence-based framework for offender management:

... what is missing is a meaningful way to measure the effectiveness ...

Here we go again. This is a chronic problem of this government. It does not have any means to measure or understand or derive feedback from the systems in place. The concern centres on the fact that the current outcome measures are not directly relevant. What are we looking at? Is it waffle, padding or things meant to create some illusion of successful outcomes?

The Victorian Auditor-General further reports:

... CCS's performance reporting does not adequately reflect the effectiveness of their offender management practices.

It concludes of the community correctional services:

Their reliance on order completion rates to assure the community about their performance is problematic. It tends to reflect the application of policy, rather than the effectiveness of offender management to address offending behaviour and reduce recidivism.

Another ramification of this form of reliance is that currently community correctional services:

... cannot be assured that offenders are getting timely access to assessment and treatment services — —

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

### **Tourism Victoria: report 2008–09**

**Ms TIERNEY** (Western Victoria) — I would like to make a contribution on Tourism Victoria's annual report for 2008–09. As most people will be aware,

Tourism Victoria is a Victorian state government authority which was established by the Tourism Victoria Act 1992. Tourism Victoria is the mechanism which enables the state government to be involved in tourism. There are essentially four action goals contained in this report. They concern marketing, leadership, industry investment and aviation, and management.

The highlights during the reporting period were, firstly, an increase of 16.1 per cent in international visitor nights, equalling 35.8 million nights; an increase in market share of international visitors to a record of 29 per cent; and a 13 per cent increase in international visitor spending. There was also an 40.8 per cent increase in Chinese visitor nights, and interstate overnight visitor spending increased to \$3.7 billion. We also saw domestic overnight visitors spend \$281 million more in Melbourne than in Sydney. It is also pleasing to see that Victoria experienced such growth in interstate overnight visitors that it overtook Queensland as the state most visited by domestic travellers.

The secret is out all over Australia that Victoria is a great place to stay, play and holiday. It is predicted that over the next 10 years the growth in international tourism will be of the order of 70 per cent. That is one of the reasons it has been so important to secure new aviation services. Up to and during the reporting period there were 30 additional weekly international direct flights to Melbourne.

One of the key elements for the continued successful growth of tourism in this state is knowing tourists can and will enjoy Melbourne, and that will continue, but it is also to have tourists enjoy the riches of our regional centres and experience the awesome natural physical and cultural attractions beyond our regional centres, particularly in my electorate of Western Victoria Region.

Our tourism growth will be exciting. We will continue to draw tourists to iconic places such as the Great Ocean Road, but it is the excitement of the new areas that are coming online, such as the volcano discovery tours and Kanawinka Global Geopark, recently announced by the United Nations Educational, Scientific and Cultural Organisation as well as Tower Hill and Lake Condah, to name a few, that offers something different to tourists, international and domestic alike. These places also bring new opportunities to western Victoria, opportunities to tell ancient stories that are so new to so many of us.

The quote 'You'll love every piece of Victoria', which sits under the Tourism Victoria jigsaw, is the key to tourism growth, because we want people to get to know and enjoy and plan return visits to every piece of Victoria. I am especially keen on Tourism Victoria's emphasis on regional marketing, which is outlined on pages 22 and 23 of the report, and the leadership action plan outlined on pages 48 and 49 that has growing regional Victoria as its first port of call.

I take this opportunity to congratulate Dr Janine Kirk, chief executive officer Greg Hywood and the Tourism Victoria board for their efforts in positioning Victoria as a must experience tourism destination that includes all of its bits and pieces.

### **Family and Community Development Committee: supported accommodation for Victorians with a disability and/or mental illness**

**Mrs COOTE** (Southern Metropolitan) — I rise to speak on the Family and Community Development Committee's report of December last year on its inquiry into supported accommodation for Victorians with a disability and/or mental illness. I must remind the chamber that this is an issue we must never neglect. Later today a bill is coming on for debate that many of us will be involved in, but it is absolutely essential to understand the issues that are involved in this report. Although it is almost 400 pages long I encourage people to read it, because it is a very comprehensive survey of and report on something of which each of us as a Victorian should be very mindful and cognisant.

The executive summary states how many and what types of people the committee spoke with: families, service providers, peak organisations, researchers, unions and self-advocacy groups. The summary says:

The committee found that responses to people with a disability and/or mental illness occur through two large service systems that are complex, diverse and interconnected. It also found that service needs of people with a disability often differ from those of people with a mental illness, and the report aims to reflect these differences.

We must never forget that there are those differences. We must be very mindful when we are discussing these issues and remember to identify and clarify the position between those who have a disability and those who have a mental illness.

As I said, this report is very comprehensive. It describes how the conditions and the way we deal with some of these issues have changed over the past two decades. In the past it has been more an issue of dealing with

people in bulk and in huge organisations and institutions, but that has now changed and there is a greater emphasis on dealing with the individual. I am very pleased that all political parties have moved down that track, because each one of these people's needs are very different, as are the needs of their families.

It is salutary to read in this report about ageing parents of children with disabilities. I have emphasised before in this place how sympathetic I am to these people. They have given up their lives for their children with disabilities, who are an integral part of their families. Some of these carers are now getting well on in age, with some of them being in their 90s, and as is stated in this report they are afraid to die because there will be no-one to look after their children. This is a terrible state for any of us to have to contemplate, and it is really important for us as legislators to make certain that those families are dealt with as individuals and to let those elderly parents know that when their lives end their children will be well and adequately looked after and treated as individuals with individual needs.

The other major problem highlighted in this report is the complexity of dealing with government departments. This is not something new, but it should have been fixed by now. It is unacceptable to have entering the system people involved in and engaged with disability or mental illness and for them to have to deal with a plethora of bureaucrats. To never get it right and to be told one thing by one lot and another by somebody else is surely unacceptable, and in this day and age it should be better. This government should go back. Instead of having a framework of silos looking after various people the system should be integrated so that people can deal with the departments secure in the knowledge that their particular issues will not drop through the filter somewhere along the line. The current system is completely and utterly unacceptable.

There are many good points and recommendations in this report. Again I encourage everybody here to look at the report, because each and every one of us has constituents whose needs are covered by these recommendations. There is also a minority report. The Liberal members of the committee said they are very concerned that urgency is not a recommendation being followed up. They wrote a very comprehensive minority report stating that these issues are urgent and should as a matter of urgency be dealt with immediately and made a priority. I emphasise that and commend the report to members. It has many good aspects, and we must all take note of it and make certain that something is done.

### **Mount Buller and Mount Stirling Alpine Resort Management Board: report 2008–09**

**Ms BROAD** (Northern Victoria) — Today I wish to make some remarks about the Mount Buller and Mount Stirling Alpine Resort Management Board 2008–09 annual report. I commence by acknowledging and thanking the board and staff for their contributions to the management and stewardship of the Mount Buller and Mount Stirling alpine resorts, and for their commitment to ecologically sustainable management and development of the resorts on behalf of all Victorians. In particular I wish to acknowledge John Dyson, chair of the board, and all board members; Phil Nunn, former CEO (chief executive officer); Tony Petersen, who was acting CEO for this period; and the new CEO, John Huber, as well as all the staff.

The annual report outlines the strong financial position of the alpine resorts management board and the board's plans to invest in further improving the amenities of the resorts and the experience of visitors. I welcome the investment by the Brumby Labor government of \$75 000 in partnership with the board to assist this year with the master plan of the resorts. As well as achieving a strong financial position, the board received a number of awards in recognition of its contribution and commitment to environmental stewardship of the alpine resorts.

These include awards for recreating habitat for the mountain pygmy possum, otherwise known as the *burrhamys parvus*, for the mountain pygmy possum recovery plan and for the water reuse project which saw Mount Buller become the first alpine resort in the world to use recycled water for snow-making. The water reuse project also resulted in water savings of 2 million litres per day and increased snow-making capacity by 30 per cent. I congratulate the board and staff on all of these achievements.

I wish to take this opportunity to acknowledge someone who was a great supporter of the sustainable environmental management of these resorts and therefore of these achievements. Sandie Jeffcoat was chief executive officer of the Mount Buller and Mount Stirling Alpine Resort Management Board from 1998 to 2005 and area manager of the Mount Buller resort from 1982. When he retired in 2005 after dedicating 23 years to the area he soon created another way to contribute by standing and being elected to the Mansfield shire council in the same year, a position he held until the end of 2009. Sandie was mayor of the shire in 2006–07 and he was appointed to the Country Fire Authority board in 2009.

He was also a keen motorcycle rider, and I well recall him rocking up on his motorcycle after riding from Phillip Island to Mansfield the day after the MotoGP in time to meet me for the announcement of a community support grant for the Mansfield shire from the Brumby government in October.

Sadly, Sandie passed away on 31 December after a battle with cancer. His friends and family can take great pride in the contribution he made to the alpine resort management board and to the shire of Mansfield.

### **Ombudsman: Brookland Greens estate**

**Mrs PEULICH** (South Eastern Metropolitan) — I gave notice that I wanted to make a few remarks on the Ombudsman's report on the Brookland Greens estate and the investigation into methane gas leaks, which was tabled in October 2009, in anticipation that perhaps the report on the implementation of the Ombudsman's recommendations, which was tabled today, may have made some mention of progress in relation to the report that was tabled in October 2009, but unfortunately it does not.

This goes to highlight the limitations that I had indicated would hamper the effectiveness of the inquiry. The Ombudsman, as is conceded on page 7 of the report tabled today, said:

Together with the Auditor-General, our offices are the only bodies, within the limits of their jurisdiction, able to provide independent and impartial analysis and assessment of the administrative actions of government agencies for Parliament, the executive and the community.

In evidence given recently at a public hearing of the upper house Standing Committee on Finance and Public Administration the Deputy Ombudsman conceded that the Victorian Civil and Administrative Tribunal decision which overturned the objections by the City of Casey and the Environment Protection Authority to granting a permit to build houses in the buffer zone was crucial to this event and if that had not occurred, the whole crisis would have been avoided — obviously, it would never have manifested.

I remind members of the house about VCAT's determination and the second paragraph of the determination made at a hearing on 5 May 2004, which was subsequently transcribed. A senior member of VCAT, Mr Horsfall, said:

In general terms, we consider the 500 metres buffer distance is unsupported by policy. We find the EPA best practice environment manual guidelines are not policy at this time.

He went on to say:

The state Environmental Protection Policy (Site and Management of Landfills Receiving Municipal Wastes) ... is the policy the planning scheme requires us to consider, and the development plan is the primary planning instrument the tribunal must apply in this case.

Clearly the Premier, in overseeing the involvement of the multiple agencies that should share in the culpability for this disaster, has made the wrong call and ignored the calls of the upper house to have an independent — a neo-judicial — inquiry into all the matters that contributed to this crisis. That is not to say that the Ombudsman's report has not been useful; it has been very useful indeed, and the Ombudsman's office has done a good job as far as it is able to do. This was confirmed further in questions asked of the deputy ombudsman during the hearing by Mr Barber, who asked whether, if the VCAT decision had not taken place, any of this sequence of events would have occurred. He confirmed that it would not have.

There are further clarifications that occur as a result of the evidence given to the committee by the deputy ombudsman and the lead investigator, and I urge all relevant parties to take note of that evidence. It clearly shows that from the point of view of gaining a resolution — it has now been some 17 months since the crisis occurred — the process is not moving, even at a snail's pace. We have a class action in place and we have the City of Casey joining third parties in the action. There will be a domino effect in relation to the cost involving a range of government agencies and departments. There will be a cost to government and a cost to taxpayers. There is also the complexity of managing the conflicts of interest between those agencies.

The process this government has in place is inadequate; it was inadequate to begin with. The Ombudsman has done as good a job as he possibly could within the constraints of his role. I call on the government to appoint a panel of experts to review all of the findings in the report and fill in the gaps where the Ombudsman was unable to investigate due to the constraints of his role under legislation and to make recommendations in a public way so that all who share culpability for this matter are asked to pay the compensation and rectification costs, not just the City of Casey, which has been the scapegoat.

### **Ombudsman: Brookland Greens estate**

**Mr TEE** (Eastern Metropolitan) — I also want to make some remarks in relation to the Ombudsman's report on the Brookland Greens estate. This report

demonstrates once again the very thorough nature of the powers that the Ombudsman has to independently investigate the circumstances surrounding the Brookland Greens estate issue. The Ombudsman, as Mrs Peulich indicated, gave evidence as to the extensive nature of his powers. No stone was left unturned. All affected community members were approached as part of the investigation by the Ombudsman in the development of this report. The Ombudsman found that there was not one complaint about the actions of the government. In fact the Ombudsman was very complimentary of the actions of the government in responding to the crisis at Brookland Greens.

Mrs Peulich failed to talk about the actions of the local council, which she continues to defend despite the evidence in both these reports. Despite the evidence, Mrs Peulich keeps trying to sheet home the blame everywhere except where it belongs, and that is with the local council. We all know it was Mrs Peulich's electorate officer who moved the motion in the council to provide the permit for the Brookland Greens estate.

**Mrs Peulich** — You are protecting your political butt as well as having the Premier in it up to here.

**The ACTING PRESIDENT (Mr Elasmr)** — Order! Through the Chair.

**Mr TEE** — It was the council that moved to provide the permit to allow this housing. It was the council that provided inadequate evidence to the Victorian Civil and Administrative Tribunal. Mrs Peulich, in defence of her electorate officer and the council, said, 'VCAT got the decision wrong', but the Ombudsman has made it very clear that the issue was the inadequate evidence brought by the council to VCAT.

**Mrs Peulich** interjected.

**The ACTING PRESIDENT (Mr Elasmr)** — Order! I ask Mrs Peulich to refrain from interjecting.

**Mr TEE** — The suggestion that VCAT's role ought to be changed because of the inadequacy of material brought by a council which those on the opposite side of the chamber fall over themselves to defend is outrageous.

It is outrageous to suggest that somehow the decisions of VCAT ought to be reviewed by the Ombudsman as opposed to by the very appropriate appeal mechanisms that were in place and could have been used in this case but were not picked up. Who stuffed up? The council, including the electorate officer Mrs Peulich keeps

defending, failed to lodge an appeal and exercise its rights. It failed to do the right thing. Now Mrs Peulich, instead of having a look at the causes and who in the council motivated the council so that it did not act to address its issues — —

*Honourable members interjecting.*

**Mr TEE** — I say to Mrs Peulich that the outcome of the investigation is clear. It is thorough. The powers of the Ombudsman are extensive. The investigation was thorough and is ongoing. The Ombudsman has clearly stated that the government has accepted his recommendations and that most of those recommendations have already been implemented.

The only body here that refuses to accept the Ombudsman's recommendations is the council that Mrs Peulich continues to defend. It is the only body that continues to deny the reality. The question that this house ought to ask is why those opposite are standing behind the council when the rest of the community and those on this side are standing behind the Ombudsman's findings and process. If you are not criticising — —

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

### **Education and Training Committee: geographical differences in the rate in which Victorian students participate in higher education**

**Mr HALL** (Eastern Victoria) — After that barrage across the chamber, I hope mine is a quieter contribution. I want to speak today on the Victorian government's response to the Education and Training Committee's inquiry into geographical differences in the rate in which Victorian students participate in higher education.

This report has been of particular interest to both you and I, Acting President, given that we are both members of the committee that produced the report. The inquiry itself was initiated by a motion of this house that I moved on 18 July 2007. The report was tabled in Parliament on 28 July 2009 and now we have the government's response some six months later. It has taken some time — the best part of two and a half years — to get a government response to the committee's inquiry, which was first initiated in July 2007.

I am very pleased to see that the government thought highly of our report. I note on page 3 of the

government's response it describes the result of the work of the committee and its staff as:

... a thorough, systematic and detailed report into the many and complex issues surrounding geographic participation in Victoria's diverse population in higher education, for which the committee and its staff are to be commended.

We take that as a pat on the back for the work undertaken by the committee and thank the government for making those gracious comments.

The 32-page government response begins by providing information on the contribution higher education makes to regional development, and I must say I agree wholeheartedly with the government's comments in respect of that matter. Higher education is important. It plays an important role beyond just providing opportunities for young people in country Victoria. It impacts on regional development in a very positive sense, and we all join together to support that sentiment. That is another reason we should be looking to strengthen the delivery of higher education in regional areas.

The preamble to the government's response also talks about skills reform and the government's program in that regard. That is something I do not necessarily agree with, but that is a topic for another day.

The government has responded to the 31 recommendations made in the report, but in some respects I am a bit disappointed that the detail of the response is not as I would have liked. Many of the responses suggest that these are matters which the government will be taking up when it develops what it calls its tertiary education plan and also a rural education strategy. Page 14 of the government's response details what it expects to have in its rural education strategy. It is a bit disappointing that some specific responses are yet to come and that those plans and strategies will not be available until the middle of the year. We will need to wait longer to see exactly what the government intends in respect of those.

In respect of recommendation 4.1, I thought the government was fairly dismissive of what I think is an important issue — that is, trying to lift aspiration levels. We should be encouraging young people in lower socioeconomic areas, in areas where participation rates are low, to set their horizons high by showing them what is possible, and yet the government's response seems to suggest there is little imagination in terms of responding to that recommendation.

Recommendation 7.2 was one of the key issues in the committee's report. It talked about the financial barriers

to participation in higher education, and the report was very conclusive that the cost of participation was the single biggest barrier to young people's participation. The committee made a recommendation that all young people who have applied to move away from home to pursue an education should be eligible for youth allowance. While there was some sentimental support from the government in respect of that recommendation, it seems to me it was less forthcoming than it could have been.

I also think the government's response fails to address the fact that year 12 completion rates in country Victoria are still below those of the metropolitan areas of Melbourne. We have just produced recent figures in support of that. Again, it is something that will hopefully be addressed in the rural education strategy or tertiary education plan, but it would have been nice to have more detail on that matter in this report.

### **Education and Training Committee: geographical differences in the rate in which Victorian students participate in higher education**

**Ms PULFORD** (Western Victoria) — I am pleased to also make a few comments on the government's response to the inquiry into geographical differences in the rate in which Victorian students participate in higher education.

In July 2007 I was pleased to join Mr Hall in the debate in this chamber on the motion which proposed that this inquiry be undertaken by the committee, and I have followed the work of the committee in this inquiry. It is an issue that affects a great many people in my electorate. All members would agree that the location of one's birth or childhood should not be a factor in determining education outcomes. It has been good to see the detailed consideration of these issues by the committee and the government's further response in this area.

I too look forward to reading the rural education strategy, because so many of our rural communities have been profoundly affected by drought over the last 13 years. Many areas in rural Victoria are experiencing population growth and prosperity, but there are other areas that have been profoundly impacted by drought, and that have suffered greatly as a result.

There is a great imperative for governments to ensure the economic wellbeing of our communities, and we cannot underestimate the impact of a family's financial position on its capacity to support a young person through education. At the time this inquiry was initially

proposed by Mr Hall there was a great deal of anecdotal evidence about young people being accepted into higher education courses but being unable to attend them because of pressures to stay at home and contribute to the family income, particularly for those in agriculture.

The government's response notes that there has been a great deal of change in the higher education sector during the time this inquiry has been under way. The change of federal government in November 2007 has led to a review and a shake-up of a range of higher education measures. Within the same time frame that this inquiry has been undertaken, the Victorian government has significantly changed the delivery of TAFE education, most notably in its Securing Jobs for Your Future — Skills for Victoria package. That \$316 million package has at its centrepiece place-based funding, with a guaranteed training place for students wishing to attain higher levels of skills along the way.

Retention and completion are important issues. The government in its response outlines some of the measures that are already in place to ensure that the recording of this information takes into account geographical differences and also some of the proposed measures to enhance that reporting. Throughout the report undertakings are given to continue to work to improve this reporting. The government has a range of strategies to address inequities in participation when they occur and will work wherever possible to ameliorate any inequities.

As I said, the government has education as its no. 1 priority. We are working with school communities to improve school buildings, we are supporting a robust curriculum and we will continue to work with the federal government to ensure the best possible education outcomes for Victorian students no matter where they live.

### **Department of Sustainability and Environment: report 2008–09**

**Mr P. DAVIS** (Eastern Victoria) — I would like to make some comments on the Department of Sustainability and Environment annual report for 2008–09. I am going to touch on a number of issues relating to the management of our forests and waterways and draw on some observations about the timber industry strategy, the report on the state of the environment and the Victorian government response. Importantly I will also talk about issues associated with public land management, and when I talk about land management I mean land and waterway management.

Initially I want to make some comments about problems with the management of our forests and access to resources, which have not been effectively addressed in the timber industry strategy. For example, I draw attention to the difficulties being experienced by Ron and Fred Becker, who have a property in the rural district of Maramingo Creek on the Princes Highway between Genoa and the New South Wales border. They operate a small sawmill there. I have visited that sawmill and have had some dealings with Ron and Fred Becker about their difficulties, particularly those in regard to fuel-reduction burning, or the lack thereof, and the threat of the encroaching forests and the potential life-threatening risk, which was highlighted in the fires in far east Gippsland over the summer.

The Becker's business, which has been producing sawn timber and firewood for some 50 years, is now at risk of shutting down because they are not big enough operators to come under the government's notice or to qualify for any of its business assistance packages. More importantly, the best way to help them stay in business would be to ensure that the VicForests auction system caters for the needs of small mills such as theirs. They have found it is futile to put in tenders because of the way the VicForests system is set up. I say again that the timber industry strategy has not addressed this.

The sale and supply of timber for firewood from forest coupes under the VicForests system has also shut them out of firewood production. The system is designed around large volumes of wood; it requires contractors to have appropriate equipment to load firewood logs from the supply depots; and the price is set so high it makes this activity unprofitable. The Beckers have been supplying sawn timber and firewood to customers in Canberra and Melbourne for many years, and they are the firewood supplier to the Methodist Ladies College centre at Mallacoota, but now it is getting so tough that they are unable to undertake the necessary update and replacement of machinery and equipment.

The issue for the government and VicForests is that the wood supply process needs to incorporate flexibility to cater for small operators like the Beckers. I trust the authorities might be responsive enough to adapt their systems in a case such as this to ensure the Beckers get reasonable access to wood.

But that is not the only problem we have. In recent times, in relation to environmental flows in our waterways in Gippsland, the government has failed to deliver on commitments made in respect of restoring environmental flows to the Snowy River. And in relation to the Thomson River, not only has it failed to deliver on commitments previously made to deliver

environmental flows but it has made a decision to divert environmental flows to supply the Melbourne water district.

The difficulty with this decision is the impact it will have on the Thomson River waterway itself but also relates to the environmental impact on the Gippsland Lakes. In that context I want to refer additionally to the Victorian government's response to the *State of the Environment Report Victoria 2008* in which the government refers to the Victorian river health program in terms of the management of environmental water to protect high-value rivers and wetlands. It talks about the environmental water reserve, which was established under Our Water Our Future. I might make the point that these so-called environmental water reserves are of not much value because they are diverted for consumptive use, and therefore the government's much-vaunted environmental credentials in terms of managing our waterways are seriously under threat in the sense that it is simply unable to deliver.

In regard to the poor performance — —

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

### **Melbourne Health: report 2008–09**

**Mr EIDEH** (Western Metropolitan) — I rise today to speak on the operations of Melbourne Health and share with the house some of this organisation's achievements, initiatives and endeavours for the last year, as recounted in its 2008–09 annual report.

As Victoria's second-largest metropolitan health service provider, Melbourne Health has continued to provide health care to more than 1 million people living in north-western metropolitan Melbourne, many of whom live in my electorate of Western Metropolitan Region.

Melbourne Health comprises the busy Royal Melbourne Hospital, which I must congratulate on recently celebrating 160 years of history and service, North Western Mental Health, North West Dialysis Services, the Infectious Diseases Reference Laboratory and facilities management. Within these operations it provides a diverse range of ordinary and specialist health care, research and education and community support services. In addition, it extends special services to regional and rural Victoria.

Despite the financial uncertainties of the previous year, Melbourne Health has continued to improve, providing greater access to services for all its patients. Having

read this report I have to say that Melbourne Health has certainly lived up to its statement of purpose of:

Securing the health of our communities through research and innovation, to deliver effective services and educate future generations.

Melbourne Health has always played an important role in implementing major health initiatives for the benefit of all Victorians, such as the Victorian cancer action plan. Cancer is one of Australia's biggest killers. The harsh reality is that we lose more than 35 000 lives a year to cancer, with another 88 000 people being diagnosed. So members can understand why I was excited to read about the great partnership unfolding in Victoria of which Melbourne Health is a part.

In partnership with the Peter MacCallum Cancer Centre, the University of Melbourne, the Ludwig Institute for Cancer Research, the Royal Women's Hospital and the Walter and Eliza Hall Institute of Medical Research, Melbourne Health is committed to the establishment of the Parkville Comprehensive Centre for Cancer, which will bring Victoria to the forefront of cancer research and treatment.

The Brumby Labor government is committed to supporting Melbourne Health in this important pursuit of providing world-class cancer care and research in Victoria. As a measure of its commitment, in 2009 the Brumby Labor government, in partnership with the Rudd federal government, announced it would be contributing \$426.1 million in funding towards the establishment of the new Parkville Comprehensive Centre for Cancer.

As Victorians we should be excited about this project and be proud of this great partnership. I have no doubt that Melbourne Health will continue to work in partnership to see that this cancer care initiative, supported by this government, will produce what is believed will rank as one of the 10 greatest cancer centres in the world. I commend Melbourne Health on its commitment to this worthy and exciting initiative.

Melbourne Health must also be praised for the significant and invaluable contribution it made in the bushfire disaster efforts during the horrific Victorian bushfires which were felt by all Victorians. In addition to keeping normal services running during this unexpected and tragic circumstance, emergency and ward staff worked to take the majority of Victoria's trauma cases. I felt proud to be an Australian when I read in the report that the staff of Melbourne Health donated almost \$45 000 to help friends and colleagues affected by the bushfires. In addition, they participated in the Melbourne Health two-day appeal for goods,

which saw in excess of 15 000 individual items donated by staff, volunteers, patients, suppliers and friends. This was truly a display of compassion, generosity and mateship — real Australian values and virtues. I take this opportunity to publicly acknowledge their contribution and dedication.

I take this opportunity to commend this report to the house and congratulate every one of Melbourne Health's 8000 employees for the hard work they undertake for all Victorians in providing this vital community service. I am confident that Melbourne Health will continue to move forward as it implements its Melbourne Health strategic plan 2010–15, which was launched at the beginning of 2010, and I look forward to hearing about all future endeavours.

## MAGISTRATES' COURT AMENDMENT (MENTAL HEALTH LIST) BILL

### *Second reading*

**Debate resumed from 4 February; motion of Hon. M. P. PAKULA (Minister for Public Transport).**

**Mr RICH-PHILLIPS** (South Eastern Metropolitan) — I rise to make some remarks on the Magistrates' Court Amendment (Mental Health List) Bill this morning. The purpose of the bill is to establish a pilot program in the Melbourne Magistrates Court for a separate list for certain defendants with mental impairments.

The way in which the bill defines this list is to establish a mental health list — as is in its title — for accused persons with a mental illness, intellectual disability, acquired brain injury, autism spectrum disorder or a neurological impairment, including dementia, which causes substantially reduced capacity in self-care, self-management, social interaction or communication and who would derive benefit from coordinated services under an individual support plan.

I start with that definition from the legislation because it is important as to how the debate and the consideration of the legislation in the committee stage will unfold due to the sensitive nature of all those conditions being lumped together under what the government has titled a 'mental health list'.

The bill provides for referrals to the proposed mental health list by the court with the consent of the accused person, with the intention that referrals could be initiated by a magistrate, the police, prosecutors, the defendant's legal counsel, one of the court-based

support services, the defendant himself or a person involved in the defendant's life, such as a carer, parent, partner et cetera.

It provides that if the defendant pleads or indicates an intention to plead not guilty to an offence, then the matter must be removed from the mental health list. There are certain constraints on the types of offences for which a defendant is eligible to be on the mental health list. In particular, defendants are not eligible to be considered on the mental health list if they are involved in serious violence or serious sexual offences.

The mental health list will only operate at a court designated by the Chief Magistrate. I understand it is the Chief Magistrate's intention that at this point the list will only operate at the Melbourne Magistrates Court, so it will have limited coverage across the Magistrates Court jurisdiction.

The bill provides that if an accused person completes an individual support plan, the court may discharge that accused person without a finding of guilt; and if the person is found guilty, the court can take into account in sentencing the extent to which the accused person participated in the support plan. As with many of the other trials that have been introduced in our justice system across the various courts, the provisions in the bill will sunset no later than 1 August 2013.

The coalition parties have taken the position that we will not oppose this legislation, but we do have a number of concerns as to how this legislation will operate. We intend to move some amendments to the bill when it reaches the committee stage. Acting President, I ask that those amendments be circulated.

### **Opposition amendments circulated by Mr RICH-PHILLIPS (South Eastern Metropolitan) pursuant to standing orders.**

**Mr RICH-PHILLIPS** — One of our principal concerns with this legislation is also mirrored in other legislation that has come forward by way of trial programs across our court system, and that is that we are now evolving to a point where the Victorian justice system is a patchwork justice system. I say that in the sense that we now have a number of program trials operating across different court jurisdictions. The Koori Court is operating in, I understand, seven separate Magistrates Courts across Victoria; the Drug Court operates in the Dandenong Magistrates Court in my own electorate in the south-east; the court integrated services program operates at three Magistrates Courts; and there is also what is known as the 'special circumstances list' operating at the Shepparton

Magistrates Court. I understand the special circumstances list is in some respects similar to what is proposed with the mental health list.

We have a situation now across the Magistrates Court in Victoria where offenders who are charged with similar offences, who may have certain similar conditions or other mitigating factors, will be dealt with very differently, depending on where they are located in Victoria geographically. Which of the courts they appear before will determine which of these programs, if any, they participate in. It is very much potluck for defendants as to how they are dealt with under this regime which has been put in place by the Attorney-General, with different programs operating in different courts.

The proposal before the house today for the mental health list will add yet another element to that, given that the intent is for the mental health list to operate, certainly initially, only in the Melbourne Magistrates Court. We will have yet another element where the geographic location of the defendant will determine how that person is dealt with by the court system.

This should be put in the context of the ongoing problems with the criminal courts in Victoria. The house has heard me speak about this issue before. Across the criminal jurisdiction, in every level of court in Victoria — from the Magistrates Court to the Supreme Court to the Court of Appeal — the backlogs, delays and waiting lists on criminal matters are the worst in Australia. The Attorney-General tinkers repeatedly with these special programs while the fundamentals of the court system continue to be ignored and the backlogs across the jurisdictions continue to grow. This is a reoccurring issue that we hear more and more about as time goes on. This year the backlog grew across every level, particularly in the criminal jurisdiction.

One of our concerns with this legislation is that it risks becoming the ambulance at the bottom of the cliff. By that I mean that while the intent of the mental health list program and consequential interventions in the court jurisdiction will hopefully be of use and of assistance to defendants presenting to those courts with the various conditions as defined, the reality is that intervention, support and support programs are required earlier than when a person reaches court. A person should not have to become a defendant in the Magistrates Court before they receive the support they require for whatever condition they may be subject to. This side of the house would hate to see a scenario where a person in effect feels they need to commit a crime and be brought before a Magistrates Court to have access to the type of

support services that should be made available through this proposed mental health list.

I know from my own experiences that in the south-eastern region, particularly in the bigger population centres of Dandenong and Frankston, there is always a shortage of support for people with a range of impairments — intellectual impairment, mental illness et cetera. At my own electorate office we continually struggle to get support and assistance for people who are experiencing difficulties because of their various conditions. The support services that are available in the community are overstretched and they struggle to meet with the demand, particularly in those areas. It would be an absolute tragedy if this program became a mechanism by which people thought they could get help — that is, if as a cry for help they managed to put themselves before the court by committing a crime. There is a great concern that this would be the ambulance at the bottom of the cliff rather than there being intervention before a person came before a court.

One of the key issues the coalition has with the legislation relates to the proposal to call the list the mental health list. This is a matter on which we have received substantial representation, the fact that for some reason the Attorney-General is seeking to lump all those people with the range of conditions I spoke about earlier — intellectual disability, mental illness, acquired brain injury et cetera — together in the mental health list. This is completely at odds with what has been the practice in Victoria over the past 20 years in recognising the difference between mental illness and disability, and it is completely at odds with the practice of the Department of Human Services, the Department of Justice and the Department of Health. It is a matter on which not only members of the coalition but I believe members of the whole of this Parliament have received substantial representations.

I would like to turn to some of those representations. The first one I refer to is a submission from Ms Margaret Ryan, entitled 'Equal justice requires a disability list'. In her submission Ms Ryan has made a number of pertinent points reflecting on what the government proclaims to be its policy on recognising the difference between mental illness and intellectual disability et cetera, and the practice we are now seeing with the introduction of this mental health list, which lumps everybody together. Ms Ryan made the pertinent point that despite the fact that this list is to be called the mental health list, four of the five eligibility criteria as defined in proposed new section 4T of the bill relate to disability and not to mental illness, so the majority of conditions that will be covered by the list are in fact not

mental illness at all, despite the way the list is to be labelled.

In her submission Ms Ryan quoted the Victorian Department of Health website, which states:

Acquired brain injury is not a mental illness and requires very different specialist skills from those offered by mental health services ...

...

Intellectual disability is not a mental illness and requires very different specialist skills from those offered by mental health services ...

That is published on the Department of Health website, yet with this legislation the Attorney-General is seeking to lump acquired brain injury and intellectual disability together with mental illness as if they are one set of conditions and can be dealt with through one set of solutions. In her submission Ms Ryan went on to make the point that the Parliament has drawn a distinction between a mental illness and a disability. We have the Mental Health Act 1986 and the Parliament has passed the Disability Act 2006, so the Parliament has drawn a distinction between disability and mental health.

Through the Department of Health and the Department of Human Services government has initiated the Victorian mental health reform strategy for 2009–19 and the Victorian state disability plan for 2002–12, again reflecting the distinction between mental illness and disability. Ms Ryan went on to remark that, in handling these different conditions, within the Department of Health there is the mental health division and separately within the Department of Human Services there is the disability services division, so structurally within government there is a separation of the management of mental illness and disability.

Therefore at a government policy level, proclaimed on its website; at a legislative level through the Parliament, with separate disability and mental health legislation; and structurally through the Department of Human Services and the Department of Health distinctions are made between how mental illness and disability are handled, yet this ham-fisted legislation coming forward from the Attorney-General seeks to lump mental illness, disability and acquired brain injury et cetera together as if they are one condition that can be treated with one solution. It has caused enormous concern in the community among carers and people who suffer from these conditions that the government is seeking, firstly, to deal with them under the label of mental health, and secondly, to lump them together in one list with one solution.

Members of the coalition and I believe other members of this chamber have also received representation from National Disability Services Victoria through Helen Bryant, the acting state manager. NDS has also commented on the inappropriate way in which the legislation seeks to combine all these conditions as if they are a single condition that can be dealt with through a single solution. In its submission NDS makes the following point:

The name chosen for the list detracts from what the list is trying to achieve. People with disabilities do not want to be classified as having a 'mental illness'. This could result in such individuals withholding consent and not undertaking the program. The needs of people with cognitive disabilities are different from those with a mental illness. One of the principal aims of mental illness is the treatment of the illness, whereas with a disability the focus is on management.

That sets out succinctly why the government in its policy, why this Parliament through its legislative framework and why the Department of Human Services and the Department of Health have separate approaches to managing mental illness and intellectual disability. It flies in the face of all the history over the past 20 years and all that experience through those agencies for the Attorney-General to lump the conditions together under the label of 'mental health list'.

As I indicated, it is the coalition's intention to seek to make amendments to the legislation, and I will touch briefly on those amendments at this point before we progress to the committee stage.

The first amendment we were seeking was to the name of the list. There is no doubt that the single label 'Mental health list' has caused enormous concern in the community. It was to be our proposal to amend that title. However, the Attorney-General has acknowledged on radio that he will seek to amend the name from 'Mental health list' and that he will propose an alternative title of 'Assessment and referral court list'. The coalition will not pursue its amendment on the basis that I understand the government will pursue that amendment when we are in the committee stage of the bill.

We do, however, propose to move four other amendments with respect to this legislation, all largely to address the issue of the government's approach of lumping intellectual disability, acquired brain injury and mental illness together.

The first amendment requires that the court, in assessing people for inclusion and managing people on the mental health list, have regard to assessments that have been undertaken by qualified personnel as to their

condition in relation to the particular or the principal impairment that the defendant suffers from. We believe that is an important element of how the mental health list should operate. It is important that people should not be merely treated as having a common issue dealt with in terms of a common solution, that the experience of appropriately qualified clinicians be taken into account when people are being considered on the mental health list and that their principal impairment be taken into account on the list.

We also believe that, notwithstanding the change of name that will be proposed by the government, the Chief Magistrate, who will oversee the operation of this mental health list initially through the Melbourne Magistrates Court, needs to have flexibility to create sub lists within the mental health list. Therefore our second amendment proposes that the Chief Magistrate have that discretion. Whether he chooses to exercise that or not will be a matter for him, but he should have that discretion if he wishes to set up separate lists within the overall mental health list to recognise acquired brain injury, intellectual disability, mental illness and so on and create the distinctions that have been omitted from the bill before the house today.

The purpose of our third amendment is to close the loop on feedback. As I indicated earlier, it is proposed that this be a trial to August 2013. As is so often the case with trials that take place in the courts — and I have spoken about a number that have been rolled out previously — the Parliament rarely gets to see the proper evaluation of those trials in order to determine whether the sunset provisions should be removed and the trial should be made a permanent feature of our judicial system.

Therefore the purpose of our third amendment is to require the court to report to Parliament through its annual report on the operation of the mental health list, setting out a number of criteria — and I will go through those in more detail in the committee stage — as to the operation of the mental health list. When the Parliament is presumably asked to reconsider the sunset provisions in this bill in 2013 we will be in a position to do so with three years of evidence via the annual reports as to the success or otherwise of the trial.

The fourth amendment is to section 4T of the principal legislation, which is in clause 5 of the bill, and it sets out the need to develop an individual support plan for a person on the mental health list. What we will be seeking to do with the amendment to that provision is to ensure that the individual support plan has regard to the diagnostic criteria and the functional criteria, both of which are defined in the legislation, essentially

meaning the condition that the person coming before the court is identified as having.

Through this amendment we are suggesting that the individual support plan needs to have regard to whether the person has a mental illness, an intellectual disability, an acquired brain injury or an autism spectrum disorder, so that the response and the plan that is put in place with the court is appropriate to the condition. Again, we are keen to ensure that despite the government's intent to lump all these conditions together the response of the report through the mental health list is not simply a cookie-cutter response to individual needs and individual conditions from which people are suffering.

That is a quick summary of the amendments we will be seeking to make to this legislation. We will not be opposing the legislation, but we have concerns about the ham-fisted way in which the Attorney-General has put the bill together as a mental health list and sought to lump together the range of impairments that the bill considers under the one banner of 'mental health'. It is a retrograde step when you consider the way in which government and the community have changed over the last 20 or 25 years to recognise the difference between disability and mental illness. Frankly it beggars belief that the Attorney-General would bring forward a bill that seeks once again to lump all these conditions together as if they are a common issue that can be dealt with by a common solution.

That said, we will not oppose the legislation, but I look forward to the support of the house in ensuring that these amendments are implemented so that we can have a better result for people suffering from mental illness as well as those suffering from intellectual disability, acquired brain injury and autism spectrum disorder.

**Mr TEE** (Eastern Metropolitan) — I welcome the opportunity to speak on this bill, which is a very important bill. It is an important contribution to tackling the causes of crime. It is an important bill for stopping crime by picking up on some of the underlying reasons that crime happens. If we are serious about reducing the impact of crime on the community and reducing the impact on victims, then bills such as these make a real difference, because they are about turning around individual lives and stopping offenders from offending, and that is a very important role that government can play to make our communities safer.

We know that unless we tackle those underlying causes the offending behaviour repeats, and unless we tackle those underlying causes we have this revolving door of people offending, going through the process, going through the system and then coming out at the other

end after a period of detention or otherwise with the underlying causes not having been addressed, and the behaviour continues.

This is particularly the case in areas where the government has already moved, where we have already seen the progress that can be made, such as the Neighbourhood Justice Centre, where again efforts are being made through a number of programs to ensure that we stop the offending behaviour.

Equally, the Koori Court addresses the unique circumstances of dispossession around our Aboriginal community. The drug court in Dandenong again seeks to stop the causes of crime in terms of people using crime essentially as a way to feed their drug habits.

This bill really moves that next step further; it moves into the area of mental health. This is the next step but it is also a very difficult step because we know that mental impairment is a very difficult problem to tackle and address. We know that mentally impaired offenders present with a number of problems. They might have issues around mental impairment but there might also be issues associated with drug use, homelessness and unemployment. There might also be issues associated with their mental impairment such as antisocial behaviour, loneliness and so on.

It is critical that we tackle this issue, but I do not think we should kid ourselves that this is an easy step to take. It is not; it is a very difficult step. However, we know — and all the research shows — that if we are going to make a difference, if we are going to turn lives around, if we are going to stop that offending behaviour, if we are going to make our community safer, we need to intervene early and appropriately. That is really at the core of this proposal. This proposal seeks to identify at an early stage of proceedings those individuals who will most benefit from specialised care and also specialised interventions to tackle some of those symptoms — be they drug use or homelessness — of the mental impairment.

The bill proposes that as matters come to the Magistrates Court there is an option for the individual to be referred to a list, which is currently proposed to be called the mental health list; although, as has been anticipated, we will be seeking to change that name. The individual is referred to that list and the matter might be adjourned while the individual is referred to specialist service providers to tackle what may be a number of coexisting mental impairment conditions and also other related symptoms in terms of homelessness and/or drug use. This then allows the magistrate to defer the hearing of the matter while those

underlying causes are being considered, while they are being dealt with and treatment is being organised. The magistrate may decide to adjourn the matter to a particular day and then bring the matter back on to get a sense of how the treatment plan is progressing, what progress is being made and so on. That may occur on a number of occasions. We anticipate that individuals will probably take between 6 and 12 months to work through the program, but there are a number of opportunities for the magistrate to oversee the progress of the individual, and that is important.

At the end of the process the magistrate will then return to their important role of sentencing. Again it is important to note that the bill does not change in any way the sentencing options available to the magistrate. It does not change in any way the way in which the magistrate will exercise those sentencing options. On the contrary, the full range of sentencing options are available to the magistrate. As with any case, the magistrate will take into account the usual matters that are taken into account — that is, issues around prospects for rehabilitation and the impact on the victim. The magistrate can quite rightly then take into account the progress that has been made in terms of the program that the individual has undertaken and in terms of sentencing as to the prospects for rehabilitation or reoffending. That progress becomes a relevant factor for the magistrate to consider in determining sentencing, and that is important.

In terms of the conditions that are to be covered by the list, again there is a broad range. It will be able to cover individuals who have got a mental illness, those with an intellectual disability, those with an acquired brain injury, those with autism spectrum disorder and/or those with a neurological impairment such as dementia. Again the objective is clear. We do not want to get caught up in an artificial limit in terms of the number of cases that we will try to address. Clear boundaries are set out, but I think the intention is that if an individual can be assisted through the program, then really that is the basis on which a referral ought to be made. There are some restrictions in terms of who may enter the list. Eligibility will be restricted to those who are not being accused of serious violence or serious sexual offences. Participation will be voluntary, but we anticipate that there will be a range of referral sources. These would include the individuals themselves and the magistrate. It may include police, prosecutors and defence lawyers, and it is anticipated that on many occasions it may include friends or family members of the defendants.

The role of the court — and this will become important when we consider the amendments that will be moved — will be primarily to assess and then refer the

defendants to the appropriate support services. Individual support plans will be provided; the court will provide progress reports to the magistrate; and there will be case managers who support defendants. Their role, as I said, will be to refer defendants to services that deal with the needs related to mental illness, cognitive impairment, homelessness and drug and alcohol abuse.

The court's role is to better align existing services with the needs of the individual. The court's role will not be to become an expert on the various types of mental impairment or on the treatment of individuals with mental impairments, or to become a treatment centre for individuals with drug and alcohol issues. The court's role will be to make sure that those individuals are properly assessed and properly aligned to the experts who can help them. That is an important feature of the bill and an important reason for the concerns I have with the proposed amendments that have been circulated.

As has been indicated, the program will be a pilot program. It will be formally and independently evaluated. This is an important step and an important means of accountability. That evaluation will occur after three years. That time frame is important, because it means there will be sufficient time for the list to be seen in operation, so that if there are changes, those changes can be made to the list and the impact of those can be explored. This will very much be a working, evolving model. The bill deliberately gives the court broad powers on how the list will operate. The government has allowed for a three-year trial period, which I think will be sufficient to assess not only the success of the list but also the success of any changes that are made to improve the operation of the list. It is important that we allow at least that period of time before we exercise any judgement about the success or otherwise of the list.

As has been indicated, the Minister for Planning, Mr Madden, will be moving amendments, and I ask that they now be circulated.

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

**Mr TEE** — These 35 amendments change the name of the list from 'mental health list' to 'assessment and referral court list'. While there may be a number of amendments, the impact of the amendments is the same as you work your way through the bill.

It is fair to say that the name of the list has been the source of much consideration and discussion, and rightfully so. There have been concerns about the

proposal to call it the mental health list. Those concerns have gone to whether the name of the list encompasses all the conditions and impairments that the list is supposed to cover, so the question is: does the name of the list appropriately reflect the content of the bill in terms of who can be included on the list?

The second concern that has been raised is whether the title 'mental health list' would be seen as a stigma by those who might be on the list and whether people would be reluctant to volunteer to be on the list because of the stigma, which unfortunately still exists in the community, associated with people seen to have a mental impairment. The concern that has been raised is that people might be discouraged from participating on the list for this reason.

After much consultation and consideration it is proposed to amend the bill so that the name of the list more appropriately reflects the functional role of the court — that is, to carry out the assessment and refer individuals to the appropriate experts. The name of the list will become more of a functional title. It is hoped this will capture the essence of the legislation and better reflect the nature of the bill.

I will briefly turn to some of the amendments proposed and circulated by Mr Rich-Phillips. As I see it, his first amendment seeks to compel — the word used is 'must' — a court, so far as is practical, to have regard to any assessment undertaken by a person with appropriate clinical qualifications and experience in relation to the particular impairment.

I indicate that we on this side of the chamber will not be supporting that amendment, and we will not be supporting it for a very good reason. The reason is that the role of the Magistrates Court is really to make an assessment as to whether it is appropriate for an individual to be placed on the list. Once on the list, the role of the court is to ensure that the appropriate assessments are made and that the appropriate referrals are made to services where the individual can get help.

The focus, as always, needs to be on the individual, whereas the amendment will result in the focus being very much on the process the court has to adopt. What the amendment requires is that there be someone with appropriate clinical experience available to give evidence on the particular impairment that the accused may have. The difficulty with that is that a particular impairment of an individual may or may not be relevant for the magistrate in considering that referral. It might be an important matter, but it might not be an important matter. It might be reasonably obvious and clear on the basis of evidence from a suitably qualified person rather

than from an expert in the field of autism, an expert in the field of mental impairment or an expert in the field of mental disability. It might be sufficient that general evidence would be sufficient to satisfy a magistrate that the individual ought to be referred to the list and, once on the list, it might be appropriate that expert advice and evidence should be sought.

It seems to me a waste and an unnecessary expense to require the magistrate to have access to a person with appropriate clinical qualifications and experience. That might be an important matter for the individual when we look at the referral, when we look at their assessment, but for the magistrate that may not be a necessary consideration. It might be that it is overkill, it might be that it goes into too much detail and it might be that all we are doing is adding an unnecessary layer of expense and an unnecessary layer of detail.

The response is that it is a question of what is practical under this amendment, but that in itself raises a number of issues. It might be practical to pay \$10 000 to a person to give evidence because the person has the appropriate clinical qualifications. It might be practical to wait for a week while that person is located and while an appointment is being made, and it might be practical then to wait for that person to come and give evidence. That all might be practical, but I do not think it is always going to be necessary.

The fault with this is compelling the court to go through that exercise — the court 'must'. That is where this amendment falls short. It drags from an individual the resources that that individual needs in the development of their plan. That is where the experts are required, in the development and the implementation of the plan. It takes resources from there, essentially, and brings it into the court so the magistrate can get the benefit of that expertise. As we have limited resources, we need to be sure that our resources are tailored in the best way they can be. The resources ought not to be at the gate stage to decide who comes in. It might be that the resources are better off staying with the individuals and that when they are on the list they can get the actual services they need.

**Mr Hall** — Do you think that word should be 'may'?

**Mr TEE** — I do. I have made that suggestion. For that reason we will be opposing the amendment.

**Mr Drum** — So far as practicable.

**Mr TEE** — Again, Mr Drum, in terms of being practicable, it is practicable to spend \$5000 or \$10 000 to get a qualified expert's voice.

**Mr Drum** — But a magistrate is going to make that determination.

**Mr TEE** — On this, a magistrate must.

**Mr Drum** interjected.

**Mr TEE** — That is right. We have got the magistrate getting submissions on whether it is practical to spend, some would say, an enormous amount of money to get an expert. It might be practical to delay the hearing for a month while that evidence is being given, but under this, the magistrate is compelled to go through that exercise. It might be completely irrelevant; it might be completely unnecessary. It might be that it is clear as day, based on the evidence of the social worker, based on the evidence of the police. The police might even consent; the police might say, 'No, this person clearly fits within the definition. Anyone can see that'. But this requires that magistrate to go through the requirement. They are mandated to go through an exercise which is expensive, unnecessary and causes delay.

The second amendment proposed deals with the issue of 'separate hearing lists within the list'. I understand the reason behind this amendment, and I have some sympathy for that, but what we are doing is unnecessary and, I suspect, unhelpful. In requiring the magistrate — or indeed the Chief Magistrate — to look at separate hearing lists, we are creating an unnecessary step in the process.

I understand that the individuals concerned and the advocates for people who suffer from mental impairment rightfully argue that the very different conditions within that broad spectrum are individually recognised and treated so that people who suffer from mental illness are not necessarily treated in the same way as those who have an intellectual disability, those with an acquired brain injury or those who have autism. I understand that it is right and important that those individuals be treated according to need rather than be grouped together. This amendment proposes something which will not help an individual get the particular support and expertise they need.

The bill provides for a plan for each individual. It is that plan that will pick up the needs of the individual and ensure that the individual is linked to the expert they need, be it in any one of those categories. The bill provides a clear way to ensure that individuals are properly assessed and their needs are properly met. This amendment proposes that instead of a functional outcome, instead of it being part of the treatment of the individual, we bring that forward with separate lists and

have all our court resources and experts work out who sits in which list.

The difficulty with that is that individuals may have coexisting conditions, so we will be asking the Chief Magistrate to have guidelines to identify who is in what list and what is done with individuals when they have a number of conditions and are in two lists. Then there will have to be a process for determining what happens with an individual when they are in a particular list but in three, four, five or six months it is found that they are in the wrong list. That would impose up-front a convoluted process, whereas what we want to do is get people onto the list, and once they are on the list give them their individual plans, individual support and access to particular services.

As I said, I have enormous sympathy for making sure that individuals are treated as individuals and that their particular needs are addressed by those who have particular expertise. That is exactly what this bill does, and it does it at the right stage through the development of an individual plan. It does not do it up-front, but it does it at the right time, and that is when the focus is on the individual human being rather than when the focus is on the court. The court does not have the expertise or resources and nor should we make the court an expert in deciding whether an individual has a particular mental impairment or a different particular mental impairment when we know there may be conflicting evidence. We are better off opening the gate, getting individuals onto the list and spending our resources on dealing with those individuals down the track as we develop their processes and the responses to their needs.

The third amendment deals with an annual report. Again, government members will not be supporting this amendment for very good reasons. Firstly, I am concerned that there is an issue around confidentiality in that there is a mandatory requirement that the sources of referrals be identified. The concern is that in some categories there might be a few referrals and it might be easy to identify the source of the referrals. I am not sure that it is appropriate that we expose a defendant's mother for suggesting to the court that the person ought to be on the list. I am not sure what the value is in outing someone's friend for trying to do the right thing and make sure that the individual has the support they need. At the end of the day the support for the individual is in relation to the voluntary nature of the list. They cannot be compelled to go onto the list, but I do not think there is any public good in requiring the sources of the referral to be exposed.

There are a number of other concerns with that third amendment. Those concerns go principally to getting the court to import a degree of expertise that the court does not have. It is one thing for the court to provide its data, and the court already does that in its annual reports, but it is another matter for the court to be speculating on reasons for failure — that is, it is another thing for the court to provide an assessment of the extent to which the list reduces reoffending.

These are all important matters. They are all matters that can, should and will be picked up by the evaluation so that we can combine both the expertise of the court in terms of the numbers and the data it collects with the expertise of those who can properly evaluate and contextualise that information. That is why the appropriate vehicle for dealing with this is the evaluation. As I have indicated, the evaluation will be conducted after three years. It is the right vehicle because it combines the people with the right expertise with the expertise provided in the courts. I should indicate that it is important to note that the evaluation will be independent. Independent evaluators will be engaged to provide the report on the assessment and referral list.

**Business interrupted pursuant to sessional orders.**

## QUESTIONS WITHOUT NOTICE

### Home insulation: federal program

**Mrs PEULICH** (South Eastern Metropolitan) — I direct my question without notice to the Minister for Planning. As the minister responsible for the Building Act and thereby the safety of households undergoing work funded by the incompetent federal environment minister Peter Garrett's home insulation program, also known as pink batts, that has resulted in four deaths of insulation installers, I ask: how many of the total national installations were in Victorian homes, what steps has the minister taken to ensure the safety of these installations and how many of these are dangerous live homes?

**Mr Viney** — On a point of order, President, the question had a preamble that was clearly a political attack on a federal minister, and I ask you to rule on whether overt political criticism of another party is acceptable in a question.

**The PRESIDENT** — Order! It referred to the federal Parliament, which is on occasion allowable, but my concern about the question is its relevance to the portfolio of the minister, and I am about to ask the

Clerk for advice on that matter, if the house will bear with me.

Having conferred with the oracle, I suggest to the minister that there is some grey area with regard to his responsibilities, so I leave it to the minister as to whether he wants to answer.

**Hon. J. M. MADDEN** (Minister for Planning) — I tend to agree with you, President, that this is not specifically or directly associated with my portfolio, but there are elements that I wish to make comment on in relation to some of these matters but not necessarily all of them.

I understand in the order of about 158 000 dwellings in Victoria have had insulation installed in some form; I understand that is the general figure. I also understand there have been no issues detected in relation to those dwellings. Any further technical issues in relation to occupational health and safety are no doubt the responsibility of other ministers or other agencies. If they relate specifically to building permit conditions or associated works that have required building permits, they will be the responsibility of the Building Commission, and as such I would expect to have information from the Building Commission on whether people do or do not need building permits in these circumstances.

Let me make the point that if a building permit has been required, then of course the Building Commission, which is the regulator, will inform me if there are any issues. I meet regularly with the building commissioner, and he has not brought to my attention any issues in relation to this matter, but I would say that many of these works could also be undertaken without a building permit. If it is the case that these works have been undertaken without a building permit, then I would expect that the responsibility would fall within occupational health and safety requirements. That would mean other ministers would be responsible for compliance issues around the occupational health and safety issues associated with these projects.

*Supplementary question*

**Mrs PEULICH** (South Eastern Metropolitan) — Given the minister's answer, can he point to action he has taken to ensure that the insulation installers are properly accredited, that the products used comply with Australian standards and that the 50 000 homes that could have live roofs are thoroughly inspected and installation faults rectified?

**Hon. J. M. MADDEN** (Minister for Planning) — The federal government, which is responsible for this

program, has answered all questions in relation to this matter. As I mentioned in my previous answer, if there were any other issues associated with my portfolio, they would be brought to my attention by the relevant agencies.

I highlight to the opposition that this program is the responsibility of the federal government. If there are issues that are relevant to me, they relate to building permit conditions. I do not believe building permits are specifically required for these projects.

I reinforce that this is very grubby territory for the opposition to go into. Time and again in this place we see the opposition trying to, by its comments, associate something with a particular minister or agency which is not associated with that particular minister or agency. I warn members of the opposition to be very careful about where they go with this issue. I caution them, and I caution the member. This is a federal program. If there were any matters associated with the building industry, they would relate to permits. There is a whole regulatory regime that deals with houses and the operation of building and construction, and if the opposition wants to undermine — —

*Honourable members interjecting.*

**The PRESIDENT** — Order! I understand this is a hot political issue and in some ways an emotive issue, but the standards of the house require that questions be asked and answers heard in reasonable silence and that members not interject, as it is unruly. In particular, constant interjections are definitely unruly. I ask the house to reflect on that. If the interjections continue in the way they have up to now, I will take firmer action.

**Hon. J. M. MADDEN** — There is no doubt this issue has been highlighted through the media, and the relevant comments by the federal government indicate that there are issues it is dealing with, but if the opposition in this house wants to tarnish the building commissioner and the entire — —

*Honourable members interjecting.*

**The PRESIDENT** — Order! I remind the minister that there is no capacity to overtly attack the opposition or the asker of a particular question. I am not suggesting that the minister is overtly doing that at the moment, but there is no question in my mind that he is provoking the reaction we are getting, so I ask for his assistance.

**Hon. J. M. MADDEN** — I would say to anybody out there who wants to criticise the building and construction industry in this state and tarnish the entire building industry, if anybody out there wants to tarnish

the entire building and construction industry in this state because of a few rogues, if those people want to criticise the building and construction industry and the thousands of legitimate families who work in the building and construction industry in this state — working families — if the opposition or anybody else wants to tarnish those workers in the industry, if they want to tarnish the reputation of the construction industry and the building and development industry, if that is what others want to say, they can do that, but I warn those others to be very careful about tarnishing the reputation of the building industry.

**The PRESIDENT** — Order! I remind the minister and all other ministers that when answering questions there is something called tedious repetition. The minister has made his point, I think, about his views on the opposition.

**Hon. J. M. MADDEN** — My point is about anybody. It is not making critical remarks about the opposition; it is about anybody, even the media, who wants to criticise the building and construction industry and tarnish every family and individual worker. I warn them to be very careful, because the economy in Victoria has been largely driven during the global financial crisis by the mums and dads, the contractors, the workers, the electricians, builders, plumbers and installers who drive this economy. They live out in the suburbs and have often been neglected in the supply of infrastructure because of the position of some people. I would caution those who criticise those workers, because they are the backbone of this state and this economy. I congratulate those workers on the work they do and the regulators who control their work, and I look forward to supporting the housing and construction industry going into the future.

### **Clean Up Australia Day: 20th anniversary**

**Ms BROAD** (Northern Victoria) — My question is to the Minister for Environment and Climate Change. Can the minister inform the house of any recent announcements where the Brumby Labor government has been recognised for its commitment to ensuring the ongoing health and vibrancy of our natural environment across Victoria?

**Mr JENNINGS** (Minister for Environment and Climate Change) — Thank you, President, for the opportunity to answer Ms Broad's question about a very important series of events taking place next week in relation to Clean Up Australia Day. I am going to stick to my answer to that question, because that was the question asked and my answer will be apposite to that. However, I invite any member of the opposition, if

they want to ask me or anybody in the environment portfolio in Victoria questions about what the Victorian government knows about the situation that was the subject of the first question — the difficulties of the commonwealth program in relation to the environment portfolio — to ask; I am very happy to answer them.

In relation to the question about Clean Up Australia Day, it has been a very important community activity in Australia that has been going for nearly 20 years. The 20th anniversary of Clean Up Australia Day will be occurring in the first week of March, and I am very pleased to say that the national Clean Up Australia Day event will be occurring in Victoria. I announced that last week with Ian Kiernan, who is the head of Clean Up Australia. He will be coming back to Victoria next week to celebrate the great achievements of Clean Up Australia and also to give inspiration to thousands of people across this country, including Victorian citizens who want to participate in the activities of Clean Up Australia Day. The event has a great track record of thousands of schoolchildren, thousands of members of the community and businesses across Victoria participating in these programs in recent times.

In terms of regional Victoria there is great collaboration between Parks Victoria and Clean Up Australia, which has seen a lot of work undertaken along the Murray River in particular in recent times. We have seen a great result in terms of the participation and the amount of litter that has been taken away from our landscape and particularly our waterways. Last year 1600 tonnes of material was gathered at over 1300 sites across Victoria. It is a great event for community spirit and community engagement, and great environmental benefits are derived from Clean Up Australia Day. We would anticipate that degree of engagement this year in the week leading up to Clean Up Australia Day on 7 March.

We will have a business engagement day on 2 March; we are encouraging Victorian firms and companies to get out there with their employees to participate in specific projects across the landscape. On 5 March thousands of schoolchildren will be participating in school events. On Sunday, 7 March, there will be many locations throughout Victoria where people will congregate in their thousands cumulatively to clean up the landscape.

In and around the Melbourne area we will be identifying a number of key sites across the bay, and we are very keen to improve the water quality for our marine life and beaches. In particular there will be an emphasis by Parks Victoria on West Beach, St Kilda, Jawbone Marine Sanctuary near Point Gellibrand and

down at Lagoon Pier near Port Melbourne. We anticipate that these will be very popular sites and that we will see thousands of Victorians come out to play their role in cleaning up Australia, with maybe even some people from the other side of the chamber joining them — it would be good to see them on those days.

### **Wind farms: Bald Hills**

**Mr HALL** (Eastern Victoria) — My question without notice today is directed to the Minister for Planning. I refer the minister to his recent decision to allow the height of wind generators at Bald Hills to be increased from a previously approved maximum height of 110 metres to 135 metres. Given that this represents a 23 per cent height increase and the new heights will have an impact on the aviation industry, shadow lengths, noise volumes and visual landscape, how does the minister justify his decision to approve this height increase without any supplementary environment effects statement and without any consultation with the community and the South Gippsland Shire Council?

**Hon. J. M. MADDEN** (Minister for Planning) — I welcome Mr Hall's interest in this matter and I also welcome the community's interest in this more broadly. As Mr Hall said, I have approved a variation under the planning permit for the Bald Hills wind farm project. Mitsui and Co. (Australia) Ltd, the current holder of the development rights for the Bald Hills wind farm, sought my approval to vary the planning permit under the secondary consent provisions to allow turbines to be constructed with a blade height of up to 135 metres.

Secondary consent provisions are from time to time included within planning permits to allow flexibility, to change planning permit conditions before a permit has been granted and to avoid delays and costs involved with processing a new application. The increased height limit, while not transforming the approved development, will enable Mitsui to construct and operate a wind farm that can optimise the laminar wind flow on the site and will also enable a selection of the best available turbine technology for the facility. In layman's terms what is particularly important here is that the technology in these turbines has changed — blade lengths are significantly different — hence the allowance for those adjustments to be made.

Through the course of the previous application for the planning permit there was significant review and significant environmental assessment, and the advice I have received is that given those adjustments there has been no need to make any substantial reassessment of those environmental impacts. The advice I have received is basically that while there are adjustments to

be made — and I note Mr Hall's concern about those adjustments — they are not unwarranted on the basis of the new technology. As such, this will allow the project to proceed in a timely way, given the changing nature of the technology that is used and the production methods for the technology, and allow for the project to be delivered not only appropriately in accordance with the issues that were considered in terms of the environmental consequences but also in accordance with the most recent and relevant technologies.

Let us not forget that this project is no doubt a significant one. It will provide the equivalent of thousands of homes' worth of energy. I recognise that these projects are often sensitive, and I also recognise that adjustments to the project may heighten the original sensitivities of those who were not enthusiastic about it. However, I am confident that this decision is an appropriate one which will assist in generating renewable energy for Victoria and has been made in a context mindful of all the consequences based on the initial environmental reviews that were undertaken in the process of considering the first planning permit and its various conditions.

### *Supplementary question*

**Mr HALL** (Eastern Victoria) — Is the minister aware of the fact that when permit conditions for the Bald Hills wind farm were previously changed, with the number of turbines changing from 84 to 52 and with an increase in turbine power, the then Minister for Planning, Minister Delahunty, required a supplementary environment effects statement (EES)? Why is this change in planning permit different, and why has this minister not done what the previous planning minister did — that is, to require an EES where there is a significant change?

**Hon. J. M. MADDEN** (Minister for Planning) — I am conscious that from time to time depending on the various projects there will be different time frames and different conditions put on those projects, particularly wind projects. I acknowledge that.

The decision I made was based on the fact that there was no additional investigation warranted or needed on the basis of the advice provided to me, given that there was a thorough assessment, I understand, of all these matters when the first planning permit was issued. As such, there was no necessity to review those conditions in great detail on the basis of those initial reports. To cut a long story short, there was not going to be a dramatic impact, and any adjustments to the blade technology and the associated conditions of that permit

were not going to have a major impact on the environmental aspects.

I am confident this decision is the right one, that it is the appropriate one and that we will see renewable energy delivered in this state under a good and proper planning process, with the benefits to be shared by all Victorians.

**Trams: new fleet**

**Mr SOMYUREK** (South Eastern Metropolitan) — My question is for the Minister for Public Transport. Can the minister advise the house on progress in securing the new fleet of 50 trams?

*Honourable members interjecting.*

**The PRESIDENT** — Order! I assume the minister knows the question.

**Hon. M. P. Pakula** — I heard the question very clearly.

*Honourable members interjecting.*

**Mr Drum** — I certainly did not hear the question, and I do not know whether it actually is a question. Could I have it repeated please?

*Honourable members interjecting.*

**The PRESIDENT** — Order! Let us not descend into farce here. I request Mr Somyurek to repeat the question.

**Mr SOMYUREK** — My question is to the Minister for Public Transport. Can the minister advise the house of progress in securing the new fleet of 50 trams?

**Hon. M. P. PAKULA** (Minister for Public Transport) — It sounds like a question to me. I thank Mr Somyurek for his question, because Melbourne's tram network is one of the largest in the world. It is a network on which patronage continues to grow. There were almost 180 million trips made on Melbourne's trams in the 12 months to September 2009. That was an increase of almost 10 per cent on the previous year.

In response to that increase in demand, I am delighted to be in a position to announce that we are now one step closer to delivering on a major commitment outlined in the Victorian transport plan, which is the delivery of the fleet of 50 new, low-floor trams for Victoria. The new tram order, and the redeveloped Preston tram workshop, is a \$1 billion commitment identified in the \$38 billion Victorian transport plan. Today the two companies which had previously been short-listed to manufacture and maintain the new trams have been

invited to submit their tenders. Alstom and Bombardier will lodge their tenders by June, and the contract will be awarded later this year.

The new, low-floor tram fleet will be capable of moving 10 000 people at any one time. A significant number of local jobs will be created as a result of the manufacture and supply of the new trams — —

**Mrs Coote** — On a point of order, President, if we were to compare this question and answer, word for word, with yesterday's *Daily Hansard*, I am sure we would find we had a similar answer to virtually the same question. What is the rule about answering exactly the same question with exactly the same answer?

**Mr Viney** — On the point of order, President, I do not recall any question — and the minister may be able to apprise me of this — on the new fleet of 50 trams. There certainly was not a question on it yesterday.

**Hon. M. P. PAKULA** — On the point of order, President, I recall answering a question yesterday from Ms Mikakos about the taxi industry. I do not recall answering a question about trams.

**The PRESIDENT** — Order! The initial point raised by Mrs Coote, that being that a similar question was asked and answered yesterday, is correct. A member is unable to ask the same question in the same session. The issue for me is: was it the same question asked yesterday? The minister has clearly stated that it is not. I do not have on hand a copy of *Daily Hansard* to refute that, so I am prepared to take the minister's word for it — I hope the minister is right — and therefore I rule out the point of order.

*Honourable members interjecting.*

**Hon. M. P. PAKULA** — If Mrs Coote is patient, she will understand very shortly that there is significantly different content in both the question and the answer. The fact is that the thing I am referring to today — the announcement that manufacturers are being invited to submit a tender — only occurred today.

A significant number of local jobs will be created as a result of the manufacture and supply of the new trams. At least 25 per cent of the manufacturing component is being sourced locally. One of the additional requirements of the contract is the delivery of a mock-up cab and saloon section of the tram during the design phase so that it can be used during consultation. It will be a great tool for public consultation and communication, and it will provide the people of Melbourne, including representatives of the disabled

community, with the opportunity to comment upon and give input into the features of the new trams.

The features of the new trams include the 100 per cent low-floor to allow accessibility for all passengers; a total capacity of 210 persons; allocated wheelchair locations and priority seating; high-contrast fittings for visually impaired passengers; full closed-circuit television coverage of the interior of the tram and of tram sides for passenger boarding and alighting; interior and exterior design which will provide a modern, open, attractive and welcoming environment for passengers; and full air conditioning for both passenger spaces and driver spaces.

The mock-up of the tram cab will be used for comprehensive consultation with Yarra Trams and Yarra Trams employees, including its drivers. That will enable everyone to have a say during the design phase.

The new tram operator — —

**Mrs Peulich** interjected.

**Hon. M. P. PAKULA** — Is there some way we can disconnect Mrs Peulich from the mains?

*Honourable members interjecting.*

**Mr Guy** interjected.

**Hon. M. P. PAKULA** — I said it to him yesterday, but no-one heard it yesterday, Mr Guy. The new tram operator, KDR, trading as Yarra Trams, has ended 2009 with excellent performance in reliability. It delivered 99.3 per cent of the timetable in December 2009. We know that the new operator is looking forward to a continuing record of excellent performance in 2010. Together with us, it is anticipating strongly the arrival of new rolling stock. The new, low-floor trams will increase by 50 per cent the number of accessible trams in the system. The first of these trams is expected to enter service in 2010.

Today is another milestone in the procurement of these trams. Along with all passengers who use Victoria's trams, I look forward to these new, low-floor, modern trams entering the fleet.

### **Housing: Geelong**

**Mr KOCH** (Western Victoria) — My question without notice is to the Minister for Planning. I refer the minister to the social housing development on the old Gordon TAFE site in Geelong, for which as planning minister he is the responsible authority under the federal government's package. My question is: will the

minister respect the concerns and wishes of the Geelong community and refer stage 2 of the Gordon TAFE development to the City of Greater Geelong for approval under the normal planning application process, thereby respecting the overwhelming desires of the local community?

**Hon. J. M. MADDEN** (Minister for Planning) — I welcome Mr Koch's interest in this matter. We as a government are very keen to see housing provided at every opportunity. We are also very conscious of the sensitivities of any local community and the issues it might be concerned about.

*Honourable members interjecting.*

**Hon. J. M. MADDEN** — I am pleased to hear that Mr Koch is no doubt supportive of the social housing development that is occurring in Geelong. I believe that to be the implication of his question — that he is supportive of that, particularly the funding for that project by the federal government and the planning provisions that allow for that to be progressed rapidly. I welcome Mr Koch's support in that area.

I also recognise, from having been to Geelong last week and having conversations with a number of community members, in particular the local members down there, including Mr Trezise, the member for Geelong in the other place, who has been very conscious that this seems to be a very sensitive issue for the local community, that we need to be conscious of these matters.

I have asked the department to give me advice in relation to how we can handle the second stage of this development. For those in the chamber who may not be aware, the first stage of the project is one which is about social housing. The second stage, I understand, will be housing which will be open to the rest of the market. I understand there are sensitivities around stage 2, and I am happy to consider a range of options provided to me by the department on how the planning process should continue in relation to that second stage.

*Supplementary question*

**Mr KOCH** (Western Victoria) — The stage 1 development was approved subject to the use being for elderly persons units. A senior official at a public meeting held last week in Geelong and attended by myself and my colleague the shadow Minister for Housing admitted that the first the Department of Planning and Community Development knew of the change of this use to mixed residency was at that meeting. I find this to be an extraordinary admission from one of the minister's senior officers, who is

allegedly responsible for the development approval. Therefore, will the minister respect the concerns and wishes of the Geelong community and consult properly with the council and the community and further review the planning approval for stage 1 of this project?

**Hon. J. M. MADDEN** (Minister for Planning) — I cannot be sure of what is said in public meetings when it is relayed to me by Mr Koch. I am not going to comment on any comments made at a public meeting. I think I gave him the answer to his second question in the answer to the first question, which is that stage 1 is a particularly important stage; it is about social housing for the elderly. I took it from Mr Koch that he was supporting stage 1 by the implication of his wanting information about stage 2.

**Ms Lovell** interjected.

**Hon. J. M. MADDEN** — I take up Ms Lovell's interjection. I understood from the way Mr Koch framed the question that he was relatively supportive of stage 1, but if he is not supportive of stage 1, if he does not want the housing for the aged community, he should put that on the record now. Is that the case?

*Honourable members interjecting.*

**Hon. J. M. MADDEN** — All right, he should put his hand up. If he does not want that project to go ahead, he should put his hand up. What do you want now? You should put your hand up if you do not want that project. If you support social housing, put that on the record.

*Honourable members interjecting.*

**The PRESIDENT** — Order! Minister, through the Chair! Members on my left should not help.

**Hon. J. M. MADDEN** — Thank you very much, President. I welcome your comments because the unruly interjections from the other side are provoking me.

This project in Geelong has two stages, as Mr Koch mentioned. The first stage is social housing for the elderly; the second stage is market housing. If there is an issue around the social housing that Mr Koch does not support, if he does not want social housing — —

**Ms Lovell** interjected.

**Hon. J. M. MADDEN** — If Ms Lovell does not want social housing or if Mr Davis does not want the social housing or if Mr Guy — —

**The PRESIDENT** — Order! I remind all ministers that there is no opportunity to debate the questions. Their answer should be relevant to the question.

**Mr Koch** — Hear, hear!

**The PRESIDENT** — Order! I thank Mr Koch for that!

**Hon. J. M. MADDEN** — Can I just make the point that I understand question time was 20 minutes shorter yesterday. Maybe it was 20 minutes shorter because I was not here. I think that 20 minutes might be for the provocation that seems to come from the opposition when I get on my feet. I reckon there has been 20 minutes of provocation from the opposition today. There is a fair degree of adrenaline pumping on the other side; sometimes I wonder whether it is assisted in some way. Can I make the point that — —

**Mr D. Davis** — This minister claims to be the Minister for the Respect Agenda. I have to say his comments to Mrs Peulich were not respectful. He needs to live up to his — —

**The PRESIDENT** — Order! I advise Mr Davis that that is clearly not a point of order. If he were not the Leader of the Opposition, he would be having an early lunch.

**Hon. J. M. MADDEN** — I make the point that I am very mindful of the issues in Geelong around this project. I think more broadly that even those who are a bit sensitive to the project recognise that the social housing is an important component. Mr Koch has already indicated that he believes the social housing is an important component.

I am prepared to receive advice on stage 2. If there have been adjustments which my department is not aware of in relation to stage 1, I will seek advice from my department. If Mr Koch's comments are correct in relation to the matters that have been raised, I am happy to take information from my department, but until I get that information and prove that that information is correct or not, I am not going to make any calls here. I am happy to take any advice from my department in relation to that.

Can I just make this point: there are those who are very sensitive to social housing, and I understand that. I think it is not helpful when there are those who also fuel resistance to social housing because they think — —

*Honourable members interjecting.*

**Hon. J. M. MADDEN** — I am very cautious because I do not want people to resist social housing because they believe it gives them political advantage or to resist social housing because they believe those circumstances are contagious. I make this point: I am very supportive of social housing.

**Mr Koch** — And so am I.

**Hon. J. M. MADDEN** — This government is supportive of social housing. I heard Mr Koch call out across the chamber that he is supportive of social housing. I will take advice from my department in relation to stage 1, and I look forward to further consultations on whatever form of advice I receive from the department so that we can allow for that in stage 2.

### Planning: Geelong

**Ms TIERNEY** (Western Victoria) — My question is also to the Minister for Planning. Can the minister update the house on how the Brumby Labor government is taking action to renew regional towns and centres such as Geelong and promote good development and urban design?

**Hon. J. M. MADDEN** (Minister for Planning) — I welcome Ms Tierney's question. I welcome the fact that she is particularly interested in the Geelong community and advocates very strongly for that community. Geelong is one of my favourite topics, because we are doing so much in Geelong. If the opposition is expecting to have an early lunch today, there is very little chance. I might talk for a fair while.

I was pleased to be down in Geelong recently and to turn the first sod of what will be the new railway station precinct in the heart of Geelong. This is a fantastic redevelopment because it complements this government's investment in the regional fast rail and also complements the huge uptake of that fast rail and the huge patronage numbers of the regional rail back and forward from Geelong. In that Geelong precinct we have a magnificent heritage station — a beautiful building — that still operates very well for the broader community when people are catching rail connections to and from Geelong.

However, we are investing to upgrade the surrounding precinct. At the moment that precinct has a lot of car parking, but it is not necessarily pedestrian friendly and does not easily orient itself to the other attractive elements of Geelong. If you are a visitor to Geelong, if you live in Geelong, if you are trying to do business in Geelong or to visit the waterfront, then the access, the

orientation and the way you get to and from the station do not relate easily to the surrounding environment.

This project is about construction works in and around the Geelong railway station to Mercer Street. It will create a much-needed link, particularly in relation to pedestrian areas, but parking, pathways and landscaping will also be reoriented. This will assist in making that whole precinct a bit more pedestrian friendly. As well as that it will also allow for direct access if people want to go from the station to the new Transport Accident Commission building or if they want to get to the waterfront. It will help on a number of fronts, whether it is those new users of the employment precinct, those people who want to visit the waterfront as tourists or those who time and again use that station because it is where they commute from daily.

In addition this project is particularly important because it frees up a development site which will provide an enormous opportunity in the north-east station precinct. We hope that will be taken up by a major employer in some form to put more jobs into that precinct and more jobs into Geelong.

This complements the significant investment that has also been made not only in the Geelong precinct but in and around the station area. Last year we announced the completion of the \$1.47 million upgrade to Bayley Street, Transit Place and Clare Street as part of the overall investment. As well as that we saw \$24.5 million in funding provided to Geelong to assist in the strengthening of the city as a regional and economic hub.

I understand this revitalisation will reduce congestion. It will reduce noise and pollution and make that whole area a bit more pedestrian, public transport and cycling friendly and a very pleasant environment to be in as well as to move through.

I want to commend the City of Greater Geelong for its partnering in this work. I want to congratulate the local members, in particular Ms Tierney and Mr Trezise, the member for Geelong in the Assembly, who have been very strong advocates and were there alongside me on the day on which we turned that first sod.

I look forward to this fantastic project. Again this government's investment in provincial Victoria is turning into what will not only be additional opportunities, greater amenity and more sensitive environmental design but will also create more jobs and more prosperity in Geelong to make Victoria an even better place to live, work and raise a family.

**Planning: growth areas infrastructure contribution**

**Mr GUY** (Northern Metropolitan) — My question is for the Minister for Planning. Noting that the Premier yesterday told Victorians that he had no plan B post the defeat of his GAIC (growth areas infrastructure contribution) bill, can the minister advise the house if the government has considered other options to collect funding from growth areas that does not require legislative approval, and if so, what are they and will he make them public?

**Hon. J. M. MADDEN** (Minister for Planning) — I am not sure Mr Guy's question is absolutely correct, because I think he is verbalising the Premier and I am not sure those are the exact words the Premier used. I am not going to comment on Mr Guy's remarks about what he believes the Premier has said, because we know that on regular occasions what he considers to be the truth is not necessarily reality.

I make this point: we know what happened in this place some days ago. We presented a plan and we presented a bill which addressed that plan. That was about providing infrastructure in communities that deserve that infrastructure — new suburbs with working families who should have that infrastructure and should have that infrastructure funding. We have put that plan on the table. We know what our options are, and we know we wanted the GAIC bill to pass to provide in the order of \$2 billion over the next 15 to 20 years to provide that infrastructure to those new communities.

We have made it clear from the very beginning that it would be irresponsible of this government to open up the urban growth boundary unless we could provide for that infrastructure. The view that we saw presented in this chamber — —

**Mr Guy** — On a point of order, President, I asked a very specific question of the planning minister about whether there were other options being considered by the government as opposed to the GAIC bill that was defeated yesterday, and the minister has failed after a minute and a half to address that issue, which was the question from the very start.

**The PRESIDENT** — Order! On the point of order, as Mr Guy points out quite correctly, the minister is in fact 1½ minutes into his answer. There are no restrictions on the amount of time he may take to answer. I believe it to be the case that the house allows a fair bit of licence to ministers to develop their answers. I believe that at the moment he is certainly

being relevant to the actual question asked, and therefore I rule that there is no point of order.

**Hon. J. M. MADDEN** — I can say straightaway that one of the options we will not consider is the opposition's option, because it does not have an option. It does not have a plan, and it has never had a plan other than chaos.

*Honourable members interjecting.*

**Mr D. Davis** — On a point of order, President, the minister well knows that it is question time and his task is to answer the question that Mr Guy has put to him, not to attack the opposition.

**The PRESIDENT** — Order! The Leader of the Opposition is correct that it is inappropriate for ministers, in answering questions, to overtly attack the opposition. He is certainly not doing that, therefore there is no point of order.

Does Mr Finn have a comment to make?

**Mr Finn** — I didn't say anything.

**The PRESIDENT** — Order! Is that a no, then?

**Hon. J. M. MADDEN** — Thank you very much, President. I do appreciate it when opposition members show you some respect.

Can I make the point that we have put forward our plan for affordable housing into the future, and part of that plan is a provision for infrastructure, and that infrastructure will also deliver jobs. But we know that that plan was scuttled by the opposition. We look forward — —

*Honourable members interjecting.*

**The PRESIDENT** — Order! I have been quite tolerant up to date, but it is now getting to the point where interjections are starting to get out of order, and particularly from Mr Guy. Mr Guy asked the question; I think he should listen to the answer.

**Hon. J. M. MADDEN** — So we look forward to considering a range of options in relation to this, but we have always said, time and again — and we made it very clear from the beginning — that it would be irresponsible of this government to adjust the urban growth boundary unless we could provide that infrastructure. On Tuesday this chamber — the Greens and the Liberal-National party coalition — failed to accept the provision of infrastructure as a critical component to expanding the urban growth boundary.

The point here is that if Mr Guy is suggesting the option of delivering these suburbs without infrastructure, we will not do that. If Mr Guy is suggesting we levy rates on ratepayers or we expect local government to deliver it, that is not an option. If The Nationals are suggesting as an option that we charge everybody across regional Victoria to pay for infrastructure in growth suburbs, that is not an option.

As we have said, we will not expand the urban growth boundary unless we can deliver this infrastructure. The opposition wants us to give developers a free kick, and that is not an option, either. So we stand by our plan, and if there is an option from the opposition and an alternative plan, I am ready to have a look at it — but I have not seen one coming from the opposition yet.

*Honourable members interjecting.*

**The PRESIDENT** — Order! I just want to make a comment on a comment. I do not know where it came from specifically, or by whom it was made, but references to paper bags, brown paper bags in particular, are inappropriate, in my view. I have ruled this way before on that remark being made, particularly to a minister on his feet. I just remind the house: I know this is a hot political topic and emotions can get high, but members should be careful.

*Supplementary question*

**Mr GUY** (Northern Metropolitan) — Given that the Premier told journalists today, for the minister's benefit word for word, 'I am considering all options' — thus a plan B for growth areas revenue collection — I ask: why did the government fail to make these other options public and put land-holders, industry and the development community through 15 months of pain simply to pursue a failed model which no-one supported and to which he always had alternatives but told no-one about?

**Hon. J. M. MADDEN** (Minister for Planning) — This is the favourite way of asking questions: if you have an option you are considering, let us know, because there is this conspiracy going on; and if you are not considering options, it is a horrible thing because you are not taking advice. Time and again this is the proposition put to us.

*Honourable members interjecting.*

**The PRESIDENT** — Order! Enough! Mr Guy!

**Hon. J. M. MADDEN** — The point here is that because of the reluctance of the opposition on Tuesday to support our plan — a plan which was very public

and which we had adjusted after consultation and lobbying from community groups — we made adjustments, and we were happy to do that. We were also happy to consider any amendments that the opposition might propose in this chamber. Not only did we not see any proposed amendments coming from the lazy opposition, but when a member of one of the minor parties in this chamber wanted to present a list of amendments — which I believed might have been the view of the opposition but apparently they were not because it did not allow for those amendments to be considered — opposition members voted down the opportunity to have those amendments considered.

Therefore I say to opposition members: you are absolutely shameless in this place. To come in here and suggest that you are concerned about working families and to make out that you are interested in working families when you want to give the developers free kicks is absolutely shameless and absolute hypocrisy from opposition members.

### **Planning: land supply**

**Ms PULFORD** (Western Victoria) — My question is also for the Minister for Planning. I am sure everyone will be pleased to hear his answer in those dulcet tones. Can the minister advise the house how the Brumby Labor government is leading efforts to bring development-ready land to market for the provision of affordable housing for working families?

**Hon. J. M. MADDEN** (Minister for Planning) — Given that we finished question time 20 minutes early yesterday, I thought I might take licence and try to get that back today.

**The PRESIDENT** — Order! I am sure that is highly relevant to the question!

**Hon. J. M. MADDEN** — Thank you very much, President. Because of the actions of the Brumby Labor government, we have one of the most affordable housing and land supplies and prices in the nation. We continue to maintain affordability advantage over Sydney, Brisbane and Perth. As well as that being so in city centres, regional Victoria continues to be the second most affordable region in the country, following Tasmania. On the work we have done to date, on the planning we have done to date and the implementation of that planning to date, we are travelling very well when it comes to land and housing affordability for those in the growth areas.

We monitor land supply and demand to ensure that there is a competitive residential land market in

Melbourne. Our growth areas have been performing comparatively better than other states over recent years as well. In the December 2009 quarter, no less than 60 per cent of the national market of lots under \$170 000 were sold in Melbourne. The same survey reports that 51 per cent of the national market of lots in the \$171 000 to \$200 000 price bracket were again sold in Melbourne. So our market supply and our affordability has to date been very, very good. When it comes to affordable and well-serviced land, Melbourne is the place to be. This claim is backed up by the 2009 Urban Development Institute of Australia *State of the Land* report, which states:

Melbourne — the best by far.

Melbourne's reasonable lot price growth indicates that they are better placed than any of the other capital cities in the supply/ demand equation.

What we know is that Brumby Labor government policies and actions are supporting the delivery of low-cost, sustainable and livable communities, and we want this to continue. That is why we put forward plans to expand the urban growth boundary to provide the next 20 years worth of land supply and keep downward pressure on housing prices. We also put forward plans to secure the funding to provide the infrastructure and services needed by Melbourne's newest communities — those working families. But we know what happened here. What happened here showed the contempt for Victorian families by others in this place. Others in this place were happy to vote the legislation down. This decision will strangle land supply in the long term and add \$30 000 to the cost of a new home in our growth areas. I say to the opposition: shame, shame, shame! We have been very clear in our position on expanding the urban growth boundary, and in doing so having the funds to provide the infrastructure for those new communities.

I have a couple of quotes about land supply I want to draw on. One of those is from the former federal Treasurer, Peter Costello, who might be known to the opposition, particularly some members of it. When he was acting as Treasurer — and I mean acting — the former federal Treasurer said:

If you don't increase the supply of housing, you're not going to do anything meaningful in relation to prices ...

As well as that he went on to say:

Let's identify land that can be released, whether it is privately owned, whether it is state government owned, whether it is commonwealth owned. Let's identify it and work out what the blockages are that are stopping land becoming available to first home buyers.

We know what the blockage is around here. I am looking at the blockage right across the chamber. It is not hard to see them as a bit of a blockage either.

I quote another conservative icon, John Howard:

The release of more land would, over time, help stabilise the cost of housing, and that, over time, has an indirect impact — maybe not a huge one, but an indirect impact — on rents ...

That is what Mr Howard told Southern Cross broadcasting when he was Prime Minister. I go on to quote him again:

The cost of housing and the cost of renting a property is high because the demand is greater than the supply.

What do we know? The opposition wants to strangle that supply. We will push on with our plan. We are committed as a government to providing affordable housing for working families, providing housing choice, boosting Victoria's economy, creating jobs and providing schools, health care, roads and public transport for working families in Victoria. The biggest threat to housing affordability is sitting here in this chamber. I look at the benches opposite. The biggest threat to housing affordability in Victoria is the opposition and the reckless economic vandalism it is prepared to undertake to threaten the viability and livelihood of Victorian working families.

### Live music: government support

**Mr BARBER** (Northern Metropolitan) — My question is for the Minister for Planning. In 2003 his predecessor, Minister Mary Delahunty, engaged in an exercise then known as the live music task force. The output of that was a document called *Live Music — The Way Forward*. A practice note associated with an amendment to clause 15.05-2 of the planning scheme was also developed. That section of the planning scheme says:

Planning and responsible authorities should ensure that development is not prejudiced and community amenity is not reduced by noise emissions, using a range of building design, urban design and land use separation techniques as appropriate ...

That sounds lovely, but the problem with it is it then goes on to say that those decisions must be consistent with any relevant aspects of several documents, including the state environment protection policy (Control of Music Noise from Public Premises) No. N-2. The N-2 state environment protection policy operates only on live music venues as an emitter of noise. It literally says that rock'n'roll is noise pollution. What I would like to ask is: can the minister point me to any example since that amendment was introduced,

including in his time as minister, where that clause has been used to support live music? That could be, for example, in a Victorian Civil and Administrative Tribunal decision, in a panel report on a planning scheme amendment or on local councils' practice of issuing planning permits?

**Hon. J. M. MADDEN** (Minister for Planning) — Mr Barber's line that rock'n'roll ain't noise pollution took me back to the other week when I was in the city near the AC/DC concert venue and there was a gentleman there who looked not unlike Mr Barber. I do not think it was Mr Barber, but he was about my age, Mr Barber's age, and he was dressed in a schoolboy's uniform with a cap. I know it was not Mr Barber, even though I suspect he is a fan of not only live music but potentially of AC/DC.

We do have a wonderful live music industry in this state. But let us recognise that we have quite an extreme range, from the big concert venues such as where AC/DC played the other night, where there were thousands and thousands of people and no doubt some fairly substantial noise, right down to the quiet little acoustic small lounge type of environment where music is played as well. I think that was the point that many people were trying to make the other day in the celebration of live music on the steps of Parliament — that live music venues can be different, from big to small, in many different ways.

My understanding of many of the matters Mr Barber has raised in relation to the control of music in various premises is that the state environment protection policy for the control of music noise from public premises basically sets out that venues cannot operate after 11.00 p.m. and that the noise limit for indoor venues is the background level plus 8 decibels.

In 2004 the then Bracks Labor government amended planning schemes to ensure that in considering community amenity — and it is not being reduced to just noise alone — councils must consider a range of building and design techniques rather than just land-use separation. I understand the concept that was developed is known as the agent of change principle, which determines responsibility for noise management. So, where changed conditions are introduced into an environment — for example, for a new use or changed operating conditions — the reasonable expectations of the existing land users should be respected. This applies to both venue operators and residents.

For an existing resident this means the continued protection of amenity in the event of a change to an existing venue's operation or the development of a new

venue. In these circumstances the burden of any remedial measures such as noise attenuation or modified operating practices falls upon the venue operator — the agent of change in those circumstances. For an existing venue operator it means that where a venue is currently compliant with relevant noise-attenuation standards and its operation does not change, new residential or other noise-sensitive development should not lead to new compliance costs for the venue operator. The onus of any remedial measures in this instance falls upon the new resident, owner or developer — the agent of change.

I hope that addresses Mr Barber's question. Basically if you are not changing any conditions, the person who was first there has the entitlement. My understanding is that that has been relatively successful, particularly in inner city areas, particularly in inner Melbourne, where somebody might do a residential development near an existing venue, and you cannot then complain if that venue has been operating for some time under those conditions without any adjustments to the arrangement. I believe this is an appropriate mechanism for balancing the right of venues to operate — particularly to play live music, where there might be a bit of noise — with the amenity of potentially new residents, but also trying to get the balance right if there is a change in the licensing or the arrangements for the existing venue.

The government thinks this works relatively well. It will not necessarily satisfy everybody long term. There will always be concerns, but that does not just relate to music; it might relate to the operation of venues of different sorts — restaurants and the like. A lot of people settle in areas because of those opportunities. Over time they might tire of them, but those opportunities still exist. I think the planning system on this basis balances those needs fairly reasonably.

*Supplementary question*

**Mr BARBER** (Northern Metropolitan) — I thank the minister. I was aware that that was the principle. My question went more to whether the minister could point to any case where that principle had been put into practice. But let me ask this by way of supplementary question: the live music accord signed by the government a day or so ago committed — —

**Hon. M. P. Pakula** — What is your theme song?

**Mr BARBER** — *Dirty Deeds Done Dirt Cheap*.

The accord committed the government to a review of these very matters — the planning aspects of it — and I ask: is the minister aware that that commitment was

made, and can he tell me when and how that review will commence?

**Hon. J. M. MADDEN** (Minister for Planning) — I will no doubt receive advice from the department as to the best way to manage that review process. I think it is important that the enthusiastic support of live music shows there is a recognition across the community that live music is one of the great attractions of Melbourne. We have a live music scene that outrivals other cities. We want to maintain that, but we also want to get that balance right. I think this mechanism works pretty well, but if there is some finetuning on either side of the ledger that does justice to those venues that want a little bit more licence but also does justice to residents, then this will form part of the review.

I would not think this will change civilisation as we know it, but I look forward to seeing what recommendations come from that review. Once I get the advice from the department as to the mechanisms for that review to be undertaken, I will be happy to provide that information to the member or present it to the chamber.

### **Housing: affordability**

**Ms HUPPERT** (Southern Metropolitan) — My question is to the Treasurer. Can the Treasurer update the house on the latest construction work figures, any links to the performance of the Brumby Labor government's first home owner grant and any threats to the ongoing operation of the scheme and to construction work in Victoria?

**Mr LENDERS** (Treasurer) — I thank Ms Huppert for her question linking construction figures, the first home owner grant and any threats to it going forward. Yesterday the Australian Bureau of Statistics released figures showing that Victoria's commercial construction rose by 12.5 per cent last year, with a diminution in large commercial construction being outweighed by a strong pick-up in the housing sector. Also in the figures that have just come out is the fact that 53 730 Victorians took up first home buyer grants. If you look at the two figures, you will see a strong correlation between the first home buyer grant and commercial construction going forward.

The Minister for Planning, Mr Madden, earlier outlined the Urban Development Institute of Australia figures that showed that in the December quarter 60 per cent of housing lots that were under \$170 000 were in the state of Victoria.

**Mr Drum** — On a point of order, President, if the Treasurer thinks he is being funny by holding up as a prop his notes, the back of which show the Leader of the Opposition. It is being very disrespectful, and he should know better.

**The PRESIDENT** — Order! I am not aware that the Treasurer was holding up a prop. If he was, he should not; Mr Drum is correct. If he was, I would appreciate it if he would desist.

**Mr LENDERS** — What we saw in the December quarter was that 60 per cent of housing allotments in Australia valued at under \$170 000 were in the state of Victoria, as Mr Madden said. If we are talking of the challenges of commercial construction, if we are talking about affordability, Victoria has led the way. Mr Madden showed quite clearly that it is not just the Labor government saying that; John Howard and Peter Costello also outlined that land supply was the critical ingredient to going forward. Land availability is a big part of the great Australian dream.

As Mr Madden said, the actions of this place in destroying the GAIC (growth areas infrastructure contribution) legislation this week have jeopardised the dreams of thousands of Victorians to get affordable housing — to get their own home. If Mr Baillieu and his allies think that is not the case, they have on their hands a \$30 000 bill for every Victorian.

**Mr D. Davis** — On a point of order, President, the Treasurer well knows his task is to answer the question and not to attack the opposition.

**The PRESIDENT** — Order! The Leader of the Opposition knows that it is overt criticism or attack on the opposition. I do not believe that is the case. There is no point of order.

**Mr LENDERS** — Ms Huppert asked me about any threats to the ongoing affordability of housing in the state of Victoria. I am answering her question directly, and Mr David Davis knows that. The biggest threat to housing affordability in Victoria today is Ted Baillieu and his allies, who have killed the dreams of a generation of young Victorians to have access to affordable housing. At \$30 000 a block, which will be the extra cost of housing, Mr Baillieu and his Liberal, Nationals and Greens allies have put a \$1.6 billion price tag on the cost of housing in Victoria.

**Mr Drum** — On a point of order, President, the Treasurer has spent the last 30 seconds doing nothing other than overtly criticising the opposition.

**The PRESIDENT** — Order! We now come to the issue of opinion. In my opinion it is not overt criticism — —

**Mr Drum** interjected.

**The PRESIDENT** — Order! If Mr Drum wants to play games with me, we will play games. He will resume his seat. He knows it is totally inappropriate to get up and move while I am on my feet addressing the chamber. I do not know what Mr Drum said or what he wants to do, but he will do it in accordance with the standing orders. If he has a point to make, he will do it in the proper fashion.

In my opinion it is not yet overt criticism. Both sides of the house are reacting to the question and to the answer, and debate is becoming a little robust. That is the nature of the game; this is a place for robustness on occasion. However, I ask the minister to be cognisant of the issue of overtly attacking the opposition. I ask the opposition to cooperate and at least listen to the answer reasonably.

**Mr LENDERS** — In response to Ms Huppert's requests about threats to housing affordability, the largest single threat to housing affordability is land supply. What we have seen because of the rejection of the GAIC legislation and the threat to the urban growth boundary is that for people across Melbourne — and particularly those outside Melbourne in Point Cook, Caroline Springs, Cranbourne, Pakenham, Ballarat and Bendigo — housing affordability will be reduced by a \$30 000 price tag per house because of the irresponsible trashing of sound urban growth practices. No government can go forward into a Los Angeles-style sprawl without appropriate infrastructure and urban planning.

We have a \$1.6 billion price per year inflicted on the aspirations of new Victorian homebuyers who wish to own their own houses. For government to pick up that infrastructure cost, as Mr Madden says, means it is either put on municipal rates for working families or it puts the state into debt or it spreads it across regional Victoria and not just the growth suburbs of Melbourne, where it puts a fair impost on developers. What I say, and I quote my colleague Minister Holding in the Assembly who yesterday referred to my electorate, is that the urban growth boundary for us is something that is relevant around the fringes of Melbourne and affects the areas on the edges of Melbourne, unlike Mr Baillieu's electorate; it does not affect St Georges Road, Toorak.

**Mr Atkinson** — President, I wish to raise by leave a matter of utmost importance. As you would be aware,

my office is on the second floor of the Parliament building. On Tuesday morning on the way to my office I noticed outside the Labor Party meeting room — being K Room in this place — a number of boxes of material that had apparently been — —

**Mr Lenders** — President, leave is not granted.

**Mr Viney** — On a point of order, President, yesterday during the debate on the independent commission against corruption I raised a point of order about some comments made by Mr Finn, and Mr Finn responded that he had used a word 'perhaps' which meant that my concern was not relevant. I have now had a chance to review the *Daily Hansard*, and I believe Mr Finn should be required to withdraw the remarks he made about the Premier because his remarks — —

**The PRESIDENT** — Order! I am sorry to cut Mr Viney short, but it is my clear recollection that I drew that matter to the attention of Mr Finn and asked him to withdraw it, and he did.

**Mr Viney** — On the point of order, President, you asked him to rephrase it.

**The PRESIDENT** — Order! I gave him the opportunity to rephrase, which he did.

**Mr Viney** — The *Daily Hansard* does not record any withdrawal; it simply records him as being asked to rephrase. The *Daily Hansard* does not record that you asked him to withdraw, but if it is incorrect, I will take your advice.

**The PRESIDENT** — Order! I have a very clear recollection that I expressed to Mr Finn my concern about his comments with regard to the Premier, particularly given the status of the office, and I offered him the opportunity to rephrase, which he did. Quite frankly I am happy with that.

**Mrs Coote** — On a point of order, President, in relation to standing order 7.06 I would like to seek a ruling, because the standing order says:

No question will be proposed in the Council which is the same in substance as any question which has been resolved during the previous six months in the same session.

On 10 November 2009 a question without notice was asked by Mr Eideh of Mr Pakula. I believe exactly the same question was asked today by Mr Somyurek of Mr Pakula. I believe it has been resolved. I ask for a ruling on this issue.

**Hon. M. P. Pakula** — On the point of order, President, I would need to go back and check the record, but my recollection of the question that Mrs Coote is referring to is that it was a question that was asked of me in my capacity as Minister for Industry and Trade and it was a question —

**The PRESIDENT** — Order! Mr Pakula does not get to debate the point of order, and at the moment I do not need his assistance, because I am quite happy to rule on this now. The fact is that there is some question about whether the member has the right standing order, but putting that aside, for the house's edification I will read the question which was asked by Mr Eideh and which has been referred to:

My question is to the Minister for Industry and Trade. Can the minister advise the house of what the Brumby Labor government is doing to help Victorian companies to share in the manufacturing opportunities arising from the Victorian transport plan?

I will compare that with today's question:

Can the minister advise the house of progress in securing the new fleet of 50 trams ...

It is my view that the original question could refer to trains, planes or automobiles. This question today was specific to a fleet of 50 new trams. I do not believe it is the same question or even close to the same question. There might be a modicum of relativity, but I believe my original ruling stands.

**Mrs Coote** — On a point of order, President, I ask for some clarification. It does say in 7.06 that it is about the substance and whether that has been resolved, and that is what I would like a ruling on.

**The PRESIDENT** — Order! One, the member does not get to seek a point of clarification; and two, I am happy with my ruling. It is my opinion that it conforms with the standing orders, and that is it.

**Sitting suspended 1.21 p.m. until 2.32 pm.**

## MAGISTRATES' COURT AMENDMENT (MENTAL HEALTH LIST) BILL

*Second reading*

**Debate resumed.**

**Mr TEE** (Eastern Metropolitan) — Just before question time I was considering the amendments put forward by Mr Rich-Phillips and our concern that they distort the resource allocation. The first concern is that they would allocate resources to the entrants of the list

rather than ensure that those resources were allocated to the individuals who are going to benefit most from the expertise that is available. Secondly, the amendments would require the courts to become experts in matters in which they do not really have that expertise. They would require courts to be expert in the evaluation of the data which they quite correctly collect, but there are areas in which they do not have expertise in terms of the evaluation of that data. Thirdly, the amendments would require the courts to become experts in deciding what particular impairment category an individual fits into, and again that would be an unnecessary use of very limited resources.

As I indicated earlier, I think some of the issues picked up in the amendments ought to be part of the evaluation which has been prescribed. As I think I also indicated, independent evaluators will be engaged to provide a report on the assessment and referral list. This evaluation report will consider the aggregated data on the source of referrals, the number of persons in each diagnostic criteria, the number of persons who have commenced and completed individual support plans and the impact on recidivism and reoffending. The report will consider the success of the list, it will recommend changes or improvements to the operation of the list and it will be publicly released.

Ms Hartland from the Greens has asked that details of the government's commitment in terms of what will go into the report be confirmed to her in writing, and I am happy to put on record that the government will be writing to Ms Hartland and setting out, as I have set out in my contribution to the debate this afternoon, the details which will be part of that report. My contribution, in essence, will be confirmed in correspondence to Ms Hartland.

That picks up on three of the four amendments Mr Rich-Phillips has put forward. In relation to the fourth amendment, at one level I can understand what is driving the amendment, but again I have significant concerns about it. In essence, the way this amendment would work is that in order to be eligible an individual would have to meet both diagnostic and functional criteria. The diagnostic criteria is the category into which the individual falls. It might be that the person has a mental illness, an intellectual disability or an acquired brain injury. You need to be in one of those categories to be eligible for the list. You also need to meet functional criteria. That would include a substantially reduced capacity in any of the following areas: self-care, self-management or social interaction. If you meet those two criteria, you are then eligible to get onto the list, and once you are on the list you then have a support plan and that support plan deals with

any psychological assessment, welfare services, health services, mental health services, drug treatment and so on. Once you have met the diagnostic and functional criteria a support plan is then developed, whether it is for drug and alcohol services or housing support services, and that is a very appropriate way for individuals to be dealt with.

Unfortunately what Mr Rich-Phillips's amendment proposes is to constrain the support plan or at least prescribe that the support plan must go back to the diagnostic and the functional criteria. That might be appropriate, and in many cases I am sure it will be, but again there may be cases where it is not appropriate.

Once we have the person onto the list because they meet those two criteria, we then want the support plan to focus on their needs in terms of health services, drug treatment and housing services. We do not want the support plan to have this artificial focus on the diagnostic criteria or the functional criteria. We do not want the support plan unnecessarily being dragged back to whether the issues are self-management or social interaction and so on.

What concerns me about this amendment is the artificiality of it. It would create an extra layer of bureaucracy whereby we require the case managers, the people who are dealing with these issues, to address criteria which may or may not be pertinent to the support plans. We would create an extra bit of bureaucracy and work which may or may not be necessary. That in itself is a concern.

Of greater concern is that in dragging people back to those criteria, we might be distorting the support plan for the individual. My view is that the support plan ought to look forward to the services that the person needs. It ought to be focused on the remedy and moving ahead rather than requiring those case managers to reflect back in terms of either the functional criteria or the diagnostic criteria. For those reasons government members will be opposing this amendment. At best what it proposes will already be there in most cases, but in some cases it will distort the support that should be provided to individuals.

With those remarks, I indicate that government members will not be supporting Mr Rich-Phillips's amendments, but we obviously will be moving the amendments that I have foreshadowed.

**Mrs COOTE** (Southern Metropolitan) — I have pleasure in speaking on some provisions of the Magistrates' Court Amendment (Mental Health List) Bill 2009, but I am deeply disturbed about other

provisions in this bill. I am not disturbed by its thrust, but I am hoping that what the government has done is inadvertent, because it has taken us back two decades in how we approach the distinction between people with a mental illness and people with disabilities. Probably most of the people in this chamber would agree with me that great strides have been made in the areas of mental illness and disabilities in this state, but I believe the consequences of this bill would be to almost take us so far back that it is a serious disappointment.

As members know, the purpose of this bill is to establish the mental health list in the Magistrates Court for accused persons with mental illness, intellectual disability, acquired brain injury, autism spectral disorder or a neurological impairment including dementia which causes substantially reduced capacity in self-care, self-management, social interaction or communication and who would derive benefit from coordinated services under an individual support plan.

My colleague Mr Gordon Rich-Phillips outlined very succinctly and in a most articulate way the major concerns that Liberal Party members have with this bill. He outlined with great care and consideration what has happened in terms of the consequences, given that the title of this bill is the Magistrates' Court Amendment (Mental Health List) Bill.

Before I go to the amendments, I want to say that yesterday we had a major debate in this place about this government not listening. This is a very clear example of this government not listening. If its members had been listening, they would have listened to the disability groups and the people with mental illnesses and they would have understood what the differences and subtleties are. Instead the government has yet again ignored a major constituency of this state. The families of people with a mental illness or a disability were not asked to comment on this bill at all, which I think is important. If government members had listened, they would have heard what those differences are.

Members have all been given a lot of information from Max Jackson and Margaret Ryan. These two people have been advocates for a significant time for people with an intellectual disability and I want to put on the record my praise for the two of them. They have continued to work in the disability sector for a considerable time. They have an in-depth understanding of the methodology of legislation, and I have to say that both their submissions were very good.

Gordon Rich-Phillips referred to and quoted from the submission that Margaret Ryan made. I would like to quote from one that Max Jackson sent to members of

Parliament. It is dated 4 February and gives 10 reasons why this bill must be amended. He says the bill:

1. Ignores the government's focus on respect — dumping offenders with an intellectual disability, acquired brain injury, autism spectrum disorder or neurological impairment under a mental list fails to respect the feelings, sensitivities and desire of these persons to be seen for their lifelong disability and not be seen as having mental health issues.
2. Ignores the fact that people with a mental health illness do not want to be linked to those offenders with an intellectual disability, acquired brain injury, autism spectrum disorder or neurological impairment.
3. Ignores the fact mental health does not equate with these other conditions. They are different in every respect.
4. Ignores the history of change established over the past 100 years to separate mental health and disability.
5. Ignores the Victorian government's acknowledgement on its website that:
 

Acquired brain injury is not a mental illness and requires very different specialist skills from those offered by mental health services.

Intellectual disability is not a mental illness and requires very different specialist skills from those offered by mental health services.
6. Ignores the separation of mental health and disability through legislation, policy and planning, administration, service outlets and delivery, and funding.
7. Ignores the fact that there are separate and distinct mental health and community services portfolios ...
8. Ignores the fact that despite the different specialist skills required in assessing and service planning, implementation of the mental health list proposes only having mental health practitioners involved in the assessment process.
9. Ignores the experience in other jurisdictions, particularly Western Australia, New South Wales, South Australia and Tasmania, and the differences with Victoria's proposed legislation.
10. Ignores the rights of offenders with an intellectual disability, acquired brain injury, autism spectrum disorder and neurological impairment to equal justice.

If members of this government had been listening, they would have taken each of these points on board and ensured that the government got it right and this bill before the chamber today did not need a government amendment. Unfortunately we are seeing in this place all too frequently this government presenting sloppy, ill-thought-through legislation that would have consequential outcomes which mean it has to go back to the drawing board. This is a very big case in point.

This morning I spoke on the report tabled by the parliamentary Family and Community Development Committee about supported accommodation for people with disabilities. The report identifies in many of its recommendations the differences between people with a mental illness and those with an intellectual disability. It is not rocket science and it should not have been difficult for the bureaucrats to see these subtle differences. Now we have been presented with this bill.

The Liberal Party, through Mr Rich-Phillips, has circulated four good amendments it proposes to this bill. I will not go into all the details right now, but I will mention amendment 3, which is about reporting in the annual report. As Mr Rich-Phillips said earlier today, it is important for this Parliament, or a subsequent Parliament, to look at the sunset clauses and to make certain that what has been discussed and passed — if this bill passes today — comes to fruition. It is important that there is proper ongoing scrutiny and proper monitoring so this Parliament and subsequent parliaments can make certain there are clear comparisons and that the whole process is open and transparent. It is important for this amendment to be agreed to today, as it is important that amendment 4 is agreed to.

Mr Tee spoke earlier about amendment 4, but he did not understand the rationale behind the amendment. Once again he failed to listen to what Mr Rich-Phillips was saying. We are talking about individuals here, individuals with individual issues. Their families have different issues. They need to be looked at as individuals. We have spent two decades treating people with mental illness and intellectual disabilities with respect and dignity, and we have made certain that their issues are kept separate. However, this bill unilaterally puts them into a one-stop shop. It is just not good enough. It is a one-size-fits-all approach. I acknowledge that the government may be aware of its mistake, because it is proposing some amendments which will change the name of the legislation, but much more than a change of name is needed.

If Mr Tee has not understood the subtleties of this — I note the grimaces — he should listen to people such as Margaret Ryan and Max Jackson, because they will set him straight. The Minister for Environment and Climate Change in his previous role as Minister for Community Services understands the difference. I suggest Mr Tee turn around and ask the minister, because he can help Mr Tee to understand exactly what those differences are; Mr Tee should have listened to him. We listened for more than 35 minutes to Mr Tee talk about the government amendments and his position on this bill, and quite frankly it is only skin deep. It is

still an issue, and this government needs to have a very close look at itself.

**Ms MIKAKOS** (Northern Metropolitan) — I am pleased, in fact proud, to rise to support the Magistrates' Court Amendment (Mental Health List) Bill 2009, and what we refer to as the assessment and referral court list bill. I would like to speak briefly both in support of the bill and also the foreshadowed amendments that have been circulated by Mr Tee during his contribution. I would also like to indicate to the house my opposition to the amendments proposed by Mr Rich-Phillips.

The reason I am pleased to be supporting this bill is that it seeks to establish an assessment and referral court list in the Magistrates Court to address the needs and offending of individuals with a mental illness or cognitive impairment. It aims to reduce the risk of harm to the community by addressing the underlying factors that contribute to offending by individuals who may be suffering from mental impairment or cognitive impairment.

I am proud to be a member of a government that has taken the issue of mental illness seriously and which has provided in the last two state budgets up to \$300 million for Victoria's mental health reform. Victoria currently ranks first in Australia with 60 per cent of the mental health budget being allocated to community mental health services. This bill builds upon this important record.

Last year the Labor government in this state released its vision for mental health services in Victoria, *Because Mental Health Matters — Victorian Mental Health Reform Strategy 2009–2019*. A key component of this strategy is to ensure that all Victorians have the opportunities they need to maintain good mental health, while also supporting those with a mental illness to access high-quality, timely care and to live successfully within our community.

The 10-year strategy is based on the four core elements of prevention, early intervention, recovery and social inclusion. Research has shown that many people with severe mental health problems present to court with multiple coexisting problems, such as homelessness, drug and alcohol abuse, poor social or interpersonal skills and unemployment. In the absence of a coherent approach of support for these individuals, they are at greater risk of falling through the cracks, leading to repeated hospitalisation, entrenched homelessness and ultimately a higher risk of incarceration.

A Victorian prisoner health study looked at these issues and found that mental illness is three to five times more prevalent among prisoners than the general community, and that more than 25 per cent of newly remanded prisoners have a mental illness. There is a clear need to better support people with mental health problems who are in contact with the criminal justice system as it is these people who make up such a large percentage of our prison population.

This bill explores a new approach in dealing with offenders suffering from mental health and other issues by referring those offenders to an assessment and referral court list. With \$13.8 million allocated in last year's state budget to the establishment of this list, offenders will have greater access to community-based support services that will help them to address the underlying causes of their offending and reduce the risk of them reoffending.

The Magistrates Court will have the power to link defendants with health and welfare services across government, and experienced health practitioners and case managers will be able to support offenders at the crucial early stages of their contact with our criminal justice system.

Early intervention programs such as the one facilitated by this bill illustrate that the Brumby Labor government is committed to breaking the cycle of offending. By identifying defendants who have a mental or cognitive impairment and ensuring that they receive the necessary support we can effectively address the matters that have contributed to their offending behaviour and therefore reduce the risk of reoffending and the level of crime in our society.

Whilst this is only a pilot program, I take this opportunity to remind members of the enormous success that other pilot programs have had in this state. Since the inception of Victoria's first Koori Court many years ago we have seen this initiative extended into a number of regional areas and metropolitan Melbourne. This had led to significant progress in reducing the overrepresentation of indigenous people in our criminal justice system. I regard this initiative today as one in a fine tradition of initiatives introduced by our reformist Attorney-General to really tackle the causes of crime in this state and reduce the rate of incarceration.

The assessment and referral to the court list will begin in the Melbourne Magistrates Court, which will hear approximately 300 cases each year. I look forward to the program being ultimately evaluated and, hopefully, if it does prove to be a success, to its introduction in other Victorian courts. Similar programs have been

introduced in other states — for example, in South Australia. An evaluation of the South Australian program was conducted in 2004. That evaluation found that up to 60.5 per cent of defendants had not reoffended, 15.9 per cent had committed fewer offences, 12.7 per cent had committed the same number of offences and 10.8 per cent had committed more offences. There was a significant number of defendants who did not reoffend. I hope the Victorian model will also prove to have this level of success or, hopefully, be better.

The list that we are looking at introducing is modelled on the successful interstate programs. It adopts the best features of those models taking into account the particular characteristics of our existing health services and associated infrastructure in Victoria. The bill gives access to defendants who present with moderate to severe mental illness and cognitive impairments, including intellectual disability, acquired brain injury, autism spectrum disorder and/or neurological impairment, including dementia. However, offenders charged with violent or sexual offences will not be accepted onto the list.

The focus will be on those offenders whose risk of reoffending is related to their mental health issues or the other impairments that I just mentioned. Priority will be given to defendants who would most derive a benefit from involvement in the case management process. Defendants whose cases are accepted will then have to participate in a support plan tailored to their individual needs. This is what this bill is about: identifying the specific needs, illnesses and disabilities of individuals and catering to those needs. I wish the bill a speedy passage and hope this program is successful.

I put on the record again my support for the amendments that have been circulated by Mr Tee and my opposition to the amendments circulated by Mr Rich-Phillips. Mr Tee has articulated more than adequately the reasons why the amendments proposed by Mr Rich-Phillips should not be supported. Briefly, the legislation that we are proposing has the adequate flexibility to have regard to the impairment and particular circumstances of the defendant coming before the court. There will be professionals involved in the court system, and they will have the appropriate clinical qualifications and experience to deal with the impairment of the accused. I do not believe Mr Rich-Phillips's amendment 1 is therefore necessary. That amendment is redundant given that the system as it stands will have the necessary flexibility to deal with the particular circumstances of any defendant coming before our court system.

As I said, the pilot program will be evaluated by qualified individuals at a later stage. Mr Tee has already put on the record that the findings of that evaluation will be publicly available. Therefore the amendment as proposed by Mr Rich-Phillips is unnecessary. With those words, I indicate my strong support for the bill before the house and wish it a speedy passage.

**Debate adjourned on motion of Mr DRUM (Northern Victoria).**

**Debate adjourned until later this day.**

## ANNUAL STATEMENT OF GOVERNMENT INTENTIONS

**Hon. T. C. THEOPHANOUS** (Northern Metropolitan) — I move:

That the Council take note of the annual statement of government intentions for 2010.

It is fitting that my final speech in Parliament be given in the context of responding to a statement by the Premier of Victoria, John Brumby, which sets out an agenda for moving forward. Moving forward is what my family and I want to do as well.

The Premier identified three major objectives: strong leadership to tackle the big issues, investment to create jobs and build new infrastructure in Victoria and addressing global challenges while supporting families. These are worthy goals and major challenges at the same time. They represent in large measure what I think politicians should strive for, and I hope they also reflect what I have tried to do as a member of Parliament and as a minister. Whilst I will not be in Parliament beyond today, I hope I can play a role in the private sector and the not-for-profit sector in continuing to make Victoria a better place for all of us and our children.

Looking back I can certainly see that, while much has been done and I feel privileged to have been a part of that, there is still much to be done in the future. This will not be a short speech, President, but it will also not be my longest! I want to talk about some of the major challenges for our community, and if I can play a role in meeting those challenges in the future, it will be my privilege to do so.

I want to talk about the following six areas: health and diabetes; education, building character in our children and reaching out to the world; multiculturalism and overseas students; building Victoria in a global economy and carbon-constrained world; the challenge

of accountability; and my own journey and a vote of thanks.

I turn to health and diabetes. With a growing and ageing population, one of the biggest challenges we face is in the area of health. I see this challenge now as more than simply a question of more funding, more resources and better management practices. Important as these things may be, we need in the future to think about how we address the way we live in the context of a world community which has much less access to health resources and choices than we have.

My particular interest is in the area of diabetes, which is a disease of epidemic proportions around the globe and is now one of the biggest epidemics in human history. The International Diabetes Federation (IDF), from figures provided by Melbourne's own Baker IDI Heart and Diabetes Institute, has estimated that the prevalence of diabetes, defined as those with type 1 or type 2 diabetes, diagnosed or undiagnosed, has increased sixfold in the last few decades to a staggering figure of 285 million people worldwide. Hundreds of millions more have impaired glucose tolerance and are also susceptible to higher levels of cardiovascular and other complications, including amputations and kidney and eye diseases.

Diabetes is the fastest growing health disorder in Australia. It is estimated there are currently 1.3 million people in Australia who are affected, and the Prime Minister recently announced that by 2020 diabetes will be the no. 1 disease in men and the no. 2 disease in women in Australia. As a type 2 diabetic myself, I have learnt to live with and manage my condition. In doing so I have had to make many lifestyle changes, including in diet and exercise and even in trying to reduce my stress levels, which is not an easy task for a politician! I do not suffer from obesity, and yet we know that obesity is linked to diabetes, as is poor diet. We call the combination 'diabesity'. The fast food industry should take notice. We also have to take responsibility for the education and diets of our children and ourselves in a fast moving world.

When I leave Parliament I will be doing some work for Melbourne's world-class Baker IDI Heart and Diabetes Institute in a voluntary capacity as an ambassador to promote diabetes awareness and programs. I believe when you have been in public life for as long as I have, you develop skills that can help these public institutions achieve their important aims, and I am very much looking forward to doing that.

I believe that the western and northern suburbs of Melbourne need particular support through expanded

programs to tackle obesity and identify and treat diabetes. Rates of diabetes in Melbourne's west in particular are amongst the highest in Victoria. Specialist services for diabetes in this region are limited and currently overburdened. Baker IDI has had a specialist diabetes service established in Footscray for over 15 years, but the needs of the local community are outstripped by its capacity. The west and north need expanded services, and Baker IDI is well placed to help provide those services with additional government assistance and by working with local organisations like the Western Bulldogs.

I also think the ethnic communities need special attention with specific programs. Victoria's migrant groups from the post-war decades such as Greeks and Italians are ageing and experiencing rapid increases in diabetes, yet their understanding of the disease and their access to services remains limited. They too need special programs and assistance. Of course diabetes is rampant across our indigenous population right around Australia and must be addressed as a priority.

I also think it is important to recognise the increase in diabetes as a worldwide phenomenon which is afflicting many people in poorer countries as well as those in affluent countries like Australia, where lifestyle choices and obesity are related to the disease. In countries like India diabetes is rampant and not properly addressed or understood. The IDF estimates that there are over 50 million people with diabetes in India and the numbers are growing rapidly.

Early research suggests that apart from the obvious linkages to poor high sugar content diets amongst many people in India, diabetes may also be linked to malnutrition of mothers during pregnancy, which increases diabetes susceptibility in the children. I hope I can influence governments in the future to adopt programs to help with research into diabetes. Baker IDI has a number of international initiatives designed to enhance capacity in disadvantaged countries through research and clinician training programs. By providing an extension of our research in Australia to vulnerable societies around the world we are improving our understanding of health and disease globally, while building new linkages and friendships to help them address their health issues. It would be a wonderful thing, for example, if we could increase collaboration with India and help train Indian doctors in these important areas and at this crucial time.

I now turn to education, building character in our children and reaching out to the world. The education system is now seen as big business and the overseas student education program has been painted as a big

revenue earner for the state, and indeed it is, but our education system is much more than that. Now more than ever, the education system is key to our prosperity and to maintaining a caring, tolerant democracy here in Victoria. Having had a good education myself and having taught at La Trobe University before being elected to Parliament, I am firmly of the view that a solid education experience is the vehicle which builds character, meaning and identity in our children and allows us to reach out confidently and engage with the rest of the world. I have been concerned for many years by the shift away from a classical broadbased education to a much narrower instrumental focus. I hope Melbourne University's attempt to reintroduce this broader base of learning receives proper support and funding.

I have fought in my political career to have languages properly funded and taught in our education system. Although much has been done, the teaching of languages is still a long way from ideal. We are one of the few countries in the Asian region, and perhaps in the world, that in the main still produces monolingual children. This is quite incongruous with our claims to multiculturalism. It does not promote access to different cultural perspectives and in the long term will not help our economy either.

The education experience which our children have is also the key to building a national or communal identity and reducing antisocial behaviour. When I talk to the younger generation today, I perceive that many of them struggle to understand who they are and their place in a competitive and sometimes alien world. Many of them feel powerless and have not found a place in this world, some hit out in mindless acts of violence and many lack the moral compass that a strong identity and direction brings. Without this moral compass they confront the enormous array of new choices in our modern world with uncertainty and heightened anxiety. This has increasingly tragic consequences, including record youth suicides.

I think that in a 'politically correct' world many boys in particular feel lost and powerless. They find it difficult to integrate conflicting social expectations and can sometimes seek refuge in groups and group violence. Recently a priest from the northern suburbs with whom I was speaking about this problem recounted to me how he barely managed to talk his way out of being bashed by three angry youths who were egging each other on. One told him he just wanted to see what it would feel like to slam his fist into the face of a priest. We cannot tolerate such shocking behaviour, but we need to understand its causes if we are to deal with it. I think that our great challenge as parents and the challenge of

our education system is to give our children the skills and values and confidence to allow them to live what I have sometimes called the existential adventure of their own freedom, as we did ours. This is a challenge for us just as much as it is for them.

We must also use our education institutions to effectively reach out with new friendships and initiatives to help our neighbours in Asia to join with us in greater understanding and increased prosperity. I think it is a great thing that our universities not only have encouraged overseas students to come to Australia to be educated but also have built new campuses overseas as a way of reaching out more into our region and developing business, educational and political networks amongst our near neighbours.

I was so impressed when I went to Vietnam to see that the premier university in Ho Chi Minh City was RMIT, with 5000 students and expanding rapidly. RMIT is not only strengthening our ties with the region, it is providing students in Vietnam with new skills to develop their economy and an insight into Australian culture and Australian democracy. I saw similar things happening in Malaysia, with Monash University having developed high-quality educational facilities there. Interestingly, the establishment of campuses in Asia has not reduced the desire of overseas students to study in Australia; it has in fact increased it.

In the future I hope I can play a part in promoting further engagement of our education and research facilities with our region and in mentoring young people in Victoria, particularly into politics. I cannot stress enough how strongly I consider that education is the key to our continued development and that of our neighbours. Education and parental guidance are the key to building character and understanding in our children as well as a commitment to democracy, justice and human rights in our region.

I refer to multiculturalism and overseas students. I cannot avoid saying something about multiculturalism in the context of the rapid increase in overseas student numbers and the new challenges brought by the Indian student issue. The first thing to say is that the ideal of a tolerant and peaceful multicultural society is something we should be committed to but, like a 'just society', it is something to strive for while recognising there is always more to be done. As someone who has experienced racism in Australia during my life and seen Australia and Victoria gradually change and become more tolerant, I have to say that I do not believe Victoria is racist, but equally I do not believe there are no racists in Victoria. Indeed I was very proud when Victoria led the way in defeating the rise of the One

Nation political party and its racist policies during the 1990s. I have no doubt that some of the attacks on Indian and other overseas students have a racial element and I understand the genuine fear that many Indian students feel, even if they themselves have not been attacked.

As a migrant in the 1950s, I felt this fear myself when growing up in working-class Broadmeadows. It makes me uneasy to think that some students from India living in Victoria feel that way today. I think many migrants from my and my parents' generation would also feel this uneasiness. We need to be sensitive to these fears and impress on members of any segment of the community who may have such fears that we will stand shoulder to shoulder with them against racism and against the mindless thugs who threaten them. We must commit whatever policing and educational resources are necessary to stamp out this violence. We should reject outright the concept that when on the streets of Melbourne these students should have to hide their watches or their iPods so as not to provoke the thugs. That is not the type of Victoria any of us can acquiesce to.

Of course racism is a much more complex issue than what I have referred to. Prejudice among some people on the basis of race, gender or religion is not only manifested in overt acts of senseless violence. Racism or prejudice can be elusive and hidden by institutionalised prejudices and structures that may not be obvious but are just as devastating when manifested in a denial of opportunity for people of ethnic or indigenous background in our political, government or business institutions.

We have never had an indigenous Victorian in the Victorian Parliament and, despite much progress, Victorians from an ethnic background are still underrepresented. A truly multicultural society is not just one where we say how tolerant we are or how great it is that we can enjoy so many different cuisines. It is also one where people address structural inequalities and create opportunities so that we are all proud to be part of a multicultural Victoria.

I hope the government and other Victorian institutions will take more initiatives of the sort I have proposed to reach out to the Indian people by offering our help, and I hope that in future this Parliament is even more reflective of the mix of gender, ethnicity and religions that are present in our multicultural society.

I refer to building Victoria in a global economy and carbon-constrained world. A great deal of my time over the past 21 years has been spent in trying to figure out

the right policy settings and actions to take in creating jobs, a strong economy, new infrastructure and secure, affordable power, water and other services for Victorians. That task has become progressively more difficult in the light of developments such as globalisation and a carbon-constrained world.

In the early 1990s when I first sought to get Victorian Labor to make major policy changes through new corporatisation policies and new commitments to economic development in the context of responsible budgetary and lending practices and competitive markets, many in the Labor Party criticised me — some very publicly.

However, what I and people like John Brumby believed was that a Labor government could not invest properly in health, education and transport if the economy was not strong and if the books were not balanced. We also believed that the best thing you could do for Victorians was to give them jobs. This is far more beneficial in economic and human terms than almost anything else. The commitments we made to responsible budget principles back then have stood the test of time and helped the longevity of this current Labor government.

There are new challenges with globalisation and within a carbon-constrained world. I have mentioned education as a key to our economic prosperity, but we must also invest in new infrastructure to make us globally competitive. Whether this is in expanding the work of the synchrotron at Monash or the new supercomputer at Melbourne University, the biosciences centre at La Trobe, or the information and communications technology (ICT) centre in Ballarat, or whether it is in the areas of ICT, aviation, advanced manufacturing, energy, roads, ports, water resources or human services, we have to invest because we now have to be world competitive to survive and prosper.

One of the critical issues we will have to face is energy security in the context of a carbon-constrained future. As energy minister I was very keen to ensure that the national energy regulator was set up in Melbourne, that Victoria developed its own Victorian renewable energy target scheme, that we promoted energy conservation, including through the black balloon campaign, and that we supported low-emission coal research.

In the future I hope to continue this work in some way in the private sector, to help Victoria develop its substantial energy resources. I also think we need to have the policy settings right. We need programs to aggressively support wind and solar energy developments as major employers, and to provide more clean, renewable energy. We should not baulk at wind

energy development because of a vocal minority. Wind energy is the most cost-effective form of renewables we have, and Victoria is blessed with huge wind energy resources.

The federal government must urgently review its renewable energy target legislation, which is currently blocking more than a billion dollars of investment in wind energy. The industry has made submissions on how to restructure the scheme to unlock this investment, and I hope the federal government will listen.

We also need to promote large-scale take-up of solar power for individual homes and businesses in Victoria through attractive feed-in tariffs or other forms of government support so that households and businesses can offset the need for new power stations to be built. In a carbon-constrained world Victoria's reserves of hundreds of years of brown coal is both a blessing and a problem. It is a cheap form of electricity, but it is also incredibly greenhouse gas intensive when it is burnt. We must find a way to use it in a cleaner way, but we should be under no illusions: we need coal for our power in the short and medium term.

There are plenty of people who are sceptical about so-called clean coal technologies and whether they will actually work, but I think we can all agree on one thing — we cannot go on using coal in the way we currently do. We need to accelerate research into coal drying technologies, gasification, liquefaction and geosequestration. We also should not rule out other uses of brown coal in agriculture, steel production and overseas export, where it can be shown that this would reduce the world's carbon footprint.

However, I also think we are mature enough to have a debate about nuclear power. This should be led at the national level. It is the case that many of our near neighbours in Asia are moving to nuclear to provide much-needed power and to reduce carbon emissions. Victoria and Australia cannot afford to put all our eggs in the basket known as clean coal technology. The Holy Grail of geosequestration or storing carbon underground has its own environmental issues and ultimately may not be viable.

My prediction is that a mix of clean coal, renewable energy, energy conservation and nuclear power will all have to play a role in the future. And yes, as a country providing uranium to the rest of the world, with new, safe nuclear plants and the uncertainty surrounding clean coal technologies, we cannot rule out this source of power. Australia and Victoria cannot afford to miss out on the new technologies that nuclear power

development will bring to many countries around the world.

Nuclear power will not be cheap, and no plant has been built for a long time without government financial backing. But if the Prime Minister is true to his word that climate change is the moral challenge of our generation, then nuclear power as a form of baseload power will probably have a role to play in addressing it. As a former energy minister, I do not think we can automatically rule out Victoria as a location, and I am happy to be part of this debate as well.

I now want to talk about the challenge of accountability in Victoria. No society, no legal system, no policing system, no health or education or transport system is perfect. What is important is that we recognise deficiencies, be accountable and honest when mistakes are made, and strive to deliver for the common good.

Accountability is an essential part of our democracy, and we should all value and fight to protect it. With the exercise of power should come accountability. That is fundamental in a democracy, and that is why I have been such a strong supporter of an independent and well-resourced Auditor-General. In Victoria our prosecutorial, investigative and justice systems have also come under considerable public attention of late, and mistakes have been made that the press or the courts have highlighted.

In our democracy our prosecutorial agencies have the power to seek to bring anyone to justice, irrespective of their station in the community. This is as it should be, and they have shown that they can and will exercise that power. Our investigative agencies also have the power to inquire into any agency or citizen. However, what they also need to show is that they are capable of having themselves subjected to accountability and independent scrutiny.

There has been significant public criticism, for example, of the Ombudsman, George Brouwer, after a police investigation suggested that he made unsubstantiated claims in the Hoffman case. Claims have also been made that legal and judicial rights, if not human rights, were disregarded, and individual interviewers have been named in the press. More generally, the Ombudsman has been criticised for destroying reputations on the flimsiest of evidence that would not stand up in court, and yet there is no mechanism for independent scrutiny of his actions. As one who has criticised the Ombudsman in this house, and without going into the detail, I want to place on record that despite a series of letters between him and me, he has failed to address fundamental criticisms I

have made as to his motivations, his processes, the standard of proof that he uses — which would not stand up in court — and his refusal to support independent scrutiny of his own actions.

Looking at this recent poor record of the Ombudsman, observers may wonder if the problem is the office, the extent and processes used in exercising his power or the man in charge. There are probably a few changes that could be made on all fronts, in my opinion, but first among them should be the introduction of some accountability provisions to apply to the Ombudsman and his staff. He and his office should immediately be made accountable to a parliamentary committee, as is the case for the other independent officer of the Parliament, the Auditor-General. But we should also consider going further and making him subject to a special investigations monitor.

It is important that when judges, including the former special investigations monitor, David Jones, have criticised the Ombudsman for his past failures in criminal proceedings and his poor knowledge of legal and forensic processes, we should take notice and do something about it.

The DPP (Director of Public Prosecutions) and his office also need to be accountable. When the Office of Public Prosecutions was established and made completely independent of the Attorney-General most Victorians welcomed it as a way of taking politics out of the prosecution system. But when one thinks about it, the Attorney-General is subject to public scrutiny and accountability, including at the ballot box, whereas the DPP is not.

I am not saying we should go back to the old system. But I do want to put it on the record that recently I received a letter from the DPP responding to issues I raised with him. In the letter he sought to provide justifications for some of his actions and decisions. I was amazed that in the same letter he threatened to sue me if I were to reveal any of the contents of his letter.

How do such behind the scenes threats help openness and accountability in our justice system? The DPP wields enormous power and police rely on his advice. I have seen firsthand how he can get things horribly wrong with devastating consequences. The DPP and some of his prosecutors have been severely criticised in court for failures of process and improper exercise of their power but, as with the Ombudsman, there is no independent scrutiny of his actions. There should be, and the Attorney-General should investigate mechanisms to bring this about.

Finally, to my own journey and a vote of thanks. I was born in Cyprus, which unfortunately has been divided during the whole of my time in politics. I hope the new round of talks between the Greek and Turkish Cypriot leaders will lead to a solution and that the thousands of Cypriots living in Victoria will be able to visit a unified country.

I am proud to have been the first person of Greek or Cypriot background to become a minister in the Victorian government. I come from a migrant working-class background and grew up in Broadmeadows, and I am under no illusion that I would not have achieved what I did if it had not been for two things: first, the determination of my parents to educate their children at any cost to themselves; and second, the election of the Whitlam Labor government, which made tertiary education accessible to migrant working-class families and introduced a policy of multiculturalism which heralded an era of hope for migrants right around Australia.

I have had the privilege of serving as an elected representative for more than 21 years. During that time I have been a minister in a range of senior portfolios in two governments. I hope I made a difference. I was Leader of the Opposition in the upper house for about six years, which I must say was tough going, and have been a Parliamentary Secretary for Education, Employment and Training and chair of the economic and budget review committee as well. It has truly been a privilege to serve.

Whilst I do not wish to exaggerate my achievements, I must say I feel proud when I think that every worker who is seriously injured in the workplace now has access to common-law rights. They have these rights because of overnight sittings in this house where I and others fought for workers to have access to proper rehabilitation and compensation.

I also feel proud every time I go past the Melbourne Convention and Exhibition Centre or the Melbourne Recital Centre or when I watch the new soccer and Rugby stadium rising from the ground. When I see new wind turbines, a new hybrid Camry that was built in Australia or a Tiger Airways, Etihad, Qatar, Emirates or Air Asia plane taking Victorians to the world I cannot help but feel that in some small way I contributed to that.

When I visit Ballarat and see the new IBM facilities and jobs or when I see the amazing new research at Melbourne University that is making it possible to develop a bionic eye using one of the most powerful supercomputers in the world I cannot help but feel

proud to be a Victorian and to have been given the chance to contribute to the leadership that has made these things possible.

I need to briefly make mention of the last 18 months of my life, which, although unbelievably painful and unjust, I refuse to allow to define me and my family and our contribution to this great state. I do not wish to go into specifics but I do encourage people to read the findings of the magistrate, who was very critical of both the DPP and the investigating officer. I hope these findings are in some way followed up with some kind of independent assessment, but I must say that given my comments about the Ombudsman, I, like many others in similar circumstances, would have no confidence in referring matters to him.

I cannot describe the extent of the pain and anguish that my family and the people close to us have gone through over these last 18 months. But none of these people ever lost faith in me. They knew me, they knew who I was and they believed in me and gave me strength. As a public figure one cannot imagine a greater set of challenges. Hundreds of people in the community offered words of support. So many ordinary people in my electorate just turned up at my electorate office in Northcote to quietly offer their support, and I want to thank them for that.

I want to thank the leaders of various ethnic communities who approached me to offer support. I want to thank the president of the Greek community, Bill Papastergiadis, and the secretary of the Greek community of Northcote and city of Darebin, Andy Mylonas, and all of the people from the Greek community who sent messages. I also want to thank Steve Angelo, the president of the Cypriot community, and the literally hundreds of Cypriots who were so proud to have a minister of Greek Cypriot background to represent them for so many years and who came forward. These communities are such a great asset to Victoria and to Australia.

One of the truisms about politics is that you can have political disagreements, but often friendships go across party lines. Many members from the other side of the house showed me and my family compassion, but I particularly want to mention Bruce Atkinson, Andrea Coote, Matthew Guy and Gordon Rich-Phillips, Louise Asher, the member for Brighton in the other place, and former member Bill Forwood for their kind words of support.

To my many friends in the Labor Party and in the government departments I have led as a minister: thank you. To all those former ministerial colleagues who

wished me well and to other colleagues — to Telmo Languiller, Nazih Elasmir, Fiona Richardson, Marsha Thomson, Danielle Green, George Seitz, Matt Viney, John Pandazopoulos and, yes, my good friend Bob Smith, who should have listened to the clerks and allowed my privilege motion to take precedence — and to all the other people in this house and the Assembly who I have worked with and known and who have given me and my family support: thank you.

I also want to thank the Leader of the Government in this house, John Lenders, who showed compassion and understanding.

While many federal members also gave me support, including Martin Ferguson, the federal member for Batman, which includes my local area, I especially want to thank Senator Stephen Conroy, who was prepared to do so publicly.

I need to mention my loyal staff. I thank Laz Iliadis and Ana Sarakinis from my electorate office, who have been with me for many years and who took the journey with me. To my former chiefs of staff, Steve Booth and Ken McAlpine, and to all my ministerial staff, in particular Philip Dalidakis, Kemberley Kitching, Helen Demetriou and Margaret Hortomaris, who worked with me and were caught up as innocent victims but unconditionally supported me: thank you.

I also want to thank the Premier, John Brumby. It is a little-known fact that despite the disagreement between us which led to my resigning as Leader of the Opposition in the upper house, it was John Brumby who insisted to then Premier Steve Bracks that he wanted me in the ministry. John is a man of integrity, sensitivity and forgiveness, and he is passionate about people. When I had to ring him to tell him I was standing down as minister I could hear the emotion in his voice. Through it all he has taken a principled stand. For that and for the support he provided to me as a minister, I thank him.

I want to thank Tony Hargreaves and Robert Richter, who believed in me. We have become friends, but I hope I never need their professional help again! I also want to thank Socrates Papadopoulos, who supported my getting into Parliament in the first place, and everyone in my large extended family who rallied behind me, in particular Theo and Effie Krambias, who were there for us day in and day out.

But mostly I need to thank my own wonderful family — some of them are here today — my daughter, Katerina, my sons, Harry, Kyri and Matthew, and my wife, Rita, who gave me the courage and the

encouragement to always pursue my dreams. Our experience has been like that of all families that become involved in politics in such intense ways. My journey has in many ways been their journey — sometimes tough, sometimes exhilarating, always interesting. They have been my strength and my inspiration. They were there in the tough times and helped me to focus on hope rather than anger. The way they fought when they had to and never stopped believing in me was truly uplifting. I have often voted in this place in support of family values. They are the best reason I can think of for what I have done. No-one could ask for a better family than the one I have had the privilege of being a part of. I am so proud of them all.

Finally, on a personal note let me say this: in this place we do not always agree, but I am sure people who know me would say I am determined, hardworking and passionate. I hope they would also say I have shown dignity and courage throughout a sometimes tough but often rewarding political career. I have never known any other way except to fight for what I believe in, and I hope I can continue to make a contribution in the future. Thank you, all of you, and goodbye.

#### **Honourable members applauded.**

**The PRESIDENT** — Order! Mr Theophanous, let me just say there has been another precedent: a long, quality speech without one interjection. Well done!

**Debate adjourned on motion of Mr O'DONOHUE (Eastern Victoria).**

**Debate adjourned until Thursday, 4 March.**

## **MAGISTRATES' COURT AMENDMENT (MENTAL HEALTH LIST) BILL**

### *Second reading*

**Debate resumed from earlier this day; motion of Hon. J. M. MADDEN (Minister for Planning).**

**Mr DRUM** (Northern Victoria) — In considering the Magistrates Court amendment bill, which has been proposed by the government as the 'mental health list' bill but which looks like it is going to be renamed the 'assessment referrals court list' bill, it gives us the opportunity to ponder what is the best way to treat people who find themselves in front of the magistrate and involved in the court system primarily as a consequence of their various afflictions, whether that be mental health issues, anxiety, depression and a whole range of mental health problems and/or secondary and primary issues associated with intellectual disabilities.

This obviously is a bill which has honourable intent and worthwhile objectives. It is something that to the layperson could be nothing other than a bill we all should support, and in the main most people in the chamber do support this bill or at least its intent. However, the government has a history of simply cobbling together various subsets of people in the community who need assistance without having the specialised understanding of what it takes to provide the appropriate level of care.

This bill is yet another example of where the government has come up with a good idea: let us look after the people suffering from mental health issues who find themselves in front of the court system. We know that many of those people with mental health issues who find themselves in front of the court system quite often have a very strong connection to alcohol and drugs. In many instances that is why, time and again, they are back in front of the magistrate. That is another reason we appreciate the fact that the government has introduced legislation that is going to give the magistrate an opportunity to get these people enrolled and involved in diversion programs and has therefore seen the need for a mental health list. However, I do not think there can be any doubt in this instance that the concept of a list of people with an intellectual disability and other impairments has simply been cobbled together at the last minute. It is saying, 'We will throw into the melting pot the people who have a whole different subset of problems. We will include them in this bill and hope they like it'.

We have enough people with a lot of experience in this chamber, so it staggers me that the government continues to go down the path it has gone down with this initial bill. It staggers me that we have to keep having these same debates with the government about truly understanding the needs of some of our most vulnerable people in the state. We continually have this debate with the government. It thought that it was a good idea to throw everybody onto this mental health list, irrespective of what their needs may be.

We need to look very carefully at the role the coalition is going to play with regard to this bill. Hopefully the coalition's amendments will reach agreement throughout the chamber. Mr Tee, representing the government, has indicated that he will not be supporting the amendments, and that is disappointing. Ms Mikakos has indicated the same. Therefore it is likely that it will come down to the Greens party and also the Democratic Labor Party as to whether these amendments are going to succeed.

We have spent the last part of two decades in Victoria trying to make sure that there was a significant gulf between the treatment and support programs in place for people with intellectual disabilities and people suffering from mental illnesses. Many of the contributors to the debate have referred to Margaret Ryan and Max Jackson for their understanding of the legislation and the various community and societal attitudes towards people who were once referred to as 'lunatics' and later on referred to in other ways less than respectfully. I think they were known as 'retards' for a number of years. Anybody who was perceived as less than normal was bundled into this subset of the community and called 'retards'.

It has taken a lot of effort from a lot of people to clearly define what the different groups are and what their afflictions truly are.

Because it is not an exact science, especially when you get into areas such as Asperger's and autism and the various traits that exist under ASD (autism spectrum disorder), there is still a litany of people who are continually incorrectly diagnosed. I was chatting with Ms Hartland earlier about how there is another subset of people who have multiple diagnoses — for instance, people suffer from anxiety, which is a mental illness, as a result of having an intellectual disability. In effect a range of people are represented in both of these sectors.

Whilst the entire sector is trying to sort themselves out and the entire sector is trying to offer specialist services for individual needs, we have a government that comes along with big, heavy gloves and cumbersome legislation and throws everyone in the one melting pot. The government has the ability to take this sector back in its particular endeavour of looking for specific needs for specific people and providing specific services to respond to those needs.

Opposition members have some real concerns about how it will work in practice. Is the bill focusing largely on people with mental illness? Some parts of government documents would have us believe that is the case. There is very scarce mention of the areas surrounding intellectual disability, which is of concern to us.

We understand this bill will not be applicable to people who plead or intend to plead not guilty. We also understand that diversionary programs will not be available to people accused of serious sexual or other assaults; that will not be the case at all. We understand that the bill will apply to only the Melbourne Magistrates Court as a pilot program.

We understand that for an individual to receive the supports that will be offered they will have to complete an individual support plan, available under the Sentencing Act 1991, and that the court may discharge the accused without finding guilt if that is done. The bill will sunset in August 2013.

The government has said that the list will have a court-based clinical assessment function, and that will be very well received. It has also said it will provide case managers for support and that there will be certain additional services. I have not been able to find anywhere in the bill any mention of how much money the government is prepared to provide. I hope someone from the government will be able to state clearly how much money the government will put into this program, because the last thing we need is for it to be inadequately funded. The program seems good in its intention, although the way it is being put into practice is a bit misguided, but if it is not funded adequately, it will be a farce and will end up causing more trouble than we already have.

We have other concerns. At the moment there is a whole range of part-time programs within the legal system, including the court integrated services program at Melbourne, Sunshine and Morwell courts; the court referral and evaluation for drug intervention and treatment bail support program, or CREDIT, at 9 different courts; the criminal justice diversion program at 13 headquarters courts; the Drug Court at Dandenong; the Koori Court in seven jurisdictions; the enforcement review program in Melbourne and Collingwood; the mental health court liaison service at metropolitan Magistrates Courts, with part-time services at some country courts; and the Neighbourhood Justice Centre in Collingwood.

An issue we have is that these programs are running at some locations but not all. In Victoria there is a piecemeal approach to dealing with people with various issues. If you commit a crime in a certain location, you may be lucky enough to be treated in a certain manner because there is a program that fits your particular unique circumstances, but if you happen to commit that same crime in another location, those services may not be operating and you will be forced into the line of backlogged cases in the mainstream legal system. There is a bit of luck involved if you happen to come into the legal system in Victoria as to whether you will have one of these special programs offering you preferential treatment in the area where you have committed a crime.

At the moment the legal system in Victoria has a heavy backlog of cases, with more than 42 000 criminal cases

awaiting trial in Victorian courts, which is nearly double the number of cases waiting to be heard in courts in New South Wales. Since 2003 there has been a 36 per cent jump in the number of cases waiting to be heard in Victorian courts. The consequence of this huge backlog is that right now, at every moment of the day, thousands and thousands of people who are likely to be convicted of serious offences are walking the streets as free men and women, and that is something we simply need to address.

Whilst this government has introduced legislation with worthwhile objectives, we need to be very mindful of just how poorly and inadequately the intellectual disability sector and the mental health system are funded. I am sure I am no different from any other MP in the state in that we have day-to-day knowledge and experience of family members knocking on our doors trying to get better services for their children or other loved ones, whether they be in the category of mental health or disability services, acquired brain injury (ABI), dementia or whatever area is covered in this legislation. The government says that under this bill it will invest in these services. The unfortunate catch is that you have to be in the court system, having committed a crime, before the government will provide those services to you. This has been referred to as putting the ambulance at the bottom of the cliff and waiting for people to fall: let us wait for people to be recidivists, continual offenders, and then we will put in some services around the issues these people have and try to get them out of the system in some way.

I support the amendments circulated by Mr Rich-Phillips in an attempt to try to do the best we can with the framework of the bill the government has given the opposition to work with. We believe we have put together the best opportunity to correct some of the problems in the bill by giving magistrates an opportunity to allocate the correct services to the people appearing before them. We believe that work needs to be done earlier rather than later to ensure that people will get the best support they can rather than being lumped on the one list and treated in the same manner. It looks as if it will be a list put together for sufferers of mental health issues, with all of a sudden lists of people suffering ABI, autism, dementia and other intellectual impairments thrown in.

I congratulate Gordon Rich-Phillips on putting forward the amendments in the hope that the government can see that accepting them will only improve the bill. We need to make sure that we learn the lessons of Western Australia and New South Wales, which have been down this path of jumbling up support services for various people in the community. The people in those

states have realised that we need to separate the different impairments and needs and create the necessary services. We must try to work harder than we currently do to provide services for people before they commit crimes and find themselves in the legal system. Hopefully down the track we will have less need for this type of legislation than we currently have. I hope we can work through the things that will lead to giving these vulnerable people in our community an opportunity to live their lives to the fullest.

**Mr SOMYUREK** (South Eastern Metropolitan) — I am pleased to speak in support of the Magistrates' Court Amendment (Mental Health List) Bill 2009. This is a good and decent bill. It will enable us to treat individuals with mental health issues who come before the criminal justice system with understanding, dignity and compassion. This approach will lead to greater community protection through reduced rates of recidivism.

The purpose of this bill is to amend the Magistrates' Court Act 1989 to establish a specialist mental health list in the Magistrates Court for a trial period. The term 'mental health' in the context of this bill is really a general expression covering a number of disabilities or impairments rather than being a clinical or diagnostic term. Eligibility for the mental health list is defined in clause 5 of the bill, which inserts a new section 4T into the Magistrates' Court Act 1989. This is where the diagnostic criteria are applied and they are: a mental illness, an intellectual disability, an acquired brain injury, autism spectrum disorder and/or a neurological impairment including, but not limited to, dementia.

At this stage I emphasise that dealing with individuals on criminal charges by way of a specialist mental health list is not a soft option. Those on charges involving serious violence or sexual offences are not eligible for the list. Participation is voluntary and the individual must consent. Eligibility is dependent not only on the diagnostic criteria but also on the individual having functional issues such as problems with self-care or self-management. Eligibility is also dependent on a demonstrable need for services. Not only must a support plan be prepared but compliance and successful participation will be taken into account by the magistrate, and of course throughout the process the individual on charges is still before the Magistrates Court.

It is hoped that the mental health list in the Magistrates Court will, over time, bring expertise and a specialist focus to those with a mental illness or other disability or impairment. Indeed I hope it will play an important role in dealing with those who fall through the cracks in

accessing services and will require other government agencies and departments to provide the appropriate services to those in need.

In saying that, one needs to understand that those with a mental illness often have a range of complex physical and social needs. Persons with a mental illness are often itinerant, homeless or lack appropriate housing. They are often unemployed, have physical health problems and lack community and social supports. They are among the most vulnerable in our society in that they are less likely to understand their rights or be able to exercise them and do not have the financial capacity to pay for top-flight legal representation. Not surprisingly, as the minister said in his second-reading speech, the mentally ill are overrepresented in our prison population.

I wish to add one caution. I do not know whether there will be pressure on the mental health list to take those with an antisocial personality disorder. Society has never really come to grips with how to deal with people with an antisocial personality disorder who offend. The cause of this disorder is not fully understood and there are no effective treatments. There was one person in this state, Gary David, who was an extreme case of someone with such a disorder.

I point out that an antisocial personality disorder is not in itself a mental illness. Section 8(2) of the Mental Health Act 1986 makes this clear where it says:

A person is not to be considered to be mentally ill by reason only of any one or more of the following —

It goes on to list various criteria, one of which — paragraph (k) — reads:

that the person has an antisocial personality.

However, in practice there is pressure on the mental health system to admit such persons, at least in the short term, because of issues such as acting out and self-harm. I would hope that when it comes to the mental health list the focus and priority will be on those who will benefit from services. A classic example would be a chronic schizophrenic who is floridly psychotic, wandering down the street, hallucinating and hearing voices and who commits an act of vandalism. Simply processing him through the criminal justice system achieves very little. It does not deal with the underlying issues or needs of the individual, nor does it protect society from a repeat of the incident.

The mental health list to be established by this bill will provide for the individual to be treated with dignity and understanding and, through the addressing of their

needs, provide a better and safer outcome for the community. I commend the bill to the house.

**Mr HALL** (Eastern Victoria) — I am pleased to have the opportunity to speak on the Magistrates' Court Amendment (Mental Health List) Bill this afternoon. In terms of legislation like this I am pretty much a layperson. I am certainly helped by some of my colleagues to better understand some of the technical aspects of this bill. I start by thanking my colleagues in the coalition and our spokesperson, the member for Box Hill in the other place and shadow Attorney-General, Robert Clark, for his thorough analysis of the bill and the briefing he provided to his coalition colleagues. I also thank my colleague in this house Gordon Rich-Phillips who, as usual, did an excellent job in presenting the arguments and views of the coalition in his contribution to the debate this afternoon. He went to some lengths to explain the purpose of the amendments he will put during the committee stage of the bill. I am fortunate to have two very diligent, hardworking colleagues to assist me in this regard.

When considering a bill I start from scratch on these matters, and because I do not have a professional background in law it is also helpful to listen to and analyse the arguments of others. To that extent the second-reading speech is an important document for us all to look through to learn the exact reasons for the measures undertaken by the government in this piece of legislation. I have done that and will come to that in my contribution.

I also think it is important to listen to those outside the Parliament who wish to express a view on legislation. In this regard there are three people I want to single out whose advice and suggestions I have taken very seriously. Those people provide very worthwhile advice, particularly in the area of disability. They are Margaret Ryan; my good friend from Gippsland, Jean Tops; and Max Jackson, and they have been mentioned during the course of the debate today. They are people who have dedicated a lifetime to assisting those with disabilities. They have researched thoroughly and they are well read and practical people who they provide us with very useful input when we are considering legislation like we are today.

I read the second-reading speech for this piece of legislation very carefully to understand why a specialist list is to be created in the Magistrates Court, and I am pleased that I can see the advantages in such a specialist list. Listening to the other speakers in this debate so far I have gleaned that all of those who have spoken support the concept of a specialist list within the Magistrates Court because of the special needs of those

types of people who will be assessed as being eligible to go onto that list. The second-reading speech states:

The program facilitated by this bill recognises the particular circumstances of mentally impaired defendants and seeks to assist courts to appropriately address the issues associated with their offending behaviour.

It goes on to mention some of the very complex issues that people bring with them when they come to the Magistrates Court, or any other court for that matter. People with mental illness could have particular circumstances different to those who may not have such a mental illness, but more importantly they need different services and different ways in which we can help them with their complex needs.

As I understand it, the very reason we are establishing a specialist list is so we can provide specialist services to assist with those complex needs. Some of the other arguments are presented by the minister on page 3 of the second-reading speech. It says:

The list will have a court-based clinical assessment function and a case management and liaison function.

The clinical assessments will be undertaken by a small team of experienced mental health practitioners who will undertake comprehensive assessments of defendants, prepare individual support plans, advise the court of the defendants' treatment progress and provide some time-limited psychological interventions.

It also goes on to say:

The critical task for the court-based mental health practitioners and the court will be to assess and refer defendants to appropriate treatment and support services, with the aim of reducing their involvement in the criminal justice system.

These are very admirable intentions, and there is a commitment that people on that list will have the very specialised support services that are necessary to help limit their presence in the justice system in the state of Victoria. These are all good things, and I am pleased to add my support to that as other members have.

The issue that appears to be the one on which the government and the opposition differ — we have not heard from the Greens yet — is whether there should be more than one such list. I know the government has proposed that it be called the mental health list and that it believes, despite signalling a name change which will probably be brought about by amendment, there still only needs to be one list.

Yet those from the disability field — the three people I mentioned before — argue very strongly that there should be more than one list, and they have expanded in quite extensive representations to all members of

Parliament the reasons for that. Without quoting extensively from a lot of the material that has been sent to us, there was one aspect of Max Jackson's email to members of Parliament that convinced me he was right — that there needs to be the ability for the magistrates to create more than one list. He says in an email of 4 February 2010 to members of Parliament that on a Victorian government website, [www.health.vic.gov.au](http://www.health.vic.gov.au), there is a statement that reads:

Acquired brain injury is not a mental illness and requires very different specialist skills from those offered by mental health services.

Intellectual disability is not a mental illness and requires very different specialist skills from those offered by mental health services.

If the intent of the creation of a list within the Magistrates Court is to be able to provide specialist assessment and support services, then I would think that those specialist and support services would be different for those who have been diagnosed with a mental illness to services provided to those with a disability, acquired brain injury, autism spectrum disorder or neurological impairment. I think those specialist assessments and services would be different across the categories. The intention to provide those services is admirable and so I think it makes sense to have more than one list so that the people in the different lists can be assigned the specialist services that those people need.

As I understand, the amendment that Mr Rich-Phillips has proposed and explained to the chamber does not say that the Parliament should define exactly what those lists do, but it gives the power and option to the chief magistrate to implement different types of lists. I think it is appropriate that the particular person in charge who is making those assessments and is dealing with this on a daily basis should have the power to do that, and it is more appropriate that he does it than that those separate lists be dictated by the Parliament of Victoria.

I have tried to analyse this in a logical way and have looked at it by considering the arguments from both sides. We are not that far apart, and I am pleased that it has been indicated that the bill will be supported. Whether it will be amended with government amendments and/or opposition amendments remains to be seen. Between now and the time the bill is ultimately voted on I hope that government members give some further consideration to the arguments put up by coalition members, because in my heart I honestly believe the amendments proposed by Mr Rich-Phillips will make this a more flexible and better piece of

legislation to accommodate people with mental illness, people with a disability, acquired brain injury and other forms of affliction.

I think Mr Rich-Phillips's amendments are sensible and positive. I would encourage the government to reflect and think again, because we are not that far apart and it would be nice if this piece of legislation could go through and be amended with the support of all members of the chamber. Again I encourage members to reflect and consider the amendments that Mr Rich-Phillips will move in the committee stage, and to support them.

**Mr LEANE** (Eastern Metropolitan) — I want to make a brief contribution to the debate on this bill. I am fortunate to be one of three MPs from this house on the Drugs and Crime Prevention Committee, where we have had the privilege of looking at parts of our judicial system. I note Mr Rich-Phillips's concern that we may be creating a fractured judicial system, but the thing about our judicial system that we have to accept is that when it comes to justice there is not a one-size-fits-all fix.

The Drugs and Crime Prevention Committee has had the privilege of witnessing some of these courts in operation and speaking to the people involved with them. The Koori Court was mentioned, and our general belief is that that particular court is working well.

I know it has not been mentioned, but as far as the Children's Court and the introduction of different diversionary programs for young offenders goes, the committee believes it has been quite successful, to the point where we believe it would be good if there were more diversionary powers in place for the Children's Court. One of the diversionary powers currently in place is group conferencing for young offenders where young offenders conference with the victim, family members, police and other people who are involved and face up to the effects of their particular crime on the people involved.

This brings us to this particular bill, which deals with people in the judicial system who potentially have mental health issues. As a representative of the Drugs and Crime Prevention Committee, I was fortunate to attend a conference which had experts from all around the world grappling with this issue. It was mainly centred around young offenders but there was a general discussion about people with mental illness who have committed offences. One of the keynote speakers, an American professor, posed to the roomful of experts — I do not count myself as one — a question about the diminished responsibility for committing a crime of

someone who has a certain degree of mental illness. The group of experts from all around the world could not come to a consensus. It is not just our jurisdiction; jurisdictions all around the world are grappling with this issue.

There is an overrepresentation of people with mental illness in the prison system compared to the general population. Any sort of bill like this that can divert people to the services they need has to be a good way to go forward. As I stated from the start, our judicial system needs to take into account all sorts of aspects of different people in our society.

**Debate adjourned on motion of Ms HARTLAND (Western Metropolitan).**

**Debate adjourned until next day.**

## CRIMES LEGISLATION AMENDMENT BILL

### *Introduction and first reading*

**Received from Assembly.**

**Read first time on motion of Hon. J. M. MADDEN (Minister for Planning).**

### *Statement of compatibility*

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Crimes Legislation Amendment Bill 2009.

In my opinion, the Crimes Legislation Amendment Bill 2009, as introduced to the Legislative 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**

A key purpose of this bill is to amend the Crimes Act 1958 to alter the structure of the penalty provisions established in section 45 for the offence of sexual penetration of a child. This amendment will apply the maximum penalty available under that section (25 years jail) to all offences involving a victim aged under 12. This penalty currently applies to all offences against children under 10. This amendment will also mean that there can be no defence of marriage, mistaken age or consent to an offence against a child under 12.

The bill also remedies an anomaly in the reporting dates under the Crimes (Controlled Operations) Act 2004 and mirrors provisions in the Fisheries Act 1995 and the Wildlife Act 1975. This correction will allow the special investigations

monitor to report comprehensively on the controlled operations conducted by various agencies.

The bill adjusts the sunset provisions of the Family Violence Protection Act 2008 to allow the family violence safety notice regime to operate until December 2011. The regime is currently due to sunset in December 2010.

The bill amends the definition of 'document' in the Evidence Act 1958 so that it is effectively aligned with the definition of 'document' in the Evidence Act 2008. This will ensure consistency between the operation of documentary provisions within the Evidence Act 1958 and the Evidence Act 2008.

### **Human rights issues**

The only provisions in the bill that engage any human rights protected by the charter are those provisions that extend the life of the family violence safety notice (FVSN) trial.

Clause 6 of the bill extends the expiry date of part 3 division 2 of the Family Violence Protection Act 2008 from two years to three years. This is to ensure that there is sufficient time to carry out an independent evaluation of the FVSN trial and make any legislative changes recommended before the sunset provision takes effect.

To the extent that the FVSN trial engages charter rights, the extension of the sunset provision will also. However, as was established when the Family Violence Protection Act 2008 was presented to Parliament, the rights engaged by the FVSN trial are reasonable and demonstrably justified.

Extending the trial by 12 months to enable a thorough and independent evaluation to be completed is also reasonable and justified.

### **Section 12 — freedom of movement**

Section 12 of the charter protects various rights in relation to freedom of movement. These rights include the right to move freely within Victoria, the right to choose where to live in Victoria, and the right to be free to enter and leave Victoria. The rights conferred by section 12 apply only to persons who are 'lawfully' within Victoria.

The trial of the FVSN system engages the right to freedom of movement. For example, if a respondent is to be excluded from a protected person's residence, or prohibited from being within a particular distance of a person or prohibited from approaching a person (by telephone or otherwise) the right to freedom of movement is engaged and limited.

The relationship between the limitation and its purpose is both rational and proportionate, given that the legitimate objective of the provisions is to protect a protected person and any children of a respondent from that respondent. In particular, a family violence safety notice is of limited duration (up to 72 hours), may only be made after hours (that is, after 5.00 p.m. or before 9.00 a.m. on a weekday, and at any time on a weekend or public holiday), may only be made in circumstances which require an urgent response to protect from family violence and are subject to the supervision of the courts.

A respondent's rights are protected by the fact that they may be granted access to particular places that they are prohibited from entering or going near in circumstances where they are accompanied by a police officer and the police officer has

made all reasonable inquiries to ensure that this is practical in the circumstances. The limitation balances the rights of a respondent and the rights of a protected person.

No less restrictive approach to achieve the intended outcome is available and on balance, the limitation on the right to freedom of movement is reasonable and demonstrably justified in a free and democratic society.

### **Privacy of the home**

#### **Section 13 — privacy**

Section 13 confers a number of rights regarding privacy. Specifically, a person has a right not to have their privacy, family or home unlawfully or arbitrarily interfered with or their reputation unlawfully attacked.

Privacy encapsulates concepts of personal autonomy and human dignity. It encompasses the idea that individuals should have an area of autonomous development, interaction and liberty — a 'private sphere' free from government intervention and from excessive unsolicited intervention by other individuals. Privacy comprises bodily, territorial, communications and information privacy.

The exclusion of a respondent from a protected person's residence may have the effect of interfering with a respondent's right to privacy of the home. Such exclusion is provided for in the FVSN regime. However, in each instance, the right to privacy of the home is not limited as the interference is lawful and not arbitrary. The interference is not arbitrary because it is in accordance with the provisions, aims and objectives of the charter (particularly section 17, which provides for the protection of children and families) and is reasonable in the circumstances (where the intent is to protect a person from further family violence incidents). Further, any exclusion only occurs if police officers consider it is necessary in the circumstances. Therefore, the interference with the right is neither unlawful nor arbitrary and the right is not limited.

#### **Section 17 — protection of families and children**

Section 17 provides for the protection of families and children. The charter provides that families must be protected by society and the state. However, while family unity is an important charter right, it must be balanced with other rights. Section 17(1) might be qualified by the special right of children to protection in section 17(2) (for example, when children are removed from a situation of family violence). The FVSN regime achieves an appropriate balance between the protection of the family unit (section 17(1) of the charter), the protection of the rights of family members to life (in section 9) and security of the person (in section 21) and the protection of the rights of the child to such protection as in his or her best interests (in section 17(2)).

### **Conclusion**

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

Justin Madden, MLC  
Minister for Planning

*Second reading***Ordered that second-reading speech be incorporated on motion of Hon. J. M. MADDEN (Minister for Planning).**

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

That the bill be now read a second time.

**Incorporated speech as follows:**

The Crimes Legislation Amendment Bill contains a range of initiatives that will improve the operation of the criminal justice system.

**Crimes Act 1958 — sexual penetration of a child under 16**

Sexual offences against children are heinous crimes against the most vulnerable members of our society, and the community has an expectation that offenders are sentenced accordingly. This government has introduced major changes to improve the criminal justice system's response to sex offences, including child sex offences.

These include changes to jury directions in sex offence cases, new arrangements for giving evidence in child sex offence cases, and establishing a child witness service, specialist sex offence lists in the courts and a specialist sex offences prosecution unit in the Office of Public Prosecutions.

The improvements continue with the amendments to the Crimes Act 1958 contained in this bill.

Section 45 of the Crimes Act establishes the offence of sexual penetration of a child under 16. Three different maximum penalties are provided for:

firstly, if the court is satisfied beyond reasonable doubt that the child was, at the time of the offence, under the age of 10, an offender faces a maximum sentence of 25 years jail;

secondly, if the court is satisfied beyond reasonable doubt that the child was, at the time of the offence, aged between 10 and 16, and under the care, supervision or authority of the offender, an offender faces a maximum sentence of 15 years jail;

thirdly, in any other case, an offender faces a maximum sentence of 10 years jail.

This bill will restructure this offence by extending the protection of the most serious of the penalties, 25 years jail, to all children aged under 12. This change will flow on to the other categories of penalty, so that they will apply to offences against children aged between 12 and 16.

Raising the age limit for the most serious class of offences means that the statutory defences to this offence do not apply to an offence against a child under 12. While there can be a defence of marriage, reasonable mistake as to age or consensual sex between young people where the offence involves a child aged between 12 and 16, none of these will be any defence to an offence against a child aged under 12.

In considering these defences, it must be remembered that absence of consent is not an element of this offence. Non-consensual sex can always be charged as rape, regardless of the age of the victim and the accused. Rape carries a maximum penalty of 25 years jail.

The catalyst for this amendment to the Crimes Act was the County Court case of *R. v. Maurice*. Maurice broke into his victim's home and sexually assaulted her whilst she was sleeping in her bed.

The victim had only two weeks previously turned 10 years of age. Because she was over the age of 10, the available maximum penalty for the offence was 10 years imprisonment. If the offence had been committed two weeks earlier, when she was under 10 years of age, the applicable maximum penalty would have been 25 years imprisonment.

In October 2008, I sought the advice of the Sentencing Advisory Council on the adequacy of the current maximum penalties for the offence of sexual penetration of a child under 16.

The council released their report in September 2009. It found that while the overall maximum penalties were appropriate, the age ranges that define the different penalties that apply should be altered in the manner I have described. The council's recommendations for restructuring the maximum penalties have been endorsed by this government and are reflected in this bill.

In its report, the council acknowledged that any aged-based legal definition is problematic and to some extent arbitrary. However, the majority of people consulted for the council's report considered that limiting the application of the higher maximum penalty of 25 years imprisonment to children aged under 10 did not reflect the inherent vulnerability of pre-teen children.

The council did find that many people who work with children consider that the transition from primary to secondary school is significant. Most children turn 12 in year 7, and children in high school are generally treated as having more independence.

Making the changes recommended by the council will have an impact upon sentences. Offences against 10 and 11-year-olds will now fall within the most serious of the three categories of penalty and will attract a maximum penalty of 25 years jail. I have no doubt that this reform will be welcomed as appropriately recognising the evil of sexual offences committed against such young children.

For these reasons this government is pleased to accept the recommendations of the SAC on this point and to amend the offence of sexual penetration of a child under 16 accordingly.

**Sentencing Advisory Council**

In delivering its report on the maximum penalties for sexual penetration of a child, the council again demonstrated its worth to the government. Its work on sentencing is always well researched, cogent and persuasive.

One of the areas that the council has focused on since its inception is the range of sentencing options that are available to courts. Its April 2008 report, *Suspended Sentences — Final Report Part 2*, discussed a raft of changes to the Sentencing Act 1991 designed to give judges and magistrates a range of

robust and useful sentencing options. It also canvassed the need to improve the way we respond to breaches of those sentencing options.

This government has always firmly supported judicial discretion and an independent judiciary. That is why we have always opposed mandatory sentences. We also want to give judges as many tools as possible in their sentencing armoury. We continue to consider the role of home detention as a sentencing option, as well as the way in which courts respond to the breaches of sentences.

Early next year the government will bring forward some further reforms based on the work of the council. Like the reforms contained in this bill, they will contribute to the creation of an effective and efficient criminal justice system.

### **Family Violence Protection Act 2008**

In introducing the Family Violence Protection Act 2008, this government created a comprehensive raft of policies and procedures to protect Victorians at risk of family violence.

An integral feature of that act was the creation of family violence safety notices. These notices gave police a tool with which they could respond to incidents of family violence that occurred outside court hours.

Family violence safety notices are designed to make it easier for police to act quickly, decisively and efficiently to protect victims of family violence. These notices have the same effect as an interim intervention order made by a court to provide legal protection for victims of family violence.

A family violence safety notice can contain many of the conditions that a court can include in a family violence intervention order, including requiring a person to leave a residence or prohibiting a person from contacting another person.

I am pleased to be able to report that since the introduction of this new police power there has been an increase in police action in response to family violence. There were 1723 safety notices issued from 8 December 2008 to 30 June 2009.

The chief commissioner and the Chief Magistrate are required to report on the operation of the family violence safety notice regime within three months of the Family Violence Protection Act being in effect for a year, and I look forward to receiving their views on the new system. The act commenced operation in December 2008.

The family violence safety notices regime is due to sunset two years after commencement of the Family Violence Protection Act. This will fall in December 2010.

This government made a public commitment to independently evaluate the efficacy of the family violence safety notice system to determine whether it is an effective and efficient after-hours response to family violence incidents.

This comprehensive 12-month evaluation is under way. Extensive consultation is being undertaken with Victoria Police members, the courts, family violence service providers as well as victims of family violence and perpetrators. The evaluation outcomes will inform the government's future decision on the system's continuation.

However, under the current provisions, it is likely that the family violence safety notice regime will sunset before the government is able to properly consider the results of its evaluation.

Rather than rush our response to the evaluation, we intend to allow the family violence safety notice system to operate until December 2011. This will give the government time to consider the evaluation and make any changes that are needed before the legislation sunsets.

To this end, this bill extends the sunset date of the family violence safety notice regime from December 2010 to December 2011.

### **Crimes (Controlled Operations) Act 2004**

When this government introduced the Crimes (Controlled Operations) Act 2004 as part of a package of reforms addressing major crime and terrorism, it included several accountability mechanisms. One of these was the provision of independent oversight of any controlled operations conducted by law enforcement agencies.

This oversight is conducted by the special investigations monitor. Each year the special investigations monitor is required to report to the Parliament on any controlled operations conducted by Victoria Police or fisheries or wildlife inspectors.

To allow the special investigations monitor to fulfil that role, those agencies must report to him every six months, detailing any controlled operations they have undertaken.

However, there is an anomaly in the reporting dates required by the legislation. The agencies, such as Victoria Police, that report to the special investigations monitor are required to make their reports in March and September. However, the special investigations monitor must report to Parliament as soon as possible after the end of each financial year.

The special investigations monitor was therefore potentially left waiting until September each year before he could begin to prepare his annual report. I understand that the goodwill of the agencies has prevailed so far, and agencies have provided supplementary reports in order to allow the special investigations monitor to meet his obligations. However, we will now act to improve the reporting obligations that apply to the law enforcement agencies.

The Crimes Legislation Amendment Bill amends the Crimes (Controlled Operations) Act, along with the Fisheries Act 1995 and the Wildlife Act 1975, to change the reporting dates for the agencies that report to the special investigations monitor. Their reports will now be due as soon as possible after December and June each year. The special investigations monitor will therefore be better placed to report to the Parliament after the end of each financial year.

### **Evidence Act 1958 — definition of document**

This amendment is a technical amendment that flows from the introduction of the Uniform Evidence Act to Victoria.

The Evidence Act 2008, which is due to commence on 1 January next year, defines a document in a way that allows courts to use copies of documents as evidence where that is appropriate.

However, the Evidence Act 1958 retains a range of provisions, including powers relating to bodies like royal commissions.

The definition of document in these two pieces of legislation is not identical, resulting in inconsistency between the operation of documentary provisions within the Evidence Act 1958 and the Evidence Act 2008. This amendment will bring the definitions into step with one another.

The amendments contained in the bill continue this government's commitment to improving the criminal justice system, particularly where this involves protecting the most vulnerable members of our community.

I commend the bill to the house.

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

**Debate adjourned until Thursday, 4 March.**

**EDUCATION AND TRAINING REFORM AMENDMENT BILL**

*Introduction and first reading*

**Received from Assembly.**

**Read first time for Mr LENDERS (Treasurer) on motion of Hon. J. M. Madden.**

*Statement of compatibility*

**For Mr LENDERS (Treasurer), Hon. J. M. Madden tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:**

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Education and Training Reform Amendment Bill 2009.

In my opinion, the Education and Training Reform Amendment Bill 2009, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

**Overview of bill**

The bill makes amendments to the Education and Training Reform Act 2006 (the act) to improve the role, functions, structure and operation of the Victorian Institute of Teaching, to enhance the operation of the merit protection board, and to amend the registration provisions applying to accredited senior secondary courses. In particular, the bill:

makes changes to the investigation of registered teachers, including widening the grounds on which teachers may be investigated and creating in certain circumstances a requirement to undergo a health assessment;

provides for the establishment of an informal hearing panel and a medical hearing panel to deal with complaints against registered teachers;

widens the sanctions available to disciplinary panels under division 12 of part 2.6 of the act;

provides for the annualised registration of teachers who are registered under section 2.6.9 of the act;

alters the constitution of merit protection boards and the council of the Victorian Institute of Teaching;

provides for registered schools to have ongoing registration with respect to accredited senior secondary courses; and

makes consequential and miscellaneous amendments to clarify the intent of the act.

**Human rights issues**

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

*The right to privacy (section 13 of the charter)*

Section 13(a) of the charter provides that individuals have a right not to have their privacy unlawfully or arbitrarily interfered with.

*Health assessments and medical panels*

The bill provides that the Victorian Institute of Teaching has the power to inquire into (clause 27) and investigate (clauses 29 and 30) whether a registered teacher's ability to practise as a teacher is seriously detrimentally affected or likely to be seriously affected because of an impairment. 'Impairment' is defined in clause 11 as a physical or mental impairment, disability, condition or disorder including substance abuse or dependence.

In order to assess whether or not a registered teacher is seriously detrimentally affected or likely to be seriously detrimentally affected by an impairment, an investigator has the power to ask a teacher to undergo a health assessment (clause 30 and the new section 2.6.33C). If a registered teacher does not agree to undergo the health assessment, the investigator must report on the matter to the Victorian Institute of Teaching. The Victorian Institute of Teaching may then refer the matter to a hearing by a medical panel. A medical panel may require a registered teacher to undergo a health assessment (clause 41 and the new section 2.6.41F).

A medical panel may also be established if the Victorian Institute of Teaching determines that a medical panel hearing be held into a registered teacher's ability to practise as a teacher or an informal or formal hearing panel has referred a matter to a medical hearing in relation to a registered teacher's ability to practise as a teacher. A medical panel hearing is not open to the public. Clause 41 provides that a medical panel may, at any time during the panel's hearing into a registered teacher's ability to practise, direct the teacher to undergo a health assessment to assess the teacher's ability to practise as a teacher on the basis that the panel believes that the teacher has an impairment.

These clauses engage the right to privacy, however, in my view, the right is not limited because the interference with the

right is neither unlawful nor arbitrary. This is because the health assessment powers are clearly defined and circumscribed in the bill (in particular they are limited to ascertaining whether a teacher's ability to practise is or is likely to be seriously detrimentally affected by an impairment), and are necessary to achieve the important purpose of ensuring teachers' ability to practise.

***The right to a fair trial (section 24(1) of the charter)***

Section 24(1) of the charter provides that a party to a civil proceeding has the right to have the proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. In *Kracke v. Mental Health Board & Ors (General)* [2009] VCAT 646, Bell J. held that the right to a fair hearing in section 24(1) is not limited to judicial proceedings and can extend to administrative proceedings that are determinative of private rights and interests. However, he also noted that the entire decision-making process in question (including reviews and appeals) must be examined in order to determine whether the right in section 24(1) is satisfied and that the right does not necessarily require that the initial decision-maker be an independent and impartial court or tribunal.

There are several decisions provided for in the bill which potentially constitute administrative proceedings determinative of the private law right of teachers to practise their profession and which may therefore engage section 24(1) of the charter. These are decisions regarding the refusal to renew registration or impose conditions on re-registration, and decisions regarding the imposition of sanctions, conditions, suspension and other requirements imposed through decisions of informal hearing panels, formal hearing panels and medical panels.

In my opinion, the proceedings in question when viewed as a whole satisfy the requirements of section 24(1) of the charter. In proceedings before informal hearing panels, formal hearing panels and medical panels, the teacher is entitled to be present, to be accompanied by another person and to make submissions. Although there is not an automatic right to have legal representation, the teacher can seek leave to have legal representation. Under the act, a teacher is entitled to make submissions regarding decisions to refuse registration, or renewal of registration, and in relation to suspension of registration or permission to teach. Importantly, the act provides for a review of these decisions by the Victorian Civil and Administrative Tribunal, an independent and impartial tribunal (section 2.6.55).

For these reasons, I consider that the bill is compatible with section 24(1) of the charter.

***The right to recognition and equality before the law (section 8 of the charter)***

Section 8 of the charter provides that every person has the right to enjoy his or her human rights without discrimination, the right to equal protection of the law without discrimination, and the right to equal and effective protection against discrimination. 'Discrimination' is defined in section 3 of the charter as meaning discrimination within the meaning of the Equal Opportunity Act 1995, on the basis of an attribute set out in section 6 of that act.

As discussed earlier, registered teachers may be investigated and may be required to undergo health assessments in order

to assess whether or not a registered teacher's ability to practise is seriously detrimentally affected or likely to be seriously detrimentally affected by an impairment. The definition of impairment in the bill is likely to overlap with the defined attribute of 'impairment' in the Equal Opportunity Act 1995. However, in my view, these clauses do not constitute either direct or indirect discrimination under the Equal Opportunity Act 1995. A registered teacher with an impairment within the meaning of the Equal Opportunity Act 1995 will not be treated differently because of the impairment, but rather because the registered teacher's ability to practise is seriously detrimentally affected or likely to be so affected. Further, the requirement to attend a health assessment is not a requirement which someone with an attribute does not or cannot comply with, or a requirement that a higher proportion of people without that attribute, or with a different attribute, do or can comply with.

Accordingly, I consider that the bill is compatible with section 8 of the charter.

**Conclusion**

I consider that the bill is compatible with the charter.

Hon. John Lenders, MLC  
Treasurer

*Second reading*

**Ordered that second-reading speech be incorporated on motion of Hon. J. M. MADDEN (Minister for Planning).**

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

That the bill be now read a second time.

**Incorporated speech as follows:**

The Education and Training Reform Amendment Bill 2009 will make a number of amendments to the Education and Training Reform Act 2006 to implement government policy and further improve its operation.

The main purposes of the bill are:

to make changes to part 2.6 of the Education and Training Reform Act 2006 relating to the Victorian Institute of Teaching (the institute) to make improvements to the role, functions, structure and operation of the institute;

to amend part 2.4 of the act to enhance the operation of the merit protection boards;

to amend section 4.3.12 of the act so that registered schools which provide an accredited senior secondary course (such as the Victorian certificate of education or the Victorian certificate of applied learning) will have ongoing registration to provide such a course.

The bill also corrects minor anomalies to clarify the operation of the act.

As the provisions of the bill are grouped under these main purposes, the following further details are also given in that same order.

The bill includes amendments to part 2.6 of the Education and Training Reform Act 2006, which will enable reforms to the Victorian Institute of Teaching arising as a result of the review of the institute conducted in late 2007.

The Victorian Institute of Teaching was established in 2001 as a professional body for the teaching profession, with responsibility for setting entry level standards of professional practice, assessing qualifications, advising on professional development, undertaking police records checks and administering a discipline system to ensure that registered teachers in Victoria meet high standards of professional practice and conduct.

The creation of the Victorian Institute of Teaching reflected the government's commitment to improve Victoria's education services and was part of a broad range of reforms implemented in the education sector to improve the quality of teaching in all Victorian schools.

In the second-reading speech for the Victorian Institute of Teaching Act 2001, the then Minister for Education committed the government to a review of the institute after five years of operation.

The review was undertaken in 2007 and considered:

the appropriate objectives for the institute in the light of government policies and changes in all education sectors since its establishment;

the effectiveness of the institute in achieving its original objectives;

the most appropriate structures for achieving the objectives identified under point 1;

whether the institute or a successor body has a role to play in this future environment; and

if the institute is to continue, changes that may be required to its functions, structure and legislative mandate.

The review considered 277 submissions, met with key stakeholders, analysed the current responsibilities and operations of the institute and researched similar bodies within Australia, New Zealand, the United Kingdom, the United States of America, Canada and other pertinent international jurisdictions. The basis for its findings was thorough and inclusive of the views of relevant stakeholders. A number of recommendations in relation to structure, functions and operations were provided in the report for consideration by government.

The review found that there was a role for the institute, but one that has a more streamlined, single focus to avoid potential overlaps with the core roles of other major stakeholders. The changes to part 2.6 of the Education and Training Reform Act 2006 contained in this bill will give effect to reforms that will improve the efficiency and effectiveness of the Victorian Institute of Teaching. This will in turn have direct benefits for teachers, schools, children and their families.

Under the reforms contained in this bill the institute will be governed by a smaller council of 12 members, which will be able to focus on leadership and strategic planning for the institute. The council will continue to consist of both appointed and elected members, with broad representation from our diverse education sector being maintained. As with the previous council composition, those elected will be practising members of the profession. The reformed council will be well positioned to further develop its regulatory role in Victoria's evolving and dynamic education system.

The composition of the council will now include:

five members appointed by the Governor in Council on the recommendation of the Minister for Education, who shall be:

one teacher, who will be appointed as chairperson of the institute;

two employers of teachers;

one expert in pre-service education; and

one parent.

six elected members, who shall be:

three registered teachers employed in government schools;

one registered teacher employed in a government school for students with disabilities or impairments;

one registered teacher employed in a Catholic school; and

one registered teacher employed in an independent school.

one member, who shall be the secretary or the secretary's nominee.

A deputy chairperson position, nominated by the minister, will also be created to provide support to the chair in meeting governance and administrative responsibilities.

The reduction in the size of the membership of the council will not increase the administrative workload of members in terms of hearing panel responsibilities. The act will be amended to provide for a pool of persons to be approved by the Governor in Council, on the recommendation of the minister, to fulfil this function.

The functions of the institute under the act are to be amended to more strongly emphasise the role of the institute as a regulator. The institute will no longer have responsibility for promoting the teaching profession, but will have an added function, to recognise and promote its own role and activities.

The bill will enable the institute to provide a more streamlined and efficient registration service to Victorian teachers. Renewal of registration will be annualised, with a straightforward online process being developed to minimise the time spent on this task by teachers. Renewal of teacher registration will occur each year coinciding with the payment by the teacher of the annual fee. The institute will renew the registration of teachers who meet the institute's minimum

requirements of professional practice; those that do not meet those requirements will not have their registration renewed.

In Victoria, provisional registration for teachers is currently granted for one year, with a further one-year extension possible on application by the teacher. Many provisionally registered teachers require two years to satisfy the standard required to qualify for full registration, including induction and mentoring processes. To this end, the act is being amended to raise provisional registration from one to two years. In addition, the institute will also have the power to grant an additional three-month extension of provisional registration to allow applicants to complete the requirements for full registration.

By extending the provisional registration period in this way the institute will provide improved client service to graduate teachers and give schools a more realistic time frame in which to manage induction and mentoring of provisionally registered teachers.

Permission to teach provisions allow non-registered persons to be employed to teach or instruct in schools in specified circumstances, under the supervision of registered teachers. This provision provides schools with the flexibility to respond to changing education contexts while protecting standards of professional integrity and competence. I believe that permission to teach should be encouraged and suitable support and supervision utilised to ensure that the highest standards are met in our schools.

It is important to note that the bill requires that an application for permission to teach must be accompanied by evidence that the person or body seeking to employ or engage the applicant attempted to employ or engage a registered teacher first, with some exemptions. This amendment will encourage a school to undertake a comprehensive recruitment process. Exemptions will provide for the registration of people who are recruited to teaching through programs or initiatives such as 'Teach for Australia' and 'Career Change', which address workforce diversity and supply needs. The act will also be amended to change the period of 'permission to teach' from five years to three years for each application.

The bill proposes a range of amendments to the act relating to assessment of teachers for initial registration and to the investigation of teachers who are the subject of a complaint, allegation or notification. These changes will extend the powers of the institute in determining those applicants who are suitable to be registered, and in managing its discipline function. I would like to summarise these changes for the house.

The bill will amend part 2.6 of the act to alter the concept of 'fitness to teach' and introduce the concept of 'suitability to teach'. The term 'suitability to teach' is considered to be a broader term than 'fitness to teach' and allows scope to include criteria relating to an applicant's physical and mental health — as well as their criminal records. In addition to a teacher's record of work in Victoria, the institute will be able to take account of a teacher's record in other parts of Australia as part of determining a teacher's 'suitability to teach'. This approach will help to ensure Victoria's registration procedures are consistent with work currently being undertaken at the national level and will result in increased confidence in the capacity of the registration process.

The bill will give the institute the power to investigate allegations below the level of serious misconduct and to impose a greater range of sanctions, including that a teacher undertake specified further education or training and cancelling a teacher's registration for a period of time. I believe that the institute's capacity to undertake its regulatory function will be enhanced by expanding investigatory powers to include less serious matters. This broadening of the institute's current powers is needed so that the institute will be able to respond with greater flexibility and nuance to different levels of misconduct and to serious incompetence.

The bill grants the institute the power to initiate an investigation into a matter in relation to a registered teacher under certain circumstances without a complaint or formal notification. The review of the institute found that on occasion notifiers declined to lodge a formal complaint despite compelling evidence. Under the bill the institute can initiate an investigation if it believes or has knowledge of a registered teacher's serious incompetence, misconduct, serious misconduct, lack of fitness to teach or matters which affect ability to practise as a teacher. The power to initiate an investigation into such matters without a complaint or notification will provide the institute with greater capacity to investigate cases which might otherwise have escaped its attention. The expansion of the powers of the institute to investigate matters less than serious misconduct brings the teaching profession into line with other professions in this matter.

The review found some complaints received by the institute have been about teachers who exhibit erratic or irrational behaviour. Further investigation revealed that this was due to ill health or alcohol or drug abuse. The current powers of the institute prevent it from dealing adequately with such cases. The bill gives the institute the power to convene medical panels in cases where a registered teacher's ability to practise is seriously detrimentally affected or is likely to be seriously detrimentally affected by a physical or mental impairment. This will prevent teachers who may be unfit to continue to teach for health reasons being subject to a discipline hearing process to determine their fitness to teach.

Where a finding is made by a medical panel that a teacher's ability to practise is seriously detrimentally affected or is likely to be seriously detrimentally affected by a physical or mental impairment, the panel will be empowered to make a determination, including to impose a condition on the teacher's registration or to suspend the registration for a period, subject to a condition specified in the determination. Such conditions may include that the teacher undergo counselling, undertake specified further education or training within a specified period, work under the supervision of another teacher or attend an appropriate registered health practitioner for treatment. This will enable the institute to determine the most appropriate course of action following a hearing into a matter.

The review recommended that the institute be granted the power to enter into an arrangement with teachers that permits deregistration by mutual consent, without the necessity of an investigation and hearing as a precondition to that deregistration. Providing the institute with such capacity will enable parties to resolve matters without the need to undergo protracted hearings. The decision to surrender registration will be binding with no right of review. This is consistent with powers provided under the Health Professions Registration Act. This amendment will provide for more satisfactory

outcomes to be achieved by all parties in a more timely and efficient manner.

The bill proposes amendments to part 2.4 of the act to change the membership of the merit protection boards to include education support employees. This will ensure that matters relating to this group will be heard by a panel which includes a member of the same employment classification.

Additionally, the structure of the boards has been changed so that member boards will be appointed from three respective pools of persons, increasing the availability of members to hear matters. This change will enable the merit protection boards to operate more efficiently and expand representation on the boards to better reflect the diversity of staff employed in schools.

The act currently provides that the Disciplinary Appeals Board's function is 'to hear and determine appeals in relation to a decision of the secretary' in regard to misconduct under division 10. The bill will provide the Disciplinary Appeals Board with the power to also hear and determine appeals in relation to a decision of the secretary made in regard to unsatisfactory performance.

The act will be amended so that registered schools that are also approved to provide an accredited senior secondary course such as the Victorian certificate of education, the Victorian certificate of applied learning and the international baccalaureate diploma will have ongoing registration to provide the accredited senior secondary course. Currently, such schools are only registered for up to five years.

Schools in Victoria are required to register with the Victorian Registration and Qualifications Authority. They remain registered until the registration is suspended or cancelled by the authority. Additionally, non-school providers of accredited senior secondary courses, such as the Victorian certificate of education or the Victorian certificate of applied learning, are required to register with the authority. The registration is for up to five years.

The act will be amended so that registered schools that are also approved to provide an accredited senior secondary course will have ongoing registration to provide the accredited senior secondary course. This amendment will address the current registration period anomaly and reduce the administrative burden on schools.

In December 2008, all Australian education ministers signed the Melbourne Declaration on Educational Goals for Young Australians. The declaration commits all key education stakeholders in Australia to an agreed set of goals which sets the direction for Australian schooling for the next 10 years. The declaration is a major achievement in national cooperation and a source of pride for Victoria and the Victorian Department of Education and Early Childhood Development in particular, which led the work on developing the declaration. Amongst the outcomes was the introduction of eight new learning areas that are the subject of free instruction in government schools. The bill will amend schedule 1 of the act to reflect this change, providing a statutory basis for the implementation of these new learning areas.

Collectively, the amendments contained in the bill will ensure that our legislative framework continues to provide for the ongoing innovation and improvement occurring in the education sector in Victoria. They will go a long way to

providing all Victorians with the assurance that Victoria maintains high-quality teachers, which is critical to ensuring the wellbeing of our future generations.

I commend the bill to the house.

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

**Debate adjourned until Thursday, 4 March.**

## LIQUOR CONTROL REFORM AMENDMENT (ANZAC DAY) BILL

### *Introduction and first reading*

**Received from Assembly.**

**Read first time on motion of Hon. J. M. MADDEN (Minister for Planning).**

### *Statement of compatibility*

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Liquor Control Reform Amendment (ANZAC Day) Bill 2010.

In my opinion, the Liquor Control Reform Amendment (ANZAC Day) 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**

The main purpose of this bill is to amend the Liquor Control Reform Act 1998 in relation to the supply of liquor on Anzac Day.

### **Human rights issues**

The bill raises two human rights issues.

#### *Section 20 — property rights*

Clause 13 inserts a new section 15A which restricts the supply of liquor on Anzac Day morning permitted under various types of licences and permits issued under the principal act. It applies notwithstanding anything to the contrary in the licence or permit itself. This has the effect of altering the conditions and rights of existing licence-holders.

Section 20 of the charter provides that a person must not be deprived of his or her property other than in accordance with the law. Although 'property' may include statutory rights such as licences, the 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. Section 58 of the principal act expressly states that the director, at his or her own initiative, may vary a licence or

BYO permit in accordance with the principal act, including varying the times at which the licence authorises the supply of liquor and imposing new conditions or removing conditions on the licence.

Accordingly, the provision does not result in a deprivation of property for the purposes of section 20 of the charter. Even if it did, any such deprivation would be 'in accordance with law' for purposes of section 20.

*Section 24 — right to a fair hearing*

As various clauses in the bill result in minor changes to the scope of licensing decisions made by the director of liquor licensing under the principal act, I have given consideration to whether the licence and permit system, as contained in the principal act, protects the right to a fair hearing in section 24 of the charter. Section 24 provides that a party to a civil proceeding has the right to have the proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. Divisions 4, 5 and 6 of part 2 of the principal act set out the application process for the granting of licences and permits including the powers and obligations of the director in determining applications. In deciding whether there is a breach of the right to a fair hearing, the process must be considered in its entirety, including any available rights of appeal or review.

Considering these various procedures in this manner, I have concluded that they accord individuals their right to a fair hearing. In reaching this conclusion, I have placed particular weight on the fact that there is an opportunity for individuals adversely affected by a decision to seek a review by VCAT. Furthermore, any contested applications are referred to the liquor licensing panel for a recommendation (section 45) which is bound to give the applicant and each objector a reasonable opportunity to be heard (section 46) in a public hearing (section 163).

**Conclusion**

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities and that no provisions in the bill limit human rights.

Hon. Justin Madden MLC  
Minister for Planning  
Minister for the Respect Agenda

*Second reading*

**Hon. J. M. MADDEN** (Minister for Planning) — I wish to inform the Council that the Assembly passed the bill with amendments. These amendments are technical in nature and ensure that the bill is clear in its aim of Anzac Day continuing to be celebrated with appropriate respect by all Victorians. I move:

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

**Motion agreed to.**

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

That the bill be now read a second time.

**Incorporated speech as follows:**

The Brumby government is committed to protecting the solemn observance of Anzac Day, to ensure that this day, so significant for all Australians, is commemorated appropriately and respectfully. In August 2009, we committed to introducing restrictions on trading by licensed premises on the morning of Anzac Day, and this bill delivers on that promise.

The focus on Anzac Day morning is the dawn services and marches which are held state and nationwide to commemorate those brave men and women who have served our country. The community believes and expects that Anzac Day is a time for us to show our respect for those persons and to remember the sacrifices that they made. The community does not support inappropriate and disrespectful behaviour or disturbances to these commemorative activities early on Anzac Day morning, which is why we are introducing a restriction on the supply of liquor beyond 3.00 a.m. on Anzac Day. As a result, licensed venues such as nightclubs, pubs, bars and late-trading venues across the state will be required to close their doors at 3.00 a.m. A 3.00 a.m. closing time will balance the commercial interests of industry and provide sufficient time for patrons to leave a venue and make their journey home prior to the community gathering for Anzac Day commemorative services.

The government is committed to protecting appropriate Anzac Day celebrations and events; therefore, the bill contains limited exemptions designed to allow these to take place. Importantly, the RSL and any sub-branch of the RSL will be exempt from the trading restrictions to ensure that commemorative events held at RSLs are not affected.

Since the bill is directed at protecting the sanctity of Anzac Day, there are a number of other exemptions for activities which will not have an impact on the commemoration of Anzac Day by the community.

There will be an exemption for the supply of liquor to residents or guests of a resident of a licensee or licensed premises, as this is not considered to disturb the public commemoration of Anzac Day.

The Anzac Day restriction will not apply to the supply of liquor to airlines for consumption by and sale to passengers aboard aircraft or to the supply of liquor by duty-free retailers. Victoria has an international reputation as a destination of choice, and it is important therefore that this bill does not restrict the servicing of aircraft and the sale of liquor by duty-free outlets. However, the supply of liquor at bars and restaurants at Victorian airports will not be permitted, unless a temporary limited licence is granted for what will be an appropriate commemorative activity.

Pre-retail licensees may also continue to supply liquor on Anzac morning. Since pre-retail licensees cannot sell or supply liquor to the general public, these licensees are not considered to pose a risk to the appropriate commemoration of Anzac Day.

This bill provides a fair balance between the protection of commercial interests of licensed venues and the sanctity and solemn observance of Anzac Day in Victoria.

I commend the bill to the house.

**Debate adjourned for Mr GUY (Northern Metropolitan) on motion of Mr Koch.**

**Debate adjourned until Thursday, 4 March.**

## OFFSHORE PETROLEUM AND GREENHOUSE GAS STORAGE BILL

### *Introduction and first reading*

**Received from Assembly.**

**Read first time for Hon. M. P. PAKULA (Minister for Public Transport) on motion of Hon. J. M. Madden.**

### *Statement of compatibility*

**For Hon. M. P. PAKULA (Minister for Public Transport), Hon. J. M. Madden 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 Offshore Petroleum and Greenhouse Gas Storage Bill 2010.

In my opinion, the Offshore Petroleum and Greenhouse Gas Storage 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**

The bill, which replaces the Petroleum (Submerged) Lands Act 1982, establishes a regulatory framework governing petroleum exploration and recovery, and the injection and permanent storage of carbon dioxide and other prescribed greenhouse gases, in Victorian offshore waters. The framework is substantially consistent with legislation developed by the commonwealth in the Offshore Petroleum and Greenhouse Gas Storage Act 2006.

#### **Human rights issues**

The bill raises issues regarding a number of charter rights, which are discussed below. It is however important to keep in mind that many of the bill's provisions are likely, in practice, to regulate corporate entities (rather than natural persons), and that corporate entities do not enjoy human rights under the charter (section 6(1) of the charter).

#### **(i) Adverse administrative decisions relating to petroleum and greenhouse gas titles issued under the bill**

The bill provides for the minister to grant, extend, vary, suspend, cancel, revoke or terminate a range of titles relating to petroleum exploration and recovery, and the injection and permanent storage of greenhouse gases (see the simplified outline of the bill at clause 4(4)). The provisions relating to the administration of these titles potentially engage the charter

rights to fair hearing, the right against self-incrimination and the property right.

#### Fair hearing — section 24(1)

Section 24(1) of the charter provides that a person who is party to a civil proceeding has the right to have the proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. In *Kracke v. Mental Health Board & Ors* (General) [2009] VCAT 646, Bell J found that the term 'civil proceeding' has a broad meaning extending to administrative proceedings that are determinative of private rights and interests. However, he also noted that the entire decision-making process in question (including reviews and appeals) must be examined in order to determine whether the fair hearing right in section 24(1) is satisfied.

As I have indicated, the bill provides for decisions regarding the extension, variation, suspension, cancellation, and revocation of titles issued. These decisions are taken by the minister, or a delegate of the ministry (in some cases on the advice of expert advisory committees established under part 9.2 of the bill). Where the effect of an adverse decision would be determinative of an individual's private rights and interests, the right in section 24(1) may be engaged. This could be the case, for example, where a title is cancelled that may be considered to be proprietary in nature, or where the effect of a decision to cancel a title would prevent an individual complying with a contractual obligation dependent on the cancelled title.

However, in my view, the right is not limited because the process set out in the bill for determining the administrative decisions in question — when viewed as a whole — satisfies the requirements of section 24(1). In particular, under chapters 2 and 3 of the bill, before certain adverse decisions are made, a consultation process is mandated, providing affected persons with an opportunity to make written submissions in response to the proposed decision that must be taken into account by the minister (see for example clause 258); a person affected by a decision made by a delegate of the minister who is dissatisfied with the decision is entitled to have the decision reconsidered by the minister (clause 765); such a person is entitled to reasons for the reconsideration decision (clause 765(5)(b)); and all decisions of the minister under the bill are subject to a right of review by the Victorian Civil and Administrative Tribunal, thereby affording affected persons an oral hearing before an independent and impartial body (clause 766).

#### Right against self-incrimination — section 25(2)(k)

Section 25(2)(k) of the charter provides that a person charged with a criminal offence must not be compelled to testify against him or herself or to confess guilt. Pursuant to clause 778 of the bill, when certain applications are made (for approval of key petroleum or greenhouse gas operations, or for the grant of a greenhouse injection licence), if the minister believes on reasonable grounds that a person has information or a document that is relevant to the minister's decision, the minister may, by written notice, require the person to provide this to the minister. Clause 780 provides that requested information or documents must still be produced even if this may tend to incriminate the individual or expose him or her to a penalty. However, clause 780(2) provides a full immunity against both direct and indirect use of the information obtained against the individual in any criminal or civil

proceedings (other than proceedings regarding failure to comply with a request for information, or proceedings regarding provision of false or misleading information).

In my view, it is unnecessary to decide whether this statutory abrogation of the common-law privilege against self-incrimination and its replacement with a full immunity limits the right in section 25(2)(k). This is because, in this context, any limitation is clearly justified because the full immunity ensures that there is no possibility that an individual could be compelled to assist in his or her own conviction for an offence (or liability for a civil penalty), and further ensures that there is no adversarial relationship between the individual and the state when the individual is required to provide the information to the minister which might otherwise attract the application of the self-incrimination right.

#### Property right — section 20

Section 20 of the charter provides a person must not be deprived of his or her property other than in accordance with law. At least some of the titles which the minister may confer under the bill might be said to be proprietary in nature. Accordingly, provisions of the bill which provide for the cancellation or revocation of such titles may engage the titleholder's section 20 charter rights. For example, clause 163 provides for the termination of a life-of-field petroleum production licence if there has been no recovery operation for five years, clause 180 provides for the revocation of a petroleum retention lease to the extent to which it relates to a block not taken up, and clauses 481–485 address grounds for cancellation of greenhouse gas titles, including non-compliance with conditions, directions and other provisions of the bill. However, these deprivations are in accordance with law and therefore in my opinion do not limit section 20 of the charter because in each case the deprivation is expressly and clearly authorised under the terms of the bill. Moreover, as indicated previously, a right of review regarding these decisions lies to the Victorian Civil and Administrative Tribunal, providing a valuable safeguard against arbitrary exercise of the powers.

#### **(ii) Ministerial directions relating to petroleum and greenhouse gas operations, safety zones, and 'areas to be avoided'**

The bill gives the minister power to issue binding directions to titleholders regarding any matter in relation to which regulations may be made (clauses 623(2) and 629(2)), as well as in relation to specific matters regarding petroleum and greenhouse gas operations identified in the bill (for example, directions to petroleum or greenhouse gas titleholders regarding the commencement of works or operations, work practices, insurance and the maintenance and removal of property under parts 6.2 to 6.4). Under part 6.6, the minister is empowered to prohibit entry or presence of vessels in designated petroleum and greenhouse gas safety zones, and schedule 2 designates certain waters as 'areas to be avoided'. These provisions potentially engage the right to be presumed innocent, the right to freedom of movement, the right against arbitrary interference with privacy or home, and the property right under the charter.

#### Right to be presumed innocent — section 25(1)

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

the burden of establishing guilt is borne by the prosecuting authority. Accordingly, placing an onus on a defendant to rebut the existence of an element of a criminal offence is likely to engage the right. The bill makes it a criminal offence to fail to comply with ministerial directions (made under chapters 2, 3, 6, parts 7.1 and 8.1 or regulations made under the bill), authorised by the bill. However, clauses 627 and 633 afford a defence of having taken reasonable steps to comply with a direction. In accordance with section 130(1) of the Magistrates' Court Act 1989, this imposes an evidential onus on the defendant. This means that the defendant must present or point to evidence that suggests a reasonable possibility of the existence of facts that, if they existed, would establish the defence. The prosecution must then rebut the defence beyond reasonable doubt. It is unnecessary to decide whether an evidential onus limits the charter right in section 25(1) because, in my opinion, any limitation on the right is reasonable and demonstrably justified under section 7(2) of the charter for the following reasons.

It is well established that the right to be presumed innocent is not absolute and can be limited, provided that limitations are kept within reasonable limits and are not arbitrary or disproportionate. In this case the limitation serves the important purpose of rendering prosecution an effective mechanism for ensuring compliance with the petroleum and greenhouse gas regulatory regime. In my view, in the heavily regulated sphere of petroleum and greenhouse gas operations, it is fair and reasonable to require a defendant, who chooses to operate under the regime, to keep a record of steps taken to comply with a direction and to be required to produce this in order to justify non-compliance with a direction and to discharge the evidential onus in respect of the defence. If the defendant has done so, discharging the requisite burden should not prove difficult. Conversely, it would not be practicable to place the full burden of establishing that reasonable steps were not taken on the prosecuting authority since knowledge of the commission of such steps will be within the defendant's possession. To do so would threaten the efficacy of prosecution as a compliance mechanism. Finally, it is important that what is at stake for a defendant is conviction for a regulatory offence carrying only financial penalties and no serious societal stigma or imprisonment.

#### Freedom of movement — section 12

Section 12 of the charter provides that every person lawfully within Victoria has the right to move freely within Victoria. A number of provisions in part 6.6 of the bill provide for the designation (by notice published in the *Government Gazette*) of safety zones of up to 500 metres distance around a petroleum or greenhouse gas well, structure or equipment into which certain vessels may not enter without a ministerial consent. Such safety zones will be put in place while specific operations are conducted in the designated area. Schedule 2 permanently designates certain waters, where offshore facilities are located, as 'areas to be avoided'. The owner or master of a vessel who enters these zones without authorisation commits an offence. Clause 674 further empowers certain authorised persons to require a vessel to be taken outside an 'area to be avoided' or to be taken outside a safety zone, and clause 675 makes failure to comply an offence. These provisions limit the right to freedom of movement; however, in my opinion, the limitations imposed are reasonable and demonstrably justified under section 7(2) of the charter for the following reasons.

First, the right to freedom of movement is not an absolute right and may be subject to reasonable and objectively justified limitations. Secondly, the designation of the safety zones and 'areas to be avoided' is essential to avoid the catastrophic consequences of a collision between certain vessels and offshore facilities. These consequences include loss of life, serious damage to the environment, and interruptions to petroleum and greenhouse gas operations. Thirdly, the areas in which freedom of movement will be restricted are very limited and no greater than is necessary, on the best available expert advice, to ensure collisions are avoided. Designated safety areas are, moreover, temporary. Finally, there are no less restrictive means available to achieve the objective of the measures. In particular, provision is made in the bill for exemptions for certain vessels (as well as for applications for ministerial consent to enter a safety zone or area to be avoided), and it is intended that these will be granted in respect of smaller vessels not posing a collision risk.

Right against arbitrary interference with privacy or home — section 13(a)

Section 13(a) provides that a person has the right not to have his or her privacy or home unlawfully or arbitrarily interfered with. Clause 677(1)(a) of the bill provides that authorised persons may board a vessel on the basis of reasonable belief that it has been or is about to be used in contravention of the safety zone and 'areas to be avoided' provisions discussed above. Clause 677(1)(b)(iv) provides for the search of such a vessel for documents relating to the vessel and its movements. Where the vessel boarded or searched is engaged in regulated petroleum or greenhouse gas activities, there may be a question as to whether the right to privacy is even engaged. However, in those cases where section 13(a) is engaged, in my opinion, any interference with the right will be neither unlawful nor arbitrary and accordingly the right is not limited. This is because boarding and searching vessels is an essential compliance mechanism for achieving the important regulatory objectives that I have just discussed. There are also important safeguards in place to protect against arbitrary exercise of the powers. In particular, clause 677(2) provides that the powers can ordinarily only be exercised in accordance with a warrant issued by a magistrate on reasonable grounds and on the basis of information on oath or affirmation (pursuant to clause 682) or with the consent of the master of the vessel, and only in certain limited circumstances of seriousness and urgency can they be exercised without a warrant or consent (under clause 683).

Property right — section 20

Part 6.4 of the bill provides for the issue of remedial directions to former titleholders, including a direction requiring the removal of property brought onto an area that has been vacated by any person engaged in the activities authorised by a title. If the direction is not complied with, the minister has the power to take action under clause 638 or 645 to remove and dispose of the property in question (by sale, auction or otherwise). This power engages the property right in section 20, but in my view the right is not limited because the deprivation is expressly and clearly authorised under the terms of the bill. Moreover, the bill provides a number of safeguards against the arbitrary operation of the provisions. In particular, before the powers are employed, the minister must first have provided the owner with a written direction to remove the property and a reasonable period to comply, and

after disposal, any proceeds (less costs incurred by removal and sale) must be paid to the owner.

**(iii) Enforcement powers**

Part 6.5 of the bill contains powers of enforcement, including petroleum project and greenhouse gas project inspectors' powers of access, inspection and entry. These powers engage the charter right against arbitrary interference with privacy or home.

Right against arbitrary interference with privacy or home — section 13(a)

Inspectors' compliance-monitoring powers include a power to access any structure, vessel, aircraft or building in the offshore area that the inspector has reasonable grounds to believe has been, or is to be used, in connection with relevant operations; a power of entry on reasonable grounds that they contain relevant documents; and a related power to inspect, take extracts or copy such documents (clauses 649 and 658). Where those structures, vessels, aircraft or buildings comprise work areas, there may be a question as to whether the right to privacy is even engaged. In some cases, however, the areas may include residential areas which constitute an individual's home, or where a reasonable expectation of privacy may arise so as to engage the right in section 13(a).

However, in my view, the right is not limited in such cases because any interference is neither unlawful nor arbitrary. This is because the interference is specifically authorised by the terms of the bill, it is only authorised to the extent necessary to ensure compliance with the petroleum and greenhouse gas regimes, and it is accompanied by adequate safeguards. Most importantly, pursuant to clauses 650 or 659, entry to residential premises is only permitted with the consent of the occupier or pursuant to and in accordance with a warrant issued by a magistrate (under clause 653 or 662 on reasonable grounds supported by information on oath or affirmation). Moreover, since inspectors will be public authorities pursuant to section 4 of the charter, they will be bound by section 38(1) of the charter to employ their general enforcement powers in a charter compatible manner.

**(iv) Data management and gathering of information**

Chapters 7 and 8 of the bill address data management and gathering of information requirements for persons engaged in petroleum and greenhouse gas operations. It is provided that the minister may direct that a person carrying on such an operation be required to keep records and comply with regulations regarding data management. Provision is made for compelled provision of information to the minister and his or her inspectors. This raises an issue regarding the charter right against self-incrimination.

Right against self-incrimination — section 25(2)(k)

Clauses 722 and 745 provide that the minister, petroleum project inspector or greenhouse gas project inspector may, by written notice, require a person to produce documents or information (or even to appear in person to give evidence orally) relating to an operation. Clauses 725 and 748 provide that a person is not excused from providing information and evidence or producing a document under clauses 722 or 745 on the ground that such documents or information might tend to incriminate the person or expose them to a penalty. However, a full-use immunity is provided in clauses 725(2)

and 748(2) rendering the information provided (and any information, document or thing obtained as a direct or indirect result) inadmissible in criminal or civil proceedings against the person, other than proceedings regarding failing to comply with a request for information or proceedings regarding provision of false or misleading information, documents or evidence. In my view, for the reasons given above, it is unnecessary to decide whether this statutory abrogation of the common-law privilege against self-incrimination and its replacement with a full immunity limits the right in section 25(2)(k) because any limitation is clearly justified.

**(v) Occupational health and safety**

Schedule 3 regulates occupational health and safety (OHS) at facilities located in offshore areas relating to petroleum and greenhouse gas operations. Certain of the powers provided to OHS inspectors raise issues regarding the right against self-incrimination, the right to be presumed innocent, the right against arbitrary interference with privacy or home, and the property right in the charter.

Right against self-incrimination — section 25(2)(k)

Clause 80 of schedule 3 empowers OHS inspectors to require certain persons, whom they believe on reasonable grounds are capable of complying, to answer questions or produce documents or articles reasonably connected with the conduct of an inspection. Clause 81 of schedule 3 provides that a person is not excused from answering an inspector's question or producing a document or article on the basis that doing so may tend to incriminate him or her or make them liable to a penalty. However, it also provides that the answer, document or article produced (and any information, document or thing obtained as a direct or indirect consequence of the answering or production of the document or article) is not admissible in criminal or civil proceeding, other than proceedings regarding failing to comply with a request or proceedings regarding provision of false or misleading information. In my view, for the reasons given above, it is unnecessary to decide whether this statutory abrogation of the common-law privilege against self-incrimination and its replacement with a full immunity limits the right in section 25(2)(k) because any limitation is clearly justified.

Right to be presumed innocent — section 25(1)

Clause 104(5) of schedule 3 provides that, in respect of the OHS offences set out in schedule 3, any conduct engaged in on behalf of an individual by their employee or agent, within the scope of actual or apparent authority, is taken to have also been engaged in by the individual, unless he or she establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct. This places an evidential onus on the defendant in respect of an element of this vicarious liability offence. In my view, it is not necessary to decide whether reversing this evidential onus limits the right to be presumed innocent since, in my opinion, any limitation is clearly demonstrably justified under section 7(2) of the charter for the following reasons. First, as I discussed earlier, the presumption of innocence is not an absolute right and admits of exceptions provided these are kept within reasonable limits. Secondly, the presumption of fact is rationally connected with the practical realities of employer-employee or principal-agent relationships in the context of this offence. Thirdly, it is reasonable and not unduly onerous to require individuals operating under this OHS regulatory

regime to, for example, maintain adequate documentary or other records of reasonable precautions and due diligence undertaken in respect of their employees and agents (which could then readily be produced to discharge the onus imposed), and it would be conversely difficult for the prosecution to discharge a legal onus in respect of the element in question. Finally, clause 104(6) of schedule 3 specifies that a conviction under section 104(6) cannot result in imprisonment.

Right against arbitrary interference with privacy or home — section 13(a)

The facilities to which the entry and search powers in schedule 3 relate include accommodation facilities (such as platforms, rigs, or seismic boats), however clause 58(2)(b) provides that an OHS inspector may only exercise powers of entry and search in respect of residential premises with the occupier's consent. In the heavily regulated context of petroleum and greenhouse gas facilities, outside of residential areas, discharge of the entry and search powers in schedule 3 may well not even engage section 13(a) of the charter. However, to the extent that the powers do so, in my opinion, any interference with privacy will be neither unlawful nor arbitrary, and therefore will not limit the right. The entry and search powers are vital to achieving the important purposes of ensuring compliance with OHS laws, investigating contraventions of OHS laws, and investigating accidents or dangerous occurrences. Further, OHS inspectors will be public authorities pursuant to section 4 of the charter and accordingly, to the extent that the privacy right would be engaged, inspectors will be legally bound by section 38(1) of the charter to employ their general enforcement powers in a charter compatible manner.

Property right — section 20

Clauses 62, 63 and 64 empower OHS inspectors, who have entered a facility or vessel under their entry powers, to seize material or data believed on reasonable grounds to be evidential material relating to the suspected or intended commission of an OHS offence. These powers engage the property right in the charter, however in my opinion the right is not limited because the deprivation of property is specifically authorised under the bill. Further, safeguards are provided to prevent arbitrary exercise of the powers, including that the powers can only be exercised in accordance with a warrant issued by a magistrate on the basis of reasonable grounds (clauses 62(4), 63(4), 73, and 74), a receipt must be given for things seized (clause 70(1)), and a limit of 60 days is imposed for retention of a seized item without further authorisation from a magistrate (clauses 71 and 72).

**Conclusion**

For the reasons given in this statement, I consider that the bill is compatible with the charter.

Martin Pakula, MLC  
Minister for Public Transport

*Second reading***Ordered that second-reading speech be incorporated on motion of Hon. J. M. MADDEN (Minister for Planning).**

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

That the bill be now read a second time.

**Incorporated speech as follows:**

In a carbon-constrained world, carbon capture and geological storage technologies are required to offset the continued use of Victoria's fossil fuels.

The Brumby government is therefore pleased to introduce legislation today that creates a framework to regulate petroleum activities and facilities and the injection and permanent storage of greenhouse gases in Victorian offshore waters.

This bill will provide investors with a clear signal that Victoria is committed to the development of carbon capture and storage in Victorian coastal waters. It will also give the community confidence that injection and storage operations will be undertaken in a manner which minimises risks to public health and the environment.

In accordance with the terms of the Offshore Constitutional Settlement, all states have undertaken to maintain, as far as practicable, common principles, rules and practices. Therefore, like the commonwealth Offshore Petroleum and Greenhouse Gas Storage Act 2006, this bill will create a system of titles for petroleum exploration and recovery and the injection of permanent storage of carbon dioxide and other prescribed greenhouse gases.

This bill addresses policy differences in the management of long-term liabilities associated with the underground storage of carbon dioxide and other prescribed greenhouse gases existing under Victorian and commonwealth legislation.

The bill also seeks to balance the rights of this new storage industry with the rights of the petroleum industry in a manner that encourages investment in both industries.

I now turn to the key provisions of the bill.

**Role of the Crown**

Like the Victorian onshore Greenhouse Gas Geological Sequestration Act 2008, this bill establishes that the Crown owns all underground geological storage formations within Victorian waters. This will allow the Crown to grant exclusive rights to explore for geological storage formations within specific areas of Victorian waters, and where a suitable geological storage formation is identified, to undertake greenhouse gas injection and monitoring operations.

**Governing authority**

The National Offshore Petroleum Safety Authority (NOPSA) will be the body responsible under the bill for performing functions relating to:

the promotion of occupational health and safety of persons engaged in petroleum operations in offshore areas;

the investigation of accidents and incidents occurring in relation to offshore petroleum activities; and

advising and making recommendations to the relevant ministers and authorities in relation to occupational health and safety matters.

**Management of competing resource use**

The bill requires the minister to assess the impact of greenhouse gas operations on petroleum exploration operations or petroleum recovery.

Where proposed injection operations pose a significant risk to petroleum exploration operations or petroleum recovery operations, the minister may, except as I will describe below, approve the proposed operation if he or she considers it in the public interest to do so, notwithstanding that risk.

The minister cannot approve greenhouse gas operations over existing pre-commencement petroleum titles or existing post-commencement petroleum production licences unless the petroleum titleholder has agreed, in writing, to the carrying out of those greenhouse gas operations.

**Regulation of activities relating to petroleum**

The bill re-enacts the existing system currently in place for regulating activities relating to petroleum. This includes activities for permits, retention leases, production licences, infrastructure licences and pipeline licences.

The bill also re-enacts the existing process under which applications for petroleum exploration permits or renewals of petroleum exploration permits, retention leases or renewal of petroleum retention leases can be made. The minister will be able to determine whether or not a petroleum exploration permit or retention lease or renewal for both, should be granted.

Like the Commonwealth Offshore Petroleum and Greenhouse Gas Storage Act 2006, the bill provides a process by which applications can be made for a petroleum exploration permit and retention lease. Separate application processes will be set out for a work-bid petroleum exploration permit, a cash-bid petroleum exploration permit, special petroleum exploration permit, and holders of a petroleum exploration permit or petroleum production licence.

The bill also authorises the minister to grant a petroleum exploration permit and retention lease subject to such conditions as he or she thinks appropriate.

**Regulation of activities relating to injection and storage of greenhouse gas substances**

The bill will facilitate primarily large-scale commercial carbon storage activities. Like the Commonwealth Offshore Petroleum and Greenhouse Gas Storage Act 2006, the bill establishes a system of titles for the injection and permanent storage of carbon dioxide and other prescribed greenhouse gases.

These are:

- a greenhouse gas assessment permit;
- a greenhouse gas holding lease;
- a greenhouse gas injection licence;
- a greenhouse gas search authority; and
- a greenhouse gas special authority.

The bill provides flexibility as to the duration, size and conditions associated with such permits, leases and licences.

The bill also makes provision for the surrender of greenhouse gas titles and cancellation of greenhouse gas titles.

#### **Registration and dealings in petroleum titles and greenhouse gas titles**

The bill provides for the creation and maintenance of a register of petroleum titles, greenhouse gas titles and greenhouse gas search authorities. The bill also includes provisions which establish the requirements for approval and registration of transfers and dealings with these titles. The bill provides transitional provisions to ensure that the existing register containing registration details for petroleum and greenhouse gas titles and greenhouse gas search authorities remain in force.

The bill establishes a regime for managing transfers of petroleum titles and greenhouse gas titles. As an example, a transfer of a petroleum title and greenhouse gas title is of no force and effect until it has been approved by the minister and an instrument of transfer is registered.

Like the Commonwealth Offshore Petroleum and Greenhouse Gas Storage Act 2006, this bill also establishes a process that is to be applied by the minister when determining whether to approve or refuse the transfer of these titles.

Importantly, the bill:

- empowers the minister to issue directions to holders of petroleum or greenhouse gas titles or authorities or former holders of titles or authorities in relation to the removal of fixtures and the restoration of the environment in respect of the Victorian offshore area;

- requires consent of the relevant minister to access restricted Crown land; and

- requires compliance with the:

- Environment Protection Act 1970;

- Dangerous Goods Act 1985;

- Aboriginal Heritage Act 2006;

- Coastal Management Act 1995;

- Flora and Fauna Guarantee Act 1998;

- Water Act 1989; and

- National Parks Act 1975.

#### **Operational requirements**

The bill provides a range of measures to ensure that petroleum and greenhouse gas injection and storage activities are carried out in accordance with agreed operational plans.

The bill gives the minister power to direct persons to:

- plug or close off, to the satisfaction of the minister, all wells made in any vacated area by any person engaged or concerned in those operations;

- provide, to the satisfaction of the minister, for the conservation and protection of the natural resources in the vacated area; or

- make good, to the satisfaction of the minister, any damage to the seabed or subsoil in the vacated area caused by any person engaged or concerned in those operations.

#### **Management of potential liabilities following surrender of licence**

The Commonwealth Offshore Petroleum and Greenhouse Gas Storage Act 2006 makes provisions for the commonwealth to assume certain long-term liability in respect of greenhouse gas operations. The commonwealth act transfers all liabilities (including common-law liabilities) from an injection operation to the Crown 15 years after the commonwealth minister is satisfied that a carbon storage operation can be closed.

This bill will differ from the commonwealth approach and will provide that common-law liabilities remain with the operator after surrender of the licence.

This position is consistent with the Victorian Greenhouse Gas Geological Sequestration Act 2008 and the approach taken for other earth resource industries and waste disposal industries more generally, the Australian Regulatory Guiding Principles for Carbon Capture and Geological Storage endorsed by the Ministerial Council on Mineral and Petroleum Resources and Queensland's Greenhouse Gas Storage Act 2009.

#### **Enforcement**

The bill provides a range of offences, penalties and enforcement provisions to ensure that petroleum operations and carbon storage exploration and injection operations meet community expectations for the protection of public health and the environment and that titleholders' rights are respected.

The enforcement provisions in this bill also differ from those in the commonwealth legislation. This is primarily due to the fact that the commonwealth legislation enforcement provisions have been drafted in accordance with commonwealth legislation which includes the Commonwealth Criminal Code Act 1995. The enforcement provisions for this bill have been drafted in accordance with Victorian legislation which includes the Victorian Charter of Human Rights and Responsibilities Act 2006 and the Sentencing Act 1991.

**Rights of petroleum titleholders**

In mirroring commonwealth legislation, the bill will give existing petroleum interests the right to apply for a greenhouse gas holding or injection title over their title areas. Their interests are protected by an 'impacts test' designed to minimise any adverse effects from carbon storage interests.

**Regulations**

The bill provides the underlying framework from which detailed regulations specific to petroleum operations and greenhouse gas injection and storage will be developed. Work on these regulations and guidelines will commence once the commonwealth has developed its regulations. The commonwealth has advised that it expects the regulations to be finalised towards the end of March 2010.

The Victorian regulations will be consistent as far as is practicable with the commonwealth regulations. Victorian supporting regulations and the role of other existing Victorian legislation will be used where necessary to ensure that environmental or health risks associated with offshore greenhouse gas and storage activities are appropriately addressed.

**Conclusion**

The creation of clear legal rights for offshore greenhouse gas and storage, as well as an efficient and credible regime for its assessment, approval and operation, are necessary preconditions for investment in this potential new industry.

In introducing this bill, the government is determined to provide a framework to facilitate a nationally consistent approach to the regulation of the offshore underground storage of carbon dioxide and other prescribed greenhouse gases in Victoria. This bill seeks to ensure that all aspects of offshore petroleum and carbon storage activities are conducted sustainably and in an open, transparent and consultative way which meets community expectations.

The need for urgent action in addressing climate change, and the significant role that this bill is likely to play in developing one of the available methods for reducing greenhouse gas emissions, will contribute substantially to enabling Victoria to meet its climate change mitigation responsibilities, at the same time enabling the ongoing use of the state's fossil fuel resources.

I commend the bill to the house.

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

**Debate adjourned until Thursday, 4 March.**

**BUSINESS OF THE HOUSE****Adjournment**

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

That the Council, at its rising, adjourn until Tuesday, 9 March 2010.

**Motion agreed to.**

**ADJOURNMENT**

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

That the house do now adjourn.

**Bendigo: school mergers**

**Ms LOVELL** (Northern Victoria) — The matter I wish to raise is for the attention of the Minister for Education. It is a matter that not only concerns me but is also a matter that the Liberal candidate for Bendigo East, Michael Langdon, has asked me to raise on his behalf. It is in regard to the closure of Eaglehawk Primary School and child-care centre at Bendigo.

My request and the request of Michael Langdon is for the minister to conduct an urgent survey of the families with students enrolled at the four primary schools involved in this merger to gauge the impact of closing all four schools and, in particular, the impact on the Eaglehawk community of the closure of the primary school and the suburb's only child-care centre.

Earlier this month Premier John Brumby announced funding for the construction of a mega school, incorporating a child-care centre on the current Comet Hill Primary School site. The merger of four primary schools — Bendigo North, Eaglehawk, Eaglehawk North and Comet Hill — was announced in June last year. These plans include the closure of both Eaglehawk and North Bendigo primary schools and Eaglehawk's only child-care centre. The Brumby Labor government rushed through these school closures by stealth. North Bendigo's school council had no time to consider its school's future as it was informed of the plans and asked to vote on them at the same meeting.

With Bendigo's population predicted to soar to a whopping 139 000 by 2031, you would think the state Labor government's focus would be on providing educational facilities capable of catering for the growing population rather than reducing capacity by closing schools. The Bendigo community is concerned about the closure of these schools and the child-care centre and believes the Brumby Labor government is deserting its most vulnerable citizens.

This concern was reinforced by the recently released *Australian Early Development Index* national report, which found 31 per cent of Eaglehawk students to be vulnerable in at least one area and 16 per cent vulnerable in two areas — a significant measure of disadvantage. These findings, which confirm the vulnerability of children in Eaglehawk, coupled with the fact that primary school-aged children from low socioeconomic backgrounds perform better in smaller schools, demonstrate that Labor's plan to produce a

large and impersonal super school may not produce the best opportunities or results for Bendigo students, especially those from Eaglehawk.

There are also concerns about the extra burden the school closure will place on Eaglehawk families who will be forced to travel a significant distance to take their children to school or child care. Due to the high level of socioeconomic disadvantage in Eaglehawk these families may not have access to a vehicle, making the task of getting their children to school or child care all the more difficult.

Labor's ill-conceived plan to close Eaglehawk and North Bendigo primary schools as well as Eaglehawk's only child-care centre will have long-lasting ramifications for many families.

My request and the request of Michael Langdon is for the minister to conduct an urgent survey of the families with students enrolled at the four primary schools involved in this merger to gauge the impact of closing all four schools — —

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

### **Libraries: Geelong redevelopment**

**Mr KOCH** (Western Victoria) — My issue is for the Minister for Local Government and relates to the City of Greater Geelong's efforts to redevelop the Geelong City Library. The Greater City of Geelong has prepared a strategic plan to build a multistorey state-of-the-art library and historical archive facility in central Geelong. These library improvements are part of the Geelong Future Cities master plan, which encompasses the area bounded by Ryrie Street, Gheringhap Street, Mercer Street, Railway Terrace and Fenwick Street.

The current library building is 50 years old, and despite the best efforts of the council and librarians, it is unable to keep up with the reading, research and technological demands of a growing regional population. The physical limitations of an undersized and outdated building mean that in order to meet the service expectations of a major regional city an entirely new library building is needed.

Geelong City Library is part of a library network servicing the city of Greater Geelong, the Surf Coast shire, the borough of Queenscliffe and the Golden Plains shire. The reading and educational requirements of the Geelong region's 300 000-plus population demands the storage of over 200 000 books. Current facilities at the library allow for a mere 60 000 books to

be housed on this site — less than a third of its requirements.

The upgrading of the city's library, in conjunction with other elements of the Geelong Future Cities master plan, such as the refurbishment of the Geelong Performing Arts Centre and the old courthouse building, will strengthen central Geelong's role as a cultural and community hub. Annual visitor numbers to this area are around half a million people but are expected to double if the facility is redeveloped.

The state government has provided \$7.9 million in funding for the Geelong cultural precinct as part of the 2009–10 budget. This funding only allowed for planning and business case development for the cultural precinct. The city's plan to build a multistorey state-of-the-art library and historical archive facility should now be available and to be assessed if funding is to be forthcoming in the 2010–11 budget.

The Liberal-Nationals coalition is committed to new library and archive storage facilities in Geelong. A recent briefing by the city fathers confirms local government is doing all it can to achieve an upgrade of these facilities. Now it is up to this government. My request is for the minister to demonstrate the government's commitment to and support of the City of Greater Geelong's initiative by committing funds for the library and archiving component of the Geelong Future Cities master plan at its earliest convenience.

### **Land tax: Ballarat**

**Mr VOGELS** (Western Victoria) — I raise an issue for the Minister for Finance, WorkCover and the Transport Accident Commission. It concerns this government's imposition of massive land tax bills on undeveloped industrial land. Ballarat has been hit hard, with 1000 jobs lost across the region over the past 18 months. Most of these jobs have been in the manufacturing sector in John Valves, Lihir Gold, Lyco Innovations and Eureka Tiles — and the list goes on. One of the priorities identified by community leaders to improve job opportunities in Ballarat is the need to ensure that there is enough fully serviced industrial-zoned land available ready for new businesses to invest in and establish on.

Over the past fortnight I have had the opportunity to meet a Ballarat landowner who has invested a huge amount in subdividing and providing infrastructure and connecting roads on his vacant industrial-zoned land. Initially, back in 2001, this landowner paid nominal land tax at around \$1000 or \$2000. At his last assessment of the same plot of land, but with it having

been subdivided and minus several subsequently sold off lots, this person incurred a \$57 000 land tax bill, and he estimates his land tax bill could rise to \$80 000 with the next assessment. This huge increase in land tax under the government is for vacant industrial-zoned land. I want to reiterate this point: it is vacant industrial-zoned land. The landowner believes this steeply rising land tax bill is unfair and provides a disincentive for landowners to prepare and service land for potential industrial businesses. Until such time as the lots are individually sold, they do not return income to the landowner from which a land tax bill could be paid. Similar-looking undeveloped rural land can be seen abutting the site. This is agricultural land which obviously attracts and incurs no land tax.

I ask the Minister for Finance, WorkCover and the Transport Accident Commission to ensure that massive land tax bills are not a barrier to the preparation of serviced industrial land, which will be needed as the economy improves and businesses look once again to invest in cities such as Ballarat.

### **Libraries: Nunawading refurbishment**

**Mr ATKINSON** (Eastern Metropolitan) — I wish to raise a matter for the minister responsible for the regional and local community infrastructure program. I am not actually sure which minister that is, so I might seek guidance from the Minister for Planning, who is in the house. The matter I raise is in respect of a significant and worthwhile government program that seeks to fund infrastructure in communities across Victoria. In this particular instance I indicate to the minister my support for an application from the City of Whitehorse for refurbishment and upgrade of the existing Nunawading branch library, which is housed in a 40-year-old council building located at 379 Whitehorse Road, Nunawading.

The proposal it has come up with for the modernisation of the library is for a \$1.6 million grant under the government's program. That money would be added to other funding available to refurbish and upgrade the existing library, which has an estimated total project cost, according to the council, of \$2.24 million. The works are required to address compliance with current regulations and standards, as well as congestion, inadequate space for display material, and lighting deficiencies in study and community areas. If these works are completed, the building will also be better able to cope with the demands of 21st century library users.

Certainly the library service has come a long way in the 40 years since this particular building was constructed.

It is an interesting building. I am actually very familiar with it, because at one time the building essentially housed the Nunawading civic offices. The council then built new civic offices on the same block and swapped the two buildings in terms of their use: the administration area became the library and the library became the administration area. It was a pretty ingenious solution to a problem that the council had at that time, but the library component of the works and facilities at this Whitehorse Road site are certainly in need of an upgrade.

I am pleased to report to the minister in seeking his or her support for this grant that this is a very well-used library. The community of Whitehorse has had a long affection for its library, it has been very interactive and innovative in its service and I trust that it will be able to continue with that thanks to this grant.

### **Glen Huntly reservoir site: heritage overlay**

**Mrs COOTE** (Southern Metropolitan) — My adjournment matter this evening is for the Minister for Environment and Climate Change and is regarding the water reservoir in Glen Huntly. In Booran Road in my electorate and the Assembly electorate of Bentleigh there is an old reservoir. It was built in 1883 and is of historic significance because it was the very first mass concrete reservoir constructed as part of the Melbourne water supply system. It is important from that perspective. I have heard that many people have driven past it on many occasions, never quite knowing what it was or is.

Two years ago, in 2008, when South East Water said it no longer needed this particular piece of land, it was handed to the state government. The state government said the 1.6-hectare site would be promised to the municipality of Glen Eira as open space. This was welcomed by just about everybody; people were very happy about it. However, now it seems that Heritage Victoria people — those spoilers — have come along and said they want to put a heritage overlay on this site.

I am in furious agreement with the member for Bentleigh in the Assembly, Mr Rob Hudson, who in the *Caulfield Glen Eira Leader* is quoted as having said that he was 'mystified and frustrated' about the heritage investigation of the reservoir, which had been closed for 30 years. Cr Jim Magee said listing the reservoir would be ridiculous, and the *Caulfield Glen Eira Leader* quotes him as saying:

It's just a big concrete hole in the ground, it's more valuable as an open space.

I agree with that. The action I am seeking from the minister is that as a matter of urgency he ensures that the former Booran Road Reservoir in the municipality of Glen Eira does not have a heritage overlay imposed on it.

**Ms Huppert** — She has in just one adjournment agreed with both a Labor member of Parliament and a Labor councillor!

**Mrs COOTE** — I know. I am happy with everyone. I get along with everyone.

### **Parks Victoria: Ferny Creek land**

**Mr O'DONOHUE** (Eastern Victoria) — I raise a matter for the attention of the Minister for the Environment and Climate Change. I have been approached by the Hubble family of Sherbrooke. They are horse lovers and, together with some other families, they have for a number of years leased a 6-hectare mountain ash paddock at Ferny Creek. Horses have been grazed on the land in question for more than 25 years, and this grazing has helped maintain an area of low fuel in a heavily treed and potentially dangerous area for fire. Indeed Parks Victoria was good enough to acknowledge as much in a letter to the Hubble family dated 17 November last year. In it the local ranger stated:

Parks Victoria recognises that horses have been appropriately grazed in the MAP for many years since the land was reserved Crown land ...

The local member, the member for Monbulk in the Assembly and Minister for Sport, Recreation and Youth Affairs, James Merlino, wrote to the Hubble family following the bushfires of last year and implored them to maintain as little fuel as possible in preparation for the upcoming fire season. The brochure he sent the Hubble family says:

Fine fuels (thinner than a finger) contribute most to the heat and speed of a fire. Fine fuels include dry grass, leaves, twigs and loose bark but do not include larger logs ... Mowing, raking, slashing, grazing or even burning can reduce fine fuels around the house.

So the Hubble family was feeling that it was doing the right thing. Unfortunately Parks Victoria has now advised the Hubble family that the grazing of horses on the land in question is to be terminated by 6 April 2010. This flows from a longstanding policy to rehabilitate the paddock back to bush, but the Hubbles raise a very good question — that is, following the fires, following the concern about fuel loads and the work that has been done to reduce fuel loads, should this decision be reconsidered?

They tell me they love the land in question, they maintain it well, their horses are very good and the situation is good for the physical wellbeing of the families that use the horses. I therefore ask the minister to reconsider this decision in light of the benefits that the Hubble family contribute to fuel reduction in the broader Dandenong region.

### **Schools: air conditioning**

**Mrs PETROVICH** (Northern Victoria) — My matter is for the Minister for Education. The issue relates to the ludicrous situation whereby schools in my electorate are denied air conditioning because of the location of a bureaucratic and historical line. I have raised this issue previously in this house on behalf of Seymour Technical High School, which is sweltering through another very hot summer because there is no funding for air conditioning in that area even though it experiences the same temperatures as Shepparton, which is funded.

This week I was made aware of a primary school which, although it has been funded for six new classrooms under the rebuilding program, does not qualify for air conditioning and does not have any, except in a portable classroom which has been provided and comes with air conditioning. The parents and friends association, out of desperation, has fundraised \$5000 to provide air conditioning for the converted art room. One can imagine how many books and how much other equipment this could buy. It does not seem right that parents have to fundraise for this piece of infrastructure. This is a sad but common tale.

Education facilities are sweltering while this government blows \$20 million on fairy lights for the West Gate Bridge. Imagine how many air conditioners that would have purchased.

The action I seek is for the minister, as a matter of common sense, to review this ridiculous policy and allow for proper heating and cooling in our schools. This should be based on current climatic conditions and not an antiquated policy and an irrelevant line.

### **Wind farms: Bald Hills**

**Mr GUY** (Northern Metropolitan) — Tonight I raise an issue for the Minister for Planning concerning the Bald Hills wind farm — a 52-turbine facility that is proposed for rural land approximately 10 kilometres south of Tarwin Lower. Members might be aware that the minister recently gave approval to the proponent, Mitsui Pty Ltd, to increase the turbine height to 35 metres — the same height as the Sydney Harbour

Bridge from water level or that of a 40-storey residential tower. Local residents in the Tarwin area have a number of concerns that have been well expressed over a period of time. Apart from the obvious environmental, visual, noise and amenity issues that exist, they are also most concerned about consultation and processes, and this aspect is the subject of my adjournment issue tonight.

The wind farm has been one of the most controversial since its inception. It has polarised the community. Indeed independent evidence shows that the vast majority of locals who will surround the turbines do not want this wind farm. While some members opposite would no doubt say that this attitude reflects a brand of nimbysism, I would challenge them to stay silent about the construction of a vertical industrial facility 135 metres high right next to their own homes, without the ability to have proper feedback, and not be upset about it.

Mitsui applied to the planning minister for an increase in the turbine height late last year. On 14 December the minister granted this near 25 per cent increase in the height of the towers to 135 metres. This means these towers will now be fitted with strobe lighting as they will become light aircraft hazards.

Worryingly, I understand the minister told no-one of the large extension of the project's size for some time, but the following points should also be noted. When the proponents advised the planning panel for the Bald Hills wind farm of the need to change the proposal from 84 to 52 turbines with an increase in turbine power, the panel chairman informed the then Minister for Planning, Mary Delahunty, who instructed the proponent to provide a supplementary environment effects statement, and the change that Minister Madden has signed off on is a 23 per cent increase in height and brings in aviation guidelines, so I ask: what is the difference?

I also ask the minister to explain what noise modelling is being carried out and whether the results of these investigations have been given to property owners within 2 kilometres of each turbine. In addition, what impact assessments have been carried out on the increased threat to migratory birds and bats because of the changed height? And when Mitsui submitted the plan of this major change to the minister, why was the local community not given the same opportunity?

My request tonight to the planning minister is that he delay the approval of the extension to this wind farm facility until a proper round of public consultation is completed and local people have had the ability to pass

opinion on any changes to the proposal, just as the proponent clearly has.

### Police: resources

**Mrs PEULICH** (South Eastern Metropolitan) — I wish to raise a matter for the attention of the Minister for Police and Emergency Services. It relates to the increased incidence of youth violence in the community and violent gang activity. Just this week the *Moorabbin Kingston Leader* ran on its front page a story titled 'Violent gang called "Kill More Curries"'. I will briefly quote from it. It states:

Youths from the southern suburbs have been linked to a violent gang whose members have attacked two Indians.

The group calls itself KMC, an abbreviation for 'kill more curries' — or as the gang has misspelt it, 'cause more chaos'.

The teenagers are based in and around Clayton South ...

Clayton South is in my electorate. The article continues:

One alleged member, a 15-year old, last week pleaded guilty at a Children's Court to a charge of affray over the bashing of two Indian men at Oakleigh station.

The court heard the boy was part of a group that taunted an Indian man before pushing him and later punching him in the face.

Another man, who tried to intervene during the incident on 4 December 2008, sustained a broken jaw and was kicked repeatedly after falling to the ground.

Magistrate Luisa Bazzani warned the youth he was 'on the path to self-destruction'.

'It (the attack) is cowardly and pathetic', Ms Bazzani said.

'You will end up with a lifetime of jail'.

The boy escaped conviction and was given a nine-month probation order after he presented a letter to the magistrate acknowledging the effect his case had had on his mother and vowing to change his ways.

Police would not comment on the existence of the KMC gang because there were related matters still before the courts.

The news comes in the wake of regular reports of attacks against Melbourne's Indian community, which attracted international criticism.

The Deputy President, like me, will be off to the Festival of Colours at Sandown Park on Sunday. We have been terrific supporters of the Indian community, and what an impressive and well organised community it is, and it breaks my heart to see any race, but in particular one that is as enterprising as this, being targeted in this way.

I think the controversy and the discussion are probably necessary, but there may be an element of copycat as well. However, what it does say is that we have some significant challenges. I call on the minister to revisit and reinstate the Police in Schools program and I call on him to reverse the abolition of the Neighbourhood Watch regime, which the Chief Commissioner of Police, Simon Overland, believes is outdated. I could not disagree with him more, because when the police are underresourced and cannot do their job they need all the help they can get.

I call on the minister to make sure that we have much better resourcing of our police so they can do their job. This government has taken the wrong approach to law and order and the wrong approach to youth violence. I call on the minister to review the direction of the government's policies, which I believe have resulted in many of these crimes becoming more common with some very significant tragedies.

### **Caroline Springs College: disability funding**

**Mr FINN** (Western Metropolitan) — I wish to raise a matter for the attention of the Minister for Education. I am sure everybody in this house knows the story of Tyler Fyshlock, a seven-year-old little boy who lost his remaining eye to cancer two or three years ago and is now completely without eyesight. I am sure everybody in this house admires his bravery and the bravery of his parents. I cannot help but think how extraordinarily difficult it must have been for his parents to decide to sacrifice his eyesight in order to save his life. As I said, I have admired both Tyler and his parents for quite some time, so I have been most distressed to read in recent times that he was bullied at his school, Caroline Springs College, which is in Western Metropolitan Region. That bullying, though, is nothing compared to what he now faces.

Tyler currently receives funding for a teaching aide for just 17 hours per week, and that is hardly sensational or anything to get excited about. But he needs a new piece of equipment at the school. The school says that it cannot afford that piece of equipment and that it will be paid for out of the budget allocated for his aide, which means there will be severe cuts to the time allowed for an aide. Now we are talking here about a seven-year-old little boy who has no sight at all; he is completely blind. Very recently he was found wandering around the front of the school, totally disorientated, when he was left without an aide for a relatively brief period of time.

This afternoon I have spoken to Tyler's mother, Georgette, who as one can understand is in quite a state

about what is happening to her son. She has told me that unless things change dramatically very soon, homeschooling is the only option for her and for Tyler. It just staggers me that this could happen in any school in Victoria in 2010. Unfortunately those of us who have children with disabilities know just how hard we have to fight for anything that we can get for our children. I ask the minister as a matter of urgency — and I emphasise that word 'urgency' — to convene a meeting of Tyler's parents, the school authorities and her office. I believe it is imperative we ensure that Tyler's life is not made even more difficult. He must be able to continue his schooling. I ask that the minister put those priorities into place, and I believe that a priority worth looking after is Tyler Fyshlock.

### **Water: Thomson River supply**

**Mr P. DAVIS** (Eastern Victoria) — I raise a matter for the attention of the Minister for Water in relation to the environmental flows in the Thomson River. The minister announced on 8 September last year a further 10 billion litres of water designated as environmental flow for the Thomson would be diverted each year to Melbourne, taking the total annual diversion of environmental flows to 20 billion litres a year. Understandably the decision has inflamed continuing outrage in the Gippsland community and generally among people concerned for the environment.

The 8 September announcement was buried at the bottom of a statement on water savings. Its presentation in this manner is consistent with the web of deceit the minister has spun in response to adverse community reaction. The minister has gone missing; he has repeatedly refused to talk to the media to explain his position to the Gippsland community, and his office has issued a confusing string of comments on Thomson water reserves and allocations.

In reply to my endeavour to obtain a formal statement to the Parliament of the reasons for the diversion, the minister said he had established a drought reserve to manage potential long-term environmental risks. I point out there has long been a reserve in the Thomson Dam, which exists for the sole purpose of providing a drought supply for the Macalister irrigation district. The minister now claims there is a second reserve, an environmental drought reserve, that was established in 2007 to protect the river, and refers to some obscure arrangement that makes provision for an annual 2-billion-litre environmental flow allocation from July this year, but does not require the water to be released to the river.

His own claim raises a contradiction between his statement that Melbourne would receive an additional 10 billion litres of water and now that 2 billion litres will be held back for Gippsland's Thomson River.

The second reserve was never mentioned in any of the statements about water diversion. The responsible local authorities, the West Gippsland Catchment Management Authority and Southern Rural Water, know nothing of it, and the catchment management authority's website refers only to the 10-billion-litre reserve which was guaranteed in 2006–07 as part of the Our Water Our Future policy statement, and which is already being diverted to Melbourne. The second reserve that the minister has magically conjured up must be regarded as extremely suspect, particularly in view of his refusal to be questioned publicly about it.

I therefore put it to the minister that he should act to clarify this contradictory situation by presenting the Parliament with a formal statement that fully discloses and explains the total Thomson Dam reserve, allocations and actual outflows for various purposes, including the environmental flow in the river.

### **Schools: government promotional material**

**Mr D. DAVIS** (Southern Metropolitan) — My matter for the adjournment tonight is for the attention of the Premier. If he wants to have a conversation with the Minister for Education in the process of addressing it, he would be welcome to do that, but it is ultimately for the attention of the Premier. It concerns the practice this government appears to have developed of using schools as a distribution mechanism for political documents. We have seen this today with the documents that have come to light as having been distributed by the member for Mordialloc in the other place, Janice Munt, and the Premier. Both the member for Mordialloc and the Premier feature very boldly in those documents which were distributed through a school which neighbours Janice Munt's electorate.

The Premier said today on ABC radio that this was not the practice of the government, that it was just some sort of slip-up that had occurred and that neither he nor the member for Mordialloc had any intention of distributing this document. He further said on ABC radio this morning that in fact it was not the practice of the government to distribute documents of this nature — political documents — through schools. You can imagine the shock of parents as their primary school-aged children come home with political propaganda. I do not think any parent expects their child to come home carrying political propaganda which has been distributed through their school.

Members can imagine my concern, considering the Premier has given a commitment that this is not the practice of the government, when we now discover that in fact in other areas there have been documents, including documents concerning a community cabinet, that have been distributed through school newsletters. In fact on ABC radio this morning the Premier ruled out the use of school newsletters for the distribution of political content, so either he has been very misleading, and perhaps lying, to the people of Victoria or alternatively he has got a case of amnesia.

I am not sure what has gone on in this particular case. It may be that the Premier, being a very busy man, has had some slip-up. I accept that he is a busy individual. However, it concerns me greatly that a second incident of political propaganda being distributed through government schools has come to light, and I really think that something has got to be done about it.

What I am asking the Premier — and, if she needs to be involved, the education minister — to do is to develop some set of guidelines or arrangements, because the Premier has basically indicated that there are none, and to ensure that this practice is stamped out. The Premier needs to apologise and to stop it.

**The DEPUTY PRESIDENT** — Order! Can I just have Mr Davis's assurance that he did not actually accuse the Premier of lying?

**Mr D. DAVIS** — I was merely laying out a series of possible reasons for the inconsistencies. I readily concede that amnesia is a very feasible one.

**The DEPUTY PRESIDENT** — Order! Amnesia was not the one I was exploring.

**Mr D. DAVIS** — I certainly did not accuse him of that. There are many explanations, and I did canvass a number of those, but I am willing to hear the Premier's explanation as to how this occurred.

**The DEPUTY PRESIDENT** — Order! In the event that Mr Davis actually did accuse the Premier of lying, can I have him withdraw those words?

**Mr D. DAVIS** — If by some inadvertence I did accuse the Premier of lying, I would withdraw that in the chamber, but it is my strong feeling that I did not.

**The DEPUTY PRESIDENT** — Order! We do not debate it. I thank the member for the withdrawal.

**Responses**

**Hon. J. M. MADDEN** (Minister for Planning) — I have written responses to adjournment matters raised by Mrs Petrovich on 3 February and Mr David Davis on 4 February; there are two responses in total.

Wendy Lovell raised the matter of the Eaglehawk Primary School and child-care centre, and I will refer that to the Minister for Education.

David Koch raised the matter of library and archive facilities in the City of Greater Geelong, and I will refer that to the Minister for Local Government.

John Vogels raised the matter of land tax in industrial-zoned land. I will refer this to the Minister for Finance, WorkCover and the Transport Accident Commission.

Bruce Atkinson raised the matter of the Nunawading branch library of the City of Whitehorse. I will refer that matter to the Minister for Regional and Rural Development.

Andrea Coote raised the matter of the Glen Huntly reservoir, and I will refer that matter to the Minister for Environment and Climate Change.

Edward O'Donohue raised the matter of grazing on Crown land in his electorate, and I will refer that matter to the Minister for Environment and Climate Change.

Donna Petrovich raised the matter of air conditioning in certain school locations, and I will refer that to the Minister for Education.

Matthew Guy raised a matter for myself regarding the Tarwin Lower-Bald Hills wind turbine project. He asked for specific information, and I am happy to seek to provide him with some of that information through my department.

Inga Peulich raised the matter of youth gang violence in the Clayton South area. I will refer that to the Minister for Police and Emergency Services.

Bernie Finn raised the matter of Tyler Fyshlock and the relevant services provided through his school, and I will refer that matter to the Minister for Education.

Philip Davis raised the matter of environmental flows to the Thomson River. I will refer that to the Minister for Water.

David Davis raised a matter regarding the relevant protocols around school information distribution, and I will refer that to the Premier.

**The DEPUTY PRESIDENT** — Order! The house now stands adjourned.

**House adjourned 5.07 p.m. until Tuesday, 9 March.**

