PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SIXTH PARLIAMENT

FIRST SESSION

Thursday, 25 March 2010

(Extract from book 4)

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By authority of the Victorian Government Printer

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The Lieutenant-Governor

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Legislative Council committees

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

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

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

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

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

Joint committees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Heads of parliamentary departments

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

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

Parliamentary Services — Acting Secretary: Mr C. Gentner

MEMBERS OF THE LEGISLATIVE COUNCIL

FIFTY-SIXTH PARLIAMENT — FIRST SESSION

President: The Hon. R. F. SMITH

Deputy President: Mr BRUCE ATKINSON

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Deputy Leader of the Government:
Mr GAVIN JENNINGS

Leader of the Opposition:
Mr DAVID DAVIS

Deputy Leader of the Opposition:
Ms WENDY LOVELL

Leader of The Nationals:
Mr PETER HALL

Deputy Leader of The Nationals:
Mr DAMIAN DRUM

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

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

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THURSDAY, 25 MARCH 2010

Thursday, 25 March 2010

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

Hon. M. P. Pakula — On a point of order, President — —

The PRESIDENT — Order! I am not taking any point of order from a Carlton man today. Whilst I totally agree with Mr Finn's sentiments, he is being provocative to some members opposite and I ask him to remove his scarf. With regard to the tie, I advised Mr Finn yesterday that it would be entirely appropriate for him to wear such a tie today.

PETITION

Following petition presented to house:

Romsey: secondary school

To the Legislative Council of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council the growing population of the Romsey-Lancefield townships and the lack of public secondary education facilities available within 25 kilometres.

Your petitioners therefore request that the state government build a secondary school (years 7–12) in Romsey to meet the current and future demands of this community.

By Mrs PETROVICH (Northern Victoria) (492 signatures).

Laid on table.

PAPERS

Laid on table by Clerk:

Parliamentary Committees Act 2003 — Government Response to the Environment and Natural Resources Committee's Report on Melbourne's Future Water Supply.

Safe Drinking Water Act 2003 — Report on Drinking Water Quality in Victoria, 2008–09.

MEMBERS STATEMENTS

Australian Labor Party: local government councillors

Mrs PEULICH (South Eastern Metropolitan) — I wish to make a brief statement in relation to an article which appears in today's *Age* headed 'ALP suspends trio for breaking ranks'. It is in relation to a matter that I have raised in this house on many occasions and principally concerns Labor's municipal caucus rules and the manner in which they operate and underpin many of the goings on in municipal councils across Melbourne.

The article notes that three councillors have now been suspended from the ALP for voting for an unapproved ALP member and not the member determined by caucus at a secret meeting — a practice that is clearly in flagrant breach of local government rules, which prevent councillors from entering a council meeting with a predetermined position. Clearly the Labor caucus requires one set of rules and the Local Government Act requires another set of rules. Those three councillors voted for another ALP member but have been prevented from exercising their rights as councillors under the Local Government Act to act in the best interests of their municipality.

I therefore call on the Minister for Local Government and all members to refer this matter to the upper house Standing Committee on Finance and Public Administration to examine carefully the operation of Labor's municipal caucus rules and their impact on due process and decision making in local government; and to ensure that the sacking — I understand that one of those councillors has been expelled from the Labor Party — is not repeated ever again. It is an example of corruption at its worst.

The PRESIDENT — Order! The member's time has expired. I advise Mrs Peulich that she has a bad habit of continuing beyond the time allowed.

Greens: Tasmanian election

Mr BARBER (Northern Metropolitan) — Tasmanian caretaker Premier David Bartlett must now be regretting the approach he took at the recent election where he pledged that he would not deal with the Greens under any circumstances should a minority government present itself. It is unfortunate that he took the approach of more or less running for opposition: he told voters that neither accountability nor stability was his highest priority, and the result is that they have punished him for it.

If it was good enough for premiers Greiner, Borbidge, Beattie, Rann and even Bracks to govern under a power-sharing arrangement, you would think it would be good enough for any Labor or Liberal Party leader anywhere in the country, but I guess this is a test of the political maturity of politicians from all parties represented in Australian parliaments.

We currently have a power-sharing arrangement in the Australian Capital Territory and the Northern Territory, and I think it is only a matter of time until we see power-sharing governments become more common across the country. That situation should not be seen as anything particularly unusual; in fact it can be extremely productive in a political sense.

Ambulance services: Yarrawonga

Ms BROAD (Northern Victoria) — On Friday, 19 March, I had the great pleasure of officially opening the brand-new $1.4 million ambulance station in Yarrawonga on behalf of the Minister for Health, Daniel Andrews.

Yarrawonga's new state-of-the-art facility will provide the hardworking paramedics and ambulance community officers who work at Yarrawonga with the very best facilities so that they can continue to provide the very best care to the community and surrounding districts. As well as that, additional paramedics will now be stationed at Yarrawonga station on an ongoing basis to assist with growing demand in the region. This investment also builds on the extensive ambulance capital works program which is under way, with 35 stations around Victoria currently receiving upgrades.

The Brumby Labor government has more than doubled funding for ambulance services since it was elected, delivering 59 new and upgraded services across 48 communities throughout Victoria. Improvements in my own region have included new stations at Bright and Mooroopna, and extra paramedics at Cobram, Kyabram, Mansfield and Benalla. I am very pleased to say that further investments have been made at Wodonga and Kyabram. The Brumby government and Ambulance Victoria have made these investments because we want to deliver the highest quality ambulance services and facilities to communities across country Victoria.

Housing: Atherton Gardens

Ms LOVELL (Northern Victoria) — Last Friday I had arranged to meet with residents of the Atherton Gardens public housing estate to hear their concerns about the standards of accommodation and renovations on the estate, which include poor workmanship, paint that wipes off the walls and fences, holes in walls, and apartments so poorly ventilated that mould is growing on the walls. Prior to the meeting I was informed that the local Labor Party network had reported back to the Minister for Housing, Richard Wynne, that I was visiting the estate and also that some residents had been advised, or should I say pressured, not to attend the meeting.

I was still happy to visit and listen to residents' concerns. After meeting up with residents at the community centre we left on a tour of the estate and looked at apartments. On my return to the centre I was informed that the minister had turned up, looked around — obviously to check on my meeting — and promptly departed when he did not find us at the community centre.

As minister, Richard Wynne should busy himself with being concerned about the conditions Atherton Gardens residents are living in rather than attempting to gatecrash a meeting with the shadow minister.

Mr Dalla-Riva: comments

Mr LEANE (Eastern Metropolitan) — I found the theme of Mr Dalla-Riva's recent attack on the member for Forest Hill, Kirstie Marshall, astounding, when you consider that seeing Mr Dalla-Riva in his electorate is akin to spotting a yeti. I am happy to inform the house firsthand that Kirstie Marshall is one of the hardest-working MPs I have had the honour to work with. I know firsthand she is continually championing issues for stakeholders in her electorate, whether they be local kindergartens and schools, businesses, aged-care facilities, non-government organisations or sporting groups. She has constantly dealt with all of these groups over a long time.

I know Kirstie Marshall has personally delivered thousands of dollars to the Whitehorse Community Chest to assist with its great work. I know Kirstie Marshall is continually setting up mobile booths around her electorate and facilitating information sessions for constituents with ministers — and I know that because I have accompanied her on a number of them.

I know that the organisers knew on the day of the event that Mr Dalla-Riva referred to yesterday that Kirstie Marshall tendered an apology due to unfortunately having to be with her gravely ill father in hospital. My advice to Mr Dalla-Riva is to get his facts right, to save his *Melway* references for himself and the bloke he is talking up, who is a failed candidate for preselection for the federal seat of Aston — the people of Forest Hill must be second best to him — and if Mr Dalla-Riva wants to be an expert on who is present out in the electorate, the first thing he has to do is actually get out into the electorate himself. He should give it a go; he might find that people do not dislike him as much as he thinks.

Buses: SmartBus route 902

Mr ATKINSON (Eastern Metropolitan) — I have got to say that statement by Mr Leane was comical! But what is not comical is an issue brought to my attention by a resident of Bramleigh Gardens, who is concerned about the government's new future SmartBus route 982 and the fact that the bus stop is located outside his property just south of the Nunawading railway line.

This is not a case of 'Not in my backyard'; in fact the resident would be quite happy if the bus stop was moved about 50 metres to the north, where it would have less impact on a number of aspects of the amenity of residents in the area, not simply on the constituent who raised the matter with me.

However, the government does not seem to be listening and the Whitehorse council has shown scant interest in this issue, despite the fact that this SmartBus stop seems rather incongruous given the redevelopment of the Nunawading railway station and the fact that the bus stop is quite a distance from the station and any potential public transport interchange. So I actually think that moving it 50 metres to the north, as was suggested by my constituent, is rather on the lean side; the bus stop ought to be moved further north so that it provides interchange opportunities for residents of the area. At any rate I hope the Minister for Public Transport addresses this issue as a matter of some urgency.

Ballarat: rail workshops

Ms PULFORD (Western Victoria) — The rail infrastructure industry in Ballarat has a long and proud history that began in 1917 and continues to the present day. With humble beginnings in an operation to carry out repairs and maintenance of existing wagons and locomotives, the industry progressed to building the grand old steam trains of the early 20th century. The Ballarat North workshops built goods wagons in the 1960s and later helped to build trains that ran on Melbourne's suburban rail network.

Alstom and UGL Rail recently celebrated 10 years of manufacturing in Ballarat. They are a significant employer of 115 people across a range of trades and operational support. Alstom and UGL Rail have confirmed that 50 new jobs will be created in Ballarat over the next three months to fit out trains for the Melbourne rail network. The shells of the 19 new six-car X'Trapolis trains for the metropolitan fleet will be shipped from Poland and then delivered to Ballarat, where they will be fitted out and finished. The cars will undergo quality assurance testing and commissioning at the Ballarat plant. Congratulations go to Alstom and UGL on a stunning success in manufacturing in regional Victoria, a success that supports many quality skilled jobs and also supports local suppliers in Ballarat.

Member for Bundoora: leaflet

Mrs KRONBERG (Eastern Metropolitan) — The people of Melbourne's northern suburbs have recently received an invitation to join the Australian Labor Party from none other than the member for Bundoora in the other place, Mr Colin Brooks. The material has been authorised by the member. The missive contains a real sense of urgency as it urges recipients to be part of the process. It states that with the state and federal elections this year, 'the outcomes of these will shape the future of our country and our great state'.

Methods of contacting the ALP are set out as follows: one can fax the completed form to 9467 5921; email contact details to bundooraalp@gmail.com; or, bizarrely, complete the form and send it to Colin Brooks, MP, post office box XX, Greensborough, Victoria, 3088. This is a mysterious destination indeed. Has the form been designed to attract those who apply for goods and services that attract an X rating, or is it a sign of carelessness and yet another example of 'Near enough is good enough'?

This leaflet was part of a recent letterbox drop. A friend of mine received this last Friday. It was authorised by Colin Brooks himself. One can only conclude that providing accurate information to the electorate is not one of his priorities.

Geelong: Pako Festa

Ms TIERNEY (Western Victoria) — I wish to congratulate Diversitat for yet another fantastic Pako festival, which was held on 27 February in Geelong and opened by the Premier, John Brumby. The parade winners were Clonard College for the best school entrant. St Patrick's Primary School won the best use of the theme, and the award for most culturally aware was won by the Filipino community group from Geelong and the Indonesian community group from Melbourne. The best cultural stall prize went to the Geelong Dutch community.

Greek Independence Day

Ms TIERNEY — On a related matter, I wish the Greek community a very happy Greek Independence Day today. I am sure there will be many celebrations this evening. I am also sure they will be different from the Liberal Party plate-breaking fundraising event

exposed by the *Geelong Advertiser*, where the Greek cultural tradition of breaking plates was hijacked and personalised for a political purpose. Some might think that is funny, but I know many consider it to be an inappropriate, disrespectful stunt that demonstrated that those involved do not deserve public support. I am sure the founders of modern-day democracy would find little humour in what amounts to appalling behaviour.

Southern Metropolitan Region: lifesaving clubs

Ms HUPPERT (Southern Metropolitan) — Earlier this year the Victorian government announced that each lifesaving club in Victoria would receive a $5000 grant to support the valuable role the clubs play in preventing drowning and injury in Victorian waters. Last week I had the opportunity to visit 7 of the 12 lifesaving clubs in the Southern Metropolitan Region and see firsthand the important role these clubs play in the community in not only reducing the number of drownings in Victoria but also involving people of all ages in their community. The clubs I visited were in Brighton, Hampton, Sandringham, Half Moon Bay, Black Rock, Beaumaris and Mentone. Many of them have been operating for a number of years. The Half Moon Bay club is celebrating its centenary this weekend.

Some of the clubs will be using the $5000 grant to purchase much-needed equipment, such as new radio and other communication equipment, while some of the other clubs I visited will use the money to assist in upgrading their facilities — painting the exterior, providing sunshades around their areas and things like that.

The thing that impressed me most about the clubs was the dedication of the volunteers of all ages who give up their time to run nippers programs and fundraising programs and do patrols of the beaches and general administration. We met people who were grandparents who were involved in the clubs because their children wanted to be involved in the nippers program. The clubs provide a real community focus for people of all ages, in particular the young people — the teenagers and people in their early 20s — who are really doing a great deal of work to give back to the community. I commend the clubs for their work.

Urban Reforestation

Mr MURPHY (Northern Metropolitan) — Recently I visited Urban Reforestation, an organisation based in the Docklands precinct of Melbourne. Urban Reforestation is dedicated to inspiring sustainable lifestyles in cities through urban farming by growing, sourcing, preparing and sharing local food. Urban Reforestation has been established for two years and has created strong links with Docklands residents, developers and businesses. I was impressed and inspired when given a tour of both the education centre and the vegetation area located on the waterfront off Merchant Street, Docklands.

Emily Ballantyne-Brodie, a young woman dedicated to maintaining the education centre and vegetation area, talked to me about the enjoyment that such a concept has given to residents from all backgrounds and of all ages. Whilst visiting the farm on the banks of the Docklands I observed many local residents visiting and picking some herbs or vegetables to add that night's dinner. The vibrant colours of the various food products growing in the farm also attracted bees and butterflies as well as interested onlookers, providing a retreat from the concrete jungle surrounding the farm.

Arpan Bhaika, a local resident and volunteer at Urban Reforestation, explained to me:

> Working at Urban Reforestation has made me and my family more environmentally conscious. I will be planting a kitchen garden on my balcony very soon, all thanks to Emily.

Those involved with Urban Reforestation have a great vision to create cultural change towards balanced and sustainable lifestyles through empowering creative everyday choices, engaging communities and connecting minds. Urban Reforestation is seeking support from the City of Melbourne and the state government to expand its services and products, and I encourage both to get behind the concept.

Libraries: Altona North

Mr EIDEH (Western Metropolitan) — Last week we saw the official opening of the brand-new, state-of-the-art $4.8 million community library in Altona North, which has been made possible thanks to the partnership between the Brumby Labor government and Hobson Bay City Council. The new library is well positioned, next to Bayside Secondary College, and gives students and families from Altona the opportunity to use the 21st century facility, which boasts modern computer facilities, internet access and wi-fi and can hold up to 25 000 items, including many in a range of languages. The library also caters for the community with meeting spaces, amenities for people with a disability and a cafe with an internal courtyard.

The Hobson Bay City Council has provided funding of more than $4 million for the project, and the Brumby Labor government has contributed $750 000 from the Living Libraries program and the Victorian community support program. This is excellent news for my

constituents of Hobson Bay as they now have access to a state-of-the-art library, with a multitude of resources and services to help promote life-long learning skills.

I commend the Brumby Labor government for its commitment to the renewal of public library infrastructure through its Living Libraries program and for taking action to build stronger communities by providing quality facilities, which are vital to our diverse growing communities.

STATEMENTS ON REPORTS AND PAPERS

Department of Planning and Community Development: report 2008–09

Mr DALLA-RIVA (Eastern Metropolitan) — I am pleased today to make a statement on the Department of Planning and Community Development annual report 2008–09. The report is interesting given the recent events and some of the matters that have arisen in this chamber and outside post the tabling of this report.

As a former shadow Minister for Community Development, I know previous reports used to refer to the lead minister. However, if you look at the current report, you see it refers to nine ministers and two parliamentary secretaries. Previous reports referred to the lead minister as Mr Madden. When I looked at page 6 of the report today I noticed it no longer specifies a lead minister. It is an indication of where things are, in particular it does not tell us who has the overarching responsibility for that particular department. A variety of ministers with different responsibilities fall within the department, but there is no particular lead minister. That was previously Mr Madden. That might or might not be the case. It is another indication of where things stand for that particular minister in respect of this report.

I was interested to see that page 20 of the report specifies that some time in the next 20 years Melbourne will become a city of more than 5 million residents. It goes on with some spin and then says:

> In December 2008 the Victorian government released the *Melbourne @ 5 Million* which is a planning update to *Melbourne 2030*.

We know Melbourne 2030 has been an abject failure of this government. It has not progressed and has not managed to deal with the complexities of the planning processes and the growth in population. What the government has now done is put another planning policy out there. It is like the transport plans. I think we are up to no. 5 now with this government, and yet people are still crammed into trains and trams. The same thing seems to be happening with this.

I should have read ahead — the transport plan is in the document as well. This is a Department of Planning and Community Development report, but it has referred to the transport plan, calling it a '$38 billion investment'. We know there is no money — it is unfunded — but the government still puts references to its transport plan in this DPCD report, which is typical of the overriding spin.

This report is about planning and community development, but it talks about the $38 billion Victorian transport plan. I should have read ahead, but now I see it is there. It staggers me that it is driven by spin rather than actuality. I have to laugh, because the way these reports are put together is a joke.

Mr Koch interjected.

Mr DALLA-RIVA — Mr Koch is correct — the people of Victoria are no longer laughing with this government.

I turn to some of the performance outcomes and measures, targets and actual results in respect of where the government is at — and being a member of the Public Accounts and Estimates Committee I got into the report and had a look. On pages 34 and 35 there are some quantity and timeliness outcomes which stand out. For housing lots with zoning completed within growth areas, the expected number was 20 660, but the result was only 18 420. For approved amendments gazetted within eight working days of approval — and this is all about the performance of the Minister for Planning — the target was 100 per cent, but the minister achieved 26 per cent. What a dismal failure; that amounts to an F-minus!

For planning permits issued within statutory time lines, the target was 98 per cent, but only 54 per cent were issued within those time lines — just over half, and again a real failure. For precinct structure plans completed in accordance with the agreed timetable, the expected number was nine, but the result was only six. This is a measure of the performance of the government and the Minister for Planning. It demonstrates again why the report does not mention him as the lead minister. It indicates just why we have problems with the minister — —

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

Geelong Cemeteries Trust: report 2008–09

Ms TIERNEY (Western Victoria) — I rise to speak on the annual report of the Geelong Cemeteries Trust. Memorial and burial grounds can be places where one can reflect; they are places we visit to deal with the loss of a loved one, to place mementos on their gravesites, and to sit and reflect on their lives and the relationship we had with them. They are also testaments to our local history and our local communities.

I take this opportunity to express my thanks to Geelong Cemeteries Trust members for the work they have done over the period 2008–09. I particularly thank Lawrie Miller, the chairman, who is a dedicated community member and plays a role in a number of other Geelong organisations. Given that he has recently announced his retirement from the Geelong manufacturing council, it is timely that he has a special mention today.

The work undertaken during the reporting period was extensive. It goes to a number of cemeteries that the trust covers. It is not just the Geelong cemetery itself; a number of other cemeteries are under the auspices of the Geelong Cemeteries Trust, including Portarlington, Mount Duneed and Leopold cemeteries, just to name a few.

During the reporting period the trust also undertook consultations with the local community and determined there was a need for a crematorium and mausoleum. Works are under way to ensure that that need is met. A number of other works were carried out at all the cemeteries, which also included the paving of car parks to make the facilities more accessible.

I also wish to raise today the issue of a number of other cemeteries in the Western Victoria Region. As members would be aware, last year the Cemeteries and Crematoria Amendment Bill 2009 was passed in this place, and it ensured that Victorian cemetery trusts were able to meet community needs now but also going into the future. Under this legislation the Geelong Cemeteries Trust was classed as one of the six class A trusts, and there are a number of other trusts which fit under class B that are in western Victoria. Cemetery B trusts rely solely on the many hours of hard work offered by dedicated volunteers.

I would like to make specific mention of a number of cemetery trust members in my electorate who have committed themselves to many years of dedicated service to their local cemeteries. Colin Richardson of the Woolsthorpe Cemetery Trust has completed 40 years of voluntary service to that cemetery trust. John Bunworth of Byaduk has committed 60 years of voluntary service to that cemetery trust, and that is just enormous. Andrew Templeton of Caramut has dedicated 41 years service to the cemetery. Kevin and Chris Humphrey have each contributed 43 years service to the Cressy Cemetery. Gordon Heard has committed 58 years of service to the Derrinallum Cemetery Trust, and William Williams has given 44 years of service to Derrinallum. Kevin Sharrock and Thomas Kelly have each given 44 years of service to the Macarthur Cemetery. Douglas Malseed of Hawkesdale Cemetery Trust has given 46 years of service. William Anders has also given 46 years of service — —

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

Department of Sustainability and Environment: report 2008–09

Mr P. DAVIS (Eastern Victoria) — I am pleased to make some comments on the annual report of the Department of Sustainability and Environment. In doing so, I pick up a theme I raised yesterday about predation by wild dogs on farmland. If the Minister for Environment and Climate Change were in the chamber, he might wonder why I am raising an issue about wild dogs in connection with the report of the Department of Sustainability and Environment. He would say wild dogs are now the responsibility of the Minister for Agriculture.

That is true, but it was the Minister for Agriculture who provoked me into speaking on this matter numerous times in this place this week, by his comment, which has been repeated several times now, that wild dogs are not government dogs, notwithstanding they are on government-controlled land, and his suggestion that wild dogs are in fact community dogs. I am not quite sure what the definition of a 'community dog' is, but to my mind and the minds of my constituents wild dogs which inhabit national parks and state forests are quite clearly dogs that are on government land and by definition are the responsibility of the government.

If the Minister for Agriculture, Mr Helper, whose profound ignorance is matched only by his inability to accept responsibility for his portfolio delegations by the Premier — that being to manage wild dogs in this state — wants to abstain from discharging that responsibility, then I guess it is clearly a matter for the government as a whole and the Department of Sustainability and Environment to accept responsibility for the land that it manages on behalf of the community and to deal with this feral nuisance, because not only are the wild dogs a pest for private land-holders, but the

predation and damage they are doing to our wildlife is extensive.

Dare I say that Mr Helper's profound ignorance is demonstrated by his remarkably uninformed comments about the level of predation. Giving figures in respect of the stock losses from wild dogs, he suggested that the number of stock lost in the Tubbut and Bonang areas has ranged from 528 in 2004–05 down to 126 in 2008–09. Anybody with any understanding of the wild dog problem knows that a single individual farm in one year loses more than the total number of reported stock losses that Mr Helper has relied on for the observations he has made about this issue.

Farmers are caught in a nightmare where they have to spend 24 hours a day, seven days a week, patrolling their farms to protect their livestock from incursions by wild dogs, which come from government land. These dogs do not inhabit private farmland; they have runs in the state forests and national parks. They are breeding in large numbers, and it is pretty clear from observation that they are not what we would regard as part of our heritage — the true Australian alpine dingo. They are in fact now largely a crossbreed of domesticated dogs which have gone bush. Regrettably they appear to be breeds of dogs which are of a large size and have a very aggressive nature. Dogs are pack animals; they hunt in packs, and the damage they do is overwhelming. What is incredibly difficult is that they are now patrolling farms in daylight and at night-time, coming in close contact with homesteads. People are concerned about their welfare, about their safety, and it is Mr Helper who should be concerned — —

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

Western Health: report 2008–09

Mr EIDEH (Western Metropolitan) — I rise to speak today on the exceptional research activities facilitated by Western Health and to share with the house its proven leadership and expertise across a range of services, as reported in its recent *Western Health Annual Report 2008–09*. As the predominant provider of health services in the western metropolitan region of Melbourne, Western Health continues to provide health services to approximately 700 000 people from over 100 linguistically diverse backgrounds, many of whom live in my predominantly multicultural electorate of Western Metropolitan Region.

In addition to providing excellent patient care through the Sunshine Hospital, Western Hospital and Williamstown Hospital, Western Health continues to facilitate important research through its office for research. It is Western Health's commitment to high-quality research and true leadership in this area that I want to share with this house today. Under the office for research, research is conducted across a number of campuses covering a broad spectrum of disciplines and focusing on those areas which are most beneficial to the community it serves. It is committed to providing the governance framework to maintain and support research activities, and it does this in line with its own processes for ethical review and approval for low-risk research.

I would like to acknowledge that Western Health now has in place its own low-risk human research ethics review panel following the National Health and Medical Research Council's 2007 *National Statement on Ethical Conduct in Human Research*, which made provision for institutions to put in place their own ethical review procedures. I congratulate Western Health for its persistent pursuit of conducting research to the highest ethical and legal standards.

In reading this report I have come to appreciate the breadth of research that is undertaken by the Western Health office for research. Its research capacity is most impressive and includes research activities in diabetes, cardiology, emergency medicine, general medicine, intensive care, pharmacy and surgery, just to name a few. Given this extensive research scope it would be impossible for me at this time to cover all of its activities. However, I want to highlight to the house some key features of its important and invaluable work.

In line with the Australian government's designated national research priorities, Western Health is committed to establishing a strong research focus on chronic disease. As a member for Western Metropolitan Region, reading that the incidence and prevalence of these diseases in my local community is on the rise is very concerning to me. However, what I can say is that this focus on chronic diseases is reflected in Western Health's research report through its far-reaching insight into research in diabetes, osteoporosis, cardiovascular disease and cancer. I am proud to see that Western Health has made it a priority to tackle these specific issues, and I express my appreciation on behalf of the people of the west and no doubt Victoria as a whole for its positive work in this important area.

The report contains an extensive list of publications by the researchers and team members from Western Health's Office for Research. It highlights major research facts and findings, progress and achievements in each department of Western Health's Office for

Research. I encourage members to read the report so that they can appreciate the scope of research that is undertaken by Western Health and the positive contribution it is making to the community.

In addition to its internally driven research initiatives and through collaborative partnerships and relationships Western Health is able to optimise its research opportunities and maintain a world-class reputation for innovative clinical research. The teaching, training and research building at Sunshine, which will feature leading-edge educational and research technology, is one of many examples that embodies this positive relationship of which I speak. Western Health has partnered with the University of Melbourne and Victoria University to develop a new teaching, training and research facility at Sunshine Hospital. This facility will further strengthen and enhance the collaborative approach with universities and medical institutions that Western Health is already so proud of. The combination of research activities, initiatives, support and encouragement provided by Western Health's Office for Research leads to real outcomes for patients and promotes new and better clinical practice and service delivery. Having had the pleasure of reading this report I can now appreciate the importance of ensuring that Victoria maintains a commitment to supporting the facilitation — —

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

Department of Planning and Community Development: report 2008–09

Mrs COOTE (Southern Metropolitan) — I wish to speak this morning on the *Department of Planning and Community Development Annual Report 2008–09*. In the introduction to the report the secretary of the department said:

> The past 12 months covered by this annual report have been unprecedented ….

That was before we had the Hotel Windsor debacle, the social housing debacle in Kingston and Glen Eira and a litany of other concerns and problems that have occurred under this now beleaguered Minister for Planning. I look forward to reading what the secretary says in the introduction to the report next year.

Most people take very little interest in government until it impacts on their lives. Residents continually tell me that they simply cannot believe how disenfranchised they are when faced with the reality of a planning decision. They feel impotent, angry, frustrated and frequently incredulous when they realise there is nothing they can do; the system is not there to protect them and is being presided over by a minister who takes more notice of spin and less of substance than perhaps any planning minister this state has seen. They also have very little faith in the Victorian Civil and Administrative Tribunal. They are increasingly angered by red tape.

Simply put, people have no faith in the planning process and none at all in the planning minister and it is easy to understand why. In the last little while under the Bracks and Brumby governments we have seen so many programs coming and going that one wonders where on earth we are at the moment — for example, under Melbourne 2030 there were going to be 50 000 additional households, not people but households, in the city of Stonnington. Then we had the principal activity centres, the neighbourhood character studies and the heritage overlays — or not, as the case may be. Now we have Melbourne @ 5 million, we have ministerial call-ins and we have the minister's development assessment committees about which the City of Boroondara is particularly incensed. Then, of course, there is the growth areas infrastructure contribution. What more do I need to say about the mismanagement of this program by the government. It was a litany of confusion. There is no doubt that people are suffering and that members of this government do not understand anything about planning in this state.

Let us talk about the city of Stonnington. The Stonnington City Council was arrogantly told by the Minister for Planning to do its homework when the council has been waiting for three years for answers to several questions relating to its C67 amendment. It has been told to do its homework. How much more homework does it need to do? It was an arrogant response given in this chamber recently by an out-of-date and out-of-touch minister.

Then we see Argo Street, which has an enormous amount of character, being threatened with a huge high-rise development in an area in which it is completely inappropriate. This minister is trying to blame the council. It is not the council's fault. It is the planning minister's fault. It is his problem and he is trying to sheet it home to the council.

We have also seen the planning minister call in a 38-storey complex on the corner of Toorak Road and Chapel Street. This has just been dreamt up by the minister. Suddenly we are going to have 38 storeys sticking out like nothing else between that site and the central business district. There is no comeback and no-one has any opportunity to have a say on the development.

Then we have a situation in Ashwood and Chadstone. I have a letter from a constituent who said:

> My wife and I wish to complain in the strongest terms about the fact that the state government has decided to build in Chadstone a seven-storey housing block, and, we understand, at least two five-storey housing blocks.

The letter goes on:

> … I understand that because the project has been 'called in', no matter what we say, our concerns will be ignored because the government has already decided to proceed. This is certainly not democratic by any means.

They feel they have been done over in not having a say in this important matter. They are not opposed to public housing but say that housing in the area should surely be a blend and not an eyesore.

This is what we are finding in many other areas in the Southern Metropolitan Region, including in the cities of Glen Eira and Kingston where the social housing projects are appalling. That is not because it is social housing but because people who most need to be helped in our community are being put into second-rate locations on main roads and where there are no railway lines or public open space. It is an absolute disgrace that this government is treating people who need social housing in this way.

Aboriginal Affairs Victoria: indigenous affairs report 2008–09

Mr MURPHY (Northern Metropolitan) — I rise to speak on the *Victorian Government Indigenous Affairs Report 2008–09*, a report that outlines the government's initiatives to improve the lives of indigenous Victorians. We all know too well that every economic and social indicator points to the inequities that exist between Aboriginal and non-Aboriginal Australians. Whether it be in relation to maternal health or life expectancy, the gap between Aboriginal and non-Aboriginal Australians is far too great for a society that considers itself to be prosperous and economically advanced.

The report suggests that the gap is closing on various indicators; however, the figures are still overwhelming. Aboriginals are three times more likely to be unemployed, their life expectancy is more than 10 years less than non-Aboriginal Victorians and their imprisonment rate is 10 times more than that for non-Aboriginal Victorians. The issues that need to be addressed are not easily solved; there is no easy solution. These statistics provide a challenge for us all, and Aboriginal and non-Aboriginal Australians must be united in closing the gap. We cannot accept that in this decade any one group can suffer so many inequities.

It is a challenge that has been met head-on by those involved in the indigenous plumbing apprenticeship scheme, which brings together unions, business, community and government representatives to provide a successful framework that is getting real results for young Aboriginal men and women in our community. Five years ago the Plumbing Trades Employees Union began a partnership with Victorian, Western Australian and Northern Territory Aboriginal communities aimed at improving sanitation standards in indigenous communities and increasing the job and training prospects of young indigenous men and women. The apprenticeship arm of the program has been up and running since 2004, with over 20 indigenous plumbing apprentices involved in the scheme. The first six apprentices to begin the program are now fully qualified plumbers. In September last year this historic occasion was celebrated by hundreds of people who have been involved in the program since its inception.

The challenges faced by all involved in the program cannot be underestimated. The apprentices and their families, employers and union leaders have embarked on a new path, and it takes the goodwill of all involved, particularly that of the apprentices who have moved from regional Victoria and Australia, including from places such as Jarlmadangah Burru, a small community on the river banks at Fitzroy Crossing, half a day's drive out of Broome. It takes courage and determination for young men and women to be prepared to leave their families and homes to improve not only their own living standards but also those of their communities.

Leaving home throws up enormous challenges; however, none of us can ever appreciate the challenges facing those who have left a small community of as few as 50 to 100 people to come to a city of over 3 million and adapt to a new culture and, in many ways, a new world, but these young men and women, with whom I have worked closely in recent years, grabbed the opportunity presented to them with both hands. Just for a moment we should put ourselves in their shoes and imagine what it must be like, given their background, to walk onto a construction site in Melbourne with hundreds of workers. The courage of these young people cannot be underestimated.

I would like to acknowledge Allen (AJ) Moore, Cooree Thorpe, Tehani Mahony, Ethan Corpus, John Mullins and Mungara Brown, who completed their four-year apprenticeships last year and are now fully qualified plumbers. This is a great achievement and a great story, but it does not end here. A new company has been

established which is based in Broome, Western Australia. It is a joint venture of union, business and community groups dedicated to improving the sanitation and living standards of Aboriginal communities in the Kimberley region. NUDJ, a not-for-profit plumbing company which is 51 per cent Aboriginal owned, has been established in the Kimberley region. This company employs some of the recent graduates I mentioned earlier, and these young people are servicing their homelands and communities and teaching the members of their community the importance of water sanitation when it comes to increasing living standards. They are also able to provide skills and tips to local community leaders on how to maintain and repair infrastructure in relation to the provision of drinking and non-drinking water.

The apprenticeship scheme and NUDJ plumbing company are examples of how unions, business and communities can come together to achieve great things. I congratulate all involved and acknowledge that the program has been supported by great Aboriginal community leaders such as Michael Long, Dean Rioli and Anthony Mundine. Their support has been significant and has provided encouragement to young Aboriginal Australians. Those involved in the plumbing apprenticeship scheme feel a great sense of pride because of their leadership.

Auditor-General: *Management of Safety Risks at Level Crossings*

Mr KOCH (Western Victoria) — I wish to speak on the Victorian Auditor-General's report *Management of Safety Risks at Level Crossings*. This report is a valuable document on the back of the Road Safety Committee's earlier inquiry on safety at level crossings of December 2008.

Victoria has 1872 road and 843 pedestrian public level crossings statewide. Of these, 43 per cent, or 803, have active devices in place, and the balance, 57 per cent, or 1067, have passive signage only. In the last eight years we have lost 73 people, with the worst single incident claiming 11 lives at Kerang in June 2007. Not only have we seen large losses in human terms but also in rail infrastructure to the point where rail reinstatement at Lismore alone amounted to over $20 million.

Historically, rail was put in place more than 150 years ago when non-mechanical means of road transport, such as horse-drawn vehicles, was the dominant off-rail transport mode. Over the years rail managers came to accept that trains were less vulnerable than road users, but all this has changed in recent years where collisions between heavy articulated and B-double transports have derailed trains with shocking results.

This report has exposed that currently agencies within the public transport division operate under different safety processes and initiatives. Action plans need far more consultation. There needs to be more evaluation before rolling out new strategies, and cost accounting needs immediate review and upgrading — for example, where V/Line manages upgrades at a cost of $200 000, the same works are charged out by VicTrack at $500 000.

An earlier initiative by the Department of Transport to offer $50 000 bounties to regional local government bodies to close regional low-use level crossings, which have no accident histories, would have dearly cost many local primary producers. Thankfully no crossings were closed under this stupid cost-shifting arrangement proposed by the Department of Transport that would have seen rural producers penalised to satisfy the whims of city bureaucrats.

There is little doubt that only a small number of crossings will see grade separation, but recent lowering of road speeds approaching crossings and greater use of active devices, including lights and boom gates, has been a move in the right direction. The greater use of integrated transport systems, including global positioning system technology, will offer greater opportunities for safety in the near future as VicRoads has now completed a statewide mapping program that allows this technology to be put in place. Consideration of lower cost technology using solar power throughout regional Victoria is gaining acceptability, as shown by experimental work. The old adage of fail-safe standards is recognised as an impediment to affordable safety improvements in the existing system.

This is a good report that I hope the government acknowledges, along with the Road Safety Committee's recommendations, so all Victorians will gain a safer passage of travel throughout the state, whether it be on road or rail. The current situation can be dramatically improved, and it is beholden on all Victorians not only to achieve outcomes that recognise the shortfalls in level crossing safety but also to get behind any strategies that will afford the travelling public safer passage on both Victorian roads and rail.

This report should be read, but more importantly the government should be doing more to offer greater grade separation than currently occurs.

Mallee Catchment Management Authority: report 2008–09

Ms BROAD (Northern Victoria) — I wish to make some remarks about the Mallee Catchment Management Authority's (CMA) annual report. At the outset I acknowledge the chief executive officer, Jenny Collins, and the chair for the period of the report, Joan Burns, and members of the board. I was pleased to visit the facilities at Irymple on last Monday, where the chief executive officer and staff are located, and see them in action. I also take this opportunity to acknowledge the members of technical reference committees, Landcare groups, Waterwatch Victoria volunteers and the wider community for their very active support of natural resource programs.

The Mallee CMA region covers about one-fifth of Victoria — not quite as large as Northern Victoria Region, the region I represent in the Parliament, but a very large area nonetheless. The primary and very important responsibility of the Mallee CMA is to ensure that natural resources are managed in an integrated and ecologically sustainable way. Each year the region has about 1 million hectares of crops planted, and the region produces up to 50 per cent of Victoria's cereals. We are hoping that it will reach those levels again in the next season, because this is a very important industry for both domestic and export markets.

I also acknowledge that the Mallee CMA area of responsibility has a regional population of around 65 000 people, so natural resource management in the region is very important for the population.

There are many highlights in this report, which I would commend to members of the house, particularly the case studies which bring to life the work of the Mallee CMA. They are very powerful ways of communicating the activities of the CMA and its staff and volunteers. I commend them for including those case studies in their annual report, because annual reports can otherwise be a bit dry for average reading.

There are many performance highlights in this annual report. I would particularly like to draw attention to, during the reporting period, the Mallee Environmental Employment Program. This was fully subscribed, and it employed in excess of 200 community members from across the Mallee region. It was funded through the Brumby Labor government's $10 million drought employment program administered through the Mallee CMA;. It provided much-needed employment for drought-affected community members, whilst also facilitating the achievement of significant environmental outcomes.

As well as that, as part of the employment program, 30 indigenous community members were employed to undertake a range of on-ground works in the Robinvale area. That is a very important program, which I particularly highlight.

I was also pleased to announce at the end of last year further grant funding from the Brumby Labor government to the tune of $1.9 million to the Mallee CMA for improvement to the health of rivers and irrigation practices in the Mallee region, and this is further funding from the Brumby Labor government. Projects to be funded through this particular program include ongoing support and training of community volunteer programs, salinity projects to assist Victoria in its compliance of the Murray-Darling Basin salinity management strategy and programs to assist irrigators with implementation of a modernised irrigation system in the Sunraysia region. Many further projects are being funded through this investment in our rivers and irrigation practices in the Mallee region.

Growth Areas Authority: report 2008–09

Mrs KRONBERG (Eastern Metropolitan) — I am pleased to comment on the Growth Areas Authority annual report 2008–09. The authority reports to the Minister for Planning and is also a portfolio agency for the Department of Planning and Community Development. It was established under the Planning and Environment (Growth Areas Authority) Act 2006. According to the chair, Mr Chris Banks:

> The authority has been instrumental in analysing which land is most suitable for inclusion in the expanded Urban Growth Boundary …

We can see that a lot of effort on behalf of the Growth Areas Authority has been put towards this, because on page 13 of the report, under the heading 'Major changes or factors affecting performance', it notes the:

> … involvement with, and advice to, the state government in the lead up to the announcement by the Premier and Minister for Planning on 2 December 2008 of Melbourne @ 5 Million. This major policy announcement outlined the investigation areas for consideration for inclusion within Melbourne's Urban Growth Boundary and the introduction of the Growth Areas Infrastructure Contribution. Progressing these two major initiatives has engaged a significant proportion of the GAA's resources and staff.

No wonder the government is upset and fought so hard for the retention of the extra land tax on landowners within the new Urban Growth Boundary area — the Growth Areas Infrastructure Contribution — because it

ploughed so much into it! And it is forgone revenue as well, so a lot of people will be interested to see how the budget is going to go this year.

This leads on to further comments by the chair, and it is interesting that in this current climate of concern the chair reports that technical considerations and the views of the community are examined before a decision for inclusion is made. That has particular resonance for me at the moment when I start to think about the views of the Minister for Planning and how he manages the views of the community. I think it is probably a good idea to record some points for the Minister for Planning at this time.

By defying the will of the people of Victoria the minister will be held to account by people who placed their trust in him. As he knows, voters will simply not allow a flawed process to dictate their lives now or in the future. His behaviour throughout the sham consultation process of the Windsor Hotel development is an example of unparalleled arrogance and is the height of cynicism. In a democracy you can only ignore the will of the people for so long and get away with it.

People are saying they had no idea that things could get this bad in this state's system of governance. Does the minister fully realise just how angry people out there are? People concerned about their local community, environmental integrity and the amenity of their neighbourhood often go to enormous trouble and personal expense to make submissions that they hope will be taken into consideration before a decision affecting their community is made. They go to trouble and expense because they believe in the system, but the system has proven to be flawed — QED on every front.

Now the official position is clear for all to see: there is a little form with the question, 'Have we consulted with the community? Yes or no?', and the government ticks the box that says, 'Yes, we have consulted with the community'.

Somewhere in the deep recesses of my mind I recall that Victoria's planning minister, who has received not one but two votes of no confidence from this house, sees the seat of Essendon as a valid launch pad for his trajectory to become the Premier of this state. The stark reality is this: if this government, which still feigns integrity, had any integrity, it would not have allowed Justin Madden to continue his involvement in the decision-making process for the Windsor Hotel development after he so clearly and badly compromised his role.

I think it is interesting at this time to include some of the comments of Jill Singer, who wrote in today's *Herald Sun*:

> What pongs is the amount of power Madden has over what does or doesn't get built, and how he exercises this power.

That is one of their own reporting like that.

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

Auditor-General: *Management of Safety Risks at Level Crossings*

Ms PULFORD (Western Victoria) — I rise to make some comments on the Auditor-General's report on the management of safety risks at level crossings. As Mr Koch indicated earlier in his contribution on the same report, in our travels around our shared electorate we certainly cross many level crossings.

I have noticed the work that is being undertaken to improve the warning system for motorists at several of these crossings, of which Victoria has a remarkable number. The report talks about the strategies that are in place to manage the risks that inevitably occur where rail lines and roads or pedestrian walkways intersect. The report concludes that:

> The rate of progress in improving safety and reducing accidents has been satisfactory.

It also suggests, however, that there can be some improvements made to 'the risk management framework and its application'.

The report also states:

> Between 2000–01 and 2008–09 level crossing accidents caused 73 deaths, an average of eight per year.

Whilst that is significantly less than the road toll, which we all constantly strive to reduce, level crossing accidents are absolutely catastrophic events for anyone involved, whether that be the families of the victims, the witnesses, the people driving the trains or the people in the cars. It is therefore imperative that we strive to continually improve safety at level crossings. The report also mentions the tragic accident at Kerang in June 2007 in which 11 people were killed and 12 were seriously injured; that was a most tragic event.

However, there has been a decline in level crossing collisions over the past 10 years, which I think indicates that we are on the right track in improving safety. The report finds that the greatest contributor to level crossing accidents is lack of awareness by motorists and pedestrians about an impending impact because

they are not looking or listening or they are hoping to jump ahead of the train. There have been public safety campaigns to make sure that people know that is just too great a risk to take and to encourage people to proceed with great caution around level crossings.

I was interested to note that the report talks about a contributing risk in our management of this issue being greatly increased traffic. My interest in this is particularly in respect of regional Victoria. The report notes that over 400 weekly passenger rail services have been introduced over the past five years and that there is a great deal more road traffic and goods traffic as well as more bus services. Regional Victorian communities are thriving, and there is a great deal of activity on our roads and on our rail network. All this additional activity poses greater risk. A graph on page 22 of the report shows annual collisions by location and captures a steady downward trend; it is important that we continue that trend.

The government will of course address the findings and recommendations in the report and work with all parties with a shared interest in and responsibility for level crossing safety to enable active participation in the upgrade process. That would be coordinated through the Victorian Rail Crossing Safety Steering Committee.

Auditor-General: *Management of Safety Risks at Level Crossings*

Mrs PEULICH (South Eastern Metropolitan) — I also wish to make a few remarks on the Auditor-General's report on the management of safety risks at level crossings, which was tabled in Parliament yesterday and dated March 2010.

It is a good report which shows some modest progress, as was mentioned by Ms Pulford, but it also demonstrates that there are significant areas where a lot of work still needs to be done not only to get the right understanding of the contributing factors leading to collisions and fatalities at level crossings and therefore to have in place programs that will address that — some programs in other jurisdictions, such as the United Kingdom, are very effective — but also to understand how we can get the best bang for the taxpayer buck in terms of having as many of these dangerous level crossings upgraded as possible.

The locations of these dangerous crossings were established through an audit following the very tragic incident of a passenger train which crashed at Kerang in June 2007 killing 11 people and seriously injuring several others. It has been a very long audit, with several hundred — I think it is about 1500 — level crossings being ranked in order of priority.

How do we actually address those needs, especially in the context of the government's Melbourne 2030 policy, which seeks to actively consolidate urban development within the existing boundary, and as we move towards Melbourne @ 5 Million — —

Mr Barber — Consolidate inside the boundary, then move the boundary!

Mrs PEULICH — I think they are planning to do both.

Mr Barber — It's a growth boundary. It's an oxymoron.

Mrs PEULICH — Yes, that is right. I have always held the view that good consolidation is acceptable, it makes sense, but it has to protect the amenity of the existing suburbs, neighbourhoods and civic assets and not make things worse for the general community, in particular in terms of road congestion and level crossings. You actually need to invest money in the development and strengthening of that infrastructure to be able to build on the population numbers and density. That has not been happening obviously over the 10 years of this government.

This is one of those areas where there should have been a rolling program. I know it is expensive. The Auditor-General in fact makes comment about there being significant differences in the costings of works for improvement of level crossings between the two lead agencies, V/Line and VicTrack, with VicTrack costings of upgrades being substantially greater than those of V/Line. To me it seems that if we are going to fix as many as possible of these level crossings that have been identified in the audit by the previous public transport minister, Lynne Kosky — and that audit was undertaken only recently after nearly a decade of Labor in government — then we need to understand why it is that one agency, VicTrack, has such substantially higher costs than V/Line.

If the VicTrack costings are double those of V/Line, then ostensibly it means we could get double the number of level crossing grade separations done by V/Line. If they are triple the cost, then we could have three times the level crossings done. I do not know if that is right, but this is the sort of work that needs to be done. I am not sure exactly where it can be done, but I would certainly like to understand why it is that the costs are so inflated. They obviously involve preferred tenderers, companies that are preferred by the government for all sorts of reasons, but clearly they are

much more expensive than V/Line. An enormous amount of important work needs to be speedily done to understand why there are significant cost differentials in grade separations works undertaken by VicTrack and those undertaken by V/Line, so that we can do more to address concerns about safety at various level crossings around the state. The audit examined the rate of progress — —

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

SEVERE SUBSTANCE DEPENDENCE TREATMENT BILL

Second reading

Debate resumed from 11 March; motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mrs PEULICH (South Eastern Metropolitan) — On behalf of the opposition I wish to make some remarks on this very important piece of legislation, the Severe Substance Dependence Treatment Bill 2009. In doing so I will also try to comment on the possible amendments that may come before this house, amendments which were flagged through the concerns that were raised by the shadow Minister for Health, Ms Wooldridge. Although we have not seen the final form of those amendments the opposition is prepared to consider supporting some of those, obviously not all of them, in order to make sure that we get the best possible outcomes for those on whom this bill will impact.

The bill repeals the Alcoholics and Drug-dependent Persons Act 1968. The main objective of the bill is to set out criteria determining the detention and treatment of persons with severe substance dependency. Obviously the issue of substance abuse, of both alcohol and drugs, is a very significant social problem affecting many persons. We have heard a lot recently about antisocial behaviour involving young people as a result of both alcohol abuse and no doubt other substances such as illicit drugs, possibly sometimes legal drugs, and often a combination of the two. This bill, however, deals with the most chronic, the most desperate, the most urgent cases: those persons who are classified as needing intervention to prevent serious damage to their health, which is a very small part of the population. It is a very narrow group. The government believes this legislation may impact upon as few as 50 or 60 people annually.

The bill provides for short-term detention and treatment orders to provide for short periods of detoxification for substance-dependent persons in order for them to be in a position to make decisions about future treatment. The main provisions of the bill are that it grants individuals the power to lodge an application for a detention and treatment order at the Magistrates Court, which must be served within 24 hours of lodging the application. It establishes regulations around the examination and assessment of a substance-dependent person by a registered medical practitioner, requiring a medical practitioner to consult with a senior clinician at the treatment centre which is proposed to detain the person.

It enforces a maximum of 14 days detention and treatment; allows for a person on a detention and treatment order to write to a nominated person to act as an advocate; requires the public advocate to be notified of a detention and treatment order within 24 hours of a person being admitted to a treatment centre; and, lastly, provides for the development of lead treatment services and post-discharge care plan.

It is very difficult to actually comment in absolutely clear and accurate detail on some of the provisions of this bill, because the regulations have not been developed to accompany the bill. Those regulations obviously need to be very carefully developed, because there is a need to very carefully balance what are the legitimate needs to respond to these types of cases with the rights and liberties that members of our community and all Victorians and Australians are entitled to.

The government undertook a consultation on this bill in 2005 — that is, five years ago! Some of those issues and concerns have remained the same. Others have changed. It is a reflection of how slowly the government moves on these things sometimes; in this case it has obviously been a little too slowly, because that has been flushed out in the consultation and some of the submissions that were received by the Scrutiny of Acts and Regulations Committee, on which I serve.

The government made a commitment to introduce the bill in the 2008 annual statement of government intentions. However, it was not introduced until December 2009. The Alcoholics and Drug-dependent Persons Act 1968 was largely outdated, and there is no doubt that revision was needed to improve its functioning and bring it into line with the government's human rights and responsibilities charter.

Advice received at the briefing on the bill indicated that approximately $300 000 to $400 000 would be provided to fund the treatment services, case

management and the additional role of the Office of the Public Advocate. The department apparently could not confirm, however, whether this would be new money or whether it would be taken from the existing budget allocation for drug and alcohol services. Dare I say, that a chronically underfunded area — not specifically to deal with these clients, although that is clearly the case is the general area of funding for persons who need to access drug and alcohol treatment and rehabilitation. Many families are at their wits' end because of their inability to access services. It is important that this is new money, not just relocation of old money.

The bill does not significantly deviate from the current act. The main points of difference are the ability for an individual to lodge a court application and the introduction of a maximum of 14 days detention or treatment order. The current act allows the court to make a treatment order for a maximum of seven days, with the provisions for the treatment centre to apply for an additional seven-day extension.

Further points of difference in the bill are the involvement of a person receiving treatment throughout all stages of the treatment process, the requirement to seek a second opinion, the introduction of guidelines which direct the operation of treatment centres, and the involvement of a guardian from the Office of the Public Advocate. There are provisions for a discharge and case management plan, which do not exist in the current act — and it does need to exist, otherwise money and expensive treatment would be squandered if there was not an ongoing case management plan. It makes no sense to have a revolving-door culture in this area.

There are a number of areas of contention, and SARC received a range of submissions. One was from the Federation of Community Legal Centres; Fitzroy Legal Service; Harm Reduction Victoria; Human Rights Law Resource Centre; the Public Interest Law Clearing House, Victoria; Victorian Aboriginal Legal Service Cooperative Ltd; and Youthlaw. I may not have the full list, but that is the list I currently have.

In addition to that, the shadow minister engaged in consultation with the alcohol policy coalition of Odyssey House; the Australian Medical Association public advocate; the Association of Participating Service Users; St Kilda Legal Service; Australian Drug Foundation; St Vincent's Hospital; DASWest, Western Health; Turning Point, Federation of Community Legal Centres; Victorian Alcohol and Drug Association; Fitzroy Legal Service; Victorian Aboriginal Legal Service; Windana; Harm Reduction Victoria; Victorian Equal Opportunity and Human Rights Commission; Western Region Alcohol and Drug Centre; Human Rights Law Resource Centre; Youth Substance Abuse Service; and Moreland Hall. I commend the shadow minister for engaging in some fairly extensive consultations, because clearly some concerns remain.

Despite that consultation on legislation that took place five years ago, the key points of concern involve a lack of clarity of detail. As I mentioned before, the government has not completed its regulations so a lot of the detail is unclear. For example, the current bill requires that a registered medical practitioner is to assess an individual. It would be expected that the definition would limit that to a physician with some sort of drug and alcohol specialisation rather than just a GP, but we do not know that, because the regulations have not been developed. There is concern that this definition would make it difficult for people living in country Victoria who do not necessarily have access to specialist physicians. Those are two concerns about a lack of clarity in the detail.

There is also uncertainty about the role of existing treatment services. The minister in his second-reading speech gave a commitment to the development of drug and alcohol treatment services. Currently there are three services located in Victoria: St Vincent's Hospital, Moreland Hall and DASWest. The government is currently consulting each of those treatment services, but it has not yet determined what the model will look like. It might select one of those three services to act as the lead agency and the other two as support agencies, or it might choose to establish a brand-new agency. That is not clear. We could be more confident that the reforms introduced by this bill will be workable if we had a concept of the model that will operate.

There is a need for alternative detention and treatment. The bill enables the detention of individuals, but current withdrawal facilities are not secure environments. That raises concerns for the staff who work with this particular client group. A person detained under this law will be able to walk out of treatment services, if they choose to. Some service providers in the sector say that for this law to be effective locked treatment facilities would need to exist, similar to the model that operates in New South Wales. Obviously that has not been funded, and there has been no comment made on that.

One of the concerns that was raised by Mary Wooldridge, the member for Doncaster in the other place, is the need for greater transparency in the operation of these provisions as well as the outcomes. I was pleased to learn that Ms Hartland will move some amendments to enshrine that. The opposition will certainly support those particular amendments. I have

not seen the final amendments as yet. The government publishes limited data about drug and alcohol services. It is an important life-changing or life-destroying area of service provision by the government, so it is crucial that we have as much transparency as possible so that policy-makers and the community can form views about the effectiveness of various treatment options and treatment services, and about whether or not they are adequately funded — and they are not. Currently it is difficult to form such a view given the limited data that is published.

The bill does not make a commitment to expand the collection of data, and that is a shortcoming. Nor will the government commit to making public the results of an evaluation, and that is imperative, especially when you have a piece of legislation that encroaches on certain rights and liberties. The minister has argued that these are justifiable limitations because we are dealing with a small group of people who require intervention and treatment as a result of a crisis which can have dramatic life consequences. Nonetheless, to make that assessment we need greater transparency and evaluation. It is difficult to assess the effectiveness of this legislation without it. I signal that the opposition — as it always does — supports measures for greater transparency and accountability in terms of any agency that receives public funding and has an impact on public health or the general health of the community. Those measures are necessary for us to form those judgements.

As I mentioned earlier, there are a range of concerns. I have read some of the submissions. They are also alluded to in the research brief that was prepared by the parliamentary library as well as in a fairly comprehensive Scrutiny of Acts and Regulations Committee report. Jeremy Gans, the adviser, had a fairly thorough look at some of the incursions, some of the contraventions, and the Parliament has the ultimate say as to whether they are acceptable or not.

The Scrutiny of Acts and Regulations Committee received a number of submissions expressing concerns about various provisions of the bill which will impinge upon the freedom of people subjected to an order application. There is concern that aspects of the bill contravene the Victorian Charter of Human Rights and Responsibilities. Many of the submissions called for evidence that the limitations to rights, such as the right to refuse treatment, are demonstrably justified. Submissions called for a review of imposition, detention and medical treatment without consent and greater access to legal representation and a fair hearing. Those concerns were raised by Mary Wooldridge in the other place, and Ms Hartland has indicated to the shadow minister that she wishes to introduce amendments that address those concerns that have been articulated in the Assembly. At this stage the opposition has not seen the exact wording of those amendments. They are only suggested amendments because there are funding implications, and they will be moved separately. We also believe this is appropriate, and opposition members will support those amendments unless there is some incredible revelation during this debate to suggest that we should not. Giving people access to greater representation is crucial, especially when they have such compounded and severe problems caused by alcohol and drug abuse.

Under the current act an average of 6 people per year are admitted to treatment centres. This number has halved over the last 10 years, down from an average of 12 people a year receiving treatment under the act, so we are talking about a very small population. That is not to say that there are not more people for whom it might be appropriate under a voluntary arrangement to get treatment under the provisions of the bill. It is a small number of people, but nonetheless all those rights are important and need to be balanced accordingly.

The proposed bill is not intended to increase the number of people treated under a detention and treatment order. However, as I said earlier generally speaking, drug and alcohol treatment is terribly underfunded. This is an area in which the government obviously needs to take greater strides. The treatment services in Victoria as a whole are stretched to breaking point. They are 50 per cent under capacity. As a result waiting times have blown out to weeks, months and even years, and people have been known to die waiting for a bed. That is a very dramatic failing. Yes, some of these people may not be visible to all of us. They are not great lobbyists, but they must not be forgotten by a society that has a commitment to treating the most vulnerable and needy. Access to treatment is crucial, and it is particularly difficult for rural Victorians due to limited drug treatment options.

More than 50 per cent of Victorians with a substance abuse issue have had a mental illness. That has been a well-established fact since the introduction of the deinstitutionalisation policy. I am not suggesting a reversal of that, but there is a need for an all-party inquiry to look at the overall effectiveness of the deinstitutionalisation policy and at how well we as a state have coped with, managed and responded to the increasing incidence of mental illness. Along with mental illness there is the use and abuse of both drugs and alcohol, perhaps to self-medicate. There is great

controversy about whether drug and alcohol abuse is a response to mental illness or whether it causes mental illness. Probably both are relevant.

We do not quite understand the magnitude of the issue. We know that one in every six people suffer from a mental health episode or issue, but we need to make greater inroads into this. We need an all-party inquiry to try to get an overall picture of the gaps in the existing services. I think there are significant gaps. Many of the people who fall through those gaps are reflected in the number of people who are homeless and people who sleep rough in our community, in the CBD but also increasingly in the suburbs.

Treatment services still continue to operate as silo systems, and I think this needs to be looked at by an appropriate all-party inquiry as well. There is limited understanding and cooperation between and within government departments and organisations delivering services, leaving Victorians with multiple needs falling through the gaps.

In conclusion, I will say that the opposition plans to also support some of the amendments that I understand Ms Hartland will move which pick up on a range of concerns that were articulated in the Assembly. We are not sure of the precise wording. Some of that is yet to be finalised. There will be some that we will not support and some that we will support. We want to see a general improvement of the provisions that operate for those who are affected by this legislation.

I understand Ms Hartland is planning to move an amendment that provides for treatment personnel to be required to extend whatever reasonable opportunity there is to inform clients of the treatment options and treatment decisions. I understand Ms Hartland would like to make that less optional. Whether or not we support the amendment will depend on its final wording. We also believe that as a minimum clinical notes about attempts to inform the patient do need to be kept, and if an amendment goes to that extent, we will certainly be happy to support it.

One area of disagreement may be about clause 22 of the legislation, which deals with the revocation of orders and application for revocation of orders, the contention being about who is obliged to prove that a revocation should be granted. Should it be possible for the patient to mount the case or not? At the moment the opposition is of the view that if the patient or those who represent the interests of the patient apply, there ought to be an ability to actually mount that case. Again, I have not seen the final wording of that. But that is the view of the shadow minister, and I am laying that view on the table on her behalf.

The amendment relating to a commitment to a review that I understand will be circulated is one which the opposition is prepared to support and which it believes is a positive addition to improvements in the bill. It would be regrettable if the government did not commit to supporting that and thus commit to providing for the outcomes of the review to be published and making sure the review is completed by 2013.

The purpose of the review is to determine whether the objectives of the act are being achieved, whether they are still appropriate, whether the act is effective or needs to be amended so as to further facilitate the objectives, whether new objectives need to be inserted and whether it needs to be repealed.

One of the provisions of the amendment is to have the minister cause a copy of that review report and a statement of the response of the government to the review to be laid before each house of Parliament within seven sitting days of that house after expiry of the period specified in the earlier section of the legislation. I think that would be a very good thing, because it would mean that those of us who are here involved in the debate of this legislation would have an opportunity to judge and form informed views about its operation.

With those few words, I commend the bill to the house and also some of the amendments that will come before it.

Mr SCHEFFER (Eastern Victoria) — Essentially the purpose of this bill is to save the lives of a small number of people whose drug addiction is so severe that they face immediate and serious harm and are unable to take any action at that point to protect their own welfare.

The bill will enable life-saving care to be given to drug users whose lives are under threat and who have been unable to voluntarily deal with their drug issues. As I said, the provisions in the bill will enable people, in severe and life-threatening situations to be treated on an involuntary basis.

I think we should be clear about the circumstances of the individuals with whom we are concerned here. We are considering people whose behaviour is severely self-abusive. We are talking about people whose disruptive behaviours are turning their families and their friendship groups upside down. We are talking about people who are unable to meaningfully seek help and who cannot get the mental and emotional space,

free of their drug addiction, to make a decision. We are talking about people who have serious and long-term medical conditions, who harm themselves and who may indeed be suicidal. We are talking about individuals who have temporarily lost the capacity to decide what is in their best interests and know what they want.

The specific objectives of the bill need to be understood, therefore, in the context of the government's longstanding policy on alcohol and other drug issues. I think all members in this chamber understand that drug abuse is destructive to both individuals who have the addiction and their families, as well as to their immediate and the wider community.

While on the one hand the government has always been tough on drugs, as seen by the many measures it has put in place to prevent harmful alcohol consumption, for example, and to deal with the manufacture of illicit drugs — they are very clear examples of where the government has been tough on drugs — it also understands, on the other hand, that people who want or need assistance to rid themselves of their addiction deserve and have the right to be supported.

The government has invested nearly half a billion dollars since it came to office in 1999 to address alcohol and other drug issues in the community, and absolutely, as Mrs Peulich said, there is more to be done; there is no doubt about that. Our approach to the issue of alcohol and other drug dependency is that we should in all circumstances in the first instance minimise harm and ensure that those with dependency issues maintain their autonomy and personally commit to and actively participate in the treatments that are available to them. But there are instances where the person with the drug issue, as I said earlier, has lost all capacity and they are unable to shift the dynamic in which they find themselves, and they cannot really take responsibility for their own treatment and get themselves back into a frame of mind where they can start again to make decisions for themselves.

The bill's stated purpose is to provide for the detention and treatment of persons with a severe drug dependency. Its objectives are clear: to provide for the detention and treatment of persons with a severe substance dependency where this is necessary as a matter of urgency to save the person's life or prevent serious damage to the person's health, and also to enhance their capacity to make decisions about their substance use and personal health and welfare. I underline the fact that the bill states that detention and treatment are considerations of last resort and that limitations on a person's human rights, dignity and self-respect have to be very carefully applied.

I have read the 2004 review of the Alcoholics and Drug-dependent Persons Act 1968 that was conducted by the Turning Point Alcohol and Drug Centre, and I have also read the 2005 discussion paper on the same act from the drugs policy and services division of the Department of Human Services. It is clear when you look at both those documents that the complex issues addressed in this legislation have been very carefully and rigorously considered over a period of time.

The Turning Point review indicates that similar legislation to the original Alcoholics and Drug-dependent Persons Act does exist in a number of jurisdictions and notes the existence of that kind of legislation in the United States, in various European countries and in other jurisdictions in Australia, most notably New South Wales. Those sets of laws enable involuntary detention and treatment of individuals with drug dependency issues.

The reviewers indicate that this kind of legislation, especially in the United States and Australia, was and is inconsistent with modern conceptions of effective ethical alcohol and drug treatments. There is also a suggestion in those reviews and papers that involuntary regimes are often used inequitably so that economically disadvantaged people tend to be more subject to the provisions of those pieces of legislation than people from advantaged backgrounds.

In Victoria the present legislation has had a long history, beginning with the Lunacy Statute 1867 which was replaced by the Inebriates Act 1872 and 1958, which was in turn replaced by the Alcoholics and Drug-dependent Persons Act 1968, which the legislation we are discussing today will repeal.

The Alcoholics and Drug-dependent Persons Act provides for the civil commitment of people with alcohol and drug issues. The essential difference between the provisions of this Severe Substance Dependence Treatment Bill and the previous legislation that it will repeal is that the philosophy on which the earlier act is based is no longer supported by the evidence or by those researchers and practitioners who are active in the drug and alcohol field. As well, the government no longer endorses earlier philosophies that believed alcohol and other drug dependency was a disease of the will that essentially needed to be treated through confinement.

The DHS (Department of Human Services) discussion paper of the existing act also signalled that over the last

30 years we have learned a lot about alcohol and other drug treatments. We know, for example, that earlier presumptions that alcohol and other drug dependency should be treated by confinement and involuntary treatment are incorrect and ineffective. The paper says we now recognise that alcohol and other drug dependency is a long-term relapsing disorder and successful treatment involves the individual with the dependency actively participating in their treatment and voluntarily changing their behaviour.

How then do we know that the provisions in this bill will improve the situation for individuals with these drug dependency issues? The bill enables any adult person — usually a member of the affected person's family, a health worker or a friend — to initiate an action in the Magistrates Court for a detention and treatment order for another person with severe drug issues.

The person making the application must have arranged for a medical examination of the person with the drug issue. Only certain medical practitioners with appropriate experience may make a recommendation that a person should be detained in a treatment centre and that that treatment should be administered. Care has been taken in drafting the legislation to make sure that the rights of the person being detained are protected. The medical practitioner conducting the examination must consult with a senior clinician of the treatment centre where the person is to be detained.

The bill has a big emphasis on the timing of the sequence of decision points, so that processes are not delayed when the circumstances are really severe and the person's life may be at risk. The initial applicant has to personally serve the application on the person with the drug issue within 24 hours of its being lodged, and it needs to list the hearing within 72 hours of the application being lodged.

Clause 15 sets out how the hearing is to be conducted and specifies that the court is not bound by rules or practices as to evidence but may inform itself in relation to any matter in the manner it thinks fit. As well, the person who is the subject of the application has the right to appear at the hearing of the application, and the court may permit the person to lead evidence and to cross-examine if they wish.

The effect of this is to give the court the flexibility to bring all necessary information before it and into active consideration, and it places the onus on the applicant to provide all necessary information. The court will also be able to consider available and more appropriate treatment alternatives that may be preferable to detention, so there is no requirement for the person to be detained and be forced to accept the particular treatments that are before the court; they can actually look more widely.

Clause 20 of the bill sets out the conditions that need to be satisfied before the court can issue a detention and treatment order. It provides for a period of up to 14 days at a detention and treatment centre, and the treatment must involve a medically assisted withdrawal regime from severe substance dependence.

The purpose of the treatment is to provide a critical intervention that will help bring the person back from the edge, as it were — back from the dangerous circumstance — and give them a level of respite from the effects of the drug of addiction, access to particular treatments and the opportunity to make some level of recovery that will enable them to assess their situation and make some decisions regarding their future.

One of the matters that has been raised in public debate on this bill is whether the numbers of people requiring the treatments will dramatically increase as a result of these changes. As I understand it, under the existing legislation an average of 6 to 10 people are detained each year, and, given the stringent procedures set out in the new bill, there does not appear to be any reason for the number of people who find themselves in this situation to suddenly and unmanageably increase. Even if there is an unexpected increase in the number of people placed under a detention and treatment order, the bill sets out that the primary treatment centre will be able to refer individuals to other declared treatment centres that will prioritise the beds to enable people who are subject to the provisions of this bill to be dealt with appropriately.

In conclusion the bill provides a system of civil detention and treatment that can apply in extreme circumstances where health professionals, family or friends need to act as a matter of urgency to save the life of a person who has a severe drug dependency issue. This legislation clearly deals, on the one hand, with serious issues around a person's rights and autonomy but, on the other hand, it goes to the responsibility of the community to intervene and provide appropriate protections for people who are in particular situations. This is a complex and difficult area, but I think this legislation is a step forward and strikes the right balance. I commend the bill to the house.

Mrs COOTE (Southern Metropolitan) — I have pleasure in many ways in speaking on the Severe Substance Dependence Treatment Bill, because I have

been passionately concerned about the issue of drugs and drug abuse since I came into this place. In fact in my inaugural speech I spoke about the issue of drug dependence — at that stage there was a flood of heroin — the ramifications of what was happening to our young people who were addicted to heroin, the hopelessness of the whole issue, and the fact that it had to be addressed. That was in 1999; since then there have been many programs brought in by this government and by independent organisations to try and address the issue of drugs.

Drugs have moved on from only heroin, and we now have a whole mixture of amphetamines and other drugs with no idea about what they are capable of doing. However, one issue that has existed for a considerable time and to which we are now giving greater recognition is alcohol as an abusive substance.

Alcohol-fuelled violence is prevalent on our streets as a result of alcohol abuse and the community at large is greatly concerned at the increase in this problem. The problem is that the users and abusers of alcohol say that it is something that has been socially accepted by a whole range of people in our community, and therefore it is very difficult to try and isolate the people who have a major problem with alcohol, although there are some excellent programs that do just that.

Before I start talking about the bill itself I reiterate that not only has this been a longstanding concern of mine but that I am a member of the parliamentary Drugs and Crime Prevention Committee (DCPC). That committee, prior to my joining it and currently, has done some in-depth research and first-rate reporting on the drugs affecting our community and how that issue plays out.

This bill repeals the Alcoholics and Drug-dependent Persons Act 1968. The main objective of the bill is to set out criteria determining the detention and treatment of a person with a severe substance dependency. This applies where the situation is urgent and classified as fatal or necessary to prevent serious damage to a person's health. The 14-day detention and treatment order provides a short period of detoxification which provides a substance-dependent person with an opportunity to detox in order to be in a position to make decisions about future treatment.

Fourteen days is a very short window of time for a dependency that has often taken a considerable time to build up. I have some major concerns with that — 14 days is a very short period. The process of detoxification can start but this is a really complex issue. Someone who is substance-dependent may have a mental illness, they may have a disability; there may be social reasons, housing reasons or a complexity of reasons why they have got to this stage in their life — and the problem is not going to be fixed in 14 days.

We need to properly fund a really good program around looking at the influences a person has been subject to during that part of their life and why they need to have such an approach to their treatment, particularly if their problem is so severe that they come under the jurisdiction of a bill such as this.

It is essential that funding goes hand in glove with this bill. There is merit in the fact that someone is recognised as needing an extraordinary amount of treatment but we have to make certain that treatment is followed through and continually reviewed. People who are alcohol-dependent or drug-dependent lead really chaotic lives. They cannot turn up to an appointment because they do not even realise what day it is; they have no idea. We are trying to impose a number of issues on people who just do not have the capacity to handle them.

It is incumbent on the government and the agencies that will have to care for these people to make certain they are carefully watched and helped, and that when they fall out of the system they are picked up again, re-engaged and helped to move on with their lives in the best way they can.

There are some areas of contention in this bill. There is the lack of clarity and detail, and also the government has not completed the regulations. We see this happening time and again in this chamber. If we cannot see the regulations, it makes it very difficult to debate bills. We need to see how the bill is going to be implemented, what sort of conditions are going to be imposed, how it is going to play out and what is going to happen. This bill is another case where the regulations have not been completed, and that is a great pity because this is an important piece of legislation on a really important issue.

We are dealing with some of the most vulnerable people in our community; we should be making quite certain that we are all very clear on how the legislation will work. The agencies that are going to have to run the programs and all of us in the community need to be very clear on what is actually happening. The people who put this bill together have missed that opportunity.

There is uncertainty about the role of existing treatment services. The minister's second-reading speech commits to the development of a drug and alcohol treatment service. There are three of these services operating in Victoria: they are St Vincent's Hospital,

Moreland Hall and DASWest. The government is currently consulting with each of these treatment services, but it has not yet determined what a model might look like. Once again, this is almost pre-emptive.

It is such a pity that the detail was not put into this bill so that all members of this house — whom, I believe, think the thrust of this bill is a very good one — are able to say with great confidence that it has been properly thought through, that all the details have been covered, so that it does not need to be re-presented or tweaked in this house as so often happens with bills in this place.

On the part of the minister, that is a great disappointment. There is a need for alternative detention and treatment, and the bill enables the detention of individuals. Current withdrawal facilities are not secure environments, and that needs to be addressed in a better way. There is also the question of the contravention of the rights and responsibilities charter.

This is a very difficult area. We are dealing with people who need an enormous amount of assistance. The number is said to be about six to eight per year, and my colleague Mr Scheffer said in his recent contribution he does not expect the numbers to increase. I say to Mr Scheffer, through you, Acting Speaker, that sadly parts of our community have collapsed to such an extent that the numbers will increase to far more than the six to eight spoken about in this bill.

Therefore it is incumbent on us to make certain that we get this right and to deal with the details, because as the numbers grow the funding and support services will need to grow, and the staff charged with dealing with this issue must have clear details. The people we are dealing with are the most vulnerable in our community, and we must remember their human rights. It is important to understand that although their circumstances may be very difficult, it is absolutely imperative that we treat them with dignity and humanity.

I am an ambassador for the Windana drug and alcohol recovery program, which is an excellent program that was established in my electorate in 1984 under a wonderful and far-sighted person called Peter Bucci, who sadly has now passed on. He created a therapeutic environment in Windana with a holistic approach to people with substance abuse problems and the best way to deal with them. The centre is located in Alma Road, St Kilda, in Southern Metropolitan Region, and there is a therapeutic facility in Gippsland as well. I want to put on the record my praise for everybody involved at Windana. It is a really successful program. Its website states its vision as:

> We envisage a society which enables individuals and families to recover from harmful alcohol and drug use and to build positive lives in mutually supportive and accepting communities.

The centre's philosophy is:

> We believe that change and growth are possible in all individuals as long as they so choose.

That is the thrust of this bill. We are looking at helping the most vulnerable people, at the moment those six to eight people per year, but also people in the future. It is imperative for us to remember that it is not just those individuals but their families and friends who are also involved in helping them to lead meaningful lives.

They are my comments on the bill. I am pleased to see it here. There are aspects of it that I very much support. I agree with the thrust of the bill and look forward to further debate.

Mr SOMYUREK (South Eastern Metropolitan) — I welcome the opportunity to speak in support of the Severe Substance Dependence Treatment Bill 2009. I wish to commence my contribution by congratulating the government on what is to be done with the Alcoholics and Drug-dependent Persons Act 1968, which has been the subject of a number of reviews over the last 25 years or so. This bill repeals that antiquated act. Its operations were predicated upon state-operated assessment and treatment centres such as Gresswell Rehabilitation Centre, Heatherton hospital and Smith Street clinic, all of which were closed a long time ago. More pertinent to debate around this bill is the fact that the 1968 act is paternalistic, and in at least one area draconian.

Clause 1 sets out the purpose of the bill as follows:

> The purpose of this Act is to provide for the detention and treatment of persons with a severe substance dependence.

It is this provision for detention which has raised the ire of civil libertarians in our community. At the outset I wish to stress the stringent limitations and safeguards that apply to this form of detention. It applies only to adults, being persons aged over 18. The purpose is only clinical: to save lives or prevent serious damage to an individual's health. The clinical decision of the medical practitioner has to meet the criteria in clause 8 of the bill, and his or her order has to be approved by the Magistrates Court. Detention is limited to 14 days, and treatment is restricted to medically assisted withdrawal. There are oversight provisions through the public advocate as well.

The Scrutiny of Acts and Regulations Committee (SARC) reported on this bill to Parliament on 2 February 2010. In *Alert Digest* No. 1 of 2010, SARC had this to say:

> The committee has previously noted that great caution needs to be exercised in the passage of any enactment that seeks to impose a period of 'preventative detention' on any person particularly where that detention is not based on punishment for an offence or at the completion of a sentence for an offence. The question for Parliament to consider is whether the imposition of the detention is punitive in character or whether the detention is a protective measure and if it is preventative in character whether the detention regime involves a meaningful judicial determination on imposition and subsequent oversight and review.

SARC put the resolution of this issue directly to Parliament by stating in the same *Alert Digest*:

> The committee considers that the question whether the legislative regime serves a legitimate non-punitive purpose is a matter to be determined by Parliament.

In my view the purpose is highly legitimate and non-punitive: it is for saving lives, not for punishment; it is for clinical purposes, not for preventive detention. In the early 1990s the Parliament enacted the Community Protection Act for the purpose of detaining one individual, Gary David. Although it was highly justified because of his record of serious violent offences and threats of further violence, nevertheless it included preventive detention. Gary David was detained indefinitely for what he might do rather than for what he had done.

We have in this bill a short-term provision for a maximum of 14 days detention to respond to a medical emergency. Mrs Coote is sceptical that 14 days will be enough, but the 14-day period is not something that the committee or the government plucked out of the air; it is based on the opinion of the medical profession. In examining this bill SARC received submissions from a number of community organisations.

The Federation of Community Legal Centres Victoria in its submission to SARC had this to say:

> We are particularly concerned that the definition of 'severe substance dependence' and the criteria for detention and treatment (clauses 5 and 8) are very broad. Accordingly, as submitted by Human Rights Law Resource Centre and Harm Reduction Victoria, a person who retains capacity and is capable of choosing to refuse treatment could nevertheless be detained and compulsorily treated. This is at odds with the human right not to be subjected to medical treatment without full, free and informed consent.
>
> The federation is also concerned that the power to restrain or sedate a person (clause 38) is not sufficiently circumscribed and therefore may encourage situations where a person's rights to freedom of movement and from torture, cruel, inhumane or degrading treatment are violated.

Unfortunately in its submission the Federation of Community Legal Centres did not examine what legislation is currently in place in Victoria. It reduced the Alcoholics and Drug-dependent Persons Act 1968 to a footnote. Had the federation examined the current law it might have realised that paternalistic and draconian provisions were being replaced by a narrow 14-day provision to deal with medical emergencies — for instance, the 1968 act is based on an assumption that persons with severe substance dependencies will benefit from ongoing treatment of months, or longer, even if the treatment is coercive rather than voluntary. As an example, section 9 of the 1968 act provided for persons to admit themselves voluntarily to an assessment centre, but then an individual, having done so and wishing to leave, could under section 10 be held for three months against their will. The point I wish to stress is that this bill is narrow and deals with medical emergencies.

An important principle in our health system is that the consumer gives informed consent. There are occasions where the individual cannot give informed consent. As a matter of public policy, a decision has to be made to override that consent — for example, there is a provision under the Mental Health Act for the involuntary admission of patients who, because of acute psychosis, are a danger to themself or others. Likewise, and in the circumstances covered by this bill, in the case of a chronic alcoholic in withdrawal and going through delirium tremens — that is, a medical emergency — they may well die without clinical intervention in a clinical setting.

There is no provision in the bill to require individuals to have ongoing treatment outside of the 14-day emergency provision without their consent. Without the consent of the individual to ongoing treatment, any therapeutic benefit would be problematic. It is unfortunate that some civil libertarians in our community have implied that we are detaining individuals with severe drug and alcohol dependency without their consent, and forcing therapy upon them. That is just not the case. It is a pity that these people have not distinguished between the emergency medical provisions of this bill and compulsory ongoing treatment, which is not in this bill, but is in the 1968 act which this bill repeals. I have no hesitation in supporting legislation that allows emergency clinical intervention to occur in a narrow 14-day window with strict conditions applying. I commend the bill to the house.

Business interrupted pursuant to sessional orders.

QUESTIONS WITHOUT NOTICE

Planning: Hotel Windsor redevelopment

Mr GUY (Northern Metropolitan) — My question is to the Minister for Planning. Noting that the minister said he had asked his department to appoint an auditor to oversee the approval process for the Windsor Hotel fiasco to 'assure that every appropriate matter is dealt with', I ask: is it government policy that an 'appropriate matter' in a planning application is adhering strictly to probity guidelines or not?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Guy's continued interest in this matter. Of particular interest in this case no doubt are probity concerns around the decision making of the Windsor Hotel redevelopment. Mr Guy would like to speculate on how a decision was made, the influences on how that decision was made, who may have influenced the decision and who might have lobbied for a decision. I make this very clear: the decision was made based on the advice which came from the panel report from Heritage Victoria and of course advice from the department. Not until that advice is received do I make a decision, because basically you cannot make a decision until that advice is received, and particularly the advice from the department in relation to the other advice.

What is particularly important in this case is the advice from Heritage Victoria. I remind the chamber that Heritage Victoria is an independent statutory body. Jim Gardner, who makes the decisions, has a role in that independent statutory authority in relation to the decision making. These are particularly important elements in the context of the decisions around the Windsor Hotel. In relation to those decisions I released two reports: an independent review of the process within the department and the probity auditor's report. They are particularly important. As I have said before in this case, I did not nominate specific details to the secretary of what I was seeking other than that people should have full confidence in the process. By having this process in place those reports have been made public and thereby the process is confirmed as one which has complied with all statutory requirements.

Supplementary question

Mr GUY (Northern Metropolitan) — I thank the minister for his answer, but note that the minister has also stated publicly that 'the buck stops with me' when referring to the Windsor Hotel fiasco, so I ask: if the buck stops with the minister, why did he not ensure that he or government advisers were spoken to by the probity auditor to ensure that all 'appropriate matters' — in his words — such as corruption of the planning system, were properly dealt with?

Hon. J. M. MADDEN (Minister for Planning) — It is interesting what Mr Guy says in relation to these matters. He wants me to in a sense draft the terms of reference for the probity auditor, and I am sure if I did draft the terms of reference for the probity auditor, Mr Guy would make substantial criticisms of me. No doubt he would be here today criticising me for drafting those terms of reference for the probity auditor.

My request to the secretary of the department was to ensure that these matters were reviewed and audited. They were reviewed and they have been publicly reported, and as such everybody should have full confidence that the statutory obligations have been complied with in relation to this process.

Questions interrupted.

ABSENCE OF MINISTER

Mr JENNINGS (Minister for Environment and Climate Change) — As a courtesy I would like to inform the house, including you, President, that the Leader of the Government is attending a meeting of state and territory treasurers with the federal Treasurer in Canberra today and will not be in attendance at question time. I believe members of the crossbenches and the opposition parties have been made aware of that, but in case they have any residual questions intended for the Leader of the Government, I will receive them on his behalf.

Mr D. Davis — On a point of order, President, I seek clarification on whether that is a treasurers meeting or a Labor treasurers meeting?

Mr Jennings — A Liberal Treasurer would be invited.

The PRESIDENT — Order! There is no point of order and there is no point of clarification either.

QUESTIONS WITHOUT NOTICE

Questions resumed.

Rail: Nunawading station

Mr LEANE (Eastern Metropolitan) — My question is to the Minister for Public Transport, Martin Pakula. Can the minister update the house on improvements to Nunawading station that will benefit commuters, particularly those who use their bikes to get there?

Hon. M. P. PAKULA (Minister for Public Transport) — I thank Mr Leane for his question. I recently visited the new railway station at Nunawading, a premium station that has been constructed as part of the $140 million Springvale Road grade separation project, made possible thanks to the cooperative efforts of the Victorian and federal governments. The new facility is a magnificent one which members should take the time to visit. It is staffed from first to last train as a premium station, and it includes a customer service waiting area for bus and train patrons, full ticketing services, toilets and CCTV (closed-circuit television).

Mrs Coote — CCTV in the toilets?

Hon. M. P. PAKULA — Not in the toilets, Mrs Coote. I am not sure — —

Honourable members interjecting.

Hon. M. P. PAKULA — I won't go there.

Major construction at the station has now concluded. There are still some tidy-up works under way. The project team is completing the community and commuter car parking areas, some minor roadworks and some landscaping.

It was also a pleasure while I was there to be joined by representatives of Bicycle Victoria to open the new parkiteer bike cage that has been installed as part of this enormous upgrade to facilities for local commuters. The new bike-friendly facilities are part of that broader parkiteer program. They provide almost 30 secure bike racks in a state-of-the-art bike cage that provides swipe card access for registered users.

The new bike cage is another attempt to encourage cycling as a practical transport option. Riders who go to Nunawading station will know that they can safely secure their bikes and then catch the train or the bus to other destinations for work, school or leisure.

It is a further improvement to public transport facilities in the eastern suburbs. It is part of the provision of an integrated intermodal transport hub, which encompasses not just the train services but also the SmartBus. The bike cage is operated by Bicycle Victoria, and riders are encouraged to contact Bicycle Victoria to secure a cage spot and a swipe card on payment of a deposit.

As part of the Victorian transport plan, there are now more than 40 of these parkiteer bike cages installed across the metropolitan and regional network. Along with my colleagues Tony Robinson, the member for Mitcham in the other place, and Mike Symon, the federal member for Deakin, who joined me on the day, I was pleased to see the addition of another bike cage at Nunawading.

Planning: Balwyn North development

Mr ATKINSON (Eastern Metropolitan) — My question without notice is to the Minister for Planning, Mr Madden. In June last year the Boroondara City Council wrote to the planning minister seeking permission to begin the process of approving an Aldi supermarket in Balwyn North, a letter to which it received no acknowledgement, no follow-up and not even a phone call.

Can the minister confirm that the Aldi supermarket for which Boroondara council asked him to begin the process of approval is the same Aldi supermarket the approval for which has sat on his desk for the last nine months but which he claimed in his announcement of two weeks ago he is speeding up?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Atkinson's interest in all things retail. There is doubt he has had a long career in reflecting the views of the retail industry and particularly competition in the retail industry, and that certainly does not go unnoticed.

In relation specifically to the letter that Mr Atkinson referred to, if Boroondara council has not had any direct confirmation of receipt of that letter, then I would have thought that normal practice for the City of Boroondara would be to seek confirmation of whether that letter had or had not been received. We receive of the order of about 200 pieces of correspondence a day through my office. Many of those go directly through the department; some come to my office, some do not.

If there is a specific letter that Mr Atkinson would like me to refer to, I am happy to check for the letter in relation to that matter and seek advice from my department as to whether it has been received, confirmed and logged into the system. I suspect that if

there has been no response or follow-up from my department, it may not have been received.

If it is a specific letter, I know Boroondara council is very conscious of communication with the minister's office and always seeks to have that correspondence confirmed, because I know there is some degree of sensitivity in Boroondara about the planning system; I am very conscious of that. Normally the City of Boroondara is very eager to get a response from me in relation to any matter it presents to me, and I often and regularly meet with representatives of the City of Boroondara. If there are matters they feel have not been attended to rapidly enough, they normally raise those matters. I do not recall having had meetings with the City of Boroondara and having had representatives bring that letter to my attention.

I am happy to take that on notice, follow up on the letter and advise Mr Atkinson accordingly.

Mrs Kronberg interjected.

Supplementary question

Mr ATKINSON (Eastern Metropolitan) — As my colleague Mrs Kronberg says, the minister is on such thin ice we can hear it cracking. Can the minister confirm — —

Hon. J. M. Madden — On a point of order, President, I do not want to debate this issue, but time and again you direct me to not criticise the opposition. The pretext of the supplementary question was a direct criticism of me, using another person's words. I take offence, and I ask the member to withdraw.

The PRESIDENT — Order! The points made by the minister are in fact correct and consistent with standing orders and the standards I think all members want in the chamber. I remind Mr Atkinson that the criticism that has been referred to undoubtedly could lead to argument, and therefore I ask him to withdraw the comment, given that the minister has expressed the view that he takes offence at that comment.

Mr ATKINSON — I withdraw the remark.

An honourable member interjected.

Mr ATKINSON — Yes, I am getting to the supplementary question, which refers clearly to the minister's response in which he indicated he did not know anything about this letter despite the fact that he called in this particular project. He clearly does know about this letter, and the answer he has given to the house is absolute rot. Can the minister confirm that despite his spin and rhetoric about the $8.3 billion in projects he claims to have called in and approved, just 9 per cent of this project value has actually been directly approved, over $7 billion in projects are still remaining idle and construction has actually started on fewer than five projects?

Hon. J. M. MADDEN (Minister for Planning) — I thank Mr Atkinson for his interest in these matters. I just want to put this in context. It is interesting to note my interventions in this space around calling in some projects for economic activity. We have a number of examples relating to economic opportunity in this state, particularly around jobs throughout the global financial crisis where it was a particular interest of this government to resolve these decisions by fast-tracking the process. That has been of particular worth, and the proof of the pudding is in the economy of this state holding up stronger than probably any other economy in any other jurisdiction in the Western world. I put it in that context first of all.

Another context on which I would like to reflect is the degree of inconsistency in the propositions put to me by the opposition. This is not a criticism of the opposition; this is just reflecting on the inconsistency of some of these questions. I often get criticised for fast-tracking projects and for a lack of consultation, but if we take a bit longer to consult before we make a final decision that resolves the matter, then of course that is too long and too slow. I find it quite disconcerting that there is an inconsistency in the questioning that I am subjected to on this matter specifically and other similar matters where I have sought to intervene in the process.

I am confident that if I need to intervene, particularly on the basis of the global financial crisis, the process that is involved in consultation, the process that is involved in information gathering for those projects and the process by which these matters are resolved sooner rather than later — that is not to necessarily give these projects approval — gives clarity for community groups and gives clarity for business groups who may or may not wish to invest or may wish to reassess their investment and invest in other projects. That clarity is very important in terms of the economy.

That is also important because for some time there have been long queues at the Victorian Civil and Administrative Tribunal, where I understand there is a separate stream that allows for projects of significant size. Many of these interventions were to fast-track and resolve the decision making around these projects. I do find it somewhat disconcerting that the opposition sometimes suggests that I am too slow but on the other hand too fast. Opposition members need to pace

themselves accordingly, work out what the pace should be and maybe even make a policy position public on how they expect these matters to be dealt with.

Ordered that answer be considered next day on motion of Mr ATKINSON (Eastern Metropolitan).

Employment: government awards

Ms DARVENIZA (Northern Victoria) — My question is to the Minister for Industrial Relations, Martin Pakula. I ask the minister if he can inform the house on how the Brumby Labor government is encouraging employers to provide the best working conditions for their employees.

Mrs Peulich — Where's that megaphone?

Hon. M. P. PAKULA (Minister for Industrial Relations) — Yes, megaphone gags!

I thank Ms Darveniza for her question, and I reflect on her long commitment to fair and flexible working practices in her career both as a parliamentarian and prior to that. I am delighted to announce that following the success of the first year of the Fair and Flexible Employer Recognition Awards in 2009, nominations are now open for the 2010 round of awards.

Last week I launched the opening of nominations at the Western Region Health Centre in Footscray. That organisation was one of the winners of the award last year. Following the success of the Fair and Flexible Employer Recognition Awards, we are again looking for corporate and business role models that offer flexible working conditions such as employee-choice rostering, flexible working hours, strong maternity leave practices and a serious commitment to pay equity.

The Brumby Labor government set up the Working Families Council in August 2007. The Working Families Council introduced the Fair and Flexible Employer Recognition Awards to promote employers who develop initiatives to assist working families. Last year 16 organisations, from all over Victoria, were recognised for being at the forefront of implementing flexible, family-friendly practices in their workplaces. All the previous award winners have proactively addressed work and family balance and pay equity issues. Those issues are crucial for workforces that are increasingly dominated by parents and older workers. I also took the opportunity to release the results of a survey of 50 businesses that attended a series of Working Families Council round tables last year. The report is titled *Why Flexibility*?. It showed that most of the businesses surveyed found that introducing flexible working conditions was productive for employees but also for employers and their businesses. The most common flexible working conditions were flexible start and finish times, quality part-time working opportunities and flexible access to leave.

The Working Families Council has posted case studies of the previous Fair and Flexible Employer Recognition Award winners on the ways2work website. That is a resource for other businesses and organisations. It is easy to nominate for the Fair and Flexible Employer Recognition Award. All the details are available on the ways2work website. I encourage those employers who want to take up the option of offering better and more flexible working conditions for their workforce to check out the website and to nominate for these awards.

Minister for Planning: media plan

Mr GUY (Northern Metropolitan) — My question is to the Minister for Planning. Given almost a month has passed since the leaking of the planning minister's March media plan and given the minister claimed never to have seen any similar media plans to the one leaked from his office — a plan he described as the work of one individual as not a professional piece and as containing inappropriate language — I ask: over the last month has the minister sought clarification from his private office, the Premier's office and his department that no other media plans exist or have been produced that contain material which he described as reckless?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Guy's interest in this matter. I think Mr Guy has mentioned all the comments that I have made in relation to these matters, so I do not need to repeat them. What I have made very clear to my staff, which they should relay to staff they actually interact with, is that they should not speculate on the decisions that I may or may need to make in any point in the future.

That is particularly important because, in the instance of the decisions I made recently, nobody could have known what the advice was going to be in relation to this project, particularly the advice that would come from Heritage Victoria. Given that this project hung off the advice of what Heritage Victoria was or was not going to recommend and that it is an independent statutory authority, any speculation was not only completely unwarranted and not only futile but it was also technically wrong, because it showed a gross misunderstanding of the process in itself.

I have relayed that to the staff, and I have asked them to relay it to other staff they interact with, that nobody should presuppose or speculate on the decisions I may

need to make in relation to my portfolio responsibilities.

Supplementary question

Mr GUY (Northern Metropolitan) — I thank the minister for his answer. In the interest of planning probity and to restore some confidence back to the planning system in Victoria, can the minister advise the house what safeguards, checks and/or other measures he has put in place over the last month, both within his department and his private office, to guarantee that any corruption of the planning process through media plans cannot occur and, if it does, will be reported promptly and publicly?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Guy's interest in this matter. What concerns me about the opposition's comments in relation to what it calls 'probity' is what we have done in recent times in this portfolio, which is to give transparency, accountability and reporting in relation to the decisions that are made. I make this point very clear for the opposition. We report and account for the interventions that the Minister for Planning makes. That has been a consistent policy position of this government. Not only do we report to Parliament on a regular basis but we also account for those decisions and the reasons why we intervene. That is a very significant component, which Mr Guy displays some interest in, which is delivered by this government.

The other area which is also worth appreciating is that the department has, before all these events took place, also put in place a probity process accounting for the processes throughout the planning process within the department and also the obligations for the statutory end of that process. I am accountable for the statutory end of that process. It is particularly important to have those safeguards in place. This stands in direct contrast to what was there before we put in place these mechanisms. If I recall rightly, in the government prior to the Bracks and Brumby Labor governments, ministerial decisions made by the previous planning minister, Minister Maclellan, were ones where he intervened on average every working day he was in office. Not only did he intervene every day he was in office — —

Honourable members interjecting.

Hon. J. M. MADDEN — If Mr Guy does not believe those figures he can have a look at those figures himself. Not only did he intervene on average every working day he was in office, one would suspect he woke up and said, 'I think I might intervene today. What can I intervene in?'; it tends to suggest that. Not only that, Mr Guy — —

Mr Atkinson — On a point of order, President, the minister is debating. I challenge the veracity of what he is saying as well, but in terms of the point of order, the minister is debating and going over territory that has absolutely nothing to do with the question that was asked.

Hon. J. M. MADDEN — On the point of order, President, these are particularly relevant matters, because the question was in relation to the probity processes in place. You also have to put in context what was not in place prior to those being put in place.

The PRESIDENT — Order! The Deputy President is correct when he says that debating an answer is not allowable under the standing orders. I accept that there was some leaning towards debating by the minister. He was starting to belabour the point about Mr Maclellan. It is relevant to refer to the fact that he was a previous Minister for Planning but not to continue to debate that point. I ask the minister to be cognisant of the standing orders in reference to debating his answer.

Hon. J. M. MADDEN — What is particularly important is that our record in this area is one of not only transparency but accountability and reporting to the Parliament on a regular basis. We know that that record stands in stark contrast to the record of the previous government. We take great pride in our record when it comes to the transparency and rigour of the planning process in this state.

Queenscliff: safe harbour

Ms TIERNEY (Western Victoria) — My question is to the Minister for Environment and Climate Change, Gavin Jennings. Can the minister inform the house of how the Brumby Labor government is taking action to strengthen the vibrant tourism industry in Queenscliff, ensuring that it continues to grow for the benefit of towns and regions surrounding the Bellarine Peninsula?

Mr JENNINGS (Minister for Environment and Climate Change) — I thank Ms Tierney for the opportunity to share with the chamber the good news that surrounds the opening last week of Queenscliff harbour, where I joined the Premier and the local member for Bellarine Peninsula, Lisa Neville, the member for Bellarine in the other place. It was a great community event.

It is important to appreciate the importance of providing safe harbour at various locations around Port Phillip Bay as hundreds of thousands of recreational boat

users, commercial boating operators and fishing fleet vessels need to operate out of our port and jetty infrastructure around the bay. Boating is an extremely popular pastime, and it is important to local economies that we provide that infrastructure.

The great community event celebrated the delivery of a $38 million investment in a safe harbour at Queenscliff — a $38 million investment that was stimulated and facilitated by the state of Victoria through its agency, Parks Victoria. We contributed $5 million of investment and leveraged $33 million of additional private sector investment. I congratulate Queenscliff Harbour Pty Ltd not only for showing the initiative to underpin this work and financially back it but also for delivering a financial return.

Honourable members interjecting.

Mr JENNINGS — I am being invited by the opposition to share good news, and I can share good news with the opposition at this moment. To answer Mr David Davis's question, I can inform the house that the Western Australian Treasurer has arrived safely in Canberra. That is the good news that I will share with the chamber.

Beyond that, it is important to understand that in port infrastructure facilities we had 150 berths previously and now we have closer to 450. There will be more than 400 berths for boating users, the commercial fleet and the couta boats that operate out of Queenscliff. The many hundreds of boat users who will be using that facility will be able to use the slipway to have maritime works undertaken.

Honourable members interjecting.

Mr JENNINGS — President, as you can tell, this has got the opposition extremely excited. It is unsurprising; in fact opposition members are with the program to the extent that they recognise that thousands of boat users are flocking to this facility and will do so in the future.

More than 200 jobs were created in the construction period, and there will be more than 90 full-time jobs into the future. The harbour will underpin a commercial and maritime precinct of the highest quality of construction, and not only will it support great economic activity and recreational opportunities in the future but it will also make sure that we do not have emissions into the bay, that we protect the maritime areas and that people can find safe harbour in Queenscliff. If the opposition members want to go down and find safe harbour in Queenscliff, by all means they should head down there.

Former Minister for Major Projects: media plan

Mr D. DAVIS (Southern Metropolitan) — My question is for the Minister for Planning. I refer to the minister's responsibilities under part 4A, sections 48A and 48B, of the Planning and Environment Act, and I ask: what role did he as the minister with those responsibilities play in the planning decisions behind the Theophanous media plan of January 2007 for the clearing of or the planning approvals for the facilities on the Commonwealth Games site referred to in the media plan?

Hon. J. M. MADDEN (Minister for Planning) — I do not know whether Mr Davis has noticed, but there is a gentleman by the name of Mr Theophanous who no longer resides in this place, for starters. It has been some time since Mr Theophanous has been a minister. Not only for those reasons but also because he asserts there is some other media plan in existence — —

Mr Guy — Did you not see the news? Have you not read the news?

Hon. J. M. MADDEN — Not only have I not seen the media plan which is presupposed to be mine, I have not seen the media plan which is presupposed to be Mr Theophanous's. Therefore I find it difficult to reflect on the document that Mr Davis referred to.

Supplementary question

Mr D. DAVIS (Southern Metropolitan) — To make it clear that the minister has responsibility under the Planning and Environment Act, I inform him that part 4A deals with the Commonwealth Games village, which was the subject of the proposed media event to which Mr Theophanous went. With the house's forbearance I might explain to the minister some of the responsibilities that he has. This is a 20-hectare site, and just to explain — —

Hon. J. M. Madden — On a point of order, President, I ask you to ask the member to stick to the question rather than to go on and basically describe what my role is and debate what my role is. I would prefer it if he would specifically get to the nub of the question and ask it.

The PRESIDENT — Order! Mr Davis knows that his supplementary question must be related directly to the substance of the answer to his original question. He does not have the opportunity to debate or expand on it. I am a little bit concerned that he wants to start reading things into *Hansard*. I ask the minister to be specific about his supplementary question.

Mr D. DAVIS — The objects in the media plan include:

> To publicise the start of the works …
>
> To promote the lasting benefits of the Commonwealth Games.

It refers to photo opportunities for a minister sitting on a bulldozer and mingling with construction workers. It states that the minister will wear a hard hat and boots. The objects are listed in the media plan, and I ask the minister — —

Ms Broad — On a point of order, President, none of the matters that the Leader of the Opposition has referred to were referred to in the minister's answer to the substantive question. He is flouting your ruling.

The PRESIDENT — Order! I appreciate your assistance, Ms Broad. I am capable of deciding for myself whether or not my rulings are being ignored. The supplementary question refers to the original question by and large. It was a little longwinded, and I would like to get on with this.

It might be useful for the house if I read a previous ruling, which states:

> A supplementary question should only be asked to elucidate or clarify the answer given to the original question. It should relate to that answer and should be asked only if the member asking the question feels it necessary to seek further information on the matter or to ask the minister to further explain the answer.

I think the question comes within that description.

Ms Broad — But the minister did not refer to bulldozers.

Mr D. DAVIS — No, but he does have responsibility, and I therefore ask the minister: can he reconcile the objectives listed in the Theophanous media plan with the minister's own responsibility under the Planning and Environment Act and his responsibility to protect heritage on the site?

Mr Viney — On a point of order, President, as I understand it this question was ruled out of order in the Assembly yesterday on the basis of two points: firstly, that the media plan referred to was for the department of major projects, which at the time was the responsibility of Minister Theophanous, who is no longer either a minister or indeed in this chamber; and secondly, that it goes to the previous administration under the Bracks government and has no bearing on the work of the current government and the current minister. It was ruled out of order in the Assembly for precisely those reasons on the basis of prior rulings by Speaker Delzoppo.

Honourable members interjecting.

The PRESIDENT — Order! If I am to rule on this point of order, it would be of great assistance to me to hear the points that members are trying to make.

Mrs Peulich — On the point of order, President, may I also recommend that you look at the ruling of the Speaker from yesterday. I believe it is an unworkable ruling, an undemocratic ruling, and that indeed — —

The PRESIDENT — Order! I inform Mrs Peulich that that is not a point of order. Let me make this very clear: it is of no importance to me what rulings are made in the Assembly. We will make up our own minds in accordance with our rules and procedures as to how we govern in this place.

Mr D. Davis — On the point of order, President, this may assist you in making this clear: the minister is the Minister for Planning, and he is responsible for the Planning and Environment Act. Part 4A of the Commonwealth Games Arrangements Act deals with the Commonwealth Games village. To assist you, I will read these sections

> The minister has and may exercise in relation to the games village land — —

T**he PRESIDENT** — Order! I will make up my mind as to whether things are in or out of order. Mr Davis does not get the opportunity to assist me by reading out to me previous rulings et cetera. If he wants to speak on the point of order, it has to be on the point of order.

However, I think I am already where I want to be. I think the supplementary question is in order. The minister is the Minister for Planning right now and having already answered the first part of the question, the minister is compelled to answer the supplementary question in any way he may see fit.

Hon. J. M. MADDEN (Minister for Planning) — Thank you, President, for your guidance and clarity in relation to this matter. While I have not seen the document to which Mr Davis referred, I understand it was prepared by the Office of Major Projects for a former Minister for Major Projects. I have not seen the document, I have no knowledge of the document, and I have nothing further to add.

Environment: government initiatives

Ms MIKAKOS (Northern Metropolitan) — My question is to the Minister for Environment and Climate Change, Gavin Jennings. Can the minister update the house on any recent initiatives which demonstrate how the Brumby Labor government is taking action to assist communities to live more sustainably?

Mr JENNINGS (Minister for Environment and Climate Change) — I thank Ms Mikakos. In fact I have some good news, and I can continue on that theme in relation to a good event I attended out her way, in Darebin, last week. I was joined by representatives of the local government sector from around Victoria to announce the latest iteration of the Victorian Local Sustainability Accord, which has been a great engagement between the state government, the local government sector and local communities to try to encourage sustainability — an approach by which we can support households and businesses to understand the importance of operating sustainably.

It has been a great partnership, a great collaboration, that has now seen almost $5 million — —

Mr Guy — Don't you refer to the Howard government, the previous federal government.

Mr JENNINGS — Mr Guy, I would mention the Howard government if it had joined in the partnerships under the sustainability accord, but it did not. It resisted the great temptation to step into this collaborative framework with communities, state government and local government and to share a commitment to achieve more environmentally sustainable outcomes. If it had, I would have given it some credit.

Mr Guy — You say you cannot refer to them.

Mr JENNINGS — I think I might be able to refer to the Howard government and to the latest iteration of the federal government, the Rudd government, which has demonstrated time and again its commitment to working collaboratively with state and local governments on a variety of matters, including environmental programs. But the program I am highlighting today — —

Honourable members interjecting.

Mr JENNINGS — I thank members opposite for the scrutiny they are applying to my answer! I do not mind the worm turning on the other side; I would expect it to. However, ultimately there are more important measures of community engagement, which is about getting the message across about sustainability. Each and every day councils across Victoria join with the state government in celebrating its commitment to supporting sustainable activities. The $5 million it has put into the program up until now saw 23 councils from across the breadth of Victoria receive funding last week to support their communities to become more sustainable.

Another Ballarat event I attended was with the member for Ballarat East in the other place, Geoff Howard, when I was able to congratulate a number of councils from across Victoria on establishing eco-living centres within their municipalities and their adjacent municipalities.

We did it in Ballarat because the Ballarat City Council has auspiced a great project by to establish a shopfront eco-living centre in Lydiard Street, Ballarat, a central location which we think will be very popular with people from the region who will come there to learn about the ways in which they can make their households more sustainable.

Mrs Peulich interjected.

Mr JENNINGS — We also provided funding to similar projects in Mildura and Wangaratta and to a coalition of councils in the south-east metropolitan area, and in fact they have open house. They might even find opportunities to invite naysayers such as Mrs Peulich to climate change programs, sustainability programs and eco-living centres. They are open and ready to engage with the community. I say to Mrs Peulich that if she wants to engage with the community on environmental programs, good on her. I am sure they would appreciate her coming down and joining them, because in fact it is a community effort to try to support these things.

The Victorian government understands the importance of working with local government and local communities on community-based solutions and innovations that share their load in relation to environmental sustainability. That is something we will continue to be committed to doing, regardless of how the head of the worm turns on the other side and regardless of the negligence and denial from the other side when it comes to engaging in these programs, because we on this side of the house are committed to them.

Housing: affordability

Mr KAVANAGH (Western Victoria) — My question is for the Minister for Planning, Mr Madden, and it relates to his often-expressed interest in home affordability. According to press reports, a decision last

year to relax visa rules has allowed special category visa-holders, some people who have never been to Australia, to now buy 'used' homes in Australia. Reports say this has resulted in up to 50 per cent of houses in Melbourne's best suburbs now being bought up, often several at a time, often by Communist Party officials of China, who may leave them empty for years on end, pricing Australian families out of the housing market. My question is: has the minister's department researched the effect on housing affordability in Victoria, both in terms of purchase price and rents, of this disastrous and outrageously foolish and destructive change to Australia's visa laws?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Kavanagh's interest in this matter. I do not want to get into a debate around migration, because I do not think that is necessarily a helpful debate to have, but I want to put a few things in context. What we do have, which is worth remembering, is an ageing population. The ageing population are really the baby boomers, and a number of us in this chamber are baby boomers and at some stage in the not-too-distant future — —

Mr Guy — Not all of us!

Hon. J. M. MADDEN — A few members of the chamber are still in short pants, but the vast majority here are probably baby boomers. They are not all baby boomers, so members can take that comment either as a compliment or not; they can take it the way they want to take it.

But I will get to the serious point. We have an ageing population which represents a big skills base, and that skills base is now moving through the population and leaving in a sense a wake, as a boat would; and that wake is in some ways a shortage of certain skills out there in the community. The skilled migration program is one way of trying to complement the skills base and the need in the community. It is important to recognise that the assisted migration in this country that is feeding into the population growth in this state is linked closely to filling the skills base for the future and for economic development.

I will come back to the point, but that was just to put the migration issues in context. I have heard anecdotal stories, not only from Mr Kavanagh today but from some others in the field who say there are, although not necessarily specifically the Chinese community or the Indian community, some people from other parts of the world who have recently acquired a fair degree of affluence because of the economic prosperity of their own countries and that they are conscious of security in their own country. One of the great things about Melbourne, Victoria and Australia is that in general terms — I know there will be arguments around safety and many other issues — they are very safe, and particularly if you have a degree of affluence. But in some of these other countries you may not necessarily have that reassured safety. The anecdotal stories I have heard is that in some instances some of these more affluent individuals are purchasing homes in the more affluent suburbs, as Mr Kavanagh mentioned, but bringing their families with them, contributing to the economy and also using the schools in the community.

Honourable members interjecting.

Hon. J. M. MADDEN — President, I am trying to give a generous answer to Mr Kavanagh's question, but I note Mr Kavanagh has highlighted the more affluent suburbs and that he indicated he believed some of the large homes may be vacant for some time. That is not necessarily specific to this group. It might relate to the issues he has mentioned, but there is nothing to stop people currently living in the community, who have resided in this country for many years, having a dwelling that they leave empty for one reason or another. There is nothing to stop people from doing that. What we do not do in this country is tell people how many people they should have in their house either. It is a very important consideration.

I am trying to do justice to Mr Kavanagh's question. I am conscious of anecdotal remarks in relation to this. I do not want to get into the population debate. I put it in the context that we have some of the most affordable housing in this country in terms of land release and new homes, but we also have some of the most affluent suburbs and some of the most expensive housing. What we do have is tension in the planning system because of a shortage of dwellings in some of those prominent or premium suburbs. If Mr Kavanagh is concerned that that is pushing up the price of the housing in some of those prominent or premium suburbs because some of the larger dwellings are lying dormant for some time, I will take that on notice and ask for advice from my department. I do not believe it is widespread, but if there is evidence that it is, I am happy to receive advice from my department in relation to these matters.

Supplementary question

Mr KAVANAGH (Western Victoria) — My question had nothing to do with people coming to live here and nothing to do with migration from China, and I say that as a person who speaks Chinese and who has lived in China for several years and represents the first party in Australia that argued against the White

Australia policy. My question was about people who are living in China who have never been here and who buy 5 or 10 houses in Toorak and Brighton and lock them up for 5 or 10 years, pricing Australians out of the market. My question to the minister is: what are you going to do about it?

Hon. J. M. MADDEN (Minister for Planning) — Thank you very much, Mr Kavanagh. There are a couple of presumptions in Mr Kavanagh's supplementary question, such as that there will be huge numbers of people priced out of Brighton and Toorak or those sorts of suburbs. I suspect there are already enormous numbers of people who are priced out of those suburbs, even before somebody might acquire or stockpile some of those homes. I suspect that is already the case. I am very conscious of making housing as affordable as we can for the broader community.

In relation to the anecdotal stories that Mr Kavanagh has relayed here today about somebody from the Communist Party in China stockpiling housing in Brighton or Toorak, I am not aware of any instances. If Mr Kavanagh has specific instances and can give some detail, I will be happy to respond to that accordingly.

I would not want to think this is widespread; I do not believe it is, but if the member believes it is widespread, I am happy to receive evidence for that. If it is warranted, I am happy to relay any of those other migration issues to my federal counterparts who have the responsibility for migration and the visa requirements. I am very conscious of that.

If the member's concern is that they are from a particular group, I am sure those matters will be looked at by specific federal colleagues. But if the member is making a case that it is a conspiracy by the Communist Party in China, then again I am happy to take that on notice. I have not had anybody else reflect on those matters to me, saying there is a Chinese conspiracy to infiltrate Australia and particularly the suburbs of Brighton and Toorak, but I am happy to receive advice on that. I know there is a degree of sensitivity in the history of the Democratic Labor Party in relation to the Communist Party.

Mr Kavanagh — On a point of order, President, is it in order for a minister to give a flippant response to a very serious question?

The PRESIDENT — Order! The fact is, and I stated it earlier, the minister can answer the question in any way he sees fit as long as it is relevant. Mr Kavanagh may well feel that the response is flippant; that is a matter of opinion. The reality is I cannot instruct a minister how they will answer if they choose to answer, as long as the answer is relevant. I think the minister's answer to the question is relevant. Is the minister finished?

Hon. J. M. MADDEN — No, not quite.

My response is in no way flippant. I give it great seriousness, and I am very earnest about it. But I am saying that Mr Kavanagh should present me with some specific evidence. This is the first I have heard of it, but I am happy to receive any evidence that substantiates it so that we can look at it more seriously.

Planning: Torquay North development

Ms PULFORD (Western Victoria) — My question is to the Minister for Planning, Justin Madden. Can the minister advise the house about his recent decision to facilitate the development of the civic and community precinct in Torquay North?

Hon. J. M. MADDEN (Minister for Planning) — I thank Ms Pulford for her interest in these matters in her region. I am also particularly mindful that what we are seeing, particularly along the Surf Coast and in Torquay and the broader region, is enormous growth. A lot of that is associated with the lifestyle benefits of living in provincial Victoria, particularly to enjoy the opportunities along the coast.

I have to declare an interest in the area in that I holiday in Torquay. My family has a holiday home there, so I am very conscious of the growth in the Torquay region. It offers a great lifestyle for those who want to live in that region. I know there are some members of the chamber who live in close proximity to the Surf Coast or spend time in that region over the summer. Because we have seen such substantial growth there is a recognition by this government, and of course by the Surf Coast Shire Council, that continued investment in infrastructure is needed to complement that growth.

I was recently able to announce that I have amended the Surf Coast planning scheme to facilitate the construction of a proposed $23.7 million civic and community precinct development in Torquay North. This heralds an exciting new era for the growing community in Torquay, particularly in Torquay North. Anybody who knows the Torquay region knows there is a fair amount of development to the edge of Torquay, and in a sense that is now moving across towards Torquay North where we are seeing many families settle in the area in quite substantial residential subdivisions. But of course these have to be complemented by additional facilities.

We will see in these new facilities a new municipal offices, a football oval, a soccer ground, netball courts, a sports pavilion and associated access roads and parking. It is particularly important that this amendment C46 be facilitated to ensure that the infrastructure complements the existing development and the continued development in the area. The amendment ensures the staged development of a 20-hectare parcel of land that is being purchased by the Surf Coast Shire Council for a civic and community precinct.

This planning decision supports increased community and recreational infrastructure, particularly for the younger members of the community. There are large numbers of families and lots of children down there, so it is particularly important that they are offered plenty of choice when it comes to recreation and amenity. This is just another example of investing in the future around infrastructure, making the relevant decisions that are necessary to ensure that Victoria is the best place to live, work and raise a family.

Sitting suspended 1.00 p.m. until 2.03 p.m.

SEVERE SUBSTANCE DEPENDENCE TREATMENT BILL

Second reading

Debate resumed.

Mr KAVANAGH (Western Victoria) — The purpose of the Severe Substance Dependence Treatment Bill is to make our current laws which deal with severe drug dependence comply with the Charter of Human Rights and Responsibilities. According to the department, at the moment the number of people who have severe substance dependence and who are given treatment which would be relevant to this bill are on a scale of only about 7 to 10 people a year. Given the scale of the drug dependence problem throughout our society, that seems to be an inadequate response. I know that is not the only response we have to this problem, but it seems to me that we need to do what this bill seeks to achieve on a much bigger scale. At the moment the bill would limit treatment of the kind described under the bill to those who are facing imminent death as a result of drug dependence. In my opinion — and I have argued this before — compulsory detoxification and treatment should be mandatory for all who have drug dependence problems. That does not mean they would necessarily be incarcerated, but the people who are affected by drug dependence would have options.

At the moment in Victoria there are many families who have teenage children affected by drug addiction. Even marijuana, which many people regard as a mild drug, can have devastating consequences, not only for the person who uses the drug but for all of his or her family. Many families in Melbourne and throughout Victoria are desperate for an option; they are desperate to find something that can be done for their children. It seems to me that we should provide an option.

Our law should really be that the legal consequence of possession or use of drugs is compulsory treatment and, if necessary, compulsory detoxification. This problem is likely to grow in importance. It is a huge problem already, but it is probably going to get worse. One reason to suspect that it may get worse is the prevalence of crystal methamphetamine hydrochloride, which is commonly known as ice and which has horrifying consequences for its users. One problematic consequence seems to be that it is extremely difficult to cure this addiction, but we certainly hope it is not impossible.

Those who have problems with legal drugs, including tobacco and alcohol, are also due every consideration and all the help that governments around Australia can give them. As I have said before, governments make huge amounts of money from taxes on tobacco and alcohol, and it should be compulsory for every government to spend at least a proportion, perhaps 10 per cent, of the money received from excise taxes on programs to help those who are addicted to alcohol or tobacco.

The bill before us deals only with the most severe situations of illegal drug use — those who are facing imminent death. Sweden, however, has cut its drug problem enormously. Its drug problem is on a scale that is a fraction of comparable countries. It has achieved that result by requiring people who are found to have drug problems to undergo drug rehabilitation. In Victoria, if a person is found down a back alley suffering from an overdose, typically the ambulance will come along and the drug user will be revived. When he wakes up he will often try to assault the people who have just saved his life, and he will stagger off to do it again.

In Sweden such a person is taken to a detoxification and rehabilitation centre and not released until their drug issues have been resolved. Perhaps we could have a much lower level of compulsion in the case of a teenager who is addicted to marijuana. Rather than putting a person on a residential program we might, for example, on request from family members and after consideration by a magistrate, be able to order such a

young person to undergo the equivalent of the driver re-education programs in the United States. Over several weekends they would be required to listen to lectures and watch films about the dangers of drugs and on methods of dealing with and overcoming addiction.

Everything we do to treat drugs will be expensive and will also possibly involve some degree of infringement of civil liberties. Of course we would prefer people to be as free as possible, but in certain circumstances a person's freedom may need to be curtailed for their own interests. Drug addiction is one of those circumstances, and we are doing people a favour when we intervene early. Early intervention is essential, and although it is expensive and may involve infringement of civil liberties, which normally we would be extremely averse to, for their sake we need to take such action. Effective help for drug addicts will be expensive and involve a lot of costs, but they are costs we have to pay.

Ms HARTLAND (Western Metropolitan) — The Greens are generally supportive of this legislation, even though we have a number of concerns. In our minds it is a tragedy to see people suffer and to see their families torn apart due to alcohol and other substance addiction. We have always advocated for more services and support for people who wish to fight addiction and live healthy, dignified lives free of the burdens and health costs that addictions carry. In my view the government has not given enough money for voluntary treatment, and there are currently very long waiting lists. The system is already under stress, and I do not know that it can handle this additional burden.

The government tells us there will be a small number of people who will qualify each year, but I am not convinced of that. Having worked in the field previously I know almost all my clients would have qualified under this legislation, so how do we know it is going to be only six or eight a year and not hundreds? Because the issues are so serious we cannot afford to fail with legislation like this. It is about saving lives.

When I was preparing for this debate I repeatedly asked the government for information about how much money it would budget for the additional services required under the bill. As Mrs Coote said earlier today, you cannot have someone in detox detention for 14 days and expect that they are just going to walk away. I am told there will be packages associated with this, but I have not been told how much money will be allocated and how that will work.

It is highly irresponsible of the government to take that attitude. If you are going to have these kinds of important programs that are supposedly about saving lives, you have to be able to show how they are going to work. I find it difficult to see how the government can ask us to believe it is putting this bill forward without any kind of costing just two months before the budget. The government's stated aim is to modernise the law and provide a more compassionate approach to the very small, in its view, group of people who cause serious and continuing harm to themselves and put their lives at risk through their drug or alcohol abuse. If that were to happen, the Greens believe it would be a wonderful achievement.

We would welcome a bill relevant to the way current treatment programs are designed to help people fighting addiction. However, we have concerns about various aspects of this bill, things that we believe will prevent the government's version becoming reality, and it is for that reason that we have proposed a number of amendments. We would be a lot happier about supporting this bill if we did not think it might accidentally do harm — accidentally but not without warning.

Non-government organisations have expressed a number of concerns about the bill, particularly around the human rights implications and the effectiveness of compulsory treatment. The bill would replace the Alcoholics and Drug-dependent Persons Act 1968. When that act was reviewed the Department of Human Services stated that there was no available evidence to support or reject compulsory treatment for non-offenders.

Turning Point Alcohol and Drug Centre used even stronger language in its 2007 report on compulsory treatment in Australia. Oddly this is the report the government used to justify increasing the 7-day treatment period from the old act to 14 days in the current bill. The report identifies a lack of solid evidence on compulsory treatment. It says that while there is some hearsay evidence that:

> … civil commitment for short periods can be an effective harm minimisation mechanism, there is little evidence to support its effectiveness in rehabilitating or achieving long-term behavioural change.

It appears the minister only read half of this sentence, the bit about there being some evidence and not the bit about the evidence being sketchy. In its submission to the Scrutiny of Acts and Regulations Committee, the Human Rights Law Resource Centre said you need higher standards of evidence to justify the significant limitations on human rights that this bill would bring about. This comes from a highly respected legal service

with particular expertise in the interpretation of legal rights laws, and the Greens agree.

This bill denies people with severe substance dependence the same rights as other Victorians. The bill provides for detention for periods of 14 days with enforced treatment of a person, and the treatment includes involuntary administration of drugs and sedation. This is seen by key interest groups as cruel and unusual punishment, and it contravenes the rights to liberty guaranteed by the Victorian Charter of Human Rights and Responsibilities. If a person refuses to be examined by a registered medical practitioner, and a number of other requirements are met, the bill empowers a police officer and a medical practitioner to enter the person's premises without their permission and to use reasonable force against the person in order to examine the person for the purpose of making a recommendation.

Clause 22(8), which provides for revocation of an order in very limited circumstances, introduces a reverse onus requiring the application to prove that the criterion for detention no longer applies to that person. Reverse onus clauses are always contentious because they infringe on the time-honoured presumption of innocence. Reverse onus should be used only in limited circumstances, and it has been traditionally used only in relation to lesser regulatory offences. In this case the reverse onus applies where an offence has not been committed. We have seen a number of reverse onus provisions from the government in the most inappropriate contexts, and this is certainly no exception. Even more worrying, the criteria which the applicant must satisfy to revoke an order do not match the criteria for which an order will be made. This severely limits an applicant's right to review.

The bill also raises issues of confidentiality. An applicant for a detention order, which in most cases will be a family member of the person, must attach a recommendation to their application from a registered medical practitioner. This recommendation will contain personal and quite possibly confidential information. Given that the person may or may not have known why they were seeing the doctor, the Greens have strong reservations about this information being passed from the medical practitioner to the applicant to the court.

Clauses 12 and 10 in the bill may also undermine trust in the medical profession. I do not think a person will be voluntarily seeking medical assistance in the future if, when they have a medical examination, the purpose of that examination is not explained to them and they are detained and treated for 14 days. The bill describes this detention as 'reasonable', but what is reasonable to one person may not be the same to another. Likewise it might destroy trust between family members, possibly eroding relationships a person may depend on for support and often survival. After the 14 days are up people who have been involuntarily detained will presumably need to be on priority lists for follow-up voluntary treatment. This raises more funding issues.

As Youthlaw pointed out in its submission regarding this bill, people who are ready for treatment will have the best chance in regaining their health and sticking to programs. Research cited by the Federation of Community Legal Services Victoria indicates that treatment failure rates are higher in programs with a larger amount of legally mandated clients. It also pointed out that retention is greatly influenced by the quality of a person's participation and their commitment to goals early in the treatment process.

I would like the minister in his reply to address the funding and treatment issues I have raised. How much money will be allocated for services for compulsory and voluntary clients, and where will it come from? What will the government do to reduce the waiting list for voluntary treatment?

Back on the topic of building positive and ongoing relationships between community and support services, we must also factor in the trauma that prior experiences of institutionalisation can bring to this equation. This is a major issue for the indigenous community. The Victorian Aboriginal Legal Service Co-operative is concerned that even though the minister spoke about taking into account social and cultural circumstances, there is no provision for this in the bill. I would like some assurance that provision will be made.

Similar consideration will need to be made for people with disabilities, people from linguistically diverse backgrounds and people who have had traumatic experiences in institutions. Regardless of how small a number of people the minister believes this bill will impact upon, these things need to be urgently clarified.

We also accept the concerns of non-government agencies that believe the definition of 'severe substance' and other definitions surrounding it, such as 'serious damage to the person's health' are far too broad. As I have said, from my previous work I would predict that this is not going to affect just six or eight people: it could be dozens, it could be hundreds. These definitions currently encapsulate a much larger proportion of substance-dependent persons than for whom the bill is apparently intended.

We have been assured by the minister that the provisions in the bill provide a limit to the breadth of the definitions, but this is not sufficient to alleviate our concerns, particularly because the bill expressly states that the rules of evidence do not apply to the court when making a decision to order detention and treatment.

Given the impact of this legislation on the human rights of Victorians, I ask the minister in his reply to provide strong, positive evidence to support the effectiveness of compulsory treatment and to justify the limits of human rights as protected in the charter. Given the strong opposition to the bill from experienced groups dedicated entirely to working with the very groups that this bill aims to assist, and the lack of evidence to justify compulsory treatment, I also ask that, should this bill pass, the government will monitor its implementation and undertake a review of the system that it establishes.

This has been an incredibly difficult bill for all the reasons I outlined. The *Stateline* program of last Friday night summed up the difficulties from both a legal centre point of view and a treatment centre point of view; and that somewhere in the middle we have to come out with a piece of legislation that not only protects the lives of people who are in the grip of substance abuse but also protects their legal rights.

Mr D. DAVIS (Southern Metropolitan) — The Severe Substance Dependence Treatment Bill 2009 is important legislation. I do not propose to make a long contribution today because my colleague Mrs Peulich has laid out the opposition's position. A bill of this nature affects the treatment of a small number of people. The substance of the bill is supported by the Liberal-Nationals coalition, and we note that it has been a very long time coming to this chamber. We welcome a number of changes in the bill.

Ms Hartland has foreshadowed a number of suggested amendments, and we will support the ones with respect to legal aid. We will also support her proposed amendments 1 and 4. The bill does not begin operation until 2011, and that is a long way off, so there is no great urgency attached to the bill. The bill can be brought into operation in improved form with Ms Hartland's amendments, and that could be done quite swiftly.

The government is suggesting that we delay the committee stage today; if there is a procedural reason why it wishes to do that, we are prepared to accommodate that suggestion, but the government cannot have it both ways: it cannot delay the committee stage and at the same time late in the day claim that the bill is urgent. It is not in any realistic sense an urgent bill, and it is more important to get right the details of the bill, the principles of which are agreed to by all parties in the chamber, I think. Let us take a little time just to smooth out and improve a number of small matters in the bill. Our role as a house of review is to look closely at the substance of bills and in so doing, improve their quality and the outcomes for the community; in this case, it is to improve the outcomes for a very vulnerable and important group in the community.

I pay tribute to the contribution made by my colleague Ms Wooldridge in the lower house and urge people to read her contribution, which I think is outstanding and lays out very clearly the opposition's position. I also indicate that Ms Hartland has taken steps to improve a number of the details of the bill, and we will be very prepared to support some of her foreshadowed amendments.

Motion agreed to.

Read second time.

Ordered to be committed later this day.

CREDIT (COMMONWEALTH POWERS) BILL

Committed.

Committee

Clause 1

The DEPUTY PRESIDENT — Order! Members may have some questions but I understand the committee will also be dealing with government amendments.

Mr BARBER (Northern Metropolitan) — I can probably deal with all my comments in one go. The Greens' residual concern was that the repeal of this bill was to occur without the federal scheme having yet come into force. We were proposing an amendment to close that regulatory gap, but having just been handed a copy of the minister's amendments, I see that they seem to be quite effective in achieving that and in fact look startlingly like my proposed amendments.

That being the case, we are quite happy to not move any amendments but to support the government's amendments, and I am sure the minister will attest that those amendments deal with the outstanding issue we

had with the bill. I thank the government for its approach in having a conversation with the Greens about this issue and making sure that all parties would be happy with the bill by tidying up that small issue.

Hon. J. M. MADDEN (Minister for Planning) — I assume that we do not want to prolong this stage, so it might be easier if I speak more broadly on the clause and address the specifics of the bill before moving to the amendments.

The bill as introduced provides for the repeal of part 4A of the Consumer Credit (Victoria) Act 1995 on the date to be proclaimed. Concerns have been raised that if this repeal comes into operation on 1 July 2010, being the date on which most of the substantive provisions of the national credit legislation will commence, there will be regulatory gaps in relation to the regulation of financial brokers.

The issue arises because the commonwealth has determined that certain provisions of the national legislation which require comprehensive disclosures by financial brokers before they enter into a contract to provide broking services to a consumer will not commence until 1 January 2011. The deferred commencement is aimed to ensure that the larger financial institutions with complex processes and IT systems have time to prepare for the new disclosure requirements. Concerns have been expressed by the Consumer Action Law Centre regarding the deferred commencement. These concerns have also been noted by the member for Malvern in the other place, Mr O'Brien, and Mr Barber during debate on the bill.

The government is of the view that the substantive conduct obligations under the national legislation which commence on 1 July 2010 will provide substantial protection for consumers dealing with financial brokers. However, to address those concerns that have been raised and to ensure passage of this important legislation, the government is proposing amendments to the bill that will delay the repeal of certain provisions in current part 4A of the Consumer Credit (Victoria) Act 1995 until 1 January 2011.

The amendments will not delay the repeal of the negative licensing scheme for financial brokers currently contained in divisions 2 and 3 of part 4A of the Consumer Credit (Victoria) Act 1995, because the commonwealth licensing system will replace them from 1 July 2010. It is essential that these divisions are repealed on 1 July 2010 to ensure that financial brokers in Victoria are not subjected to multiple licensing systems.

The amendments will, however, delay the repeal of divisions 1, 4, 5 and 6 of part 4A of the act until 1 January 2011. These divisions impose disclosure and related conduct requirements on finance brokers when dealing with consumers in Victoria. The retention of these divisions will retain the status quo in Victoria until 1 January 2011. After that time, financial brokers in Victoria will be subject to specific disclosure requirements in the national legislation. Based on the amendments before members, the clauses of the bill to be amended are 2, 20, 22 and 30.

Clause agreed to.

Clause 2

The DEPUTY PRESIDENT — Order! Mr Madden's amendment 1 is a fairly minor one, but in my view it is a test for his proposed further amendments 2 to 5 and amendment 9. Amendment 2 is also relevant to this clause.

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

1. Clause 2, line 11, for "This Act" substitute "(1) Subject to subsection (2), this Act".

2. Clause 2, line 12, after this line insert—

   "(2) Section 20(2) comes into operation on 1 January 2011.".

Amendments agreed to; amended clause agreed to; clauses 3 to 19 agreed to.

Clause 20

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

3. Clause 20, line 23, before "Sections 3," insert "(1)".

4. Clause 20, line 23, omit "Part 4A" and insert "Divisions 2 and 3 of Part 4A".

5. Clause 20, line 25, after this line insert—

   "(2) Divisions 1, 4, 5 and 6 of Part 4A and the heading to Part 4A of the **Consumer Credit (Victoria) Act 1995** are **repealed**.".

Amendments agreed to; amended clause agreed to; clause 21 agreed to.

Clause 22

The DEPUTY PRESIDENT — Order! I call on the minister to formally move his amendment 6 to clause 22, and I advise the house that in my view this is a test for amendments 7 and 8 as well.

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

6. Clause 22, line 14, after this line insert—

'(1) In section 37A of the **Consumer Credit (Victoria) Act 1995**—

(a) **insert** the following definition—

"**National Credit Code** has the same meaning as in Part 5;";

(b) in paragraph (a) of the definition of ***consumer credit***, for "Consumer Credit (Victoria) Code" **substitute** "National Credit Code";

(c) in paragraph (b) of the definition of ***consumer credit***, for "Part 10 of the Consumer Credit (Victoria) Code" **substitute** "Part 11 of the National Credit Code";

(d) in the definition of ***valuation fee***, for "Consumer Credit (Victoria) Code" **substitute** "National Credit Code".

(2) In section 37J(3) of the **Consumer Credit (Victoria) Act 1995**—

(a) in paragraph (a), for "Consumer Credit (Victoria) Code" **substitute** "National Credit Code";

(b) in paragraph (b), for "Consumer Credit (Victoria) Code" **substitute** "National Credit Code".'.

Amendment agreed to.

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

7. Clause 22, line 15, for "(1)" substitute "(3)".

8. Clause 22, page 17, line 1, for "(2)" substitute "(4)".

Amendments agreed to; amended clause agreed to; clauses 23 to 29 agreed to.

Clause 30

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

9. Clause 30, line 31, after "repeal of" insert "Division 1 of".

Mr GUY (Northern Metropolitan) — In relation to this and the other clauses which the coalition is supporting, I put on record that it has been obviously a constructive process for the coalition spokesperson on this issue, the member for Malvern in the other place, Mr O'Brien. I understand the Greens as well as the coalition and the government have worked to come to a position where we can put these amendments to the committee and actually have them passed.

I say particularly to the minister at the table that it is an insightful and beneficial way of conducting bill negotiations, to do them in this manner. These issues do not have to be sent off to other committees in this Parliament; we can actually resolve matters clearly, properly, transparently and openly in a process that is agreeable to all parties — —

Mr Barber interjected.

Mr GUY — No secret deals here — absolutely, Mr Barber. So I think the government, and particularly the minister at the table today, should actually note that, and note the process that has achieved what appears to be a consensual outcome for all the parties in this Parliament.

Hon. J. M. MADDEN (Minister for Planning) — Point taken.

Amendment agreed to; amended clause agreed to; clauses 31 to 60 agreed to.

Reported to house with amendments.

Report adopted.

Third reading

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

That the bill be now read a third time.

In doing so I thank members of the chamber for their contributions to the debate.

Motion agreed to.

Read third time.

SEVERE SUBSTANCE DEPENDENCE TREATMENT BILL

Committed.

Committee

The DEPUTY PRESIDENT — Order! I have had no indication from anybody wanting to make a contribution on clauses 1 to 3. Ms Hartland is not here to move her amendments.

Hon. J. M. MADDEN (Minister for Planning) — I am happy to accommodate that.

The DEPUTY PRESIDENT — Order! I understand that. We can deal with these clauses, but as soon as we do that we will move on to the clause the proposed amendment relates to, and the proposer of the amendment is not here.

Clauses 1 to 3 agreed to.

Clause 4

Mr VINEY (Eastern Victoria) — I ask that we report progress.

The DEPUTY PRESIDENT — Order! Why does Mr Viney wish progress to be reported?

Mr VINEY (Eastern Victoria) — The house has moved into the committee stage, and I have to say I was not informed that other negotiations are now happening in relation to some of the proposed amendments. At the request of the people who are proposing those amendments I have agreed that we report progress and come back to it as soon as we can. I apologise, Deputy President. That is as good as I can advise you.

The DEPUTY PRESIDENT — Order! I appreciate Mr Viney's advice. I might indicate that it is not helpful to the Chair of the committee or the staff of the Parliament if we are expected to follow a running sheet that has been provided to us and we are not aware that there are other matters under consideration. I thank Mr Madden for his assistance in the early part of the committee.

Progress reported.

STATUTE LAW AMENDMENT (NATIONAL HEALTH PRACTITIONER REGULATION) BILL

Second reading

Debate resumed from 11 March; motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr D. DAVIS (Southern Metropolitan) — I am pleased to rise to make a contribution to the Statute Law Amendment (National Health Practitioner Regulation) Bill 2010. This is an important bill in one respect; in another respect it is largely a consequential bill, as it is a bill that deals with the flow-on of earlier acts, including the one in December last year that dealt with these matters of a national registration system and the complexities of the national registration system. There is no great need to add a lot to what I said at the time about the broad principles. Mr Viney got agitated when I spoke for a long time, but there was a lot to cover. This bill is quite the contrary — there is not a lot of great new material here. It amends the Health Professions Registration Act and other Victorian acts dealt with by the previous bill. It makes transitional provisions and ensures that the Public Records Act applies appropriately.

It deals in particular with two boards — the Chinese Medicine Board and the Radiation Board — which will continue to operate until the new boards are formed around 2012. It allows for the Pharmacy Board to continue to operate until the Victorian Pharmacy Authority is formed in May, and it makes arrangements for its continued operation, if that formation is delayed. It amends the Victorian Civil and Administrative Tribunal arrangements to ensure that it can continue to have jurisdiction as per the current arrangements. It amends some definitions in other consequential acts, in line with the legislation enacted last year. As I said, it amends the Public Records Act. The other health boards will remain in operation to enable annual reports to be produced and tabled.

I have a couple of issues in terms of national registration. They have been well documented in previous contributions to the chamber, and it is not my intention to go over them. There are a couple of issues that I want to put on the record. There are some issues with certain professional groups such as midwives, and there are some other issues that surround psychologists, and I will come back and say some more about that in a moment.

I have a couple of specific concerns, and I would appreciate a response from the minister on those concerns. He may choose to do that in the summing up of the second-reading debate. One of those concerns is about registration fees. It seems to me there is a significant likelihood that there will be a long-term increase in registration fees for some health professions. I would like an assurance from the minister that that will not be the case, that registration fees for health professionals under the arrangements of the national scheme and the flow-on through this particular bill will not result in increased health practitioner registration fees beyond the consumer price index.

The costs to health professionals are passed on to those who use those services. That will increase the cost of health services and thereby reduce their accessibility. It is a significant issue, particularly for those health professions that are not reimbursed by Medicare, that there may be a significant increase in registration fees. I

would like an assurance on the record, if the minister is prepared to give that.

There is also the issue of how the assets and liabilities of the current boards will be dealt with: how they will be transferred, what the ratios will be and whether Victorian practitioners, whose boards are in a reasonably satisfactory state, will end up picking up the can for registration boards that are rolled in from other states. It would be wrong if there were, in effect, a cross-subsidy from Victorian registered health practitioners to the health practitioners of various types registered elsewhere in the country, who are soon to be registered under the national arrangements.

I also want to say something about psychologists, both the organisational and educational psychologists but particularly the organisational psychologists, who — with some justification — are concerned that they will not be treated fairly under this process. In truth a number of the psychologists are, other than by definition, not health professionals. One of the concerns, which goes back to the start of this process, is that they have been rolled into the whole health practitioner registration process.

It was much more manageable under the old system where there were individual boards and so forth, but it has become increasingly problematic for the organisational psychologists. They can see into the future that they are not going to be treated distinctly as the separate group that they legitimately claim to be. It is not a health profession within the normal meaning of the word.

They are professionals, they are highly qualified, and they deserve appropriate recognition. It is unfortunate that the government has not seen fit to negotiate properly with these groups. I have had a number of communications with members of the organisational psychology groups, and they put their case persuasively to me. I am persuaded that the government should seek to accommodate them.

That will become increasingly difficult when there is an entirely national framework. This may well be one of the last occasions when this Parliament can exercise its powers to get the outcomes those organisational psychologists desire. They have sought on a number of occasions to seek assistance with the drafting of amendments. I have to say there is enormous complexity in achieving their desires. Parliamentary counsel has made a sincere attempt to sort that out.

I am not at the moment persuaded that the solutions are there. My own view — and I am happy to put this on the record — is that the government has been a bit bloody-minded about this. The government should have in good faith — whatever the difficulties or idiosyncrasies of the particular requirements — been prepared to work with them in good faith to find a solution. A solution could have been found. It reflects poorly on the Minister for Health, and it reflects poorly on the government as a whole, that they have not been prepared to work to find an accommodation that provides a satisfactory outcome.

I am somewhat at a loss to know where to go from there. I do not have the drafting capacity, even with the assistance of parliamentary counsel, to personally provide a solution for that. The government has a huge tower of bureaucrats, including lawyers, who could straightforwardly work through some of these matters, and they should have done so.

I pay tribute to the work of parliamentary counsel, who have made an heroic attempt to work through some of these issues. With those points, I make it clear that the opposition will not oppose the bill.

I want to summarise this for the minister: we would like some clarification about the issue of registration fees, because ultimately that is a matter that will impact on the access of the public to health services; we seek some clarification of the issues around the wind-up of the old boards, their assets and liabilities; we seek an assurance that Victorian health registrants will not be disadvantaged in that national process; and finally we seek some genuine engagement from the minister on dealing with the issues raised by the organisational psychologists. If the minister were prepared to pause for a few days to sort that out, that would be a welcome outcome.

Mr KAVANAGH (Western Victoria) — I move:

That the debate be adjourned for one week.

The College of Organisational Psychologists has requested extra time to negotiate amendments to the bill. Given that this bill will affect people of that profession, it seems entirely reasonable to give them every opportunity to contribute to discussion on the bill. The government says there is no time to defer and that the matter is urgent, but this bill is part of a national scheme to be passed by each state. I understand so far neither South Australia nor Western Australia has passed not just this bill but the equivalent of the predecessor bill, which we passed last November.

Mr VINEY (Eastern Victoria) — The government is not able to support Mr Kavanagh's proposition. I am advised that the national scheme needs to be

implemented by 1 July and that a considerable amount of work needs to be done in the preparation period leading up to that. Therefore, we would severely limit the capacity of the department to get that in order, so we are not able to support Mr Kavanagh's desire to adjourn the debate. I appreciate that he has good reasons for trying to do that after some of the discussions he has been having with stakeholders, but unfortunately that is the position. We need to proceed with this legislation as expeditiously as we can in the context of still being able to hold a reasonable debate.

Ms HARTLAND (Western Metropolitan) — The Greens will not be supporting a deferment of the debate. While I understand Mr Kavanagh's reasons and appreciate the comments Mr David Davis has made about the College of Organisational Psychologists, I am not sure that its issues or its amendments could be resolved in any extra time gained by an adjournment of the debate on this bill. I would urge the government to negotiate with that organisation to see what can be achieved.

Mr D. DAVIS (Southern Metropolitan) — I understand the points made by the government. We would be prepared to have the Parliament come back next week, if that was required. The government could very well work this through. I understand Ms Hartland's point as well. In what I see as an on-balance decision, I think we would be prepared to support this motion for the adjournment of the debate, but I am just not convinced the government is genuine about providing any arrangement.

Mr Kavanagh's motion negatived.

Mr SOMYUREK (South Eastern Metropolitan) — I welcome the opportunity to speak in support of the Statute Law Amendment (National Health Practitioner Regulation) Bill 2010. This bill does several important things. It completes the legislative framework for the establishment of a national system of registration of health practitioners. It also ensures the continuing registration of Chinese medicine and medical radiation practitioners until the rest of Australia catches up in 2012.

This bill is mainly technical, as Victoria has previously enacted a raft of legislation to ensure that it is prepared for the move to a national system of registration and accreditation of health professionals. Last year we enacted the Health Practitioner Regulation National Law (Victoria) Act 2009. Previously the government brought 12 health professions under uniform legislation with the passage of the Health Professions Registration Act 2005. Following the consideration by the Council of Australian Governments of a national scheme, the Victorian Parliament then enacted the enabling bills in 2007 and 2008. This ensured that Victoria maintained a strong and up-to-date system of registration for our health practitioners until the move to national health registration. The Health Practitioner Regulation National Law (Victoria) Act 2009 provides for the regulatory framework for the national scheme for the registration of health practitioners.

The bill makes minor technical amendments to the Health Practitioner Regulation National Law (Victoria) Act, such as a regulation-making power. The bill also recognises the growing role of nurse practitioners by inserting a definition of 'midwife' and 'registered nurses' into the Births, Deaths and Marriages Registration Act 1996 and the Drugs, Poisons and Controlled Substances Act 1981 respectively. In respect of the latter act, the growing role of nurse practitioners is recognised with a number of amendments, including clause 37, relating to nurses holding drugs in the practise of their profession.

One of the important provisions in this bill relates to ongoing registration of Chinese medicine practitioners in this state. Victoria has led the way with registration of these practitioners. Following work in the 1990s, we passed the Chinese Medicine Registration Bill in 2000. This provided Chinese medicine practitioners with registration in line with that of other practitioners. In doing so it provided greater protection to the consumers of these services. Acupuncture is one example where Chinese medicine has entered the mainstream and is widely accepted, and indeed practised by some western medical practitioners.

Other states have been slower to take up registration of Chinese medicine practitioners, and they will not join the national scheme until 2012. Importantly for our practitioners and the communities they serve, this bill actually ensures ongoing regulation and registration in Victoria until 2012.

Questions were raised in the lower house, and also in this house by the Leader of the Opposition, with respect to this bill. On behalf of the minister I will, if I may, just go through some of the points the minister wishes to put on record. In regard to issues raised about fees, once the national scheme commences there will be standardised national registration fees for each of the professions or divisions of the professions. Presently there are fee discrepancies between the eight states and territories. However, Victoria's fees sit at about the mid range of fees charged by practitioner boards in other jurisdictions. It is therefore unlikely that there will be a significant increase to fees for registrants in Victoria

under the scheme. National boards will operate on a self-funding basis. The main source of revenue for the national boards will be registration fees.

One of the key purposes of the national scheme was to reduce duplicated structures and functions of health profession boards across Australia. While it is likely that there may be reduction of revenue for some national boards due to each registrant only having to pay one fee, there will be some national cost-saving benefits through the national scheme. It is expected that economies of scale over time will reduce overall running costs for national boards.

On the issue of the assets of state boards under the national scheme — as I said, the Leader of the Opposition in this place raised these questions, as did members in the other house — Victorian boards that regulate professions entering the national scheme on 1 July 2010 are required to complete a services, assets and liabilities transfer agreement, otherwise known by the acronym of SALT. The SALT agreement is based on the financial principles that there will not be cross-subsidisation between professions, and any assets transferring from existing boards will be abrogated at a professional level for each professional group. Services, assets and liabilities will vary by boards but will include unearned fees that are held by boards, any fee that extends beyond 1 July 2010, and funds to cover current liabilities in relation to staff and ongoing complaint cases.

If there are funds left over, after the transferred amount has been agreed the boards may enter into discussions with the Minister for Health about the arrangements for the balance of funds remaining, in the interests of their health professions.

Finally on the issue raised by the opposition over its concerns about organisational psychologists, the following points should be noted: organisational psychologists are captured under the national law; the diversity of the psychological profession and that of other health professionals has been accommodated in this legislation; and the unique differences amongst the psychology profession are well managed by the psychologist registration boards in Victoria.

For example, where there is a complaint made regarding an organisational psychologist, advice is sought from other organisational psychologists in relation to the reasonableness or otherwise of the issue raised. On the rare occasion that these matters proceed to a more formal hearing or go to the Victorian Civil and Administrative Tribunal, psychologists with expertise in organisational psychology will be included on the panel. These principles will continue under the national scheme. I am advised that there are two members on the current Victorian boards and one on the Psychology Board of Australia who are experienced in the field of organisational psychology.

In conclusion, this government has been working with the organisational psychologists. Their organisation has met with the minister's office on multiple occasions. Given that the amendments were given to the department yesterday, it is clear that many of the amendments are not workable in the context of a national scheme and would remove organisational psychologists from the regulatory requirements of the scheme in this state only. With that, I commend the bill to the house.

Ms HARTLAND (Western Metropolitan) — I will make only a few remarks, because I think David Davis and Mr Somyurek have both summed up this bill really well. There are a few points I would like to make. The fact that caught my attention was that nurses who work in country hospitals and in other situations will be able to prescribe a limited number of drugs. This is a really good recognition of the skills that many nurses have. It is especially an important way of strengthening rural health.

I think David Davis has worked quite hard with the organisational psychologists, trying to find a way of incorporating the amendments and their concerns into this bill, but I think in the end it was not going to be able to be achieved. But I would encourage the government to continue working with the organisational psychologists to try to find ways of addressing their concerns.

With those few remarks, I indicate that the Greens think this is really good legislation: it is bringing things together, it is a follow-on from other legislation: and it is an excellent bill.

Motion agreed to.

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

Third reading

Motion agreed to.

Read third time.

ANNUAL STATEMENT OF GOVERNMENT INTENTIONS

Debate resumed from 9 March; motion of Hon. T. C. THEOPHANOUS (then Northern Metropolitan):

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

Mr VINEY (Eastern Victoria) — It is with great pleasure that I rise to speak on the annual statement of government intentions, which is the second statement since the elevation of John Brumby from the office of Treasurer to that of Premier of Victoria.

He has brought a great record to Victoria. His record as Treasurer of Victoria is of strong economic growth and the development of a resilient economy, an economy which has seen significant jobs growth and significant investment across a range of industries important to this state. The hallmark of the Brumby-led government in Victoria is a commitment to a strong, sound economy with high attention paid to social fairness and justice, and with a leader in the Premier who is able to respond sensitively to urgent community issues.

We have seen over the last 10 years a commitment to making Victoria a fairer place where there is a commitment to the important social programs that state governments are about — for example, the government has a commitment to rebuilding every government school in this state; and a commitment to making sure that our education system is as strong as it can be, which has seen the introduction of thousands of additional teachers into the system. The government has made a commitment in relation to our education system that is rebuilding schools and employing more teachers.

We have seen a massive multibillion-dollar investment in our public hospitals during the course of this government and the way in which we will continue that commitment is outlined in this annual statement. As I have outlined to the house before, we have seen the commitment to rebuilding hospitals across Victoria, in particular country hospitals. I remember that when I was Parliamentary Secretary for Health in the first term of this government there was a need for government to take back control of the Latrobe Valley hospital. That hospital is now developing as a major regional facility, having been privatised under the previous Kennett government. It is now back in public hands and providing outstanding service to the Latrobe Valley and Gippsland communities, including for the first time in that region some very important and comprehensive cancer services that have not been available to people in Gippsland; people had to travel to Melbourne for those services.

We have also seen the commencement of the largest community health centre project in Victoria under construction in the Latrobe Valley, a $21 million project that is a significant investment in our health and hospital system. This is a system that is co-dependent on a range of comprehensive health-care areas — for example, our acute health services through the public hospital system, community and public health services through things like the community health centre that we are developing in the Latrobe Valley and the complementary health services that are provided throughout both the public and private sectors.

As a government we have made some fairly significant commitments in the area of environmental management and dealing with issues such as climate change that are confronting us as a society. We have seen significant investments in my electorate in areas such as the opportunities for new technology developments in the coal industry and innovative investments that have seen the construction of demonstration plants for the capture of carbon. As I have said in previous debates, what we do know is that the storage of carbon is relatively straightforward and the technologies for the storage of carbon underground exist. What has always been difficult has been the capture of carbon from power plants, but what we have seen from some of the demonstration plants in the Latrobe Valley is that it can be done. It is technically complex and expensive, but it can be done. The task now is to develop more efficient and more cost-effective ways to capture the carbon so that it can be stored. If we are in a position to succeed in the capture and storage of carbon in the earth then the coal industry in the Latrobe Valley will have a future.

The coal industry is sometimes regarded as not being that popular in modern times and the historic impact of the coal industry on our atmosphere in my judgement is undeniable, although I know that others might deny it.

Mr O'Donohue interjected.

Mr VINEY — Senator Joyce might be one. My view on this subject is that, ironically, if we can find efficient ways to capture and store carbon for the coal industry in Victoria that can be one of the solutions to the greenhouse challenge. I say that because the world needs to move from an oil-based economy to an electricity-based economy. Our greatest resource in Victoria for the production of electricity is unquestionably our coal resource. Therefore we need to be able to produce electricity with that resource, if we can, in an energy-efficient and clean way.

There are, of course, other developments in the area of energy and the shift in what needs to occur to move from the oil-based economy we have had in the past to an electricity-based economy and they largely revolve around solar and wind generation. There are other opportunities potentially in tidal and other forms of renewable energy, but we have been making progress.

Sometimes in Gippsland we have had difficulties with the impact of the wind energy industry on local communities. Personally I do not find windmills unattractive; I find them quite interesting and attractive pieces of technology, but other people struggle with that. As we need to move into those areas, which are essentially landscape and aesthetic concerns, I suspect we will participate more and more, but I think when we transfer the way we produce our energy in this state, the community will adjust to that transfer.

I also want to make some comments on water. For many years to come water will continue to be a major social, community and political issue. If some of the predictions on climate change are correct, water will be treated as an even more valuable resource. I am sure many members will agree that as children we certainly did not have the same views about water as we have today. You do not see kids running through sprinklers any more, and I think that is a shame, but it has become a necessity. If I think about the way we used to irrigate the paddocks on our farm, I am somewhat horrified. It certainly would not be able to be done today.

I remember shifting irrigation pipes through ankle-deep water on the paddocks when we wondered how much more water was needed on the paddocks but still kept pumping it on. Those old technologies are very much a thing of the past. I remember on one occasion we pumped so much water out of the creek that it got dangerously low. There were very different attitudes to the treatment of water 45 years ago to what we would perhaps regard as in any way acceptable today.

It is commendable that in our community we have had a significant shift in approach and attitude. It is commendable as an outstanding community effort that we have reduced water usage so much in our community on a per capita basis, and an important element of that has been the leadership shown by the Brumby government in making sure that the reduction in water usage has been so significant across the state.

Those initiatives started right back in our first term in government. Some of the water initiatives started very early. They include the Wimmera–Mallee pipeline, a fantastic piece of infrastructure which at the time was not supported by the former federal government but has ultimately become symbolic of the sort of development that needs to happen. Now the infrastructure development needs to happen.

With the northern irrigation project, a commendable initiative of the northern irrigators, substantial amounts of water are being saved from inefficient systems losing water through evaporation and other losses. We will be able to ensure that that saved water is shared across the environment and with the irrigators themselves, and that we bring some of the water to Melbourne.

I know some of those things are controversial, and there are people who have difficulties with them, but they are examples of common sense and collective thinking where savings and benefits can be delivered and shared equally between the economic forces of life. The irrigators need to grow their produce, there are environmental factors in returning water to the environment and the rivers, and there is a need to deliver water to the people of Melbourne. That is where it is needed, and the people of Melbourne need to bear the lion's share of that funding both through their portion of the government's contribution to the project and through the direct funding that has been provided to the project through Melbourne Water.

The other area I would like to make comment on is the preparation for bushfires that is outlined in the statement of government intentions and the continuation of the government's response to the bushfires of Black Saturday last year. I opened my contribution talking about the great leadership of the Premier in making sure that we have a resilient economy in order to sustain the social investments that are necessary to make Victoria a great place.

There is little that would be more symbolic of his leadership than his immediate response to those tragic events in February last year. He was in Bendigo at the time. He showed empathy with the community in its tragic loss. They were important symbols of his leadership of Victoria, but undeniably the great element of the Premier's leadership in this was his capacity to cut through and deliver the social, community, economic and infrastructure support required as a response to the fires.

As the leader of this government the Premier responded to the tragic events around those fires with an extraordinary effort as both a Premier and a man, and I for one give my thanks as a person who saw the devastation pretty much firsthand on that day and the days afterwards. I want to offer my thanks to the Premier for that leadership and for the incredible work that he did during that period.

I have said this in other debates, but it is worth repeating: I offer my sympathy and support to the people who were so affected by those fires. In my public life I have dealt with many issues, but I have to say that dealing with the tragedy around those fires — talking to people who lost their homes, everything they owned and in many instances family members and close friends — was among the more moving experiences I have had in public life.

Just last week I bumped into an old university mate who lost his home, and he was telling me the story of it. The devastation and speed with which the fires struck Christmas Hills was quite extraordinary. On that day I sat on the front veranda of my house and saw the fire go from Labertouche to Drouin West in I reckon 10 to 15 minutes. It was quite an extraordinary sight.

The last thing I wish to comment on is the government's initiatives in community safety. We have had a number of high-profile public issues around community safety, particularly around night spots where there has been far too much violence in our community. Some people challenge the claim that it is alcohol fuelled. I have no doubt that it is alcohol fuelled, and the government's response has been a strong response. It has been a response based on having invested substantial amounts of money, particularly in law enforcement and boosting police numbers in this state. It has also been a response that has needed some stronger legislation; that has occurred in relation to the carrying of knives, and other elements have been indicated in this government statement of intentions as being forthcoming.

The response has also been reinforced by the government's initiative in relation to the respect agenda. This statement also outlines that initiative. It is important for us as a Parliament and a government to say to our community that at the core of a safe and decent society is the need for respect. As the statement outlines:

> Respect for ourselves, others and our community is the key to a healthy, friendly and productive community.

I say, 'Hear, hear!' to that. If we do not have that level of respect permeating our community, no set of laws and no amount of police presence on our streets will make our community safer and fairer.

The statement of government intentions comprehensively outlines the government's response to many of the challenges that face us as a community. There will always be challenges in society. There are things that change, but the fundamentals of the government's approach are having a strong economy and using that as a basis to build a sound and high-quality health and education sector; the development of fairness in terms of supporting those who need a hand; and also ensuring that we have a safe community with an overarching emphasis on the need for all of us to have some respect for ourselves and for others. These are fundamental principles, and they typify a good government doing good things led by a good man.

Mr O'DONOHUE (Eastern Victoria) — I am pleased to make a contribution to the annual statement of government intentions, which was first released in February 2010. This has been an elongated debate, and no doubt will continue to be so.

The first contributor to this debate was Mr Theophanous, who is no longer a member of this place, and I would like to make a comment about his contribution. During the 2006 state election campaign Rosie Buchanan, the then Labor member for Hastings in the other place, ran an aggressive campaign against the then Liberal Party candidate, Neale Burgess. She ran a campaign about Mr Burgess wanting to build a nuclear power plant on the Mornington Peninsula or in the electorate of Hastings. The same campaign was rolled out against the federal member for Flinders, Greg Hunt, in the 2007 election.

Mr Theophanous's contribution was most interesting for his support of nuclear power, because during the 2006 state election campaign he was the Minister for Energy Industries and Resources. It is disappointing that the minister made those beliefs very clear in his contribution to this debate but as a member of cabinet was happy for one of his members in a marginal seat to run an untrue scare campaign against the then Liberal Party candidate. I make that observation about the speech made by former member Mr Theophanous. Mr Murphy has made his inaugural contribution to this place, and I welcome him to the Parliament.

As other speakers have observed, this is the third in line of the statements of government intentions released by the Premier. The words in here sound very good, but in general there is a disconnect between the reality of life for many Victorians and the spin and the glossy material produced by the government. There is a disconnect between the reality for many people and the way the government sees things, and that is typical evidence of a tired government that is out of step with community expectations.

With the Minister for Public Transport in the chamber, it is worth highlighting a couple of public transport projects. In previous debates in this place and other

forums, there has been debate about the government's transport plan — the centrepiece of its strategy for solving Victoria's transport problems. As I have highlighted to the minister previously, the definition of the words 'short term' appears to be very fluid. Here we are 16 months since the announcement of the plan, yet many of the so-called short-term projects are nowhere to be seen. Many of them will have construction time frames of years. How can the public have any confidence that long-term projects will be delivered in accordance with anything like the timetable or the budget estimate when short-term projects take so long?

A recent example, not in the portfolio of the Minister for Public Transport but in the portfolio of the Minister for Roads and Ports, was a couple of weeks ago when the Minister for Roads and Ports came out to Berwick and announced that 5 kilometres of wire rope barriers would be erected. After a big fanfare — an announcement to the media, a press release and the like — it became apparent later on that that work will not start until October, that it is going to take up to 6 months to construct the 5 kilometres of wire rope barriers and that the project will not be fully completed for approximately 12 months. This is not classed as a major project — it is worth only approximately $1.5 million of capital cost — so why would the government make the announcement now if construction is not going to start until October, and why is it going to take so long to build such a relatively short-term project?

We have had problems with similar projects, due to the liquidation of Akron Roads. Despite several weeks now having passed, many of its projects are idle, in a semi-completed state. Whilst it is not necessarily the government's fault that Akron Roads has become insolvent, there seems to be a long delay in picking up where those projects have been left and completing them.

The minister is aware, but should be reminded again, of some of the outlandish — in hindsight — promises that Labor made in opposition in 1999 about the anticipated cost of some projects. The Cranbourne East railway station is perhaps the best example. It was estimated to cost a couple of million dollars, but now it has become a medium-term project in the Victorian transport plan and has been costed at $200 million. The price inflation of costs associated with this government is absolutely outrageous.

The South Morang rail extension is another example. As Mr Guy has often observed in this place, you would think that the spikes being used to build the railway were gold-plated at the cost the government has estimated, especially when compared with the original price estimates.

To pick up on Mr Viney's comments with regard to the respect agenda, Mr Madden has made comparisons between the respect agenda and the campaign to introduce seatbelts into cars in Victoria as part of an effort to reduce the road toll. That campaign to introduce compulsory seatbelts was based around legislative change, a strong public awareness campaign and hard data about collisions and injury impacts. The respect agenda is full of well-intentioned words and general concepts but is very light on when it comes to specific actions, outcomes and measures. It is a hollow agenda at best. With the minister in his current state, one has to wonder whether this sort of responsibility would be better handled by someone else.

I do not wish to dwell too much on the statement of government intentions, because previous statements have demonstrated that the anticipated legislative agenda has not been met and that the goals of the statement have not been met; therefore I wish to turn to the opposition's response to the statement.

This annual statement of government intentions is really one of the few opportunities we have in this place to talk about alternative visions across a range of portfolios and government responsibilities. The opposition has used this opportunity to review the impact of a decade of Labor on Victorian families, and unfortunately the report for the government and for Victorians is not very good.

When it comes to Labor's taxes, charges and interest bill, they are all growing. When it comes to the standard of state government services, they appear to be deteriorating. There is pressure on household budgets, notwithstanding the record revenue the government is reaping from Victorians. This is evidenced by the 26 new taxes and charges that the government has introduced or extended throughout its term.

Notwithstanding the growth in revenue, total state public sector debt is forecast to soar to $31.3 billion by 2013 — an increase of over 700 per cent compared to 2007–08, leaving a burden the equivalent of nearly $6000 for every man, woman and child by 2013. Old Labor is back!

At the same time we have seen services deteriorate. Our health system is suffering from a downward trend in treating elective and emergency patients in a timely and clinically appropriate manner. Fewer and fewer patients can rely on the public hospital system. Our hospitals, nurses and doctors are overworked and underresourced.

The most recent analysis by the Organisation for Economic Cooperation and Development shows that Victorians have the lowest base skills level of the mainland states and that we spend less on each student than any other state. Parents are voting with their feet, and the private education sector is growing enormously as parents are abandoning the state education system.

On our roads people are taking longer to commute. Average commute times are growing, the measure of people's commute speed is decreasing, and average speed is decreasing. We have had failed projects such as myki chewing up hundreds of millions of dollars of precious taxpayers money that could have been used for other services.

We have a law and order crisis in Victoria, and nothing demonstrates that better than the City of Frankston feeling the obligation to its ratepayers and its community to go out and hire private security guards to fill the void left as a result of not having enough police officers on the beat. My heart goes out to former inspector Gordon Charteris, whom I met whilst he was the inspector for the Mornington Peninsula. He has now retired from the force.

We have a situation of deteriorating services, higher taxes and growing debt, and this at a time when workforce growth will diminish with the ageing of the population. The federal government has now commissioned three intergenerational reports, and whilst the evidence from those intergenerational report shows that the birth rate is increasing and that the number of workers per retiree, or persons aged over 65, is not as bad as first predicted, the Treasury projections do show that the proportion of people aged 65 and over will rise strongly over the next 40 years from 13.3 per cent to 22.4 per cent. The 5 people of working age to every person over 65 will halve to 2.7 people in 2049. To me this is the biggest challenge facing our community going forward: the pressure that will be borne as a result of fewer taxpayers, fewer workers, paying for and caring for more and more retirees.

The last decade of economic growth, save the global financial crisis, really was an opportunity to save for the future, to plan for the future, to develop the services to cater for that changing demographic. It was an opportunity to ensure that the retirements of the baby boomers, who have worked hard throughout their lives, would be assured and that the next generation would not be left with the heavy burden of providing for their care. The previous federal government recognised this challenge. It recognised this challenge by running strong budget surpluses, paying off commonwealth debt and investing in the Future Fund and other new vehicles.

Of course the current federal government has done its best to unwind that good work in a very short period of time, and at a state level Victoria, like most of the other states, has similarly borrowed and wasted money and indeed put at risk the prosperity of the next generation whilst also making it harder for the current generation of baby boomers to retire comfortably knowing that the services they will need in their retirement will be there.

Australia's modern history in general is one of growing gross domestic product per capita, growing affluence and better access to services, but the expectation of each generation being provided with a better future than the next is now in question. The prosperity of the last decade has been wasted by this Labor government. The consequence of that waste — of the federal government's current waste and the debt that state Labor and federal Labor are accumulating, which will one day have to be repaid, from a diminished taxation base by a smaller number of workers as a proportion of the population — is an indictment of the way Labor has governed. It will impose a heavy burden on future generations, on our children and on our children's children. It is not good enough.

If you take a long-term view, if you take a step back from the day-to-day minutiae and day-to-day issues that occupy much of our time, you see that this is the biggest legacy of this government. It is the government's failure to make the most of the prosperity of the last decade, its failure to invest in critical services, its failure to pay its own way and its reliance on debt as we go forward. That debt will be repaid by future generations, which will have diminished capacity to pay because there are fewer young people now and there will be fewer young people in the future as a proportion of the economy.

Whilst, as I say, we often get caught up in daily issues, in weekly issues or things that consume us from month to month, in the long term this will be the no. 1 failure of this government, and the no. 1 challenge for future governments will be to ensure that our children have the same prosperity, opportunity and access to services that the baby boomer generation and subsequent generations have had until this point.

The statement of government intentions is a great disappointment. It symbolises a government that is tired and it symbolises a government that is out of touch with reality. We welcome the opportunity to make a contribution and highlight these failings of the

government and we look forward to the election in November.

Mr SCHEFFER (Eastern Victoria) — Unlike Mr O'Donohue, who made it very clear that he is unimpressed with the annual statement of government intentions, I rise to signal to the house that I am very impressed with it. Members would be aware of course that this is the third such statement, and ever since the first one I have been a very enthusiastic supporter of the annual statement of government intentions; it is a document that I look forward to each year. These statements help keep the government on track and they help inform the community about the government's priorities and the key pieces of legislation and policy initiatives for the year ahead. The statement acts as a discipline, it acts as an audit, and each subsequent statement shows what the government has been able to do and also what it has not been able to achieve in the previous year.

This is part of open, accountable government. The community and members of this Parliament have acknowledged the government's achievements and, as Mr O'Donohue has, have taken advantage of the statements to take the government to task over what still remains to be done. That is part of the purpose of the statement. It also provides an opportunity for the government to present a broad account of where the government is positioned — in other words, the state of the state.

The 2010 statement reflects on the economy and jobs, on the improvement in services and their delivery, on the importance of making Victoria a fairer state through supporting disadvantaged individuals and communities, on the necessity to focus on the environment and on the impact of climate change. Underpinning these broad themes the statement identifies job creation, implementing the bushfire strategy, community safety, managing growth in both Melbourne and regional Victoria, and maintaining the momentum on climate change. That is a critical issue, as is water security in an increasingly dry region.

Mr Viney has covered a very broad scope of what is in this document. I would like to confine my remarks to chapter 8 which deals specifically with the environment and climate change, an issue that has been at the forefront of public concern, especially since the Copenhagen conference at the end of last year. When Victorians look at the 2010 statement of government intentions they will be encouraged to see that chapter 8 of the statement says 'Climate change is the defining challenge of our times'. The statement says it is imperative for Victoria and the nation to take immediate action to avoid the worst effects of climate change and that the climate change debate will dominate 2010 at both national and international levels.

I am delighted that the Victorian government has not stepped back on this issue, despite the commentators who have chosen to say that the momentum to decide on a carbon emission scheme has stalled both at home and internationally in the aftermath of the Copenhagen conference. The statement of government intentions shows that the Victorian government is not going down that path and that we are determined to address issues relating to dangerous climate change. It is true that the Copenhagen conference failed to meet the expectations of many people for a binding international agreement that was fair, that was equitable and that would set the planet in a direction that would avoid the worst impacts of climate change.

Many people were very disappointed that their expectations had not been met, and media reports over the summer period were dominated by stories of what had not worked. For a while it was very difficult for many of us to get some perspective on what had in fact happened. One thing was absolutely clear: the objective conditions relating to climate change that existed on the day before the Copenhagen conference commenced were no less true on the day after the conference had concluded. The fact that certain expectations had not been met had nothing to do with the fact that carbon emissions are increasing and that they are negatively impacting on the health of the global environment.

Professor Ross Garnaut gave a keynote address in January this year to the annual conference of Supreme Court and Federal Court judges. I am sure many members of this chamber have either heard or looked at his offering. I think his address provided much clarification. It certainly helped me to better understand the significance of the Copenhagen conference.

He said he agreed that the conference itself was a fiasco, but pointed out that we should keep a focus on the discussion that led up to Copenhagen, that there was value in that discussion and that there is value in the consequences, even if that particular forum left something to be desired. He also noted that it is still possible to achieve effective global mitigation with all major countries making substantial contributions, despite the fact that the conference itself was flawed.

The failure of the Copenhagen conference was its inability to formally sign off on practical and binding measures to reduce the impacts of climate change and carbon emissions, but this inability was structural. He talked about the complexity of having that many nation

states in one forum attempting to work out such a complex deal.

The aspiration of those participating states signing off on that single set of binding agreements is a hugely complex matter. To do that through a single process was probably always a big ask; in retrospect it was probably unachievable. The accord is maybe as far as we can expect to go in an international forum of that type. However, in summary it seems to me that the success of the conference was that there was an agreement, firstly, to halt any increase in global temperatures to below 2 degrees; secondly, to develop a global monitoring and measuring system — people will be aware that prior to Copenhagen there was no such agreement; and thirdly, to provide financial support to reduce emissions and to strengthen adaptation strategies in developing countries.

At the conference many countries, and especially developing countries, put forward new proposals for constraining carbon emissions. Members will remember that China, Brazil, Indonesia and South Africa offered considerably more than their full shares. The other thing that is worth noting is that the USA is now, under the Obama government, actively engaged in climate change debate. The importance of that really cannot be underestimated.

Notwithstanding all of those qualified successes, that the President of the United States of America is severely constrained by the US Congress. As Professor Garnaut pointed out, this country can support the United States government by going as far as it can in developing its own mitigation policies.

It is critically important for countries such as Australia to continue to act on climate change and to implement the agreements contained in the Copenhagen accord. The Victorian and federal governments are doing this in the most effective and inexpensive way through an emission trading scheme. Put simply, we charge the biggest polluters and we use that money to compensate the community for any costs that flow through to it; we use the money gathered in that way to invest in energy-efficient measures. That is basically, as I understand it, what a cap-and-trade system is: it is a market-based scheme that caps pollution.

I guess the worry is that since Copenhagen, shrill voices have been raised to deny dangerous climate change, and that has distracted a number of people into what I think is a fantasy in which they want to wish away what they cannot bear to confront. Professor Garnaut put it well in his address to the conference of judges when he said, 'It would be imprudent beyond the normal limits of human irrationality to rely on the thin air of dissent rather than the mainstream science'.

The federal opposition, as we all know, has put forward its own direct action climate change plan as a cover, because it cannot go into the election later this year without some sort of plan. In that context, any old plan would do. As far as I can tell from looking at it, the federal opposition's proposal is to reduce carbon emissions by cleaning up farm practices such as soil carbon sequestration, working on power stations, cleaning up coalmine gas and so forth. That is really the extent of it, with a few other bits and pieces.

The problem is that this approach, while it is simple and, as I said earlier, seductive, is absolutely inadequate for the extremely complex matters that need to be addressed. Those matters involve choices about a wide range of new and emerging technologies, about how and where to invest. There are so many factors at play that it beggars belief that a government agency or a single instrumentality could make the appropriate decisions in that kind of scenario.

In an interview on *Lateline* earlier in the year the Garnaut described the opposition's policy — or he implied it; while he would not specifically name it, that is what he meant — as a central planning model that was more reminiscent of the Soviet approaches of the 1960s. He said that only a market mechanism is capable of processing the vast complexity of information and input that is at play in this effort to reduce the level of carbon emissions.

Chapter 8 of the statement of government intentions, which deals with climate change and the environment, needs to be understood — as the government understands it — in this wider context. Victorians will be reassured that Victorian Labor and Labor governments right across this country are absolutely not resiling from the challenges of climate change. The statement affirms that the process that our government has followed since the 2008 summit in this Parliament, through the green paper process and the white paper that will be released this year, is all subject to the final design of the carbon pollution reduction scheme.

Both the white paper and the climate change bill have been unavoidably delayed because they depend on the complex resolutions in the Senate, which are being blocked by the opposition. There is a kind of a cheek in coming back into this Parliament and saying that we failed to progress our climate change legislation when the Liberals at the federal level are the authors of that situation. It is a nonsense.

All that uncertainty — and this is the serious part of it — has an impact on how we operate, how we run this state and on the confidence that business can have in moving forward around the various technologies. It is impacting on Victoria's Future Energy statement as well. The intention is that that statement will set out how we will make the transition to a more sustainable energy supply.

Chapter 8 also deals with the government's priorities in the areas of waste reduction, which members would know from newspaper reports today we are moving on in a strong and forward-looking way; water; the protection of the natural environment; and the management of the state's mineral resources.

I turn to the state's mineral resources. The area of Gippsland and the Latrobe Valley in particular has special interest in the whole issue of the future of coal and the debate around fossil fuel. It is a very big issue in the Latrobe Valley and across Gippsland, so I should say something about that in this contribution.

New low-emission coal technologies, including carbon capture and storage and coal drying, are developing and are attracting national and international investment, and huge interest. Victoria is one of the leaders in the development of these associated technologies. Investment needs to be made, as that is being made in the other uses of coal, such as the production of liquid fuels, fertilisers and gases.

The global demand for products like this and for the technologies that are behind those particular coal products is likely to grow into the future. Victoria's future prosperity is hinged on those sorts of skills and that knowledge and technology being developed. This is why the government established and invested $370 million into the energy technology innovation strategy, or ETIS as we call it: so that industry and research can be better supported. We have had promising results in the development of carbon capture and storage technology, which has the potential to help cut greenhouse gas emissions and create new job opportunities.

In conclusion, the government is aware, as I and Mr Viney are both aware, that Gippslanders are concerned about their jobs and the jobs of their children. The government is determined to make sure that Gippslanders are not left behind as the economy changes. Everyone needs to have a share in the benefits that this rich country can provide.

I will conclude on that point. I once again commend the statement of government intentions. It is a document that we could spend a great deal of time on, because there is so much in it. My contribution has barely scratched the surface of chapter 8, and there are a lot more chapters — certainly I could talk on chapters 1 to 7 in great detail as well. I certainly commend the document to the house. I know that on the basis of my contribution those members opposite will go off with a copy and study it carefully over the next fortnight; they will make it their Easter reading!

Debate adjourned on motion of Ms TIERNEY (Western Victoria).

Debate adjourned until next day.

EQUAL OPPORTUNITY BILL

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

For Hon. J. M. MADDEN (Minister for Planning), Mr Pakula 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 Equal Opportunity Bill 2010.

In my opinion, the Equal Opportunity Bill 2010 (the bill), as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill will replace the Equal Opportunity Act 1995, the current law that protects Victorians from discrimination based on certain characteristics such as race, sex, age and impairment. The bill improves the effectiveness of equal opportunity law in Victoria.

The bill seeks to eliminate discrimination, sexual harassment and victimisation to the greatest extent possible. The bill also aims to promote and facilitate the progressive realisation of substantive equality, as far as reasonably practicable. It does this not only by prohibiting discrimination based on particular attributes but also by recognising that in certain circumstances, special measures may be required to redress the impact of past or continuing disadvantage.

A key purpose of the reforms in the bill is to provide a framework for dealing more effectively with systemic discrimination. In order to encourage proactive compliance and alleviate the burden on individuals to address discrimination through making complaints, the bill reframes existing implied obligations to eliminate discrimination and to

make reasonable adjustments for people with impairments, as positive obligations. Other reforms include giving the Victorian Equal Opportunity and Human Rights Commission (the commission) more effective options to respond to systemic discrimination such as:

a clear role in conducting research and education;

the ability to investigate serious systemic discrimination in the absence of a complaint and to conduct a public inquiry with the consent of the Attorney-General;

engaging directly with duty-holders to reach enforceable undertakings and issuing compliance notices where systemic discrimination is found to have occurred.

In line with equal opportunity law in other Australian jurisdictions, the reforms extend protection from sexual harassment to people who work on a voluntary or unpaid basis.

The bill also introduces a new system for dealing with disputes about discrimination, sexual harassment and victimisation. The changes will make dispute resolution quicker, more flexible and more responsive to individual disputes. In addition, it will eliminate the current duplication in the complaints process by allowing people with a dispute to go directly to the Victorian Civil and Administrative Tribunal (VCAT), rather than requiring them to lodge a complaint with the commission first, as is currently the case.

Finally, the bill updates and modernises the exceptions to unlawful discrimination.

Human rights issues

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

The bill will be part of a framework of laws in Victoria, along with the charter and the Racial and Religious Tolerance Act 2001, that promote respect for human rights. The human right that is most relevant to the bill is the right to equality (section 8 of the charter). Indeed, one of the objectives of the bill is to promote the right to equality under the charter.

However, as well as promoting the right to equality, the bill, through the exceptions, limits the right to equality in certain circumstances. The bill also limits other charter rights. The right to freedom of association (section 16 of the charter) is limited through the prohibition against discrimination in relation to membership of clubs. The right to a fair hearing (section 24) may be limited by the provisions allowing the commission to order non-disclosure of information in certain circumstances. The right to freedom of expression (section 15) is limited by the secrecy requirements that bind the commission's staff and board members. Finally, the right to be presumed innocent (section 25(1)) is limited by the formulation of the defence to the offence of discriminatory advertising.

This statement of compatibility first discusses the exceptions and then considers the other provisions in the bill that engage charter rights, and finally the other provisions in the bill that limit charter rights.

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

THE EXCEPTIONS

The purpose of exceptions in equal opportunity law

Exceptions are an integral part of equal opportunity law. Equal opportunity law creates prohibitions in relation to conduct that falls within the definition of discrimination, and creates the right to seek relief from discrimination in specific circumstances. Exceptions, in certain circumstances, prevent relief from being sought in relation to conduct that would otherwise fall within the definition of discrimination.

The review of the exceptions

The exceptions in the Equal Opportunity Act were the subject of extensive review, first by the Department of Justice and then by Parliament's Scrutiny of Acts and Regulations Committee (SARC). The review processes attracted over a thousand submissions from a diverse range of stakeholder groups and individuals. In addition, evidence was received through public hearings on particular issues from key stakeholder groups. Many of the submissions contributed ideas about how the exceptions could be improved. In conducting its review and making its final recommendations, SARC considered whether each exception was a reasonable limitation on the right to equality under the charter. SARC's review has made a valuable contribution to the development of the government's position on the exceptions as reflected in the bill. I note that the government supports either fully, in part or in principle, 56 of SARC's 59 recommendations. The government's response to each of SARC's recommendations is detailed in the response to the SARC report, which was tabled on 11 March 2010.

The fact that the exceptions have been subjected to detailed analysis by SARC for their compatibility with the charter strengthens the conclusions I have reached on those exceptions that align with SARC's recommendations.

The nature of the right to equality

Section 8 of the charter is a collection of rights relating to recognition and equality before the law. Justice Bell, in *Lifestyle Communities Ltd (No. 3) (Anti-Discrimination)* [2009] VCAT 1869, stated that the human rights of equality and non-discrimination are of fundamental importance to individuals, society and democracy (at [107]). His Honour noted that the equality rights in section 8 are 'the keystone in the protective arch of the charter' (at [277]). Furthermore, the concept of equality enshrined in the charter is one of substantive equality, not just formal equality (at [107] and [118]), and that the fundamental value underlying the equality right in section 8 is the 'equal dignity of every person' (paragraph 277).

Section 8(3) is particularly relevant to equal opportunity law. It provides that 'every person is equal before the law … and has the right to equal and effective protection against discrimination'. Discrimination is currently defined in section 3 of the charter as 'discrimination (within the meaning of the Equal Opportunity Act) on the basis of an attribute in section 6 of that act'.

The value underpinning section 8(3) is personal dignity. To treat somebody differently because of an attribute rather than on the basis of individual worth and merit can undermine personal autonomy and self-realisation. Therefore, it is

important that the exceptions, which limit the right to equality, are justified as reasonable limitations. In my view, the exceptions in this bill are reasonable and justifiable limitations on the right to equality, in accordance with section 7(2) of the charter.

The categories of exceptions

For the purposes of this analysis, the exceptions have been grouped according to the rationales that underpin them. The rationales fall into the following categories:

A. **Targeted measures.** These exceptions allow targeted measures to meet the special needs of groups with particular attributes.

B. **Conduct that falls within the private realm.** These exceptions are designed to ensure people's personal and private choices are infringed as little as possible.

C. **Competing rights.** Exceptions that limit the right to equality to balance other important rights.

D. **Other justifications.** Exceptions that are justified for another important reason, such as health and safety.

These four categories are used to structure the discussion on the exceptions in this statement of compatibility. Each exception is analysed below according to the test set out in section 7(2) of the charter.

A. Targeted measures

Many of the exceptions in the bill are measures targeted towards groups with special needs. The aim of these exceptions is to allow differential treatment between people with particular attributes and those without the attribute. The purpose of targeted measures is to provide a benefit or facilitate appropriate services for the target group for the welfare of members of the group. The principle behind targeted measures is that one size does not necessarily fit all — groups with certain attributes have particular needs that require or would benefit from targeted services, benefits or facilities.

While targeted measures may limit the right to equality in that they provide services, benefits or facilities to particular groups only, these limitations are reasonable. The exceptions that are targeted measures in the bill do not limit the access of people other than the target group to generalist or other specialist services, benefits or facilities.

A.1. Clause 28 allows an employer to limit the offering of employment to people with a particular attribute where the employment is to provide services that are special measures to promote or realise substantive equality or services that meet the special needs of a group with particular attributes if those services can be provided most effectively by people with that attribute. The exception applies to all attributes. The exception limits the right to equality (section 8(3)) by preventing certain persons who do not possess the relevant attribute from gaining employment in certain circumstances.

The importance of the purpose of the limitation

The purpose of this exception is to facilitate services to disadvantaged groups or groups with a special need that are for the welfare and advancement of those groups. The exception recognises that, in certain circumstances, such services can best be provided by people who share the same attribute as the group. This may be because having the attribute provides the service provider with a particular insight into the needs of the group. For example, support services for people with a mental illness may most effectively be provided by a person who has previously been a user of mental health services, as that person will have an insight into the issues facing people with a mental illness. Appropriate service provision to disadvantaged groups and groups with special needs is an important purpose.

The nature and extent of the limitation

The exception will only apply where the services to be provided are special measures or welfare measures or services for special needs as prescribed by the bill and where those services can be most effectively provided by people with the same attribute.

The relationship between the limitation and its purpose

The relationship between the limitation and its purpose is rational.

Any less restrictive means reasonably available to achieve its purpose

As the circumstances in which the exception will apply are narrowly restricted by the thresholds for special measures and welfare measures or services for special needs, there are no less restrictive means reasonably available to achieve the purpose.

A.2. Clause 39 allows educational institutions that operate wholly or mainly for students of a particular sex, race, religious belief, age or age group or students with a general or particular impairment to exclude students without the particular attribute from the school or an educational program. This exception limits the right to equality (section 8(3)) for students who do not have the particular attribute for whom the school or program was designed. However, in relation to many of the groups, the exception may also promote freedom of thought, conscience, religion and belief (section 14), facilitate the protection of families and children, where limiting the provision of educational services to persons of particular attributes is in the best interests of children (section 17) and facilitates the protection and promotion of cultural rights (section 19).

The importance of the purpose of the limitation

The purpose of this limitation is to allow schools to provide educational settings that are targeted towards the needs of particular groups. Excluding students who are not of that group allows resources to be concentrated on the needs of the target group.

The nature and extent of the limitation

As the exception applies to five grounds only — sex, race, religious belief, age and impairment — the right to equality is only limited in restricted circumstances. In the great majority of instances, alternate schools or programs that cater for the students who are excluded from a particular school or program exist (for example, schools for boys and schools for girls). In these circumstances, the extent of the limitation will be minimal as those students who are excluded from one particular school or program will be able to access similar educational facilities and programs elsewhere.

Further, the extent of the limitation is balanced by the other rights promoted by the exception.

The relationship between the limitation and its purpose

Due to limited resources, all schools must have the ability to restrict eligibility to enrol in the school or to access particular programs within the school. Usually eligibility criteria for enrolment relate to geographical distance from the school, or priority being given to siblings of existing students. Eligibility for particular programs is often restricted to those with particular needs. This exception allows schools to take sex, race, religious belief, age and impairment into account when setting eligibility criteria for access to enrolment or particular programs. As its purpose is to provide educational settings targeted towards the needs of particular groups, and the limitation is restricted as other options will be available in the great majority of cases, the limitation is reasonable and rational.

Any less restrictive means reasonably available to achieve its purpose

If schools do not have the ability to exclude students from enrolment or programs targeted towards the needs of students with particular attributes, students with those attributes may miss out on receiving targeted educational opportunities.

A.3. Clause 43 allows educational authorities to select students for a program on the basis of an admission scheme that has a minimum qualifying age or that imposes quotas in relation to students of different age groups. This limits the right to equality (section 8(3)), as students of particular ages may not gain admission to a program or a scheme and thus may be denied an opportunity because of their age.

The importance of the purpose of the limitation

The purpose of this exception is to enable educational authorities to ensure the different developmental and learning needs of students of different ages can be catered for by schools. This is an important purpose as it advances the welfare of students.

The nature and extent of the limitation

While the exception may limit students of a certain age accessing particular programs, other age-appropriate programs will be available to those students. Further, subject to particular age-specific programs continuing, students who are not yet eligible to access a particular program because of their age will be able to do so in the future. Therefore, the limitation is not extensive.

The relationship between the limitation and its purpose

The limitation is connected to its purpose, as there is no other way of ensuring children receive age-appropriate educational programs.

Any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means reasonably available to achieve the purpose of the exception.

A.4. Clause 60 allows hostels and similar institutions which are run wholly or mainly for the welfare of persons of a particular sex, age, race or religious belief to refuse accommodation to people who do not have the particular attribute. This exception limits the right to equality (section 8(3)), as persons who do not possess a relevant attribute may be refused accommodation.

The importance of the purpose of the limitation

The purpose of this limitation is to allow hostels and similar institutions providing accommodation for groups with particular needs to restrict accommodation to those people with the same attribute. Targeted accommodation can facilitate the right to privacy (section 13), the right to freedom of thought, conscience, religion and belief (section 14) and protection and promotion of cultural rights (section 19) where a hostel or similar institution facilitates an environment which respects the observance of a particular religion or cultural belief. Accommodation for women and children experiencing family violence promotes the protection of families and children (section 17).

The nature and extent of the limitation

The limitation applies only to those accommodation providers who can show that they are run wholly or mainly for the welfare of persons with a particular attribute. Therefore, the limitation will only apply in restricted circumstances.

The relationship between the limitation and its purpose

The limitation is rationally connected to its purpose in that excluding people without the attribute that the accommodation is targeting will allow such accommodation providers to reserve their limited facilities for members of the target group.

Any less restrictive means reasonably available to achieve its purpose

While narrowing the exception so it only applies to the provision of accommodation established wholly for the welfare of people of a particular sex, age, race or religious belief is less restrictive, it potentially denies a provider of welfare-related accommodation the ability to rely on the exception if the provider accepts a person not in the target group for any reason. For example, the manager of a hostel for women with children under the age of 18 may be denied the ability to rely on the exception in the future if she accepts a woman with a 19-year-old child where no other accommodation is available for that family. Given this, the more restrictive limitation is reasonable.

A.5. Clause 61 allows educational authorities that operate schools wholly or mainly for students of a particular sex, race, religious belief, age or impairment to provide accommodation wholly or mainly for students with the particular attribute. This exception operates in conjunction with clause 39, allowing for such educational authorities to exclude students without the targeted attribute. As for clause 39, clause 61 limits the right to equality (section 8(3)) for students who do not have the particular attribute for whom the school or program was designed.

The importance of the purpose of the limitation

This limitation is aimed at allowing schools targeted towards particular groups that provide accommodation to reserve the accommodation for the target groups.

The nature and extent of the limitation

As the exception applies to five grounds only — sex, race, religious belief, age and impairment — the right to equality is only limited in restricted circumstances. Further, the limitation only applies to those schools that target particular groups and provide accommodation. Therefore, the limitation is not extensive.

The relationship between the limitation and its purpose

The limitation is rational and proportionate to its purpose.

Any less restrictive means reasonably available to achieve its purpose

SARC recommended that this exception be amended to clarify that if an educational institution that provides accommodation does accept students outside the target group, it may not discriminate in the allocation of that accommodation. However, it is not considered that the exception allows discrimination in allocating accommodation to existing students, but only in deciding who to provide accommodation to. On this basis, SARC's recommendation is not considered a more restrictive option.

Given this, there are no less restrictive means reasonably available to achieve the purpose of the exception.

A.6. Clause 66 allows for clubs that operate principally to preserve a minority culture to exclude from membership people who are not members of the minority culture. This exception limits the right to equality (section 8(3)).

The importance of the purpose of the limitation

This limitation recognises that the preservation of minority cultures may be enhanced by allowing clubs for those groups only. This exception facilitates the sharing of culture (section 19) and also freedom of association (section 16).

The nature and extent of the limitation

This exception is limited to those clubs that operate principally to preserve a minority culture. It is also limited in that the exception only applies to membership of such clubs and not to service provision or employment.

The relationship between the limitation and its purpose

The limitation is rational and proportionate to its purpose.

Any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means reasonably available to achieve the purpose of this limitation.

A.7. Clause 67 allows clubs established for people of a particular age group to exclude from membership people who are outside that age group. It also allows clubs to provide different benefits to different members on the basis of their age where it is reasonable to do so. This exception limits the right to equality (section 8(3)).

The importance of the purpose of the limitation

This exception recognises that different age groups will have different needs and interests and allows clubs to cater for this by allowing clubs and membership benefits for different age groups. In so doing, it promotes freedom of association (section 16) and facilitates appropriate service provision to groups of different ages.

The nature and extent of the limitation

This exception only differentiates on the ground of age in the area of clubs. Therefore, it is not extensive. Although the application of this exception may mean that certain age groups are excluded from certain clubs or certain benefits of membership, other clubs may cater for that group or provide those benefits.

The relationship between the limitation and its purpose

The limitation is rationally connected to its purpose, which is to facilitate the exclusive association of people of particular age groups.

Any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means reasonably available to achieve the purpose of this limitation.

A.8. Clause 87 allows benefits, including concessions, to be provided to people based on age. This exception limits the right to equality (section 8(3)), by preventing certain people from obtaining the benefit of concessions based on their age.

The importance of the purpose of the limitation

This exception recognises that different age groups may have particular needs or may have limited capacity to pay and allows these needs or limited capacity to be met through the provision of benefits including concessions. An example of this is the provision of travel concessions to senior citizens or discounted museum entry to children.

The nature and extent of the limitation

The exception is limited to age and only extends to eligibility for benefits or concessions. Therefore, it is not extensive. Further, as a person's age changes, their eligibility for age-based benefits changes, so that such discrimination is likely to impact in both a negative and positive way over a person's lifetime.

The relationship between the limitation and its purpose

The limitation is directly related to its purpose.

Any less restrictive means reasonably available to achieve its purpose

It may be argued that not all people in a particular age group have a particular need that should be met through a benefit or concession. It may be argued that other means of assessing eligibility for such benefits or concessions, such as a person's actual ability to pay, should be used. However, the difficulty and intrusiveness of obtaining such information is not proportionate to the benefit or concession conferred and therefore is not reasonable.

A.9. Clause 88(1) provides an exception for the establishment of services, benefits or facilities that meet the special needs of people with a particular attribute and allows eligibility for those services, benefits or facilities to be limited to people with the target attribute. **Clause 88(3)(a) and (b)** are specific examples of circumstances in which special needs

may be met by targeted services. Clause 88(3)(a) allows rights, privileges and benefits to be offered in relation to pregnancy or childbirth. Clause 88(3)(b) allows holiday tours to be restricted to people of a particular age or age group. These exceptions limit the right to equality in that people who are not in the target group will not be able to access the services, benefits or facilities allowed by the exceptions.

The importance of the purpose of the limitation

This limitation recognises that targeted services may be required to meet the needs of particular groups. This may be because only people in the target group have the need (for example, only pregnant women or women in childbirth require services targeted to this group), or because general services may not meet or may not best meet the particular needs of people in the target group (for example, a general mental health service may not adequately meet the mental health needs of young men). This is an important purpose and may assist in promoting other rights, depending on the nature of the service, benefit or facility to be provided.

The nature and extent of the limitation

The exception is restricted in that it only allows for the establishment of services, benefits or facilities to meet the special needs of groups with an attribute and for the eligibility for those services, benefits or facilities to be limited to people within the target group. It does not allow for discrimination in the administration of those services, benefits or facilities to eligible people. Further, it does not prevent generalist services from existing. Where a special service, facility or benefit is provided because generalist services do not adequately meet the needs of the target group, the limitation is not extensive because people outside the target group will still be able to access generalist services, benefits and facilities. Where people outside the target group do not have the need for the service, benefit or facility, then there is no limitation on the right to equality.

In relation to the specific examples in subclauses 88(3)(a) and (b), the extent of the limitation is further mitigated by the fact that being pregnant and being a particular age are not immutable attributes. Consequently, individuals may have the benefit of the services allowed by the exception at a particular point in their life.

The relationship between the limitation and its purpose

The limitations in this exception are rationally connected to their purpose, which is to meet the special needs of people with a particular attribute.

Any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means reasonably available to achieve the purpose of these limitations.

B. Conduct that falls within the private realm

The exceptions, which fall within this category, are designed to protect personal autonomy in the private sphere. Equal opportunity law focuses on activities that are in the public sphere and interferes as little as possible in conduct that occurs in the private sphere. These exceptions reflect that divide.

B.1. Clause 24 allows people to discriminate in relation to employment to provide domestic and personal services, including child-care services, in their own home. The exception covers employers, such as agencies who provide staff to provide home-based domestic or personal care services where the person receiving the services requests this. This limits the right to equality (section 8(3)) by excluding people with particular attributes from employment in another person's home in certain circumstances.

The importance of the purpose of the limitation

The purpose of this limitation is to protect the privacy of the family and the home. It is important to preserve the distinction between the private sphere, which is not regulated by equal opportunity law, and the public sphere that is.

The nature and extent of the limitation

The limitation is restricted in nature and extent. It applies only in relation to certain types of employment, in limited circumstances. It does not apply to other types of employment, such as business-related employment conducted in a person's home.

The relationship between the limitation and its purpose

The limitation is rational and, as it is not extensive, is proportionate to the purpose of protecting people from arbitrary interference with their privacy.

Any less restrictive means reasonably available to achieve its purpose

Accepting that the protection of privacy is an important purpose, there are no less restrictive means available to achieve the purpose of the exception.

B.2. Clause 51 allows a person to discriminate against any person on the basis of any attribute in the disposal of land by will or gift. This limits the right to equality (section 8(3)), by excluding persons with particular attributes from receiving benefits in certain circumstances.

The importance of the purpose of the limitation

The purpose of this limitation is to allow individuals the freedom to choose to whom they will or give their property. This limitation consequently protects the right to privacy (section 13), and also potentially the right to protection of families and children (section 17), the right to freedom of thought, conscience, religion and belief (section 14) and the right to freedom of expression (section 15).

The nature and extent of the limitation

While the limitation is broad in that it allows discrimination on all attributes, it is limited to the specific circumstances of disposal of land by gift or will.

The relationship between the limitation and its purpose

The limitation is rationally connected to its purpose given the importance of the competing rights it promotes.

Any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means available to achieve the purpose of the limitation.

B.3. Clause 59 allows a person to discriminate on the basis of any attribute in determining who is to occupy residential accommodation in which the person or their near relatives lives and intends to continue to live and that is to accommodate no more than three people in addition to the person or their near relatives. This exception limits the right to equality (section 8(3)), by preventing persons with particular attributes from occupying residential accommodation in certain circumstances.

The importance of the purpose of the limitation

This exception allows a person freedom of choice in relation to who should live in their home when it is occupied by them or their near relative. This exception facilitates the protection of families and children (section 17) and the right to privacy (section 13).

The nature and extent of the limitation

This limitation applies only in restricted and defined circumstances. The restriction of this exception to accommodation for the person or their near relatives and for no more than three additional people reflects the principle that the bill does not seek to regulate conduct in the private sphere.

The relationship between the limitation and its purpose

The limitation is a rational and proportionate means of achieving its purpose.

Any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means reasonably available to achieve the purpose of the limitation.

B.4. Clause 62 provides that an accommodation provider may refuse to provide accommodation for or in connection with lawful sexual activity.

The importance of the purpose of the limitation

This exception complements other laws that control the regulation of commercial sexual services and laws that allow landlords to decide the type of businesses that are conducted from their premises. Tenants may not conduct businesses from home as of right. For example, under the Residential Tenancies Act 1997, tenants may conduct business from home with the consent of the landlord.

The nature and extent of the limitation

The limitation applies only to the conduct of commercial sexual services. It does not allow landlords, in determining a person's rental application, to discriminate on the basis of lawful sexual activity.

The relationship between the limitation and its purpose

The limitation is rationally connected to its purpose.

Any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means of achieving the purpose of this limitation.

B.5. Clause 80 provides that the bill does not affect deeds, wills or other instruments that confer charitable benefits. This limits the right to equality (section 8(3)).

The importance of the purpose of the limitation

The purpose of this limitation is to allow donors the freedom to choose whom to confer charitable benefits on. Such choices promote the right to privacy (section 13), freedom of thought, conscience, religion and belief (section 14) and freedom of expression (section 15).

The nature and extent of the limitation

The exception applies only where charitable benefits are being or are to be conferred. Therefore, the limitation is not extensive. Further, depending on the recipient, the exception may provide benefits to disadvantaged groups.

The relationship between the limitation and its purpose

The limitation is rationally connected to its purpose.

Any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means of achieving the purpose of this limitation.

C. Competing rights

In certain circumstances, a person's right to equality in section 8 of the charter may be at odds with another person's rights under the charter, such as the right to privacy or the right to freedom of association. In such circumstances, it is necessary to engage in a balancing exercise to determine how best to resolve the tension between competing rights. In my view, the exceptions in this category achieve the appropriate balance between competing charter rights.

C.1. Clause 26(1) allows employers to discriminate on the basis of sex where it is a genuine occupational requirement that employees be of that sex. Subclause 26(2) non-exhaustively lists situations that fall within this exception. The situations include where the employment can only be performed by a person having particular physical characteristics (other than strength or stamina) and where the employment needs to be performed by a person of a particular sex to preserve decency or privacy. Further subsections provide examples of types of jobs that fall into that category such as where the job involves fitting clothes or conducting body searches.

The importance of the purpose of the limitation

The purpose of the limitation is to preserve the privacy and dignity of the people receiving the service provided by the person employed under the exception. This is an important purpose.

The nature and extent of the limitation

The exception is confined to recruitment where it is a genuine occupational requirement. This means that the discrimination must be necessary to do the job, not just desirable. Further, the exception applies equally for jobs requiring men and jobs requiring women.

The relationship between the limitation and its purpose

The limitation is a rational way of achieving its purpose, which is the preservation of privacy and dignity.

Any less restrictive means reasonably available to achieve its purpose

The exception will only apply where an employer can show that the requirement that a person be of a particular sex is a genuine occupational requirement. Where the requirement that a person be of a particular sex is not genuine, the exception will not apply. Accordingly, the exception is limited in nature and there are no less restrictive means reasonably available.

C.2. Clause 26(3) allows employers to discriminate on the basis of sex, age or race, or in favour of people with or without a particular impairment in relation to a dramatic or artistic performance, entertainment, photographic or modelling work or any other employment if it is required for authenticity or credibility. **Clause 26(4)** allows employers to discriminate on the basis of physical features in relation to dramatic or artistic performance or similar employment.

The importance of the purpose of the limitation

The underlying purpose of the limitations in clause 26(3) and (4) is to allow freedom of expression where this is required for authenticity or credibility in the limited context of artistic and related employment. This is based on the acceptance that in artistic endeavours a particular aesthetic may be required to give full expression to the work of the artist. The limitation facilitates the contribution of artistic endeavours to the cultural life of Victoria.

The purpose of allowing the limitation in clause 26(3) to extend to other employment for reasons of authenticity or credibility is to allow targeted recruitment in cases where the person's attribute is central to authenticity or credibility. An example of the type of other employment this exception will cover is the employment of an Aboriginal person to provide information and education on Aboriginal heritage in an Aboriginal cultural centre.

The nature and extent of the limitation

The limitation in clause 26(3) only applies to certain attributes — sex, race, age and impairment. It is restricted by the type of employment it relates to, namely, artistic and related employment, a limited field of employment. While the limitation also extends to other employment, it will only apply where it is necessary to do so for reasons of authenticity or credibility.

The limitation in clause 26(4) only applies to the attribute of physical features and is restricted to artistic and related employment. It does not extend more generally to other types of employment, as is the case with the limitation in clause 26(3).

The relationship between the limitation and its purpose

The limitation is rationally related to its purpose.

Any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means available to achieve the purpose of these limitations.

C.3. Clauses 30(2) and 31(3) and (4) provide that a person who intends to establish a firm of less than five partners and an existing firm of less than five partners can discriminate on any ground where this is reasonable. This exception limits the right to equality (section 8(3)). However, because the nature of financial and fiduciary relationships between partners in a firm is more personal than those between employers and employees, this exception also promotes the right to privacy (section 13) and freedom of association (section 16).

The importance of the purpose of the limitation

The purpose of this limitation is to protect privacy and freedom of association by allowing partners in small firms some choice in who they choose to enter into particular types of financial and fiduciary relationships with.

The nature and extent of the limitation

The extent of the limitation is inherently restricted by the requirement that any discrimination be reasonable.

The relationship between the limitation and its purpose

The limitation is a rational means of achieving the aim of allowing partners in small firms freedom of privacy and association.

Any less restrictive means reasonably available to achieve its purpose

The requirement that any discrimination be reasonable inherently incorporates consideration of whether there are any less restrictive means reasonably available to achieve the purpose of the exceptions.

C.4. Clause 82(1) allows discrimination in relation to the training and appointment of priests, ministers of religion or members of a religious order. This limits the right to equality (section 8(3)). However, it promotes the right to freedom of religion (section 14).

The right in section 14 of the charter establishes a right to freedom of thought, conscience, religion and belief and a right to demonstrate one's religion or belief. Under the equivalent right in the International Covenant on Civil and Political Rights, the first aspect of the right is considered to be absolute. However, the second aspect may be limited, because the way in which religion or belief is practised or observed can impact on others. For the purpose of analysing the religious exceptions in the bill against the charter, there is clearly a need to balance the right to equality with the right to freedom of religion.

In *Christian Education South Africa v. Minister of Education* (2000) 9 BHRC 53, Sachs J stated (at [35]) there is a question in any open and democratic society based on human dignity, equality and freedom in which conscience and religious freedom have to be regarded with appropriate seriousness, as to how far such democracy can and must go in allowing members of religious communities to define for themselves which laws they will obey and which not. While there is no automatic right to be exempted by religious beliefs from the

laws of the land, the state should, wherever reasonably possible, 'seek to avoid putting believers to extremely painful and intensely burdensome choices of either being true to their faith or else respectful of the law'.

Additionally, courts tend to defer to Parliament in relation to how best to achieve a balance between these two rights. In *The Christian Institute & Ors, An Application for Judicial Review* [2007] NIQB 66, the High Court of Justice in Northern Ireland was asked by various religious groups to assess the compatibility of regulations made under the Equality Act 2006 relating to discrimination and harassment on the grounds of sexual orientation. The religious groups contended that the exemptions in the regulations were insufficient to protect their freedom to manifest religious belief. On the balance to be accorded the competing rights, Weatherup J said at paragraph 92: '[t]here are inevitably different views about the proper balance between the respective interests and about the balance achieved by the regulations. This balance is essentially a matter for the legislative decision-makers …'.

The importance of the purpose of the limitation

The purpose of this limitation is to allow religious bodies the freedom to decide the manner in which the training and appointment of priests and the selection of others to perform functions related to religious observance and practice should be conducted. This is important as it protects freedom of thought, conscience, religion and belief (section 14).

The nature and extent of the limitation

While this exception covers all attributes, the exception only applies in the context of the teaching, practice, worship and observance of religion.

The relationship between the limitation and its purpose

The limited nature of the exception is appropriate to achieving its purpose.

Any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means reasonably available to achieve the purpose of the limitation.

C.5. Clauses 82(2) and 83(2) allow religious bodies and religious schools to discriminate on the grounds of religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity in certain circumstances. This limits the right to equality (section 8(3)). However, it protects the right to freedom of thought, conscience, religion and belief (section 14).

The importance of the purpose of the limitation

The purpose of these exceptions is to allow religious bodies and schools to discriminate in certain circumstances where this is required to avoid conflict with their religious doctrines or where it is reasonably necessary to avoid injury to the religious sensitivities of adherents of the religion. This is important in a pluralistic society that values freedom of religion. The freedom to manifest religion or belief in worship, observance, practice and teaching covers a broad range of acts. For example, the right encompasses freedom to establish religious schools and the liberty of parents and guardians to provide religious and moral education to children. The right also protects acts that are intimately linked to religious beliefs.

The nature and extent of the limitation

The limitation in clauses 82(2) and 83(2) does not apply in relation to employment, but rather will apply in relation to other activities conducted by religious bodies, such as providing services, and by religious schools, such as providing education. The limitation is restricted to certain attributes. These attributes were identified as relevant attributes through consultation with faith groups, as such attributes may conflict with core beliefs and values held by religious organisations.

The exceptions are limited by the threshold requirement that the discrimination either must conform with the religion's doctrine or must be reasonably necessary to avoid injury to the religious sensitivities of adherents of the religion. The addition of the word 'reasonably' in clauses 82(2)(b) and 83(2)(b) incorporates an objective element in the provision so that action must not only be necessary to avoid injury to the religious sensitivities of adherents of the religion, but also must be reasonable.

In addition, in order to be covered by the exception, the religious body or school must meet the threshold of being either an entity established for a religious purpose or an entity that is intended to be, and is, conducted in accordance with religious doctrines, beliefs or principles.

The relationship between the limitation and its purpose

The threshold test requiring connection to religious doctrine or religious sensitivities ensures that the limitation is directly related to its purpose, which is to allow freedom of religion in these circumstances.

Any less restrictive means reasonably available to achieve its purpose

There are inevitably different views about the proper balance between respective interests in relation to these exceptions, and about the best way to deal with the tension between sections 14 and 8 of the charter. In my view, these provisions represent an appropriate balance between the right to freedom of religion and the right to equality.

C.6. Clause 82(3) and 83(3) provide that nothing in part 4, which prohibits discrimination in certain circumstances, applies to anything done in relation to the employment of a person by a religious body or religious school where conformity with the doctrines of the religion is an inherent requirement of a position and the person's religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity means that they do not meet that inherent requirement.

The importance of the purpose of the limitation

The purpose of this exception is to allow religious bodies to discriminate in employment where conformity with the doctrines, beliefs or principles of the religion is an inherent requirement of the relevant position. Again, this limitation is important in a pluralistic society that values freedom of religion.

The nature and extent of the limitation

This clause will only apply in the context of employment where conformity with the doctrines, beliefs or principles of the religion is an inherent requirement of the particular position. As with clauses 82(2) and 83(2), the limitation is restricted to certain attributes which are most likely to impact upon core religious beliefs.

The relationship between the limitation and its purpose

The threshold test requiring connection between the doctrines, beliefs or principles of the religion and the inherent requirements of the particular position ensures that the limitation is directly related to its purpose, which is to allow freedom of religion in these circumstances.

Any less restrictive means reasonably available to achieve its purpose

As is the case with clauses 82(2) and 83(2), there are inevitably different views about the proper balance between sections 14 and 8 of the charter, but, in my view, clause 82(3) and clause 83(3) represent an appropriate balance between the right to freedom of religion and the right to equality.

C.7. Clause 84 provides that nothing in part 4 (that is, none of the prohibitions against discrimination) applies to discrimination by a person against another person on the grounds of religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity where this is reasonably necessary for the individual to comply with the doctrines, beliefs or principles of their religion. This limits the right to equality (section 8(3)).

The importance of the purpose of the limitation

The purpose of this limitation is to allow individuals the freedom to express and demonstrate their religious beliefs, even if such beliefs are discriminatory, where this is reasonably necessary for the person to conform with religious doctrine, practice or belief.

The nature and extent of the limitation

This exception will only apply in relation to certain attributes (those which are most likely to impact on core religious beliefs), and thus is limited in scope. Further, it will only apply in circumstances where the conduct is reasonably necessary for compliance with the doctrines, beliefs or principles of the religion. The addition of the word 'reasonably' incorporates an objective element in the provision so that action must not only be necessary to comply with the doctrines, beliefs or principles of the religion, but also must be reasonable. Consequently, the limitation is relatively narrow in nature.

The relationship between the limitation and its purpose

The limitation is rationally connected to its purpose.

Any less restrictive means reasonably available to achieve its purpose

In a society that values freedom of religion, there are no less restrictive means reasonably available to achieve the purpose of this limitation. In my view, this clause strikes the appropriate balance between the right to freedom of religion and the right to equality.

D. Other justifications

The exceptions that are in this category rely on a range of justifications including health and safety and allowing statistic-based services, such as credit provision and insurance.

D.1. Clauses 23, 34, 41 and 46 allow discrimination where reasonable adjustments for people with impairments cannot be provided or where the person could not do the job or participate in the educational program or service even if reasonable adjustments were provided. Clause 58 allows discrimination where a person who provides public premises could not reasonably be expected to avoid discrimination. These exceptions limit the right to equality (section 8(3)) by allowing discrimination against people with impairments in certain circumstances.

The importance of the purpose of the limitation

These exceptions allow employers, firms, educational authorities and service providers to discriminate where reasonable adjustments are not possible, or would not achieve the purpose of allowing the person with an impairment to work or participate in education or receive a service or, in the case of clause 58, where it is not reasonable to avoid discrimination. These exceptions recognise that it is not always reasonable or possible to make adjustments or alterations to allow a person with an impairment to participate.

The nature and extent of the limitation

The exceptions will only apply after consideration of whether the duty-holder can make reasonable adjustments or whether any reasonable adjustments would allow the person to do the job or participate in the educational program or service. In this way, discrimination is the last resort.

The relationship between the limitation and its purpose

The limitation is rationally connected to its purpose.

Any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means reasonably available to achieve the purpose of these exceptions.

D.2. Clause 25 allows discrimination on the basis of any attribute by an employer against an employee or prospective employee if the employment involves the care, instruction or supervision of children and the discrimination is reasonably necessary to protect the physical, psychological or emotional wellbeing of the children. This exception limits the right to equality (section 8(3)).

The importance of the purpose of the limitation

The purpose of the limitation is to protect children. This is an important purpose.

The nature and extent of the limitation

The exception is limited by the requirement that the discrimination be reasonably necessary. This requirement means that the exception will only apply when the need for the discrimination can be objectively justified. The exception is further limited as it does not apply to employment by a

post-secondary education provider, where the employment is only likely to involve the care, instruction or supervision of older children.

The relationship between the limitation and its purpose

The limitation is rationally connected to its purpose.

Any less restrictive means reasonably available to achieve its purpose

As the exception includes an inherent limitation that the need for the discrimination be reasonable, there are no less restrictive means reasonably available to achieve the purpose.

D.3. Clause 27 allows discrimination on the grounds of political belief or activity in the offering of employment to a person as a ministerial adviser, member of staff of a political party, member of the electorate staff of any person or any similar employment. This exception may limit the right to equality (section 8) and the right to privacy (section 13) to the extent that some of the information that job applicants will be asked to disclose will relate to political memberships, associations and activities that may be personal and are closely connected to individual identity and autonomy. It may also engage freedom of expression (section 15), to the extent that this right also protects the right not to impart information and because an employer may be able to consider a job applicant's previous activities in publishing political opinions when it determines offers of employment, freedom of association (section 16) and participation in public life (section 18).

The importance of the purpose of the limitation

The underlying purpose of this limitation is to promote the efficiency of Parliament and to facilitate the proper working of democracy. The exception does this by facilitating the trust and confidence of political employers in their employees to conduct their work in the best interests of the employer they are serving.

The nature and extent of the limitation

While the exception limits a number of rights, it does so to a small extent. The exception applies to a restricted type of employment and applies only to the offering of that employment.

The relationship between the limitation and its purpose

Ministers and political parties must have confidence that the staff they employ will serve the interests of the party, including by maintaining confidentiality. Allowing discrimination on the grounds of political belief in such employment is a rational way of achieving this purpose.

Any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means available to achieve the purpose of this limitation.

D.4. Clause 29 allows employers to take the age of an employee and their eligibility to receive a retirement benefit from a superannuation fund into account in deciding the terms on which to offer employees incentive to resign or retire through early retirement schemes. This exception limits the right to equality (section 8(3)), as it allows the offering of different incentives to resign or retire based on a person's age. It also allows employers to only offer early retirement schemes to employees over a certain age.

The importance of the purpose of the limitation

The purpose of the exception is to provide employers who are restructuring or reducing their workforce a way of providing meaningful incentives for employees to retire or resign early.

As all employers have finite funds, where an employer cannot differentiate between employees, the amount offered as an incentive will be smaller than if they can differentiate between employees. This will limit the attractiveness of the incentive and may not achieve the desired purpose of the scheme.

The ability to provide incentives to retire or resign assists employers to restructure their businesses to meet changing needs and circumstances and, in this way, promotes a healthy economy. This is an important purpose as it assists all Victorians.

The nature and extent of the limitation

The limitation only applies to the offering of incentives to retire or resign. This gives the employees the option to retire or resign, but does not force them to do so.

The relationship between the limitation and its purpose

Differentiating on the basis of age and eligibility for superannuation benefits provides a rational way of differentiating between employees, by ensuring that all employees in the business will have income security following a restructure. I note that the commonwealth Income Tax Assessment Act 1997 (section 83.180) provides for tax exemptions for payments pursuant to approved early retirement schemes. The existence of this tax benefit underscores the rationality of age-based early retirement schemes.

Any less restrictive means reasonably available to achieve its purpose

There are other ways of differentiating among employees when creating incentives to resign or retire. For example, differentiation could be on the grounds of performance or workplace location. While these options do not limit the right to equality, they may not always be available. Further, the Supreme Court held in *Sabet v. Medical Practitioners Board of Victoria* [2008] VSC 248 (at [188]), that in considering whether there are less restrictive means available, it was sufficient to consider whether the chosen measures fall within a range of reasonable alternatives. Given this, allowing differentiation on the grounds of age is a reasonable option.

D.5. Clause 37 allows qualifying bodies to set reasonable terms or make variations to reasonable terms where a person cannot meet the terms of a qualification to allow the person to practise their occupation. The reasonable terms may be a restriction on full practice of the profession or trade.

The importance of the purpose of the limitation

The purpose of this limitation is to ensure that a person with an impairment that limits their ability can gain entry to a profession or trade or continue to work in a profession or trade to the fullest extent possible.

The nature and extent of the limitation

The limitation aims to facilitate the participation in the workforce of people with impairments. While it may mean that there is a restriction on full practice of the profession or trade, this is justified by the need to ensure public health and safety.

The relationship between the limitation and its purpose

The limitation is rationally connected to its purpose.

Any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means to achieve such a purpose.

D.6. Clause 42 allows educational authorities to set and enforce reasonable standards of dress, appearance and behaviour for students. Subclause 42(2) clarifies the views of the school community are a relevant factor in assessing the reasonableness of the standard. This exception limits the right to enjoy human rights without discrimination (section 8(2)) and the right to equality (section 8(3)). In its application, it may also engage the right to bodily privacy (section 13) in that the provision may control physical appearance, the right to freedom of thought, conscience, religion and belief (section 14) in that a person may be prohibited from demonstrating their religious beliefs through limitations on dress or conduct, the right to freedom of expression (section 15) in that a person may be denied the right to freely express themselves through dress or conduct and cultural rights (section 19) in that a person may be prohibited from enjoying their culture or practising their culture.

The importance of the purpose of the limitation

The purpose of allowing a school to set reasonable standards of dress, appearance and behaviour is to promote appropriate standards of behaviour and decency and ensure the health and safety of students. In some respects, the purpose may also be to promote equality between students by setting a standard school uniform.

The nature and extent of the limitation

The exception is inherently limited by the requirement that any standard set by the school be reasonable. For public schools, which are public authorities and therefore bound by the charter in their decision making, any standard set must be a reasonable limitation on any right that the standard engages.

The provision in clause 42(2), which clarifies that consultation with the school community is a relevant factor in determining reasonableness, recognises that there may be different standards and expectations between schools. That the school community is an important stakeholder in the setting of appropriate standards of dress for each school is confirmed by the recommendation of the Education and Training Committee of Parliament's Inquiry into Dress Codes and School Uniforms in Victorian Schools that 'decisions regarding dress codes and school uniform policies remain the responsibility of school councils, in consultation with their communities'.[1]

The relationship between the limitation and its purpose

The limitation is rationally connected to its purpose. There is no other way for schools to regulate standards of dress, behaviour and appearance aside from providing an exception to allow them to do so.

Any less restrictive means reasonably available to achieve its purpose

As noted above, there is no other way for schools to achieve the purpose of the limitation.

D.7. Clause 47 allows insurance providers to discriminate on any attribute by refusing to provide an insurance policy to the other person, or on the terms on which an insurance policy is provided where it is allowed by a commonwealth act or where it is justified by actuarial or statistical data or where it is otherwise reasonable, if no such data exists and it is not reasonable to attain it. This exception limits the right to equality (section 8(3)).

The importance of the purpose of the limitation

The purpose of this exception is to enable insurers to provide affordable insurance to customers, by allowing different premiums to be offered to those groups with different levels of risk.

The nature and extent of the limitation

While the exception covers all attributes, the extent of the limitation is inherently restricted by the requirement that it be reasonable or allowed under a commonwealth act.

The relationship between the limitation and its purpose

As the insurance premiums are calculated on the generalised behaviour of different groups, justifiable discrimination is required to enable insurance to be offered. As such, the limitation is rationally limited to its purpose.

Any less restrictive means reasonably available to achieve its purpose

While it could be argued that the exception could be limited by restricting it to the attributes of age, sex and impairment, the in-built requirement that any differentiation based on an attribute must be reasonable and justifiable safeguards the exception against an unjustified broad application of the exception.

D.8. Clause 48 allows credit providers to discriminate on the grounds of age by refusing to provide credit, or on the terms in which credit is provided, if the refusal is based on actuarial or statistical data on which it is reasonable for the credit provider to rely and is reasonable having regard to that data, or where no data is available, if the refusal or terms on which credit is provided are reasonable having regard to any other relevant factors. This limits the right to equality (section 8(3)) by preventing people from accessing credit, or affecting the

[1] Education and Training Committee of Parliament, *Inquiry into Dress Codes and School Uniforms in Victorian Schools — Final Report*, December 2008, recommendation 2.1.

terms under which a person can access credit, on the basis of their age.

The importance of the purpose of the limitation

The purpose of this limitation is to allow credit providers to use age as a basis for assessing the risk associated with extending credit. This may be beneficial to young people who are unaware of such risks and may otherwise unwittingly take on excessive debt. It may also be beneficial to older people who, by reason of reduced income after retirement, may not be able to pay back a loan.

The nature and extent of the limitation

The exception only restricts the right to equal treatment on the grounds of age. The exception is inherently limited by the requirement that it be reasonable and justifiable.

The relationship between the limitation and its purpose

As terms and conditions of the provision of credit are calculated on the generalised behaviour of different age groups according to data on the ability of such groups to pay back the credit, justifiable discrimination is required to enable credit to be offered. As such, the limitation is rationally limited to its purpose.

Any less restrictive means reasonably available to achieve its purpose

A less restrictive means of assessing risk in relation to credit would be by reference to the person's credit history once they have one. However, as information about a person's history may not be readily available to credit providers, allowing credit providers to use age is a rational and proportionate means of allowing them to assess risk.

D.9. Clause 49 allows a person providing goods and services to a child to require the child be accompanied or supervised by an adult if there is a reasonable risk that the child may cause a disruption or endanger himself or herself or another person. This limits the right to equality (section 8(3)), as it may prevent parents (or others caring for children) and children themselves from accessing certain places or participating in certain activities. In its application, it may also engage the right to freedom of thought, conscience, religion and belief as it may be used to deny a person access to religious institutions. Similarly, it may engage cultural rights (section 19) as it may restrict the capacity to access particular venues for the purpose of taking part in cultural practices. However, it may also facilitate the protection of families and children (section 17) and other individuals' privacy (section 13) where this is at risk of disruption by a child.

The importance of the purpose of the limitation

This limitation is aimed at ensuring children do not unreasonably cause disruption or danger to themselves or other people.

The nature and extent of the limitation

The limitation is not extensive. It only allows a provider of goods and services to require that a supervising adult be present and by default would allow the provider to refuse the goods and services where this condition was not met. Further, it is restricted by the requirement that the risk of disruption or risk to safety be reasonable.

The relationship between the limitation and its purpose

Requiring an adult to supervise a child where a reasonable risk of disruption or danger presents is a rational and proportionate way of achieving the aim of the limitation.

Any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means reasonably available to achieve the purpose of the limitation.

D.10. Clause 68 allows clubs established for one sex only to exclude from membership people of the opposite sex. This exception limits the right to equality (section 8(3)).

The importance of the purpose of the limitation

The main purpose of this limitation is to avoid inconsistency with the commonwealth Sex Discrimination Act 1984, which defines clubs in the same way as the bill and contains an exception allowing single-sex clubs to discriminate in relation to membership. If Victorian law is inconsistent with commonwealth law, the Victorian law will be invalid to the extent of the inconsistency. However, there are other purposes of single-sex clubs, namely, to promote freedom of association between members of the same sex. This may be particularly important for women, where associating with other women members promotes equality. This is likely to be the justification for the exception for single-sex clubs in the Sex Discrimination Act, as one of the objectives of that act is to give effect to the Convention on the Elimination of All Forms of Discrimination Against Women.

The nature and extent of the limitation

The limitation arising from allowing single-sex clubs is restricted by the definition of 'club' in the bill. Only clubs with more than 30 members and that have a liquor licence (other than a temporary licence or a major event licence) will be regulated by the bill.

The relationship between the limitation and its purpose

The limitation is directly connected to its primary purpose, which is to avoid inconsistency with the commonwealth Sex Discrimination Act.

Any less restrictive means reasonably available to achieve its purpose

Given the definition of 'club' in the bill is the same as that in the commonwealth Sex Discrimination Act, there are no less restrictive means available to avoid inconsistency.

D.11. Clause 69 allows clubs to provide equivalent but separate benefits to male and female members where it is not practicable for men and women to enjoy the same benefit together. This exception may limit the right to equality (section 8(3)) in its application, by preventing either male or female club members from enjoying a benefit.

The importance of the purpose of the limitation

The purpose of this exception is to ensure men and women have reasonably equivalent access to member benefits of a club, if it is not practicable for men and women to enjoy those benefits at the same time. For example, where there is only one change room available at a sporting club, it may be

reasonable to provide separate access to men and women. In such cases, the exception will operate to protect the right to bodily privacy (section 13).

The nature and extent of the limitation

This exception applies only to sex discrimination in the area of clubs. Further, it will only apply where it is not practicable for the benefits to be enjoyed by men and women at the same time. The nature of the limitation is inherently restricted by the requirement that it not be practicable to provide the benefit to men and women at the same time. The extent of the limitation is minimised by the requirement that separate benefits be the same or reasonably equivalent.

The relationship between the limitation and its purpose

The restricted nature of the limitation means that it is rational and proportionate to its purpose.

Any less restrictive means reasonably available to achieve its purpose

The assumption underlying the limitation is that the club's resources are limited and that therefore providing the benefit simultaneously to men and women is not practicable. While it may be appropriate for clubs to move towards the position where they are able, through redesign of premises or other means, to provide the benefit simultaneously, there are no less restrictive means reasonably available to achieve the purpose of the limitation where clubs are hampered by limited resources.

D.12. Clause 72(1) combined with **clause 72(3)** allows for single-sex sporting competitions for people over the age of 12, where the strength, stamina or physique of the competitors is relevant. It also allows for the exclusion of people on the basis of gender identity from such competitions in those circumstances. **Clause 72(2)** allows competitive sporting activities to be restricted to people who can effectively compete, people of a specified age or age group or people with a general or particular impairment. This clause limits the right to equality (section 8(3)). In allowing discrimination on the basis of gender identity, it may also limit their right to privacy (section 13).

The importance of the purpose of the limitation

The purpose of this limitation is to allow fair competition in competitive sporting activities by differentiating between people based on attributes which may mean they cannot compete at the same level as people without those attributes. This is an important purpose in a society that values competitive sport.

Doing this may increase participation in some sports, and thereby facilitate freedom of association between members of these groups (section 16).

The nature and extent of the limitation

The extent of the limitation is restricted in that it only applies to competitive sporting activities and (in relation to sex and gender identity) those in which strength, stamina or physique are relevant. The effect of this limitation may be far reaching in circumstances where no equivalent sporting competitions are provided to people in the groups excluded by the exception. However, such circumstances depend on the availability of resources, and in some instances, the history and culture of the sport, which are issues that equal opportunity law cannot adequately address.

The relationship between the limitation and its purpose

By restricting the application of the limitation to competitive sporting activities and (in relation to sex and gender identity) those in which strength, stamina or physique are relevant, the limitation is rationally connected to its purpose.

Any less restrictive means reasonably available to achieve its purpose

The exception allowing discrimination on the grounds of gender identity assumes that a transgender person may have a competitive advantage associated with their birth gender. This may not necessarily be the case. For example, female-to-male transgender people competing in male competitive sporting activities are unlikely to have a competitive advantage. Given this, limiting the exception to instances where people have a competitive advantage because of their gender identity may be a less restrictive means of achieving the purpose of the exception. However, framing the exception in this way may be difficult to apply, as it would involve assessing the effects of the person's gender identity on their sporting ability, an assessment that would be beyond the capability of most sporting organisations and may involve intrusive questioning and testing. For example, the International Olympic Committee's rules on participation by transgender athletes in competitions for the sex with which they identify require athletes to have had surgery at least two years prior to the competition, to be taking hormone replacement therapy for an appropriate period of time and to be legally recognised as a member of the gender with which they identify.

In light of this, and in light of the fact that the exception is limited to competitive sporting activities, the exclusion of people on the basis of gender identity is a reasonable means of achieving the purpose of the limitation.

D.13. Clause 74 allows a councillor of a municipal council to discriminate against another councillor or member of a council committee in the performance of their public functions on the grounds of their political belief or activity. This exception limits the right to equality (section 8(3)).

The importance of the purpose of the limitation

The purpose of this exception is to facilitate the efficacy of local government through democratic political affiliations, and thereby enabling councillors to interact with other councillors on the basis of their political affiliations. This is a legitimate and important purpose in a free and democratic society.

The nature and extent of the limitation

This limitation is restricted to very narrow circumstances and therefore is not extensive.

The relationship between the limitation and its purpose

The limitation is rationally connected to its purpose.

Any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means available to achieve the purpose of the limitation.

D.14. Clause 75 allows a person to discriminate on any grounds where it is necessary to comply with or is authorised by an act or enactment. While this exception is not discriminatory itself, it may facilitate the limitation of a number of charter rights, including the right to equality (section 8(2) and 8(3)), depending on the provision in the act or enactment.

The importance of the purpose of the limitation

This exception recognises that, in limited circumstances, it will be intended that an act or enactment allows discrimination, and while the discrimination does not fall within an exception, it is considered to be a reasonable limitation on the right to equality.

The nature and extent of the limitation

Prior to the commencement of the charter, the exception in section 69 of the Equal Opportunity Act was very far reaching. However, since the commencement of the charter, there are a number of processes for ensuring human rights are taken into consideration in the development of new policy and legislation. These processes are designed to ensure new acts or enactments are charter-compatible, or that the decision to enact legislation that is not compatible is intended and explained.

In addition:

all government departments undertook an audit of the existing legislation they administer in 2007 and 2008 to identify incompatible provisions;

since 1 January 2008, section 32 of the charter requires courts and tribunals to interpret laws in a way that is human rights-compatible as far as possible;

section 38 of the charter requires public authorities to act in a manner that is compatible with human rights. This applies to all decisions made by public authorities, including where a public authority has decision-making discretion;

clause 156(2) of the bill provides the commission with a monitoring role and requires the commission to report to the relevant minister and the Attorney-General on any legislation that discriminates or has the effect of discriminating against any person.

The relationship between the limitation and its purpose

The limitation is rationally connected to its purpose.

Any less restrictive means reasonably available to achieve its purpose

It may be argued that listing any provisions that are intended to discriminate in a schedule to the act is a less restrictive means of achieving the purpose of the limitation, as such a schedule would be definitive. However, given the checks and balances already available to ensure legislation is charter-compatible, such a time and resource-intensive process may not be a reasonable alternative. Further, such a scheme may have unintended consequences for any discriminatory acts or enactments that have been overlooked and are not included in the schedule.

D.15. Clause 76 allows discrimination where this is necessary to comply with an order of VCAT or any other court or tribunal. This exception may facilitate the limitation of a number of charter rights, including the right to equality (section 8(2) and 8(3)) depending on the order.

The importance of the purpose of the limitation

This limitation is to ensure orders of courts and tribunals are complied with. This is important in a democratic society committed to the rule of law.

The nature and extent of the limitation

As courts and tribunals are required by the charter to interpret all legislative provisions consistently with the charter, it is likely that the restriction will not be broad.

The relationship between the limitation and its purpose

The limitation is rational and proportionate to its purpose.

Any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means reasonably available to achieve the purpose of the limitation.

D.16. Clause 77 allows discriminatory provisions relating to pensions. This limits the right to equality in section 8(3).

The importance of the purpose of the limitation

The purpose of this exception is to allow provisions relating to pensions to discriminate. This recognises that entitlements to benefits are linked to the way in which certain attributes, such as marital status, sex and impairment, are defined by particular laws. Most of these laws are commonwealth laws, not Victorian laws. In these cases, Victoria cannot control discriminatory provisions in pensions.

Further, anomalies between the way in which particular attributes are defined for the purposes of the Equal Opportunity Act and other Victorian laws may result in terms in pensions being discriminatory. For example, while the Equal Opportunity Act has a broad definition of gender identity for the purpose of protecting people from discrimination, the Births, Deaths and Marriages Registration Act 1996 has a much narrower definition for the purpose of legal recognition of sex. Similarly, while the Equal Opportunity Act has a broad definition of impairment for the purpose of protection from discrimination, other laws have narrower definitions. Where pension entitlements are based on the narrower definition of the attribute, the term may be discriminatory.

The nature and extent of the limitation

While the commonwealth has recently amended some laws that allowed discrimination in pension entitlements on the grounds of sexual orientation, other laws that allow discriminatory pensions still exist. This is recognised by the exemption of certain pensions that contain discriminatory terms from commonwealth antidiscrimination laws.

The relationship between the limitation and its purpose

The limitation is rationally limited to its purpose.

Any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means reasonably available to achieve this purpose.

D.17. Clause 78 allows discrimination on any ground in relation to superannuation fund conditions existing prior to 1 January 1996.

The importance of the purpose of the limitation

This exception recognises the point of time in which superannuation funds became subject to the Equal Opportunity Act 1995 and allows discrimination existing at the time to apply to people who were members at the time or became members within 12 months of the act commencing. This is important to ensure that agreements made during that time remain valid and binding.

The nature and extent of the limitation

This exception is limited in that it only applies to discriminatory terms existing as at 1 January 1996 and to people who were already members of the fund or became members of the fund within 12 months from that date.

The relationship between the limitation and its purpose

The limitation is rationally limited to its purpose.

Any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means reasonably available to achieve this purpose.

D.18 Clause 79 allows discrimination in superannuation fund conditions after 1 January 1996 on the grounds of age, sex, marital status or impairment where this is allowed under commonwealth acts and in relation to age if it is based upon actuarial or statistical data on which it is reasonable for the person to rely and is reasonable having regard to that data and any other relevant factors; or in a case where no actuarial or statistical data is available and cannot reasonably be obtained, the discrimination is reasonable having regard to any other relevant factors. This exception limits the right to equality (section 8(3)) and may also limit other rights, depending on the nature of the discriminatory provision.

The importance of the purpose of the limitation

The purpose of this exception is to ensure compatibility with commonwealth laws relating to superannuation.

The nature and extent of the limitation

This exception is restricted to discrimination in superannuation allowed under commonwealth laws, and, in relation to age, where the discrimination is reasonable.

The relationship between the limitation and its purpose

The limitation is rationally connected to its purpose.

Any less restrictive means reasonably available to achieve its purpose

The exception refers to the exceptions under commonwealth laws and, in relation to age, mirrors the exception. This ensures the exception only allows discrimination on the same terms as that is allowed under the commonwealth laws.

D.19. Clause 85 allows discrimination against a person who is subject to a legal incapacity that is relevant to the transaction or activity in which they are involved.

The importance of the purpose of the limitation

The purpose of this exception is to prevent people with a legal incapacity entering into transactions or engaging in certain activities for which it is considered they are insufficiently mature, or have other legal incapacity.

The nature and extent of the limitation

The nature and extent of the limitation is confined in that it extends only to those transactions in which the person's legal capacity is at issue. Therefore, it is not extensive.

The relationship between the limitation and its purpose

As the exception only applies where the person's incapacity is relevant to the transaction, it is directly related to its purpose.

Any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means reasonably available to achieve the purpose of the limitation.

D.20. Clause 86(1) permits discrimination on the grounds of impairment or physical features where this is reasonably required to protect the health, safety or property of any person. **Clause 86(2)** permits discrimination on the grounds of pregnancy where this is reasonably required to protect the health or safety of any person. This clause limits the right to equality (section 8(3)). However, it promotes the protection of life (section 9) and the right to security of person (section 21).

The importance of the purpose of the limitation

This limitation has an important public purpose of allowing discrimination where this furthers the right to safety and security of people, or where it is necessary to protect public property.

The nature and extent of the limitation

The limitation is confined to discrimination on the grounds of impairment, physical features and pregnancy. The requirement that the discrimination be reasonably necessary to protect health and safety or property inherently requires consideration of whether the discrimination is reasonable, rational and proportionate.

The relationship between the limitation and its purpose

The limitation is rationally connected to its purpose.

Any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means to achieve such a purpose.

OTHER CLAUSES THAT ENGAGE CHARTER RIGHTS

Right to equality

The provision clarifying that taking special measures to promote or realise substantive equality is not discrimination

(**clause 12**) and the provisions that create a duty for certain duty-holders to make reasonable adjustments for people with impairments (**clauses 20, 33, 40 and 45**) engage but do not limit the right to equality in section 8(3).

As I noted in the introduction to this statement of compatibility, section 8(4) of the charter specifically recognises that taking special measures to achieve substantive equality for disadvantaged groups is not discrimination. **Clause 12** reflects this model. Clause 12 contains a number of safeguards to ensure that special measures may only be used for the purpose of promoting or realising substantive equality of the target group. In addition to providing that the person taking the measure bears the onus of proving that the measure is a special measure, the clause provides that once the measure meets its purpose, it is no longer a special measure. Therefore, continuing special measures beyond the achievement of substantive equality may be discrimination.

The reasonable adjustments provisions in **clauses 20, 33, 40 and 45** also engage but do not limit the right to equality. The purpose of the duty to make reasonable adjustments is to enable people with impairments to participate in areas they would not be able to participate in unless the adjustments were made. Making reasonable adjustments for people with impairments requires taking measures that would not be taken for people without an impairment. However, as people without impairments would not need the adjustments, the right to equality is not limited.

Clause 89 allows for the granting, revocation or renewal of applications to the tribunal for a temporary exemption from the act. An exemption makes conduct that would otherwise be unlawful, lawful for the duration of the exemption. While the process prescribing the exemption process does not itself limit the right to equality, an exemption will limit the right to equality and may impact on other rights depending on the nature of the exemption.

Clause 90 provides that the tribunal must consider certain factors when making decisions to grant, renew or revoke an exemption. One of these is whether the proposed exemptions is a reasonable limitation on the right to equality in the charter. In this way, the exemption process ensures that all exemption applications will be assessed according to the reasonable limitations test in section 7(2) of the charter and that all exemptions that are granted or renewed will be compatible with the charter.

Freedom of expression

Clauses 132 and 133 enable the commission to compel the production of information or documents as part of an investigation or public inquiry into a serious systemic matter, and to compel attendance. **Clause 134** provides a penalty for failure to comply with the request for information, to produce documents or to attend without reasonable excuse.

Clauses 132 and 133 may engage the right to freedom of expression in section 15 of the charter, which includes the freedom to impart information and ideas of all kinds, as well as the right not to impart information. However, to the extent that the right is engaged, these clauses would fall within the exceptions to the right in section 15(3), as reasonably necessary to respect the rights of other persons, or for the protection of public order.

The powers to compel information and attendance apply only in the context of an investigation or public inquiry; they are not powers used by the commission in relation to individual disputes. The powers enable the commission to properly carry out its investigatory functions and are appropriately circumscribed, ensuring that they are only used when the information is necessary for the investigation or public inquiry, and that the person required to provide the information or to attend is given a reasonable time in which to comply. The powers are further limited by the protection against self-incrimination in clause 135 and the bill does not override any other relevant privileges that would apply at common law. On a more general level, the commission is bound by the principles of natural justice in conducting an investigation or public inquiry.

Accordingly, I consider that clauses 132 and 133 do not limit the right to freedom of expression in the charter.

The right to privacy

Clause 140 allows the commission to publish a report on a public inquiry. It also allows the commission to provide a report on a public inquiry to the Attorney-General who may then table the report in Parliament. This may engage the right to privacy (section 13). However, the bill includes a number of provisions that ensure that the right to privacy is not unlawfully or arbitrarily interfered with.

Clauses 136 and 137 of the bill act to protect individuals who give information or documents to the commission as part of a public inquiry. Under clause 136, the commission can order non-disclosure of a person's identity where this is necessary to protect the person's security of employment, privacy or other charter right, or to protect the person from victimisation. Under clause 137, the commission may give directions prohibiting or limiting publication of evidence of information having regard to well-established public interest criteria. These criteria include the unreasonable disclosure of the personal affairs of any person. Under clause 141(2), the commission may exclude from the report of a public inquiry, any matter it considers desirable to do so, having regard to the factors in clauses 136 and 137.

The bill also includes protection for people who may be the subject of an adverse finding in a report on a public inquiry. Pursuant to clause 141, where the commission believes there are grounds for making adverse findings, it must give the person who is the subject of the adverse findings the opportunity to comment on the subject matter of the public inquiry and respond to the grounds for making the adverse findings, before the report is given to the Attorney-General or published by the commission.

On a more general level, the commission is bound by the principles of natural justice in conducting the public inquiry and is also bound by the Information Privacy Act 2000, which regulates the circumstances in which personal information may be made public.

Consequently, clause 140 does not limit the right to privacy.

OTHER CLAUSES THAT LIMIT RIGHTS

Freedom of association

Clause 64 prohibits discrimination against applicants for membership of clubs. Clause 4 defines a 'club' as an association of more than 30 persons associated together for

social, literary, cultural, political, sporting, athletic or other lawful purpose that has a liquor licence (other than a temporary limited licence or a major event licence) and runs its facilities wholly or partly from its own funds. With some exceptions, associations that meet the definition of 'club' will not be able to discriminate in relation to membership. Regulating the membership of a club limits the right to freedom of association (section 16).

The importance of the purpose of the limitation

The purpose of regulating clubs over a certain size and that have a liquor licence in the bill is to ensure that people are not prevented from becoming members of such clubs on the grounds of a protected attribute. This purpose promotes the right to equality. This is important given that membership of clubs can be a gateway to other opportunities, such as employment or sporting benefits.

The nature and extent of the limitation

As noted in this statement of compatibility, there are a number of exceptions that allow discrimination on the basis of certain attributes, namely, clubs for minority cultures, clubs for particular age groups and single-sex clubs. In addition, a club that is established to promote or realise substantive equality for people with a particular attribute will be a special measure and therefore not discriminatory under the bill or charter. Further, the bill enables clubs, who are not covered by an exemption or undertaking a special measure, who wish to discriminate in relation to membership for reasons such as freedom of movement, to apply for an exemption from VCAT. This would then be a matter for VCAT to consider based on the relevant circumstances of the case, and whether the proposed exemption is a reasonable limitation on the equality right in the charter. Consequently, the limitation is circumscribed by the exceptions, special measures and exemption process in the bill.

The relationship between the limitation and its purpose

Defining clubs to be regulated by reference to size and whether they hold a liquor licence is a rational way of achieving the purpose of balancing the right to freedom of association with the right to equality. Smaller associations are more akin to a private gathering, whereas larger associations are more likely to be considered as operating in the public sphere. Having a liquor licence subjects the association to licensing regulation. This is an indication that the association is operating in the public sphere and should be subject to equal opportunity regulation. The rationale of adopting this definition of 'clubs' is supported by the fact that most other states in Australia and the commonwealth Sex Discrimination Act use the same definition.

Any less restrictive means reasonably available to achieve its purpose

There are a number of ways in which the line could be drawn between the public and private spheres in relation to clubs. For example, the Equal Opportunity Act draws the distinction based on whether or not the association is on public land or receives public funding. Private clubs are currently exempt from the act. This scheme could be seen as intruding less on the right to freedom of association of private clubs. However, the current definition of 'clubs' captures a greater number of associations. Not regulating any associations in relation to membership is another option that promotes freedom of association. However, this is done at the expense of the right to equality.

On balance, defining 'clubs' in this way, together with the exceptions for clubs included in the bill, is a justifiable way of balancing the right to freedom of association with the right to equality.

The right to a fair hearing

As discussed above, **clause 136** empowers the commission to give directions prohibiting the disclosure of the identity of a person who provides information as part of an investigation or public inquiry, as well as the disclosure of information that would be reasonably likely to identify the person, where the commission considers that the preservation of the person's anonymity is necessary to either protect the person's security of employment, privacy or any right protected by the charter, or to protect the person from victimisation. **Clause 137** allows the commission to prohibit or limit the disclosure of other information on public interest grounds. These clauses may engage the right to a fair hearing under section 24(1) of the charter.

The right to a fair hearing applies to proceedings that are determinative of private rights and interests in a broad sense. It is arguable that an investigation of a serious systemic matter by the commission could constitute a 'civil proceeding' given the ability for the commission to issue a compliance notice as an end result of an investigation (but not a public inquiry), and that an individual (as opposed to an organisation or corporation) who is the subject of the investigation could be regarded as a 'party'. If an investigation does constitute a civil proceeding, then it must be 'fair' within the meaning of section 24(1) of the charter. While the commission may order that certain information not be disclosed, in my view, investigations carried out under part 9 will be fair, particularly given that the commission must afford natural justice throughout the investigative process, and that an affected person can apply to VCAT to seek review of a compliance notice issued by the commission.

The commission would be unable to issue a compliance notice without first complying with the rules of natural justice in conducting its investigation. This would include giving the person the chance to challenge any adverse conclusions that might be the basis for a compliance notice. However, if the provision amounts to a limitation of section 24(1) of the charter, I consider that the limitation would be reasonable and justified for the following reasons.

The importance of the purpose of the limitation

In considering the possible limitation on the right to a fair hearing, it is important to look at the context for an investigation by the commission. Clause 127 allows the commission to conduct an investigation into any matter that raises an issue that meets the criteria for an investigation and which would advance the objectives of the act. The objectives include encouraging the identification and elimination of systemic causes of discrimination, sexual harassment and victimisation. The outcomes of an investigation, such as a compliance notice, are aimed at encouraging compliance and changing the culture of organisations, as opposed to providing redress to an individual who has been discriminated against.

In order to ensure that investigations are effective, it is also important that the commission is able to protect the identity of

people providing information or evidence as part of the investigation, and to limit disclosure on other public interest grounds. Without these protections, people may be reluctant to provide relevant information.

The nature and extent of the limitation

The assessment of whether or not a proceeding is 'fair' so as to satisfy section 24(1) of the charter is to be undertaken 'globally', taking account of available safeguards before the relevant body and the availability of review before a court or tribunal.

Taking this global approach, the first point to note is that the commission is bound by the principles of natural justice in conducting an investigation that could lead to the issuing of a compliance notice. This means that a person or organisation that will potentially be issued with a compliance notice will know about the investigation, and any allegations of breaches of the legislation, and have had an opportunity to respond to these matters.

A direction prohibiting disclosure of the identity of a person or other information will only be given if this is necessary for the above purposes.

The commission must also set out in a compliance notice issued under clause 146, the basis for its belief that an unlawful act has occurred and that the person may apply to VCAT for a review of the notice. This ensures that the person understands what they are being asked to remedy and why, and what legal options they have to challenge this.

The bill provides that a person issued with a compliance notice has 28 days to apply to VCAT for a review of the issuing of the notice or of any term of the notice.

The relationship between the limitation and its purpose

The possible limitation is directly connected to its purpose, which is to enable the commission to properly carry out its investigative functions.

Any less restrictive means reasonably available to achieve its purpose

As the circumstances in which the possible limitation will apply are restricted to where the commission considers that non-disclosure is necessary to protect a person's anonymity or is otherwise in the public interest, the extent of the limitation is such that there are no less restrictive means reasonably available to achieve the purpose of the clauses.

If the right to fair hearing is limited by the bill, then any limitation is reasonable within the meaning of section 7(2) of the charter.

Freedom of expression

Clause 176 prevents the recording, disclosure or communication of personal information by the commissioner, board members and staff of the commission (and other specified people) unless it is necessary to do so for the purpose of, or in connection with, the performance of a function or duty or the exercise of a power under the bill. It does not prevent the parties themselves from disclosing information. This limits the right to freedom of expression including the freedom to seek, receive and impart information and ideas of all kinds (section 15(2)) by making it an offence for specified people to make a record of, disclose or communicate certain information.

The importance of the purpose of the limitation

The purpose of this limitation is to ensure that confidential information provided or obtained in the course of working for the commission is protected. This is important to protect the right to privacy of individuals or organisations to whom such information relates and to protect the integrity of the work of the commission.

The nature and extent of the limitation

Commission staff are already covered by the Information Privacy Act and are required to act compatibly with the charter. These acts require commission staff and board members to protect the privacy of certain information. The limitation in clause 176 does not extend beyond the obligations under these acts.

The relationship between the limitation and its purpose

The limitation is rationally connected to its purpose.

Any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means reasonably available to achieve the purpose.

The right to the presumption of innocence

Clause 183 of the bill provides that it is a defence to the offence of discriminatory advertising if the defendant proves they took reasonable precautions and exercised due diligence to prevent the publication or display of the discriminatory advertisement. This limits the right to the presumption of innocence in section 25(1) of the charter, as it places a legal onus on a defendant by providing that the defendant must prove certain factors in order to avail himself or herself of the defence.

The importance of the purpose of the limitation

The purpose of imposing a burden of proof on persons regarding the offence of discriminatory advertising is to ensure that these offences can be effectively prosecuted and that they operate as a deterrent to discriminatory advertising by imposing a duty on persons to take responsibility for the manner in which they advertise. The limitation will importantly protect the right to equality in section 8 of the charter by ensuring that persons of a particular attribute are not discriminated against in advertising.

The nature and extent of the limitation

When an individual has engaged in discriminatory advertising, a burden is placed on that individual to prove that they have taken reasonable precautions and exercised due diligence to prevent the offence. By choosing to engage in a public activity, it is reasonable to expect individuals who are publishing advertisements to take steps to ensure that the advertisements are not discriminatory. If reasonable steps have been taken, proof ought not to be difficult. Whilst the prescribed penalty can involve low-level fines, it does not involve imprisonment.

The relationship between the limitation and its purpose

The imposition of a burden of proof on the defendant is directly related to its purpose as described above.

Less restrictive means reasonably available to achieve the purpose

An evidential onus would not be effective as it could be too easily discharged by the defendant. Having regard to the purpose of the offence, it would be unduly difficult and onerous for the state to investigate and prove what steps the defendant took to discharge his or her responsibilities. Accordingly, I consider these provisions to be compatible with the right to be presumed innocent in the charter.

Conclusion

The bill is an important vehicle for promoting the right to equality. However, in some instances, that right and other rights must be limited to properly balance competing rights or for other important reasons, such as public health and safety. As discussed in this statement of compatibility, all of the limitations in the bill are reasonable and justifiable.

Justin Madden, MLC
Minister for Planning

Second reading

Hon. M. P. PAKULA (Minister for Public Transport) — I advise the house that there was an amendment to this bill in the Legislative Assembly.

The bill as introduced into the Legislative Assembly proposed to extend protections against discrimination and sexual harassment to volunteer workers. Following further consultation with stakeholders and in order to respond to concerns around the compliance burden on smaller organisations, particularly those in the not-for-profit sector, the government has decided to amend the bill to protect volunteer workers from sexual harassment but not extend the prohibition against discrimination in employment to volunteer workers.

Importantly, given that the second-largest number of equal opportunity complaints in the area of employment are about sexual harassment — the first being complaints of disability discrimination — and the large numbers of women in the volunteer workforce, this reform will make a real and appreciable difference to the lives of hardworking Victorians giving up their time for the benefit of the community.

Most other jurisdictions already have protections for volunteers in relation to sexual harassment and have done so for some time.

The second-reading speech and statement of compatibility have been amended to reflect the house amendment. The amendment was made to the second-reading speech on page 7 and the amendment to the statement of compatibility was made on page 1.

The second-reading speech and statement of compatibility have also been amended to reflect that the government's response to the Scrutiny of Acts and Regulations Committee report *Exceptions and Exemptions to the Equal Opportunity Act 1995* was tabled on 11 March 2010. The amendment to the second-reading speech was made on page 2 and the amendment to the statement of compatibility was made on page 2.

I move:

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

Motion agreed to.

Hon. M. P. PAKULA (Minister for Public Transport) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

Introduction and background — a fair go for all Victorians

It would be difficult, President, to find a Victorian who did not support the idea of the fair go.

After all, everyone wants to be happy and healthy, to have a good education and secure employment. Everyone wants to be included in the economic prosperity we have worked hard together to achieve; as well as in the community we have built together –one that values diversity; that values opportunity; that values the contribution that every member of our rich and varied society can make, if given the chance to make it.

That is why, over three decades ago, Victoria adopted equal opportunity legislation –legislation that attracted bipartisan support; that signalled our aspirations for fairness with new strength and clarity. That legislation has been a bulwark of Victorian civic life ever since, providing a foundation for our society as it has developed and matured.

It could not have done this properly, however, unless it had progressed with the community it was designed to protect. President, whether in demographics or in population, Victorians are not the same as they were in 1977, nor is our understanding of their varied experiences and the barriers that some still face to participating and contributing in full.

We can see that, though progressive in its day, the legislation of a generation ago contained no provision for the diversity that we now assume. That is why, in 1995, it was amended to prohibit discrimination on the basis of, amongst other things, lawful sexual activity, age and pregnancy. In 2000, breastfeeding, sexual orientation and gender identity discrimination were included. In 2008, it was amended to protect employees who requested flexible working arrangements to accommodate their family responsibilities.

Gradually, its scope has changed to reflect the scope of the wider community. What the legislation has not done until today, however, is change to reflect and address the varied forms of discrimination that Victorians continue to experience — yes, as individuals, but also as members of whole groups in the community.

What this means is that, while the right to participate fully is available to all Victorians — the right, if you like, to congregate at the starting line — for many the track ahead remains full of hurdles.

Pay inequity between men and women; persistent indigenous disadvantage; facilities that are physically accessible to some but not to others — these inequalities endure because they are systemic, rather than isolated; because they cannot be redressed by an individual complaint. As a result, discrimination can disadvantage entire groups in a variety of ways.

Recent ANU research cites employment as one such area. According to the research, 21st-century employers are still more likely to grant interviews to candidates with Anglo-Celtic names, on otherwise identical job applications in a supposedly open field. Further, a 2004 report of the Productivity Commission found that only 53.2 per cent of people with disabilities were in work compared to 80.6 per cent of those without a disability.

If such basic forms of discrimination are still entrenched, then we need to acknowledge that some opportunities remain more equal than others — that Victorians are competing on uneven ground and that we need to level the playing field. We need a legal framework and commission that is properly equipped to tackle all forms of discrimination — individual or systemic — to dismantle it where it does exist, and nurture and encourage a future in which it does not.

That is why the government commissioned the former public advocate, Mr Julian Gardner, to conduct a review of the Equal Opportunity Act 1995. Mr Gardner's report, 'An Equality Act for a Fairer Victoria' (Gardner report) was released in June 2008 and made 93 recommendations for reform.

The government has responded to the Gardner report in two stages. The first stage saw the passage of the Equal Opportunity Amendment (Governance) Act 2009, which implemented recommendations relating to the governance structure of the Victorian Equal Opportunity and Human Rights Commission (the commission). This act commenced operation on 1 October 2009. The commission is now stronger, more accountable and better prepared to adapt to the changes that this second stage of reform represents.

This bill introduces key reforms to respond to the limitations of the current act. In particular, the bill:

changes the commission from a complaints-handling body to one that educates and facilitates dispute resolution, best practice and compliance;

gives the commission more effective options to respond to systemic discrimination;

encourages best practice and proactive compliance by duty-holders without reliance on individual complaints;

provides a more effective and efficient complaints resolution system by placing the focus on early and flexible dispute resolution at the commission but allowing complainants to also go directly to VCAT to have their matter determined; and

removes legal and technical barriers to the elimination of discrimination.

The bill also clarifies, updates and amends exceptions to unlawful discrimination in response to a separate review by the Scrutiny of Acts and Regulations Committee (SARC). The government tabled its response to SARC's report on 11 March 2010.

Overall, these reforms equip Victoria to prevent discrimination, rather than just react to it; to resolve it in an early and more enduring way where it does occur; to build relationships and collaboration with business and support best practice; to encourage productivity and innovation; to remove the obligation from individual shoulders and assume it together.

Before I go into further detail, President, I want to emphasise that we take these steps not as an optional extra, nor for the warm inner glow they may excite in even the stoniest of hearts.

We must do this because, while individuals and particular groups within the community suffer when they experience discrimination, we also know that society as a whole cannot be strong and prosperous without also being fair. In fact, we know that society flourishes, both socially and economically, when all members are able to contribute productively to its social and economic life; when businesses are more innovative and diverse; when workforces and communities are more healthy, cohesive, stable and secure.

In turn, we are all harmed when discrimination occurs. We are all diminished when Victorians with disabilities cannot find employment; when pay inequity persists; when violence or hate motivated crime is perpetrated against our Indian community.

We are diminished not just by the breakdown of trust and respectful relationships but also by the very tangible effects that unfavourable treatment, violence or harassment can have on a person's mental and physical health; on their economic or educational security; on their basic capacity to participate. In fact, research reveals that experiencing race-based discrimination, for example, is associated with an increased risk of anxiety and depression, and possibly associated with diabetes, obesity and cardiovascular disease, as well as with a lack of productivity.

Ill-health comes at a cost to the public, as well as the individual, purse. This means, then, that in a variety of ways, discrimination has an economic cost, as well as a social one, vindicating the Brumby government's view that social and economic progress are inextricably linked: that a strong economy is needed to develop a healthy and strong community, and that a healthy and strong community is vital for continued economic growth. Just like the health arena, then, we owe it to ourselves to opt for prevention, rather than just cure.

Key reforms

I would now like to touch on some of the key reforms in the bill in more detail.

Changing the role of the commission

The bill gives the commission a new focus. Rather than concentrating its resources solely on processes for handling complaints, the commission will now focus on flexible and responsive dispute resolution that will help parties resolve a dispute as quickly as possible. The commission will have an increased role in working with and encouraging duty-holders to comply with the legislation through education, the development of industry-specific guidelines and organisational engagement.

The bill also clearly recognises the commission as a body with specialist expertise, allowing the commission to intervene in legal proceedings involving issues of equal opportunity or discrimination if permitted to do so by the court or tribunal.

Giving the commission more effective tools to respond to systemic discrimination

The commission has a limited a range of options to enable it to investigate circumstances in which discrimination may be occurring.

This bill provides for a graduated and effective range of options aimed at addressing systemic discrimination. However, I should emphasise, this does not involve allowing the commission to enter premises, conduct searches or to seize property.

What it does involve is enabling the commission, following a decision of the board of the commission, to conduct an investigation into a serious matter that affects a class or group of people and that indicates a possible contravention of the act, if the investigation would advance the objectives of the act.

For example, a company may have a policy that appears to indirectly discriminate against people with a disability. While the company settles several individual complaints about the policy, the policy has not been changed and continues to disadvantage people with a disability. This is the point at which the commission may step in and gather information about the extent of the problem, and decide whether further action is warranted.

Where the commission's investigation reveals a problem, the commission will be able to engage with the individuals and organisations concerned to collaborate on a solution. This may simply involve an agreement to change a particular practice, or a series of practical and measurable steps to address the issue. The commission may also accept a more formal undertaking in which the person or organisation agrees to take action or refrain from taking action, and such an undertaking will be enforceable at VCAT if breached.

Where an outcome cannot be reached by agreement, the commission will be able to issue a compliance notice for a person or organisation to remedy a breach of the act. If that notice is not complied with, the commission can apply to VCAT to enforce it. The notice, or any part of it, can also be appealed to VCAT.

Where it is in the public interest, the commission will be able to recommend to the Attorney-General that a broader public inquiry be conducted into a serious systemic matter. In order to ensure that an inquiry is in the public interest, the commission will only be able to conduct a public inquiry with the Attorney-General's consent. At the conclusion of a public inquiry, the commission will provide a report to the Attorney-General, which may be tabled in Parliament.

The commission already has the option of compelling the production of documents and attendance. The bill also sets out, then, that the commission can exercise the powers to compel only after issuing a written notice setting out what it is seeking and why, as well as providing that the commission is generally bound by the principles of natural justice. In this way, the bill provides a number of checks and balances to safeguard the rights of individuals and organisations. The commission is, of course, also required to act compatibly with the Charter of Human Rights and Responsibilities.

Encouraging best practice and proactive compliance

These tools are about supporting business and encouraging the best practice that already exists in the vast majority of Victorian organisations. While the current act contains implied duties to not discriminate, sexually harass or victimise, stating these duties in a positive way — a way that does not rely on a complaint being lodged — promotes proactive compliance and allows the commission to engage more easily with organisations about their practices where there is evidence of systemic discrimination.

Duty-holders are, of course, only required to take measures that are reasonable and proportionate. Including the words 'as far as possible' ensures practicability and that any costs of meeting their obligations are proportionate to the size and operations of the organisation. By providing a list of factors relevant to consideration of when a measure is reasonable and proportionate, the bill recognises that different duty-holders have different capacities to eliminate discrimination, and that what may be possible for one organisation will not be possible for another.

In practice, the duty will mean that organisations will need to think proactively about their compliance obligations, rather than wait for a complaint to trigger a response. In other words, prevention is better than cure and many organisations already recognise this as a matter of best practice. It may involve organisations identifying potential areas of non-compliance, developing a strategy for meeting and maintaining compliance, for example, through training or clear policies, and having a process for reviewing and improving compliance where appropriate.

This duty will not be enforceable through individual complaints. However, the duty may form the basis upon which the commission takes action to investigate allegations of systemic discrimination and, if appropriate, take action to enforce compliance. In this way, the baseline obligations for duty-holders will not change. Rather, the change will be that compliance will be systemic and proactive, rather than being activated by individual complaint after the event.

Creating a more effective and efficient dispute resolution system

The individual complaints process, too, will be significantly reformed under this bill. The changes will make dispute

resolution faster, more flexible and more appropriate to individual disputes. In addition, it will eliminate the current duplication in the complaints process by allowing people with a dispute to go directly to VCAT, rather than requiring them to lodge a complaint with the commissioner first, as is currently the case.

This new model will be supported by the establishment of an independent specialist legal advice and assistance service designed to give people early strategic advice about their matter and to provide representation where appropriate. The commissioner must offer services to facilitate the resolution of disputes; but use of these dispute resolution services will be voluntary, meaning any party can withdraw at any stage. People with a dispute will not be required to go through the commissioner's dispute resolution services before they can take their dispute to VCAT, though VCAT will continue to have the power to order compulsory mediation and strike out claims in certain circumstances.

Changing the commission's focus from formal complaint handling to flexible dispute resolution will allow disputes to be resolved more quickly, minimising the harm caused not only by discrimination and sexual harassment, but by the expense associated with protracted complaints processes. It will also allow relatively minor disputes to be resolved quickly and at a low level, through the provision of information to duty-holders.

In this way, while direct access to VCAT will be available, it is intended that the commission retain its critical functions, providing general information and education to both duty-holders and people with a dispute.

Removing legal and technical barriers to the elimination of discrimination

Simpler definitions of discrimination

The bill clarifies the meaning of discrimination so that it is easier to understand for both duty-holders and complainants, and so that a complaint will no longer fail on unnecessary technicalities.

The bill provides that direct discrimination occurs if a person treats, or proposes to treat, someone with an attribute unfavourably because the other person has the attribute. This definition removes the technical difficulties associated with the current requirement to compare the treatment of the person with a person in the same or similar circumstances.

The bill provides that indirect discrimination occurs if a person imposes a requirement, condition or practice that has, or is likely to have, the effect of disadvantaging people with an attribute and the requirement or condition is not reasonable. The definition removes technical difficulties associated with the current definition, which requires a complainant to show that a substantially higher proportion of people without the attribute can comply with the requirement, condition or practice.

The definition also requires the person imposing the requirement, condition or practice to show that it is reasonable. This reflects the fact that the evidence about what is reasonable is usually controlled by the duty-holder, not the person being discriminated against, and follows the approach taken in other Australian jurisdictions. The definition includes a list of factors to provide guidance about what may be relevant when assessing the reasonableness of a requirement, condition or practice.

Special measures are not discrimination

The bill makes a clear statement that taking special measures to address the disadvantage of a particular group protected by the act is not discrimination. Special measures recognise that achieving equality is not about treating all people the same, but is about treating people differently in order to cater for different experiences and circumstances; to aim for equality of outcome, rather than just equality of opportunity. Special measures are therefore an expression of equality, rather than an exception to it.

Duty to make reasonable adjustments for people with impairments

The current act imposes duties on employers, firms, educational authorities and service providers to make reasonable adjustments for people with impairments. These duties are implied by the requirement not to indirectly discriminate and by various exceptions allowing discrimination against people with impairments in certain circumstances.

The bill reframes the existing exceptions as positive duties to make reasonable adjustments for a person with an impairment. This approach provides greater clarity and certainty about the obligations of duty-holders under the act and will more effectively address systemic discrimination experienced by people with disabilities.

The new provisions set out a list of factors relevant to determining whether an adjustment is reasonable, which provides guidance about how to balance the action to be taken with the expense or effort involved. If an adjustment requires disproportionately high expenditure or disruption, then it will not be reasonable. The bill continues to allow discrimination where an adjustment is not reasonable or would not be effective.

Extending protection from sexual harassment to volunteer workers

The bill extends the existing protection against sexual harassment for employees to unpaid workers and volunteers. Victoria values the countless numbers of volunteers that contribute to the life of this community and this change recognises the simple fact that a person can experience sexual harassment in the workplace even if they are not paid a wage. Most other Australian jurisdictions provide protection against sexual harassment for unpaid workers and volunteers, and have done so for many years.

Exceptions to unlawful discrimination

As noted above, given the high level of community interest that the issue attracted, the government requested SARC to undertake a review of the exceptions and exemptions in the current act. SARC tabled its final report in November last year.

The government has considered SARC's recommendations and is tabling both this bill and a formal response to set out very clearly its position on the exceptions to unlawful discrimination.

The government's aim in reforming the exceptions is to ensure that they are reasonable and appropriate, and in line with other government policies and laws. The government agrees with SARC that consistency with other jurisdictions is desirable and this approach has been adopted where appropriate. However, exceptions that allow discrimination that is already allowed by another law are redundant and have been repealed. The bill has also repealed exceptions from the 1995 act that served no purpose and, in some cases, caused considerable confusion.

There will always be circumstances in which discrimination is justified. In equal opportunity law, these circumstances are reflected in the exceptions. Exceptions balance the right to be free from discrimination with other important rights. Most exceptions are straightforward, non-contentious and indeed expected, such as allowing sex discrimination in employment for jobs involving fitting clothes or conducting body searches; or allowing discrimination against a person with an impairment where not doing so puts a person's, or the public's, health and safety at risk.

Other exceptions are not so straightforward and framing them involves the difficult task of balancing competing rights. This bill draws that necessary line.

The religious exceptions — those allowing discrimination by religious bodies, religious schools and individuals based on their religious belief — have been particularly contentious. Framing the religious exception involves striking the balance between freedom of religion and freedom from discrimination. The bill retains, but tightens, the religious exceptions.

Discrimination by religious bodies and religious schools will no longer be allowed on grounds such as race, age and impairment, which are not connected to any religious doctrine. However, discrimination will continue to be allowed on other grounds, such as religious beliefs, sex and sexual orientation, which may be connected to particular religious doctrines.

In order to rely on the exceptions, religious bodies and schools will have to show that the discrimination conforms with the doctrines of the religion, or is reasonably necessary to avoid injury to the religious sensitivities of adherents of the religion. In relation to employment, religious bodies or schools who wish to discriminate will have to show that having a particular attribute, for example being heterosexual, or being of a particular faith, is an inherent requirement of the particular job. This will continue to allow religious organisations to remain faithful to their religious doctrines where this is required for a particular job, while prohibiting discrimination where it is irrelevant to the job.

In order to avoid requiring people to act in a way that is inconsistent with their faith, the exception allowing individuals to discriminate where this is reasonably necessary to conform with the doctrines of their religion has been retained. This exception has also been narrowed to only apply to certain attributes and to require a more objective assessment of when such discrimination is necessary.

Another area that has been contentious is that of private clubs. Regulation of club membership grapples with the right to freedom of association as well as the right to freedom from discrimination.

Most jurisdictions in Australia define clubs by reference to their membership size and whether they hold a liquor licence. The bill adopts this definition and drops the distinction between private and other clubs in the current act. The rationale behind this approach is that the granting of a liquor licence by the government is accompanied by responsibilities to the community, and this should include the responsibility not to discriminate without justification.

No other jurisdiction defines clubs by reference to whether they are on public land or receive public funding, which is the definition in the current act. No other jurisdiction allows clubs to discriminate in a wholesale fashion simply because they occupy private land or do not receive public funding.

There are some exceptions to the prohibition against discrimination in relation to club membership. Exceptions exist in the current act to allow clubs for minority cultures and for different age groups. These are retained in the bill.

The bill also includes a new exception allowing single-sex clubs, one that has been included to avoid inconsistency with the commonwealth Sex Discrimination Act 1984. While there are various community views on this issue, I believe we have struck the right balance, limiting the ability of single-sex clubs to discriminate at whim against a whole range of people.

Obviously it is a matter for the commonwealth government to decide whether to amend their Sex Discrimination Act in relation to single-sex clubs, and if they took such action, all states, including Victoria, would have to review their law in this area. In order to promote transparency and ensure that the exception is being applied in as narrow a way as possible, however, single-sex clubs will be required to make their membership rules publicly available.

In addition to reforms to these two contentious issues, reforms have also been made to a number of exceptions in relation to employment. While modest, these reforms will clarify the rights and duties of employers and employees. A number of exceptions in the current act appear to give rights to employers that they already have. These exceptions have been repealed. For example, employers have the right at common law to set reasonable terms of employment and to set reasonable standards of dress and behaviour, so the exceptions appearing to give those rights to employers have been repealed.

I wish to make it clear that in repealing these redundant exceptions, the government in no way intends to take rights away from employers. Rather, it intends to avoid the confusion that can arise from including such rights as exceptions in equal opportunity law. Repealing these exceptions aligns Victoria with other Australian states.

Conclusion

Each example I have cited today illustrates the way in which the government has taken a measured approach and, step by step, struck the right balance. We have sought the views of the community; we have carefully considered the recommendations both of the independent reviewer, Julian Gardner, and those of SARC in relation to exceptions and exemptions; we have recognised that an appropriate amount of time is required to prepare for commencement of the new legislation, which is why the bill builds in a default commencement date of 1 August 2011.

Just as importantly, we recognise that this legislation is just part of a broader framework — one that includes other laws such as the Charter of Rights and Responsibilities and the Racial and Religious Tolerance Act 2001, yes, but which also includes wider efforts, such as programs which educate, which raise awareness, which strengthen communities and equip them to support the fair go.

In introducing this bill to the house today, then, I take the opportunity to thank Julian Gardner, whose report provided the opportunity for us to look at this area of the law with new eyes; as well as the members of SARC, a committee that plays a very important role in our parliamentary process. I thank the many, many contributors who took the time to express their views to both the Gardner review and to the SARC inquiry; and I thank the commission for their tireless support of a fair go for all Victorians. I also thank the hardworking officers from the Department of Justice, as well as Mr Brian Tee, MLC, for their commendable work on this significant piece of reform.

This bill is about bringing equal opportunity law into the 21st century. Supported by the best academic and industry research, and by the practical, firsthand experiences of businesses that have long known the value of tackling discrimination on a systemic, rather than just an individual level, this bill is about reflecting the value that Victorians place on the fair go — on the opportunity of every person who lives here to contribute to the social and economic life of this great state.

I know all members of this house who support the fair go will support this legislation, all members who have a belief in the equal rights and dignity of every person.

As much as we may champion the equal opportunity reforms of thirty years ago, our understanding of the way discrimination operates has changed. We now understand that we cannot satisfy the fair go by merely reacting to discrimination once it has occurred — that we must instead be positive and proactive about tackling it in all its various forms.

It is time, then, to take this next step in our journey towards a fairer society, towards realising our shared affection and ambition for the fair go.

It is time to make every opportunity in Victoria a genuinely equal one.

I commend the bill to the house.

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

Debate adjourned until Thursday, 1 April.

JUSTICE LEGISLATION AMENDMENT BILL

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

For Hon. J. M. MADDEN (Minister for Planning), Mr Pakula 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 Justice Legislation Amendment Bill 2010.

In my opinion, the Justice Legislation Amendment Bill 2010 (the bill), as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of the bill

Home detention

The bill makes amendments to the Corrections Act 1986 and the Sentencing Act 1991 in relation to home detention. It amends the home detention scheme currently provided under the Sentencing Act, and makes minor amendments to home detention granted at the end of a sentence under the Corrections Act. While the bill changes the status and availability of home detention — to be granted as either a home detention order or a pre-release home detention order — the way home detention is administered in each of these scenarios remains essentially unchanged. Where home detention is ordered as a sentence, oversight will be by the court rather than the Adult Parole Board.

Breach of a sentencing order

The bill removes the offence of breach of each of the intermediate sentencing orders available under the act: being combined custody and treatment orders, intensive correction orders, community-based orders, home detention orders and orders for release on adjournment. Instead of a criminal offence, the bill provides new procedures to ensure the attendance at court of an offender who is alleged to have breached his or her order. To allow this breach to be dealt with, the bill makes substantial amendments to the procedure that follow from a breach of an intermediate order available under the Sentencing Act 1991. The bill also alters the time limits within which a breach action may be taken, to create a fairer outcome for offenders.

Criminal procedure

The bill makes a number of procedural amendments that build upon the landmark changes introduced by the Criminal Procedure Act 2009.

The bill also makes some amendments to the Children, Youth and Families Act 2005 in relation to sentencing in cases where a child gives an undertaking to assist authorities and DPP appeals.

This statement does not include analysis of every clause in the bill, but focuses instead on reviewing the amendments that raise substantive charter issues.

Human rights issues

The bill has been assessed against the charter.

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

The principal rights under the charter relevant to the bill are:

Section 10: protection from torture and cruel, inhuman or degrading treatment

Section 13: privacy

Section 17: protection of families and children

Section 21: right to liberty and security of person

Section 23: children in the criminal process

Section 24: fair hearing

Section 25: rights in criminal proceedings

Section 26: right not to be tried or punished more than once

Section 27: retrospective criminal laws

Due to the nature of the amendments and the scope of the rights engaged, this statement will deal in turn with:

the amendments to home detention;

the new procedures relating to breach of intermediate sentencing orders;

the amendments relating to criminal procedure and the Children, Youth and Families Act 2005.

Home detention amendments

Liberty — clauses 4, 14 and 47

Section 21 of the charter relevantly provides:

(1) every person has the right to liberty and security;

(2) a person must not be subject to arbitrary arrest or detention;

(3) a person must not be deprived of his or her liberty except on grounds, and in accordance with procedures, established by law.

The liberty right is modelled on article 9(1) of the International Covenant on Civil and Political Rights. Although serving any kind of custodial sentence clearly restricts an individual prisoner's liberty, the 'deprivation of personal liberty in the form of imprisonment or as a preventative measure has long represented the most common means used by the state to fight crime and maintain internal security', and continues to be one of the legitimate means for exercising sovereign state authority.[1] As such, it is only deprivations of liberty that are arbitrary and unlawful which are prohibited by section 21 of the charter.

The bill provides that eligible offenders ordered to serve a term of imprisonment not more than one year may do so by way of home detention (clauses 4 and 14). The home detention provisions in the bill replace the provisions relating to home detention orders in subdivision (1D) of division 2 of part 3 of the Sentencing Act and are in similar terms. Clause 47 of the bill replaces the pre-release home detention order available under the Corrections Act which enables eligible prisoners to be released from prison before the completion of their sentences to serve their remaining time in home detention allowing for better rehabilitation and reintegration into the community. The bill also makes provision for dealing with persons who have breached other community-based orders, including detention of persons in particular circumstances.

Home detention

Home detention orders made under clause 14 of the bill restrict physical liberty by requiring an offender to reside at premises approved by the secretary (section 26U(c)) and to remain at the approved residence at all times unless authorised to leave, or where it is unsafe to remain there or a person residing at the residence objects (section 26U(d)). The restriction on liberty permitted by section 26U will not, however, always comprise 'detention' or a 'deprivation of liberty' for the purposes of section 21(2) and (3) of the charter. In the context of curfews or house arrest, English courts have emphasised that the prohibition on depriving a person of his or her liberty has an 'autonomous meaning' and will only extend to orders confining a person to an approved residence where the daily period confinement and ancillary orders are sufficiently stringent so as to severely limit interaction between the person and the outside world. This analysis is undertaken in light of the impact of the particular order on an offender in his or her situation, taking into account the nature, duration, effects and manner of the penalty or measure in question. Thus, in some circumstances, the implementation of the core conditions governing home detention (section 26U) and the undertakings given by him or her (section 26S) may comprise a deprivation of liberty for the purposes of section 21(3) of the charter, but ultimately it will depend on the combination of those measures and the extent to which they are tantamount to imprisonment.

In any event, I do not consider that home detention orders made under clause 14 of the bill will limit section 21 of the charter. The liberty right prohibits detention which is arbitrary or deprivations of liberty that are made without grounds or procedures established by law. Clause 14 establishes a procedure whereby a person convicted by a court of an offence is sentenced to imprisonment and if the sentence is not more than one year, the court can order that it be served by way of home detention. The person must be eligible, and the circumstances appropriate (section 26M). The court is required to determine the suitability of an offender to serve a home detention order after consideration of a home detention assessment report (clause 14, section 26Q of the bill).

The order comes with core conditions that are implemented by the secretary to the Department of Justice and relate to where the offender will reside (section 26U(c)); the duration of daily confinement (section 26U(d)); and the conditions governing the offender's absence from the approved residence (section 26U(e), (o), (r) and (s)).

Further, the court oversees the revocation or cancellation of home detention orders (see section 26X, section 26Z(1), section 26ZK(c) and section 26ZO).

In summary, home detention is clearly a less restrictive and socially isolating alternative to a prison sentence. In my view,

[1] M Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (2005, 2nd Ed), 211.

home detention in these circumstances may not even engage the liberty right and even if it does, there is no unlawful or arbitrary detention.

Role of the board

Clause 47 enables the board to make a home detention order at the request of a prisoner and in defined circumstances as part of a pre-release scheme. I do not consider that the decision to make a home detention order in this context engages the liberty right because the deprivation of the prisoner's liberty has arisen by reason of the order of the sentencing court so as to fully comply with section 21(3) of the charter.

Privacy — clause 14

Section 13(a) of the charter protects a person's right not to have his or her privacy, family, home or correspondence interfered with in a manner that is unlawful or arbitrary. The secrecy of personal information (including information about a person's physical condition, identity, interpersonal relations, day-to-day activities and whereabouts) lies at the heart of the privacy right because of its direct relevance to the choices or circumstances of an individual's personal life over which he or she is responsible and autonomous.

The conditions of home detention are relevant to the offender's right to privacy in section 13(a) but do not interfere with it in a manner that is unlawful nor arbitrary. The bill re-enacts the offender's undertaking (currently required for home detention in section 18ZZ of the Sentencing Act), including that the offender must give an undertaking to submit to any monitoring or testing required or directed under the home detention order to ensure compliance with the obligations imposed by the order (clause 14, section 26S). Clause 14 (section 26U) of the bill also re-enacts the core conditions of home detention, currently imposed by section 18ZZB, including that:

> the offender must advise the secretary as soon as possible if arrested or detained by a member of the police force (section 26U(b));
>
> during authorised absences from the approved residence the offender must adhere to a specified activity plan (section 26U(e));
>
> the offender must advise the secretary to the Department of Justice as soon as practicable after departure from the approved residence because it was unsafe to remain there or because the person residing at the approved residence has withdrawn his or her statutory consent (section 26U(f));
>
> the offender must comply with any reasonable direction of the secretary in relation to association with specified persons (section 26U(k));
>
> the offender must not consume alcohol or use prohibited or unlawful drugs or abuse drugs (sections 26U(l) and (m));
>
> the offender must accept any reasonable direction of the secretary in relation to obtaining employment (section 26U(o));
>
> the offender must inform any employer of the home detention order and, if directed by the secretary to the Department of Justice, of the nature of the offence that occasioned it (section 26U(p));
>
> the offender must facilitate contact with any employer and the secretary (section 26U(q)); and
>
> the offender must engage in personal development activities or in counselling or treatment programs (section 26U(r)) and undertake unpaid community work as directed by the secretary to the Department of Justice (section 26U(r) and (s)).

These limitations are clearly prescribed and are proportionate to the objective of ensuring an offender's compliance with the home detention sentencing order. As such, the provisions are neither unlawful nor arbitrary.

Restrictions on privacy imposed by other core conditions in proposed section 26U are closely connected to the purpose of the proper administration of home detention orders. The restrictions described in the following paragraphs are necessary for, and proportionate to, that purpose.

Subsections 26U(g), (h), (i) and (j), which also re-enact the core conditions of home detention currently imposed by section 18ZZB, require a person to accept visits, submit to searches, and submit to electronic monitoring which are necessary features of ensuring compliance with the order. The ability to search in section 26U(h) is confined to places and things under the immediate control of the offender. To this extent, account is taken of the privacy rights of other people living in the home. It should be noted that a home detention order may only be made if other residents consent, and consent may be withdrawn at any time (section 26W). Any interference with the privacy of other residents is therefore not arbitrary. The provision requiring the offender to submit to electronic monitoring in section 26U(i) involves the use of a system consisting of a signal-transmitting bracelet worn around the wrist or ankle, a monitoring unit installed in the offender's home, and a central computer which communicates with electronic monitoring centre staff. Should the offender fail to comply with curfew requirements or attempt to tamper with the bracelet or with the monitoring unit, the supervising officer of the offender will be notified by the electronic monitoring centre staff. Corrections Victoria staff are also equipped with mobile monitoring units that may be used to unobtrusively monitor an offender's compliance with approved activities such as attendance at programs, education or training.

While electronic monitoring interferes with the privacy of offenders, the interference is clearly prescribed by law and necessary for the proper function of home detention orders as it enforces restrictions on the liberty of an offender (without which the offender would need to be imprisoned) and ensures an appropriate level of protection for victims and the community. Electronic monitoring adds flexibility to the order so that the offender can attend employment or personal development programs while remaining subject to strict monitoring. In my view, the use of electronic monitoring in this context does not amount to an arbitrary or unlawful interference with the right to privacy under the charter.

Subsection 26U(n) requires the offender to submit to test procedures for detecting drug and alcohol risk. These procedures are also necessary to ensure compliance with the reasonable core conditions of the order of ensuring offenders

do not use or obtain prohibited drugs or consume alcohol and are lawful and not arbitrary.

Clause 14 (section 26Q) of the bill provides that a court may only make a home detention order if a home detention assessment report has been prepared on the offender in accordance with section 99F of the Sentencing Act. Although assessment reports engage the right to privacy, the collection of information is pursuant to a court order and for the purpose of enabling the court to assess the suitability of the offender for an order and subject to disclosure restrictions (see sections 99F and 99J of the Sentencing Act).

The home detention regime under clause 14 of the bill also protects the privacy and family life of offenders by enabling them to live in an approved residence of their choice and with others with whom they share important personal ties. Thus, home detention provides an alternative to imprisonment which facilitates ongoing contact with friends and relations, including children and partners.

In my view, the bill engages, but does not limit the right to privacy.

Protection of families and children

Section 17 of the charter provides for the protection of families and children. I have already concluded that clause 14 reinforces the privacy interests of offenders under section 13(a) of the charter insofar as home detention enables an offender to live in an approved residence of his or her choice and maintain domestic relations with partners and children. For the same reasons, I conclude that clause 14 respects the interests protected by section 17 of the charter.

Compulsory medical treatment — clause 14

Section 10(c) of the charter protects a person from medical treatment without his or her full, free and informed consent. The protection is modelled on article 7 of the International Covenant on Civil and Political Rights which prohibits subjection to medical or scientific experimentation without consent.

A core condition governing home detention is that the offender must engage in treatment programs as directed by the secretary (clause 14, section 26U(r) of the bill) which, depending on the direction, may limit the offender's right not to be subjected to medical treatment without his full, free and informed consent, as protected by section 10(c) of the charter. I nevertheless consider that any limit is reasonable and demonstrably justifiable in the terms of section 7(2) of the charter.

(a) the nature of the right being limited

The right in section 10(c) of the charter provides protection from compulsory medical treatment without full, free and informed consent. An important purpose of the protection is to ensure that vulnerable persons, such as prisoners or other detainees, are not subjected to non-therapeutic medical procedures. The Human Rights Committee has noted in relation to the prohibition on medical experimentation under article 7 of the ICCPR that the consent of persons who are deprived of their liberty (such as prisoners) is inherently suspect because of their particular vulnerability. The prohibition on medical 'treatment' is considerably wider than the prohibition on medical 'experimentation' and ensures that vulnerable persons are protected from compulsory treatment, unless reasonable and justified.

(b) the importance and purpose of the limitation

The requirement that offenders in home detention undertake compulsory treatment programs directly addresses the shared interest of the community and individual offenders in the rehabilitation of offenders.

(c) the nature and extent of the limitation

The secretary's discretion to direct participation in a treatment program will be exercised in accordance with the purposes of the Sentencing Act 1991, which include the prevention of crime and to promote respect for the law by providing for sentences that facilitate the rehabilitation of offenders. Consistent with these purposes, a direction under section 26U(r) of the bill will only be made where the treatment order is reasonably necessary for the rehabilitation of the offender. In making a direction for treatment under section 26U(r), the secretary also acts as a public authority under the charter.

Further, the offender must give an undertaking to comply with the core conditions attached to his or her home detention order, including treatment programs, if directed. The offender can refuse to undergo a treatment program, but as a result may forgo the benefit of the home detention and be required by the court to serve the remaining portion of his or her sentence in prison. Refusal to participate in a treatment program does not, however, comprise an offence, punishable by a further sanction.

(d) the relationship between the limitation and its purpose

A treatment order will only be made where it is necessary for the rehabilitation of the offender and the prevention of crime.

(e) any less restrictive means available

The requirement that an offender in home detention undertake treatment programs is narrowly tailored to addressing the purposes of his or her rehabilitation and the prevention of crime. The amendment alleviates the harshness of a prison sentence by enabling an offender to serve his or her sentence at home while also supporting such offenders in their rehabilitation. In these circumstances, offenders who participate in treatment programs choose to do so as a condition of obtaining the benefit of home detention and avoiding the more restrictive requirements of imprisonment.

In conclusion, therefore, to the extent that clause 14 (section 26U(r)) of the bill limits section 10(c) of the charter, I consider that the limit is reasonable and proportionate to the objective of supporting offender rehabilitation while alleviating the harshness of serving sentences in prison.

Freedom of movement — clause 14

Section 12 of the charter provides that 'every person lawfully within Victoria has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where to live'. Freedom of movement recognises that persons are entitled to move from one place to another and to establish themselves in a place of their choice, irrespective of the purpose or reason for the person wanting to move or stay in a place.

(a) the nature of the right being limited

The right to move freely does not require any particular purpose or intention in movement, and encompasses both physical and procedural impediments. The requirement that an offender reside only at an approved residence limits him or her choosing where to live and restricts the activities that a person can undertake outside of that residence. It is a core condition of a home detention order that the offender must remain at the approved residence at all times other than when the absence is authorised by the secretary, when it is unsafe to remain there due to an immediate danger, or when a person residing at the approved residence has withdrawn his or her consent.

(b) the importance of the purpose of the limitation

The purpose of a home detention order is to allow a court greater flexibility to impose a less restrictive order than imprisonment where appropriate, potentially leading to a reduction in sentences of imprisonment with advantages such as the promotion of the offender's rehabilitation. This supports the broader purposes of the Sentencing Act to prevent crime and promote respect for the law through providing for sentences that achieve deterrence and allow the court to denounce the offending conduct; sentences that facilitate the rehabilitation of offenders; and ensuring that offenders are only punished to the extent justified by the offence, their responsibility and any other factors.

(c) the nature and extent of the limitation

Clause 14 of the bill re-enacts several limitations on the freedom of movement of offenders subject to a sentence of home detention, in particular:

the requirement that the court be satisfied that the home detention program is located close enough to the place where the offender will reside during the period of the order to ensure adequate support and supervision (clause 14, section 26Q(1)(c)(ii) of the bill);

the requirement that the offender must reside only at premises approved by the secretary (clause 14, section 26U(c) of the bill);

the requirement that the offender must remain at the approved residence at all times other than when the absence is authorised by the secretary, when it is unsafe to remain there due to immediate danger, or when a person residing at the approved residence has withdrawn his or her consent (clause 14, section 26U(d) of the bill);

the requirement that during authorised absences from the approved residence the offender must adhere to a specified activity plan approved by the secretary (clause 14, section 26U(e) of the bill);

the requirement that the offender must advise the secretary as soon as practicable after departure from the approved residence because it was unsafe to remain there or that a person residing at the approved residence has withdrawn his or her consent (clause 14, section 26U(f) of the bill); and

the requirement that the offender must submit to electronic monitoring of compliance with the home detention order (clause 14, section 26U(i) of the bill).

(d) the relationship between the limitation and its purpose

Home detention restricts the movement of persons who have committed offences punishable by custodial sentences and allows their activities to be monitored to ensure their good behaviour and compliance with the order. Restriction of movement in this manner also affords appropriate offenders an opportunity to serve their sentence without the additional burdens of formal detention, including isolation from family and the comforts of home. For home detention, the restrictions on freedom of movement are both directly linked to the objective of the custodial sanction and are a necessary feature of the sentencing order.

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

Restrictions on prisoners' rights, especially the right to freedom of movement, are a necessary and reasonable aspect of any custodial sentence, including home detention.[2] The limitations on sections 12 are clearly prescribed by the proposed provisions, are not unreasonable, are proportionate to the purpose of the sentence, and provide necessary protection for the community. The bill appropriately balances the punitive, deterrent and rehabilitative aims of the sentence. Importantly, a home detention order already constitutes a less restrictive means than the alternative, being a term of imprisonment. Further, the core conditions allow for authorised absences geared towards assisting the offender's transition back into the community (for example, under sections 26U(e), (o), (r), and (s)), and to ensuring safety of the offender, the community and residents of the approved residence (for example, section 26U(d)).

(f) any other relevant factors

None apparent.

Sentencing Act amendments

Proceedings for breach of an intermediate sentencing order

This bill repeals a number of offences of breaching intermediate sentencing orders and replaces those offences with new proceedings in the Sentencing Act. The new proceedings will cover a breach of a combined custody and treatment order (clause 206), intensive correction order (clause 209), home detention order (clause 210), community-based order (clause 213), and orders for release on adjournment (clause 217).

Right to liberty and security of person

The charter states at section 21(2) that a person must not be subject to arbitrary arrest or detention. The amendments to the Sentencing Act provide powers of arrest or detention following an allegation of a breach of a sentencing order, but these powers are not arbitrary. Warrants of arrest may be authorised in limited circumstances by a registrar of a court. Although these powers are no longer triggered by an allegation of an offence of breach of a sentencing order, the procedure and surrounding safeguards attendant on the old offence of breach remain.

[2] *R (Hirst) v. Home Secretary* [2002] 1 WLR 2929, 2943-44.

Rights in criminal proceedings

Section 25(2) of the charter sets out minimum guarantees in criminal proceedings, including the right to be tried without unreasonable delay and to be informed promptly and in detail of the nature for the charge.

The changes to the procedure for dealing with breaches of intermediate sentencing orders remove an additional and unnecessary offence and reduce the time frame for bringing a breach proceeding. The courts oversee the breach proceeding, including variations or cancellations of intermediate sentencing orders (section 18WJ — combined custody and treatment order; section 26ZK — home detention orders; section 26J — intensive correction order; section 47J — community-based order; and section 79J — orders for release on adjournment). Cancellation of an intermediate sentencing order will, in some cases, lead to a jail sentence.

Although the offence of breach is repealed, an offender will still enjoy all the rights guaranteed by section 25(2) of the charter. The bill states that the practice and procedure applicable to the hearing of a summary charge in the Magistrates Court applies to the determination of a breach proceeding.

Section 25(4) provides a right to appeal a conviction and any sentence imposed. Although the additional breach offence is removed, the right of offenders to challenge an alleged breach and appeal a re-sentencing following a breach is preserved within the sentencing scheme. The new proceedings for breach of an intermediate sentencing order engage section 25 positively.

For these reasons the proceedings for a breach of a combined custody and treatment order, intensive correction order, home detention order, community-based order and orders for release on adjournment are consistent with the charter.

Criminal procedure

I will now address the amendments relating to criminal procedure. For each right under the charter, clauses in the bill that will have an impact on that right are identified and analysed to determine whether they limit or restrict the right and, if so, whether they are compatible with the right. Where a clause or process involves considering more than one right, I have made that clear.

Section 24: fair hearing

Section 24 of the charter guarantees the right to a fair and public hearing. The purpose of the right to a fair hearing is to ensure the proper administration of justice — including the right of a party to a fair hearing and to respond to allegations made against them as well as the requirement that the court be unbiased, independent and impartial.

Section 25 of the charter sets out specific minimum rights in criminal proceedings and gives much of the content to the section 24 right to a fair hearing in the criminal law context.

With the exception of amendments relating to the power to close proceedings, the abolition of the allocutus and sentence indications, all of the clauses in the bill that relate to a fair hearing are discussed in relation to the specific minimum guarantee that they relate to in section 25 of the charter.

Power to close proceedings

The Criminal Procedure Act 2009 provides for alternative arrangements for the giving of evidence by complainants in sexual offence cases, including a power for the court to specify who may be present in the courtroom at the time that a witness is giving evidence. These provisions recognise that all proceedings that relate to sexual offences may cause distress and further trauma to witnesses.

This bill broadens the existing provisions in the Magistrates' Court Act 1989, the County Court Act 1958 and the Supreme Court Act 1986 to ensure that witnesses have the same protections as complainants. The existing provisions allow the courts to close proceedings when a witness gives evidence in proceedings that relate to a charge for an offence involving an act of sexual penetration. The bill broadens the application of the courts' power to close proceedings, so that it now includes any proceeding that relates wholly or partly to a charge for a sexual offence. This is consistent with other protections afforded to complainants and witnesses in sexual offence cases under the Criminal Procedure Act 2009.

On the face of it, these amendments limit the right of an accused to have a public hearing. Section 24(2) of the charter qualifies this right, however, in providing that a law may exclude the public from a hearing.

While the law may codify an exception to section 24(1) it is important that any such law be precise and circumscribed. It is appropriate in sexual offence proceedings for the law to permit the court to exclude the media and public in certain circumstances.

The law is important in a free and democratic society to protect witnesses from the trauma and distress of giving evidence that may be of a highly personal, sensitive and traumatic nature. The power to close a hearing is important in more broadly addressing the problems with low reporting and prosecution rates for sexual offences by providing a level of protection from public exposure and embarrassment for witnesses.

I am satisfied that the law is sufficiently circumscribed and precise. It is also a discretionary power, therefore the court has the opportunity to assess the appropriateness of such an order on a case-by-case basis. As such, the right of the accused to have a public hearing is not limited by this amendment.

Abolition of the allocutus

The bill abolishes the allocutus procedure and introduces a clear process to specify when a person is found guilty of an offence (clause 62).

The allocutus is an antiquated process in which the court asks the accused, after a plea of guilty or a jury verdict of guilty, 'Do you know of any reason or have anything to say why this honourable court should not pass sentence upon you according to law?'.

This procedure was important when sentences were mandatory. It provided an opportunity for the accused to either:

> claim 'the benefit of clergy', meaning that they would be sentenced by the ecclesiastical courts; or

stop a judgement from being executed because of some irregularity, which was necessary because there was no appeal against conviction.

Given that there is now a right of appeal against conviction, and no ecclesiastical courts, the traditional reasons for the allocutus no longer exist. The only contemporary significance of the allocutus is that it is a means of signifying when an accused is convicted of an offence.

In June 2009, the Court of Appeal considered the uncertainty surrounding the question of exactly when a person is convicted (*DPP v. Nguyen*; *DPP v. Duncan* [2009] VSCA 147) and called for the law to be clarified and the allocutus to be abolished.

The bill replaces the allocutus with a modern procedure to indicate when an accused is found guilty of an offence. The new procedure is simple and consistent with the modern case management procedures in the County Court and Supreme Court. Clause 62 amends the Criminal Procedure Act 2009 to provide that if a plea of guilty is entered to a charge on arraignment, or a jury delivers a verdict of guilty on a charge, the accused is taken to have been found guilty of the offence unless the court sets aside that plea or verdict of guilty.

This change establishes a simple, uniform process which determines the timing of when an accused is found guilty of an offence. Timing can be critical in relation to time limits such as those that apply under the Confiscation Act 1997 concerning the forfeiture of restrained property.

By making the timing of a finding of guilt certain, clear and consistent, this amendment ensures that the criminal justice system operates in a way that is predictable and comprehensible to the accused. The court may also set aside the finding of guilt. In certain cases the court may permit the accused to change their plea or ask a jury to reconsider its verdict (for example, where the verdicts returned are inconsistent with one another). The circumstances in which the court may set aside a finding of guilt are not changed by this bill; that continues to be governed by the common law. In this way, the amendment both engages and supports the right to a fair trial.

For the sake of completeness, I mention that abolishing the allocutus neither engages nor limits an accused's freedom of expression under section 15 of the charter. It may be thought to do so as it removes words that appear to invite the accused to speak. In practice, however, the allocutus is directly followed by counsel for the accused announcing their appearance (even when appearances have already been announced). The question posed in the allocutus is not used to prompt the accused themselves to speak but rather to signify the acceptance of a plea or verdict of guilty. Abolishing the allocutus does not limit the right to make submissions on sentencing. As such, the accused's right to freedom of expression is neither engaged nor limited by the change to this procedure.

Sentence indications

The bill repeals the sunset provision in relation to sentence indications in the Criminal Procedure Act 2009 (sections 2(2) and 437 of the Criminal Procedure Act 2009) to allow for the continued operation of the existing scheme set out in part 5.6 of that act. The sentence indication scheme under the Criminal Procedure Act 2009 provides that the decision to give or not to give a sentence indication is final, limiting the right of appeal in regard to that decision.

On the face of it, this scheme may be considered to engage the right to a fair hearing. The purpose of this right is to ensure the proper administration of justice. The right is concerned with procedural fairness and involves the right of a party to be heard and to respond to any allegations made against him or her. The decision to grant or not grant a sentence indication does not infringe this right because it in no way limits the information that may be presented to the court. If a decision not to grant an indication has been made, the hearing or trial proceeds as normal and the accused may produce any material that was already available to them to produce before the indication was requested. The bill also provides that the application for, and determination of, a sentencing indication are inadmissible in evidence against the accused. Furthermore, the bill does not limit the accused's right to appeal the final sentence imposed.

The bill, by allowing for the continuation of the sentence indication scheme, may also enhance the right to a fair hearing. Sentence indications are aimed at helping an accused to make their plea decision at an earlier stage, by having more knowledge and certainty about what sentence he or she is likely to receive. Further, the bill provides that if the accused does not wish to plead guilty after receiving an indication, the case must be listed before a different magistrate or judge. This preserves the fair hearing requirement that the court or tribunal be unbiased, independent and impartial. The sentencing advisory committee's report demonstrates that the scheme has operated fairly and has not placed any improper pressure on the accused to plead guilty. Indeed, the outcomes of the report indicate that the ability for an accused to apply for a sentence indication may enhance the accused's right to a fair hearing.

Section 25(2): minimal guarantees in criminal proceedings

Section 25 sets out detailed procedural rights in criminal proceedings and the relevant rights are addressed in the context of the bill.

Section 25(2)(g) — the right of a person charged with a criminal offence to examine, or have examined, witnesses against him or her, unless otherwise provided by law

Alternative arrangements in sexual offence cases

Clause 66 expands the range of offences for which a court can allow alternative arrangements for the giving of evidence by different categories of complainants and witnesses. Currently, alternative arrangements (such as the giving of evidence by closed-circuit television) can be made in proceedings that relate to a sexual offence as defined within the Criminal Procedure Act 2009 (these are all indictable offences). The bill expands the protections afforded by these provisions to cases involving the summary offences of obscene, indecent and threatening language and indecent exposure. Both of these offences may involve inappropriate sexual conduct and therefore warrant the special protections.

While a fair hearing right incorporates the concept that an accused should be able to 'face their accuser' this is not always appropriate, such as in sexual offence and family violence proceedings where the witness often has a personal relationship with the accused. The alternative arrangements

do not limit the accused's right under section 25(2)(g) of the charter. The accused is still able to challenge the evidence against them either by presenting their own evidence or through cross-examination of witnesses for the prosecution.

The scheme for arrangements also positively engages a number of rights including the section 13 right to privacy and reputation of the victim as well as the obligation in section 17 to provide special protection to families and children.

The criminal justice system must ensure fair outcomes not only for the accused but also complainants and witnesses. The scheme recognises the special issues which arise in sexual offence and family violence cases, in relation to the trauma and embarrassment experienced by the victim as well as the domestic and personal nature of such offences. The scheme provides appropriate protections to witnesses as well as ensuring there are appropriate safeguards in place to ensure fairness to the accused.

Section 25(2)(k) — the right of an accused person not to be compelled to testify against himself or herself or to confess guilt

This section protects the right of an accused person to be free from compulsory self-incrimination. This right means that a person charged with a criminal offence must not be compelled to testify against himself or herself or to confess guilt and is an important element in the right to a fair trial. There are no clauses that limit this right but there are two issues that, arguably, raise it, namely summary case conferences and sentence indications.

Summary case conferences

The bill expands some of the new case management processes in the Magistrates Court introduced by the Criminal Procedure Act 2009.

Under that act, in cases where a notice to appear is issued and a preliminary brief is served within seven days of a charge being filed, a summary case conference must be held before the case is set down for contest mention, a summary hearing or a request for a full brief is made. The bill expands this requirement to all cases where a preliminary brief is served within seven days of filing a charge sheet, rather than only notice to appear cases.

A summary case conference is designed to make the most of court time by creating an early opportunity for cases to be resolved or cases to be managed to a hearing.

The bill provides more flexibility in cases where the accused is not legally represented. Because of the broad description of what may constitute a summary case conference, section 54 may prevent any discussions between the prosecution and the accused, including such matters as whether the case will be contested or whether the accused requires further disclosure of the prosecution case. The flexibility provided by clause 59 of the bill restores the practical manner in which the criminal justice system has operated for many years. The Magistrates Court, both magistrates and registrars, is well placed to regulate this process, including through practice directions, to ensure that the process operates fairly.

Further, in order to ensure that an accused is not at risk of making statements against interest, the bill provides that the content of a summary case conference is inadmissible in any hearing of the charge. An accused is not compelled to admit guilt or testify, and the risks associated with the process are ameliorated by the evidential protections. As a result, this clause does not limit the right in section 25(2)(k).

Sentence indications

As mentioned above, clause 73 provides for the continuation of the sentence indication scheme in the County and Supreme courts.

When the Criminal Procedure Legislation Amendment Act 2007 (which first introduced sentence indications) was before Parliament, the Scrutiny of Acts and Regulations Committee raised the issue of whether sentence indications will compel an accused to plead guilty. In particular, concerns were raised that the possible combined effect of the sentence indication scheme and the discount for a guilty plea might increase the pressure on all accused to plead guilty.

When considering sentence indications in 2007, the Sentencing Advisory Council addressed this issue and tailored its recommendations to operate in a way that would not result in any compulsion or improper inducement. The scheme set out under the Criminal Procedure Act 2009 is based on the council's recommendations and provides that a sentencing indication may only be given where the accused has sought an indication and the accused is free to choose whether to seek an indication.

The council has monitored the scheme since its commencement and, in its sentence indication monitoring report (released in February 2010), the council has recommended that the scheme continue. The council reported that while it was recognised that a sentence indication could act as an incentive to plead guilty (particularly if given for a non-immediate custodial sentence) it did not mean that the incentive was improper or infringed the right of an accused against self-incrimination.

This bill allows for the continuation of an existing scheme that is consistent with the council's recommendations and I remain of the view that the sentence indication scheme is compatible with the accused's right against self-incrimination.

Section 27(1): no retrospective criminal laws

Special transitional provisions

The bill provides for a new transitional provision to two permutations that may arise with a trial on indictment.

First, where there are co-accused, one of whom was committed for trial prior to 1 January 2010 and one of whom is committed for trial under the new laws contained in the Criminal Procedure Act 2009. The bill creates a mechanism which means that both accused will be dealt with under the new laws. This avoids the need to hold separate trials, one under the Crimes Act 1958 procedural provisions and one under the Criminal Procedure Act 2009. This new transitional provision will reduce stress for victims, witnesses and the accused and costs to participants in the justice system.

Second, where an accused is committed for trial or directly presented for trial on a charge prior to 1 January 2010 and on another charge is committed for trial or directly indicted after 1 January 2010. The bill creates a mechanism which means that all of the charges may be joined in the one indictment and the provisions of the Criminal Procedure Act 2009 will apply to those charges.

In each situation, the provisions under the Criminal Procedure Act 2009 will continue to be relevant in determining whether the charges are appropriately heard together or whether separate trials should be conducted or a committal proceeding conducted before the trial commences. Further, the court retains the power to prevent an abuse of process, for instance, where the court considers that it is necessary to conduct a committal proceeding to ensure that the accused has a fair trial (e.g. see *Barton v. R* (1980) 147 CLR 75 and *R v. Dupas* [2006] VSC 481).

The bill also provides for special transitional provisions to allow the Court of Appeal to impose the new test for determining leave application to all pending applications for leave to appeal against sentence, regardless of when the sentence was imposed. The new test is simpler and should assist the Court of Appeal in managing its appeals workload.

Currently, the new provisions only apply to applications filed in respect of a sentence imposed on or after 1 January 2010. The new test is simpler and should assist the Court of Appeal in managing its workload.

These transitional arrangements do not limit section 27(1) of the charter. This is because the scope of section 27(1) does not extend to prevent retrospective changes to procedures that do not form part of the penalty or punishment of an offender or to changes in procedure laws. It is possible that changes to criminal procedure may infringe this right where they affect the basic elements of a fair trial. However, this is not the case here.

Amendments to the Children, Youth and Families Act 2005

Children involved in criminal proceedings are afforded special protections under the charter because of their vulnerability as minors. To avoid repetition, these are considered together below.

Section 17(2) provides:

Every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child.

Section 23 provides:

(1) An accused child who is detained or a child detained without charge must be segregated from all detained adults.

(2) An accused child must be brought to trial as quickly as possible.

(3) A child who has been convicted of an offence must be treated in a way that is appropriate for his or her age.

Section 25(3) provides:

A child charged with a criminal offence has the right to a procedure that takes account of his or her age and the desirability of promoting the child's rehabilitation.

Sentencing and a failure to fulfil an undertaking

Clause 30 provides statutory authority for a court to impose a less severe sentence on a child at the time of sentencing in cases where the child undertakes to assist the authorities after sentencing, in the investigation and prosecution of another offence.

Clause 34 also amends the Children, Youth and Families Act 2005 to provide that the DPP may appeal against a sentence imposed where a child receives a lesser sentence and subsequently fails to fulfil an undertaking. Similar provisions already apply to adult offenders.

The extension of these provisions to child offenders recognises that there may be instances where a child is able to assist the authorities in the prosecution of offences against others, such as an adult co-accused. Currently, where this occurs a child may not receive the benefit of a reduced sentence despite any assistance they provide to authorities after sentencing or sentencing may be significantly delayed until after they have completed assisting the authorities.

Clauses 30 and 34 engage but do not restrict section 23(3) of the charter. Importantly, clauses 30 and 34 must be considered in the context of the special sentencing considerations that apply to children, because it is in that context that the clauses must be applied. A sentencing court must, as far as practicable, have regard to matters such as the need to strengthen and preserve the relationship between the child and the child's family, the desirability of allowing the child to live at home and the need to minimise the stigma to the child resulting from a court determination.

The special sentencing considerations reflect the right of a child convicted of an offence to be treated in a way that is appropriate for his or her age. They also reflect the right of a child charged with a criminal offence to have a procedure that takes account of his or her age and the desirability of promoting the child's rehabilitation (as provided for in section 25(3) of the charter).

Appeals against sentence

The bill removes restrictions on appeals against sentence from the Children's Court. There are currently specific restrictions on an appellate court's power to determine an appeal from a sentence imposed by the Children's Court. Firstly, if the DPP appeals against an undertaking or a good behaviour bond the appellate court cannot increase the sentence. Secondly, if the child or the DPP appeals against a sentence of detention in respect of two or more offences for an aggregate period, the appellate court must not impose a longer period of detention.

Restrictions only applied to this specific sentence. Restrictions did not, for instance, apply to a single sentence. The Court of Appeal in *DPP v. M N* [2009] VSCA 312 found that this restriction was in fact inoperative and has been since 1989. All remaining protections to ensure procedural fairness will continue to apply — for example, the court must still warn the accused if it is considering imposing a sentence which is greater than that imposed by the original court.

As with clauses 30 and 34, clause 33 engages but does not limit section 23(3) of the charter. When sentencing a child on appeal, the appeal court applies the special sentencing dispositions that apply in the Children's Court. These dispositions recognise the special needs of children in the criminal justice system and the importance of rehabilitation as a sentencing outcome for children.

Section 26: right not to be tried or punished more than once

This provides that a person must not be tried or punished more than once for an offence in respect of which he or she has already been finally convicted or acquitted in accordance with law.

There are no provisions in the bill that raise this right. However, the bill does make some amendments to an appellate court's power to determine a DPP appeal against a sentence from the Children's Court. It also allows the DPP to appeal against a sentence imposed by the Children's Court where there has been a failure to fulfil an undertaking as discussed above. The right not to be punished more than once does not apply to prevent prosecution appeals against sentence, or to increase a sentence on an appeal by an accused. That is because an increased sentence on appeal involves substituting one sentence for another, not imposing a second sentence on top of the first. I also consider that, as the Supreme Court of Canada has held in relation to an identical right, this right applies only after appeal proceedings are concluded (*R v. Morgentaler* [1988] SCR 30).

Conclusion

The bill is compatible with the charter.

Justin Madden, MLC
Minister for Planning

Second reading

Hon. M. P. PAKULA (Minister for Public Transport) — I advise the house that the Justice Legislation Amendment Bill was amended in the Legislative Assembly. The purpose of the house amendment was to make two technical amendments to the bill.

The first technical amendment was in relation to Clause 76 of the bill. Clause 76 inserts a new section 440 into the Criminal Procedure Act 2009 to deal with transitional arrangements in relation to particular proceedings commenced under the Criminal Procedure Act 2009 but not determined before the commencement of this bill. Clause 76 cross-referred to rule 2.03.1 of the Supreme Court (Criminal Procedure) Rules 2008, which refers to certain powers that may be exercised by a single judge of the Court of Appeal. The house amendment to clause 76 instead makes a cross-reference to section 582 of the Crimes Act 1958, which sets out the power of a single judge of the Court of Appeal in relation to sentencing appeals, which is the subject matter of this transitional provision.

The second technical amendment is in relation to clause 43 of the Bill. Clause 43 inserts a new section 611 into the Children, Youth and Families Act 2005 to deal with transitional arrangements in relation to proceedings commenced under that act, but not determined before the commencement of this bill. Due to a numbering clash with transitional provisions being inserted by the Health and Human Services Legislation Amendment Bill 2010, the new section number must be amended. The house amendment renumbers the section inserted by clause 43 so that instead of being new section 611, clause 43 inserts a new section 616 at the end of part 8.6 of the Children, Youth and Families Act 2005.

Neither of these amendments are directly referred to in either the second-reading speech or the statement of compatibility. Therefore there is no need to amend either document to reflect the house amendment.

I move:

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

Motion agreed to.

Hon. M. P. PAKULA (Minister for Public Transport) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Justice Legislation Amendment Bill will contribute to fulfilling the government's commitments for 2010.

The bill focuses on changes to the criminal law, ranging across sentencing laws, the provision of home detention and procedural reform that will continue our work to modernise and simplify Victoria's justice system. The bill will also enhance the operation of Victoria's gaming and racing sector.

In particular this bill will:

give effect to recommendations in part 2 of the Sentencing Advisory Council's final report on suspended sentences, that breach of an intermediate sentencing order should no longer constitute an offence and that breach proceedings should commence promptly;

amend the Sentencing Act 1991 to ensure that the County and Supreme courts may use aggregate sentences when they are sentencing offenders pursuant to their new powers under the Criminal Procedure Act 2009;

amend the Corrections Act 1986 and the Sentencing Act 1991 to extend and strengthen Victoria's home detention program, and to ensure that it will interact appropriately with the Family Violence Protection Act 2008;

make further improvements on the landmark reforms introduced by the Criminal Procedure Act 2009, consistent with the government's commitment to modernise and simplify Victoria's justice system, including its criminal procedure laws;

amend the Sentencing Act 1991 to give effect to the Sentencing Advisory Council's recommendation that the

sentence indication scheme should continue to operate in the County and Supreme courts;

amend the race fields provisions of the Gambling Regulation Act 2003 to remove any doubt about the capacity of the Victorian racing industry to charge and collect fair and reasonable fees for the use of its product from overseas and interstate wagering service providers;

vary the structure of the Victorian Commission for Gambling Regulation to enhance its capacity to meet its existing regulatory responsibilities as well as the challenges associated with transitioning to the new venue operator gaming industry model.

I now turn to each of the bill's components in more detail.

Amendments to the Sentencing Act 1991

Last year, the government implemented a series of Sentencing Advisory Council recommendations on sentencing, changing sentencing laws in relation to sexual offences against children and enacting new sentencing laws to target crimes motivated by hatred or prejudice.

The bill continues this work by implementing the Sentencing Advisory Council's recommendation that breach of an intermediate sentencing order should no longer constitute an offence. This unnecessary criminal offence has been repealed and instead an administrative procedure, similar to the one that currently applies to suspended sentences, will operate to bring the offender back before the court and allow the court to re-sentence him or her.

These amendments are modelled on the existing procedure in the Sentencing Act 1991 which provides for an offender who breaches a suspended sentence by further offending to be re-sentenced. This procedure will apply to breaches of other orders under the Sentencing Act 1991, including breaches of:

combined custody and treatment orders

intensive correction orders

home detention orders

community-based orders, and

orders for release on adjournment.

In each case, the prosecutor or corrections officer will have two ways to proceed on the breach — as is the case with a breach of a suspended sentence. If the offender is before the court being sentenced for an offence committed during the term of the intermediate order, the prosecutor may ask that the breach constituted by the new offence be immediately dealt with. The court will have powers to list the matter immediately in the appropriate jurisdiction of the court, and remand or bail the offender to that date.

If this procedure is not appropriate or if the breach is constituted by behaviour other than a new offence, the corrections officer will be able to seek a warrant or a breach summons to take the offender back before the appropriate court.

In addition to implementing the Sentencing Advisory Council's recommendation that a breach of an intermediate sentencing order no longer constitutes a separate offence, the bill also implements the recommendation to reduce the time frame for bringing a breach proceeding from three years after breach. The bill amends the Sentencing Act 1991 to require breach proceedings to be commenced within six months of a finding of guilt or within two years of the expiry of an order where the breach was constituted by the commission of a further offence, and within one year of the expiry of an order in all other cases.

This amendment will speed up the process for dealing with offenders that breach an intermediate sentencing order and enable courts to quickly address the breach while also removing an unnecessary offence.

Aggregate Sentencing

The bill will also amend the Sentencing Act 1991 with respect to aggregate sentencing.

In 1997, the Magistrates Court was provided with the power to impose an aggregate sentence of imprisonment. In 2006, the County and Supreme courts were provided with the power to impose an aggregate sentence of imprisonment. In *DPP v Felton* [2007] VSCA 65 the Court of Appeal indicated that there were important differences between imposing an aggregate sentence of imprisonment in the summary jurisdiction of the Magistrates Court and indictable offences tried in the County and Supreme courts.

The Criminal Procedure Act 2009 provides the County and Supreme courts with significantly increased powers to deal with summary offences that are either related or unrelated to the indictable offence before the court. The bill expressly addresses issues raised in Felton's case to make clear that the power to impose an aggregate sentence in relation to related and unrelated summary offences in the County and Supreme courts should operate in the same way as aggregate sentences of imprisonment currently operate in the Magistrates Court.

Amendments to the Children, Youth and Families Act 2005

Part 3 of the bill makes the following amendments to the Children, Youth and Families Act 2005.

Sentencing under the Children, Youth and Families Act 2005

Currently, under the Sentencing Act 1991 a court may, at the time of sentencing an offender, impose a less severe sentence because of an undertaking by an offender to assist the authorities after sentencing in the investigation and prosecution of another offence. This provision does not apply to children.

There may be instances where a child is able to assist the authorities in the prosecution of offences against others, such as an adult co-accused. Where this occurs, a child may not receive the benefit of a reduced sentence despite any assistance they provide to authorities after sentencing. The bill addresses this by amending the Children, Youth and Families Act 2005 to ensure that a court may, at the time of sentencing a child, impose a less severe sentence because of an undertaking to assist the authorities after sentencing.

The bill also amends the Children, Youth and Families Act 2005 to provide that the DPP may appeal against a sentence imposed where a child receives a lesser sentence and subsequently fails to fulfil an undertaking.

Aggregate sentences and DPP appeals against sentence under the Children, Youth and Families Act 2005

The bill repeals a number of redundant provisions in the Children, Youth and Families Act 2005 that concern the imposition of aggregate periods of detention.

These provisions purported to restrict the power of appellate courts in relation to a sentence that imposed an aggregate period of detention order. In December 2009 the Court of Appeal in *DPP v M N* [2009] VSCA 312 found that the sections of the Children, Youth and Families Act 2005 that impose these restrictions are inoperative. This is because they are premised upon the Children's Court having the power to impose aggregate period orders, which it has not been able to do since the Children and Young Persons Act was introduced in 1989.

This bill repeals these redundant provisions to ensure that the appeals provisions under the Children, Youth and Families Act 2005 are up to date and clearly reflect current sentencing practice in the Children's Court and appellate courts. The removal of these redundant provisions also makes clear that there is no inappropriate restriction on DPP appeals against sentence. Further, where the child is the appellant, if the appellate court is considering increasing the sentence on appeal, it must provide the child with a warning that it is proposing to do so as a matter of procedural fairness.

Amendments to the Corrections Act 1986

Part 4 amends the Corrections Act 1986.

In 2004 the government implemented a commitment to introduce home detention to Victoria. This was one element of a range of measures to extend the options for rehabilitation and diversion for carefully selected, low-risk, non-violent offenders.

These reforms are important to continue the strengths of the Victorian correctional system and highlight the fact that Victoria remains the most efficient state in Australia in the delivery of correctional services. Victoria also continues to have the lowest overall imprisonment and community corrections rate in the country. Importantly, Victoria continues to maintain a solid downward trend in relation to prisoner recidivism and in the 2008–09 year, completion rates of home detention orders were 97.7 per cent. These are the key highlights of the annual report on government services, prepared by the commonwealth steering committee for review of government service provision.

Home detention was introduced because, for low-risk offenders, diverting people from prison represents not only significant community savings, it provides increased opportunities to successfully rehabilitate an offender, maintain important links with community, family and employment, and will reduce the likelihood of reoffending.

The expanded home detention program will continue to provide a means by which carefully selected, non-violent, low-risk, low-security offenders can serve a period of imprisonment in the community under highly restrictive and intensively supervised conditions.

Home detention programs are a well-established feature of the correctional landscape. The experience in Victoria and other jurisdictions is that home detention is an effective means to enhance the prospects of offender rehabilitation without putting the community at risk.

As was said when this program was first introduced, this government believes that imprisonment should be used solely as a last resort and restricted to serious offenders. Victoria has a proud record in this regard, and the expansion of home detention will further enhance this.

Reforms to the program

The bill contains amendments to the Corrections Act 1986 and the Sentencing Act 1991 designed to extend and strengthen the home detention program by —

making home detention available as a stand-alone order;

giving judges and the Adult Parole Board greater discretion by allowing more flexibility within eligibility criteria through the application of certain past offences; and

including a judicial veto preventing the Adult Parole Board from making the home detention orders in some cases.

Home detention placement saves taxpayers significant amounts of money. Expanding the home detention program is expected to —

increase the number of offenders participating in the program;

deliver 'economies of scale' savings for Corrections Victoria. The current cost per offender under the existing model is estimated to be $41 000. The expansion of the program is expected to reduce this cost by around 25 per cent;

save up to 85 prison beds within four years of implementing the changes. This is a significant saving to Victorians who currently pay $108 598 per annum for each prison bed when taking into account capital costs.

Other benefits are expected to flow from these reforms. The reforms will result in greater flexibility in sentencing by the courts, reduced breach rates and increased public safety.

The Department of Justice is supporting rural and regional Victoria with these reforms. The implementation of the expanded Victoria-wide program will result in the creation of around 40 new positions within Community Correctional Services between 2010 and 2013. It is anticipated that around half of these positions will be located in rural and regional areas.

These reforms also aim to contribute to the continued decline in recidivism of Victorian offenders. Importantly, these reforms will increase the likelihood that offenders will maintain employment and, family relationships and continue to contribute to the community. As mentioned earlier, the annual report on government services noted that Victoria has maintained a downward trend in relation to prisoner recidivism for seven consecutive years. In 2008–09 the rate of return to prison was 33.9 per cent, down from 35.6 per cent in 2007–08 and well below the national average of 39.3 per cent.

Key changes to home detention: option at sentencing and pre-release

The expanded Victorian home detention system will continue to operate as a sentencing option and a pre-release mechanism. As a sentencing option, home detention presents an excellent opportunity to successfully rehabilitate and reintegrate relatively low-risk, non-violent offenders into the community while minimising the disruption to family and employment that incarceration can cause. As a pre-release option, home detention offers a means of consolidating the rehabilitative work done in prison by assisting prisoners back into the community under highly restrictive conditions and intensive supervision.

The program will continue to be open to all eligible offenders. It is not a program for the more affluent offenders. During the operation of the pilot program Corrections Victoria staff assisted eligible offenders to locate appropriate housing, assisted them in finding employment and provided other assistance required for successful participation in the program.

Improving community safety

The expanded program will continue to ensure the protection of the public, and in particular, co-residents of the offender.

The bill also has the effect of widening the number of offenders who will be eligible for home detention. Under the current provisions, an offender is automatically excluded from home detention where the offender has been found guilty at any time of a range of serious offences.

As the current provisions leave no scope for discretion in relation to these offences, the existing program limits the range of offenders who might otherwise be appropriate for home detention.

The bill differentiates between current and past offending. For current offences, the offences that automatically exclude an individual from being eligible for a home detention order remain the same, except in relation to the breach of an intervention order. Where the current offence is or includes the breach of an intervention order, the offender will only be ineligible if the intervention order relates to a person with whom the offender is likely to reside, or continue to resume a relationship with, if a home detention order were made.

In relation to past offences, the amendments will provide the courts and the Adult Parole Board with some discretion in allowing offenders with a history of currently excluded offences to undertake the program. However, prisoners or offenders who have convictions for sexual offences, violent offences and serious violent offences as listed in schedule 1 of the Sentencing Act will continue to remain ineligible for a home detention order.

In relation to past convictions for the breach of an intervention order, the bill will render a person ineligible only where they have been convicted of a breach of an intervention order —

within the last 10 years; or

where the intervention order was made on behalf of a person with whom it is likely the offender would reside, or continue to resume a relationship with, if a home detention order were made.

In contrast to the current provisions that automatically exclude an offender who has a past conviction for drug offences listed in schedule 1 of the Sentencing Act, the bill confers a discretion on courts and the Adult Parole Board to make a home detention order in respect of drug offences.

The bill includes important safeguards: courts and the Adult Parole Board may only apply the discretion if satisfied that doing so would not pose an unjustifiable risk to the community. In considering this risk, courts and the Adult Parole Board must consider —

the period of time since the offender committed the offence;

the sentence imposed for the offence;

the age of the offender at the time the applicant committed the offence;

the nature and gravity of the offence; and

any other matter considered relevant to the application.

Before a home detention order can be made the offender must undergo a comprehensive assessment by a trained supervising officer located within Community Correctional Services.

Before a home detention order can be made the intended adult co-residents of the offender must have acknowledged that they understand the conditions that the offender must fulfil under a home detention order and must have given their written consent that an offender can reside in their home. In the case of a child who will reside with the offender, the court or the Adult Parole Board must be satisfied that the child was consulted about the offender residing with him or her and that consideration was given to the child's view with due regard to the age of the child. Once an order is made, the currency of the co-residents' consent will continue to be regularly assessed by supervising officers throughout the life of the order.

Appropriate ongoing independent support will be extended to co-residents to ensure that, as far as practical, this consent is clearly informed and freely given. If consent is withdrawn by co-residents, the offender must cease living at the residence. If an alternative residence cannot be found the Adult Parole Board has the power to revoke the order and return the offender to prison. The court can revoke the sentencing order and may return the offender to prison or make a fresh sentence concerning the offences for which the offender was serving the sentence of home detention.

In practice, when the offender's suitability for the home detention program is assessed, alternative accommodation options are identified for use if the circumstances warrant relocating the offender.

Supervision

The expanded home detention program will continue to employ continuous, 24-hour-per-day electronic monitoring. The program will be delivered by the Department of Justice Community Correctional Services.

The imposition of a curfew that requires the offender to remain at the approved residence continues as a central element of the program. Offenders will only be permitted to leave the residence where it is unsafe to remain due to

immediate danger, or to engage in activities approved by a supervising officer. Approved activities will depend on the circumstances of the offender, but might include employment, education or training commitments.

In addition, it is a core condition of home detention orders that offenders must participate in unpaid community work when not otherwise employed.

The curfew will continue to be monitored by an active system of electronic monitoring. This system consists of a signal-transmitting bracelet worn around the wrist or ankle, a monitoring unit installed in the offender's home, and a central computer which communicates with electronic monitoring centre staff. Should the offender fail to comply with curfew requirements or attempt to tamper with the bracelet or with the monitoring unit, the supervising officer of the offender will be notified by the electronic monitoring centre staff. Corrections Victoria staff are also equipped with mobile monitoring units that may be used to unobtrusively monitor an offender's compliance with approved activities such as attendance at programs, education or training.

Widely used in other jurisdictions, active monitoring systems are well regarded for their dependability in monitoring compliance without causing undue disruption to the home environment.

Judicial veto

The bill provides that, at the time of sentencing, a court may order that a particular offender is not a suitable candidate for home detention. This order — or veto — will prevent the Adult Parole Board from considering home detention as a pre-release option at the end of that offender's sentence. This is an important part of the home detention expansion program.

Granting the courts this discretion provides greater transparency in sentencing. A sentence of imprisonment with a non-parole period usually means that the entire non-parole period is served in prison. When the Adult Parole Board orders a period of home detention, the part of a non-parole period that will be served in prison is reduced. The new clause will ensure that a court is clearly aware, at the point of sentencing, that fixing a non-parole period does not automatically result in the entire duration of the non-parole period being served in a prison in every case.

It is anticipated that changes to the home detention program will be operational by 1 July 2010.

The expanded home detention program is consistent with existing Victorian traditions of reserving imprisonment for serious and violent criminals. These reforms will ensure that home detention is available for a larger group of carefully selected, non-violent, low-risk, low-security offenders to serve a period of imprisonment in the community under highly restrictive and intensively supervised conditions. The offenders will receive targeted interventions aimed at reducing offending and maximising the prospects for rehabilitation.

Amendments to the Criminal Procedure Act 2009

Part 5 of the bill makes a number of amendments which build on the landmark reforms introduced by the Criminal Procedure Act 2009. I will now turn to a discussion of these amendments.

Introducing a clear process to specify when a person is found guilty of an offence

In *DPP v. Nguyen* (2009) VSCA 147 in June 2009, the Court of Appeal made a number of comments about the uncertainty concerning when a person is convicted of a charge. The court called for the law to be reformed in order to clarify when a person is convicted of a charge and to abolish the allocutus. The allocutus is not relevant to contemporary criminal procedure. It is an ancient process where, following a plea of guilty or a jury verdict of guilty, the court says the following, 'Do you know of any reason or have anything to say why this honourable court should not pass sentence upon you according to law?'.

This procedure was important when sentences were mandatory. It provided an opportunity for the accused to either:

claim 'the benefit of clergy', meaning that they would be sentenced by the ecclesiastical courts; or

stop a judgement from being executed because of some irregularity, which was necessary because there was no appeal against conviction.

Given that there is now a right of appeal against conviction, and no ecclesiastical courts, the traditional reasons for the allocutus no longer exist.

The bill abolishes the common-law process of allocutus. It also provides that if a plea of guilty is entered to a charge on arraignment or a jury delivers a verdict of guilty on a charge, the accused is taken to have been found guilty of the offence unless the court sets aside that plea or verdict of guilty. At the sentencing hearing the court can indicate whether the court records a conviction as part of the sentence imposed, in accordance with the Sentencing Act 1991.

This reform demystifies and modernises the law in this area by establishing a simple, uniform process for determining the timing of a finding of guilt.

Sexual offence cases

The bill makes important changes to further protect complainants in sexual offence cases. The bill achieves this through the following:

broadening the factors the court must have regard to, at a sentencing hearing, in determining whether to grant leave to cross-examine or admit evidence of a complainant's prior sexual activities; this includes having regard to the need to respect the complainant's personal dignity and privacy;

expanding the range of offences for which a court can allow alternative arrangements for the giving of evidence by different categories of complainants and witnesses to now include the summary offences of obscene, indecent and threatening language and indecent exposure;

broadening the circumstances in which a court can order that proceedings be closed in sex offence cases to include any proceeding that relates wholly or partly to a charge for a sexual offence so that witnesses have the same protections as complainants.

These reforms further protect and respect the personal dignity and privacy of complainants and witnesses in sexual offence cases.

Sentence indications

The bill amends the Criminal Procedure Act 2009 to allow for the continuation of the sentence indication scheme in the County and Supreme courts.

The government introduced legislation to implement the scheme in 2008 following the Sentencing Advisory Council's report. Under the scheme, the court may indicate whether it would or would not be likely to impose an immediate custodial sentence if the accused pleads guilty before trial. When the scheme was introduced it was made subject to a sunset clause causing it to lapse on 1 July 2010.

The government asked the council to monitor and report on the scheme's operation in the County and Supreme courts. The council has now produced its sentence indication monitoring report.

The report indicates that the pilot scheme has been very successful and recommends the continuation of the scheme without any changes to the legislative framework in the Criminal Procedure Act 2009.

Sentence indications are an important component of the government's strategy to provide flexible and better ways to identify pleas of guilty at an earlier stage and therefore resolve cases more quickly. Early plea resolution is beneficial to both victims of crime and to the effective operation of the criminal justice system.

Other amendments

The bill further improves criminal procedure by:

providing registrars with new powers to issue a warrant in County Court appeals where an appellant fails to appear at their appeal;

extending the new summary case conference process to all cases in which the prosecution serves a preliminary brief within seven days of filing a charge sheet, irrespective of whether a notice to appear was issued;

addressing some unusual situations in transitional provisions where one accused, or co-accused, is charged with offences before and after the commencement of the Criminal Procedure Act 2009. The bill creates a mechanism which enables these charges to be dealt with under the Criminal Procedure Act 2009;

enabling the Court of Appeal to impose the new test for determining leave applications to all pending applications for leave to appeal against sentence, regardless of when the sentence was imposed. The new test is simple and fair and will assist the Court of Appeal in managing its appeals workload.

Amendments to the gambling legislation

Part 5A of the bill amends the Gambling Regulation Act 2003 and the Casino Control Act 1991.

The bill provides for the racing controlling bodies to impose a fee based on a formula as a condition of an approval to publish or use race fields.

The bill also provides a transitional provision to require wagering service providers who have published or used race fields since 4 September 2008 to pay a fee for the period from that date until the commencement of the amendments.

These provisions will remove any doubt about the capacity of the Victorian racing industry to charge and collect fees for the use of race fields data and ensure that all interstate and international wagering service providers make a fair and reasonable economic contribution to the Victorian racing industry for the use of its product.

The bill varies the structure of the Victorian Commission for Gambling Regulation by removing the office of the executive commissioner and revising how the commission is constituted by providing that the commission consists of at least three commissioners. Under the amendments, the Victorian Commission for Gambling Regulation will be comprised of at least a chairperson, a deputy chairperson and another commissioner.

The bill provides that the functions of the commission that currently may be performed by the executive commissioner in both the Gambling Regulation Act 2003 and the Casino Control Act 1991 may be performed by any of the commissioners.

This approach provides the Victorian Commission for Gambling Regulation with the discretion to determine which commissioner should be performing the functions or, alternatively, to delegate the performance of those functions to staff of the commission.

Varying the structure in this way will separate the statutory functions of the commission from its non-statutory management functions. It is intended that a full-time chief executive will be appointed to oversee the Victorian Commission for Gambling Regulation. The full-time chief executive will provide the dedicated focus and leadership necessary to strengthen the commission's capacity to meet its existing regulatory responsibilities as well as its capacity to meet the challenges associated with transitioning to the new venue operator gaming industry model.

I commend the bill to the house.

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

Debate adjourned until Thursday, 1 April.

LEGISLATION REFORM (REPEALS No. 6) BILL

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Legislation Reform (Repeals No. 6) Bill 2009.

In my opinion, the Legislation Reform (Repeals No. 6) Bill 2009, as introduced to the Legislative Council is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The purpose of the bill is to repeal a number of redundant acts of Parliament (listed in schedule 1).

In consultation with parliamentary counsel, the government has carefully reviewed the legislation listed in schedule 1 and is satisfied that the repeal of that legislation will not engage any human rights protected by the charter.

In addition, section 14(2)(e) of the Interpretation of Legislation Act 1984 provides that the repeal of an act or a provision of an act, by itself, does not 'affect any right, privilege, obligation or liability acquired, accrued or incurred under that act or provision', unless the repealing act expressly provides for a contrary result. The bill does not expressly seek to affect any person's existing rights, privileges, obligations or liabilities, but simply to repeal the acts specified. As a result, this section should operate to prevent any unintended impairment of the rights or obligations of any persons that might result from the repeals.

Human rights issues

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

The bill does not engage any of the rights under the charter.

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

As the bill does not engage any of the rights under the charter, it is not necessary to consider the application of section 7(2) of the charter.

Conclusion

I consider that the bill is compatible with the charter of human rights and responsibilities because it does not raise any human rights issues.

Hon. John Lenders, MLC
Treasurer

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. M. P. PAKULA (Minister for Public Transport).

Hon. M. P. PAKULA (Minister for Public Transport) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

At the 2006 state election, the Victorian government made a policy commitment to improving the efficiency of government. The bill before the house demonstrates the Brumby government's ongoing commitment to this election promise and to the Reducing the Regulatory Burden initiative.

The government's legislation reform initiative is already well under way. Four acts in this series have been passed, and a further bill has been introduced into Parliament.

The first four acts in the series repealed approximately 200 principal and amending acts from the statute book. Once passed, the Legislation Reform (Repeals No. 5) Bill 2009 will take this process further.

This bill provides a valuable contribution to Parliament's ongoing review of legislation in the Victorian statute book and to repeal acts that are no longer required. Clearing the statute book of redundant acts will help to make the task of consulting our legislation easier and less confusing.

This bill will contribute to the significant progress that has already been made. The bill will repeal another 63 spent and redundant acts, which have been identified as part of an ongoing government-wide review of the statute book.

The repeal of these acts will improve the accessibility of our legislation for all Victorians.

I commend the bill to the house.

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

Debate adjourned until Thursday, 1 April.

RADIATION AMENDMENT BILL

Introduction and first reading

Received from Assembly.

Read first time for Mr JENNINGS (Minister for Environment and Climate Change) on motion of Hon. M. P. Pakula.

Statement of compatibility

For Mr JENNINGS (Minister for Environment and Climate Change), Hon. M. P. Pakula tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities (the charter), I make this statement of compatibility with respect to the Radiation Amendment Bill 2010.

In my opinion the Radiation Amendment 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 the bill

The purpose of the bill is to amend the Radiation Act 2005 (the act) to enable the Department of Health to administer the act more efficiently and effectively. The bill will allow the Secretary of the Department of Health to impose additional conditions on management licence-holders relating to the management or control of the use of a radiation source. It will also allow the secretary to impose conditions on licence exemptions that require compliance with an incorporated document. The scope of certain offences will be clarified by inserting a fault element. Finally, the bill will enable the secretary to publish on the internet limited parts of the register maintained under the act that relate to use licences.

Human rights issues

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

Section 13(a): right to privacy

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

I consider that clause 8 of the bill engages but does not limit the right to privacy because the interference with privacy is not unlawful or arbitrary.

Clause 8 amends section 138 of the act to give the secretary the power to publish and maintain on a website limited parts of the register the secretary is already required to establish and maintain under that section. Specifically, the bill will enable the secretary to publish and maintain on the internet:

the name of a use licence-holder;

the number assigned to a use licence-holder for the purpose of the register;

the date on which a use licence expires or, in the case of a use licence that has expired, the date of expiry;

a description of the use allowed under the use licence;

the radiation source the licence-holder is permitted to use or the purpose for which a radiation source identified or described in a use licence may be used;

if a use licence is suspended, the date of suspension;

if a use licence has been cancelled, the date of cancellation; and

if a use licence has expired, the date of expiry.

The secretary will only be able to publish and maintain on the internet the date on which a use licence was cancelled for a period of 12 months after the date of cancellation and the date of expiry of a use licence for a period of three months after the date of expiry.

The clause does not unlawfully interfere with the right to privacy because it specifies what information can be published about a current or former use licence-holder. The clause does not arbitrarily interfere with the right to privacy because it enables the secretary to disclose information for an important purpose — to enable management licence-holders to confirm whether particular employees, contractors and applicants for employment currently hold an appropriate use licence. The government of Victoria wants to encourage management licence-holders to take reasonable steps to verify that their employees and contractors are appropriately licensed under the act. The interference with the privacy of individuals is minimal because the secretary may only publish and maintain on the internet the information needed to ascertain whether an individual currently holds an appropriate use licence. Importantly, the provision does not enable the secretary to publish other personal information about current or former use licence-holders such as their date of birth or residential or business address.

2. Consideration of reasonable limitations in accordance with section 7(2)

As the right under the charter which the bill engages is not limited by the bill, it is not necessary to consider the application of section 7(2) of the charter.

Conclusion

I consider that the bill is compatible with the charter because, although the bill engages the right conferred by section 13 of the charter, it does not limit that right.

Gavin Jennings, MLC
Minister for Environment, Climate Change and Innovation

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. M. P. PAKULA (Minister for Public Transport).

Hon. M. P. PAKULA (Minister for Public Transport) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The purpose of this bill is to make a series of minor amendments to the Radiation Act 2005 to ensure that Victoria has radiation safety legislation that is consistent with national directions to protect people and the environment from harmful effects of ionising and non-ionising radiation.

In particular, clause 4 of the bill, which relates to the definition of 'radiation practice', will allow the Secretary of the Department of Health to impose further conditions on management licences relating to the management or control of the use of a radiation source. There are approximately 2500 management licences issued predominantly to companies. These licences authorise a diverse range of practices in medical, dental, veterinary, industrial, education and research sectors.

The proposed changes will ensure that appropriate restrictions can be placed onto these licences to protect health and the environment from the harmful effects of radiation.

Clauses 5 and 7 of the bill clarify the scope of several key offence provisions in the act by inserting a 'fault element' into those offence provisions.

Clause 6 of the bill will allow the secretary to impose conditions on any licensing exemptions that require compliance with incorporated documents such as codes of practice. Currently the exemption can be made but must reproduce the contents of the codes or standards.

Clause 8 will allow the secretary to publish on the internet specified details about the persons who are licensed to use radiation sources.

There are over 9700 licences issued to individuals to use radiation sources in Victoria, ranging from basic dental X-ray equipment to sources containing significant amounts of radioactive material used in industrial practices.

The Victorian government wants to encourage management licence-holders to take reasonable steps to verify that their employees and contractors are appropriately licensed under the act.

The publication of a limited public register (i.e., names and details about the type of licence issued) will ensure that businesses can quickly verify that staff and contractors hold the appropriate licences.

The bill specifies the information that may be published as: the names of the use licence-holders holding the use licences; the licence number; the date on which each use licence expires; the description of the use that is allowed by the licence and the detail of the kind of radiation source that may be used under each licence.

The bill will also allow the secretary to publish details about any cancelled or suspended licences.

Importantly, the bill does not give the secretary the power to publish on the internet any information about where a current or former use licence-holder lives or works.

The provisions will come into effect on a day or days to be proclaimed, or on 1 February 2011 if not proclaimed beforehand.

These amendments to the Radiation Act 2005 will continue to ensure that Victoria remains in a leading position in Australia in respect of the regulation of radiation safety to protect both people and the environment from the harmful effects of radiation.

I commend the bill to the house.

Debate adjourned for Mr D. DAVIS (Southern Metropolitan) on motion of Mr Koch.

Debate adjourned until Thursday, 1 April.

TRANSPORT LEGISLATION AMENDMENT (COMPLIANCE, ENFORCEMENT AND REGULATION) BILL

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. M. P. PAKULA (Minister for Public Transport).

Statement of compatibility

Hon. M. P. PAKULA (Minister for Public Transport) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Transport Legislation Amendment (Compliance, Enforcement and Regulation) Bill 2010.

In my opinion, the Transport Legislation Amendment (Compliance, Enforcement and Regulation) Bill 2010, as introduced to the Legislative Council, is compatible with human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of the bill

The bill makes diverse amendments to the Transport Act 1983, the Bus Safety Act 2009, the Rail Safety Act 2006, the Marine Act 1988, the Rail Corporations Act 1996, the Road Safety Act 1986, the Working with Children Act 2005, the Public Transport Competition Act 1995, the Road Management Act 2004 and the Transport Legislation Amendment Act 2007.

Human rights issues

The bill raises a number of human rights issues.

Unlawfully operating a taxi — section 25(1) and the right to be presumed innocent

Clause 28 of the bill introduces three new offences into the Transport Act 1983, all relating to the operation of a taxi by a person who does not have the proper authorisation to do so. New section 158AA makes it an offence for a person (other than an accredited operator or his or her employee) to permit another person to operate a taxi. New section 158AB says that if a taxi is operated by a person who does not have proper permission to do so, the accredited 'operator' of the taxi (being the holder of the licence under which the taxi is operated or, if the licence-holder does not operate the taxi, the person to whom the right to operate the taxi has been assigned) commits an offence. New section 158AC says that if a taxi is permitted to be operated by a person who is not entitled to give that permission, the person operating the taxi commits an offence.

Both new section 158AB and new section 158AC create defences. New section 158AB makes it a defence if the

operator satisfies the court that he or she took all reasonable steps to stop the taxi being operated by a person who did not have permission. New section 158AC makes it a defence if the person who unlawfully operated the taxi satisfies the court that he or she took all reasonable steps to determine whether the person who purported to give him or her permission to operate the taxi was entitled to give that permission.

Because these defences place a burden of proof on the defendant, they limit the right to be presumed innocent in section 25(1) of the charter. Section 25(1) requires that the prosecution must prove all aspects of a criminal charge.

I consider, however, that both reverse onuses limit the right in a manner that is reasonable and demonstrably justified in a free and democratic society having regard to the factors in section 7(2) of the charter for the reasons outlined below.

(a) The nature of the right being limited

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

(b) The importance of the purpose of the limitation

The purpose of imposing a burden of proof on accredited operators and unauthorised drivers of taxis is to ensure that these offences can be effectively prosecuted and that they operate as a deterrent to the unlawful operation of taxis by imposing a duty on operators and drivers to actively take responsibility for the manner in which taxis are operated. The taxi industry is considerably regulated for public purposes, which include community safety and service standards.

(c) The nature and extent of the limitation

When a taxi is operated without the requisite permission, a burden is placed on both the accredited operator and the driver to prove that they have taken reasonable steps to prevent the offence. By choosing to engage in a regulated activity, it is reasonable to expect operators and drivers to take steps to ensure that taxis are only operated by people lawfully authorised to do so. If reasonable steps have been taken, proof ought not to be difficult.

Whilst the prescribed penalty can involve fines of up to $5841 for operators, it does not involve imprisonment.

(d) The relationship between the limitation and its purpose

The imposition of a burden of proof on the accused is directly related to its purpose as described above.

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

An evidential onus would not be effective as it could be too easily discharged by the defendant. Having regard to the purpose of the offences, it would be unduly difficult and onerous for the state to investigate and prove what steps the defendant took to discharge his or her responsibilities.

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

Adverse publicity orders

Clause 13 inserts new section 230FA into the Transport Act 1983 which enables a court to make adverse publicity orders against persons found guilty of a breach of a relevant safety law or an offence under divisions 4 or 5 of part VI of the Transport Act 1983. Adverse publicity orders involve publication of the particulars of the offence, its consequences, the penalty imposed and any other related matter to a specified person or class of persons.

Clause 16 inserts a similar provision into the Marine Act 1988 by way of new section 85AX.

Section 13 — right to privacy and reputation

Section 13 of the charter provides that a person has the right not to have his or her privacy unlawfully or arbitrarily interfered with or to have his or her reputation unlawfully attacked. In my view, any interference with the right to privacy occasioned by an adverse publicity order is likely to be minimal. The fact of conviction and the penalty that has been imposed are already matters of public record; and the broader circumstances of the offending will have been aired in court during a public trial. An adverse publicity order, therefore, does not disclose information that is 'private' but rather communicates in different form information that is already in the public domain.

The offences targeted by these adverse publicity orders include transport safety offences and dishonesty or fraud offences relating to public transport regulation. Adverse publicity orders seek to achieve the deterrent and denunciatory aims of sentencing by 'shaming' offenders, as well as furthering the protection of users of public transport by publicly outing those who contravene safety regulations and strengthening the integrity of the regulatory system. In my view, any interference with the right to privacy is neither unlawful nor arbitrary.

Section 15 — freedom of expression

An adverse publicity order engages the right to freedom of expression as it compels a person to disclose or publish information. Section 15 provides that every person has the right to impart information and ideas of all kinds. It is well established that this includes the right to choose not to impart information. However, section 15(3) provides that the right to freedom of expression can be subject to lawful restrictions that are reasonably necessary to respect the rights of other persons and for the protection of, amongst other things, public order.

Public transport and marine regulation is clearly designed to protect the rights of others in the community. Further, as public transport is a vital and essential service, the proper and effective regulation of public transport safety can be considered a matter of public order. For the reasons given above in relation to section 13(a), I consider that any interference with the right to privacy furthers important public aims, and that any limit on the right not to impart information is proportionate to the interests served.

Reduced penalties for minors — section 8 and the right to equality

Clause 78 inserts new section 215(2)(ab) into the Transport Act 1983 to confirm the power of the Governor in Council, when making regulations governing transport or ticket

infringements, to prescribe a lower penalty if the offender is under the age of 18. In accordance with the definition of discrimination in section 8 of the Equal Opportunity Act 1995, this clause may limit the right to be protected against discrimination contained in section 8(3) of the charter. That is because a person over the age of 18 will be treated less favourably than a person under the age of 18 when he or she commits the same infringement. In my view, however, any such limitation is clearly justified. It is a minimal infringement on the equality right that recognises the more limited financial means of children, as well as their reduced culpability. It is consistent with other provisions in the charter itself as well as elsewhere in the law that create obligations to accord children special protection (see especially section 17(2) of the charter but also sections 23 and 25(3)). It is consistent with the reforms made to the Children, Youth and Families Act 2005 and the administration of the Children's Court.

General inspections, inquiry and search powers

Section 228Z of the Transport Act 1983 gives transport safety officers the power to enter railway and residential premises for compliance and investigative purposes. Once proclaimed, the Bus Safety Act 2009 will extend this power of entry to 'public transport premises', which include bus premises. The then minister assessed section 228Z in the 2008 statement of compatibility for the Bus Safety Bill (now the Bus Safety Act 2009) and concluded that it was consistent with the right to privacy under section 13 of the charter.

Division 4B of part VII of the Transport Act 1983 sets out the inspection, inquiry, search and seizure powers that transport safety officers can exercise when entering a place under section 228Z. Many of those powers are currently limited to residential premises and railway premises. Clauses 69 and 70 of the bill amend various sections in division 4B (after the Transport Act 1983 is renamed the Transport (Compliance and Miscellaneous) Act 1983) so that various inspection, inquiry, search and seizure powers are not so limited but can be exercised by transport safety officers on all public transport premises.

The extension of these powers to public transport premises engages the right not to be compelled to incriminate oneself, the rights to privacy, freedom of movement and property, and the presumption of innocence.

Section 25(2)(k) and 24(1) of the charter — the right not to be compelled to incriminate oneself

Once amended, section 228ZB will confer on a transport safety officer who has entered public transport premises under section 228Z of the Transport Act 1983 a range of powers of inspection, inquiry and search, which are to be exercised 'for compliance and investigative purposes'. These include the power to require any person in or on the public transport premises to produce any relevant documents in that person's custody or control (section 228ZB(1)(h)). In addition, section 228ZL empowers a transport safety officer to direct relevant persons (as defined in section 228S) to provide assistance to him or her to enable him or her effectively to exercise powers under division 4B, including the powers of search and inspection in section 228ZB.

Section 228ZZP of the Transport Act 1983 provides that a person is not excused from complying with a direction under division 4B on the ground that to do so would incriminate the person. For that reason, the amendment to section 228ZB (read with section 228ZL) engages the right not to have to incriminate oneself. That right is protected by both section 25(2)(k) of the charter (the right not to have to testify against oneself) and also section 24(1) (the right to a fair trial).

Section 228ZZP(2), however, goes on to provide an immunity to persons who have been compelled to provide incriminating information. As currently drafted, it protects against the direct use in criminal proceedings (other than in proceedings in respect of the provision of false information), or in any civil proceeding for a penalty, of any information obtained from a natural person under a direction given under division 4B. Clause 5 of the bill amends section 228ZZP(2) to extend the immunity to indirect use of the compelled information, i.e., to information obtained 'as a direct result or indirect consequence' of the information.

The immunity in subsection 228ZZP(2) is, however, subject to exceptions, as set out in subsections 228ZZP(3) and (4). They provide that the immunity does not apply in relation to the following two classes of compelled documents or real evidence:

> documents or items that were required to be kept under a relevant transport safety law (section 228ZZP(3) and (4)(a));
>
> things obtained under section 228ZK(1)(b). That section empowers a transport safety officer to direct a relevant person (as defined in section 228S) to provide any documents, devices or other things in his, her or its possession or control 'relating to rail operations'.

In short, then, a person who is required to provide incriminating information under division 4B is protected against the direct or indirect use of that information against them in court proceedings, except in the two situations set out above.

These provisions limit the right not to have to incriminate oneself, as protected by sections 25(2)(k) and 24(1) of the charter. However, I am of the view that the limitation is reasonable under section 7(2) of the charter for the following reasons.

(a) The nature of the rights being limited

In *Re Application under the Major Crime (Investigative Powers) Act 2004* [2009] VSC 381 (Major Crime), Chief Justice Warren said that the right not to be compelled to incriminate oneself as protected by sections 25(2)(k) and 24(1) of the charter is at least as broad as the common law privilege against self-incrimination. It protects against the use of material that was obtained from a person either prior to or after the charge was laid.

The right in section 25(2)(k) of the charter is a right not to 'testify against oneself', the core idea being that a person should not be conscripted into incriminating themselves. For that reason, a search of and seizure of a person's records is not generally considered to breach the privilege against self-incrimination as the person has not been conscripted into articulating or producing what is expressed in the records. I accept that the right does nevertheless protect against the compelled production of documents as well as to enforced oral testimony.

However, in my view, the protection accorded to the compelled production of pre-existing documents is considerably weaker than the protection accorded to oral testimony or to documents that are brought into existence to comply with a request for information. That is consistent with the decision of the High Court of Australia in *Environment Protection Authority v. Caltex Refining Co Pty Ltd* (1993) 178 CLR 477:

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

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

(b) The importance of the purpose of the limitation

The primary purpose of the abrogation of the privilege against self-incrimination in section 228ZZP(1) is to ensure that transport safety officers have adequate powers to inquire into and monitor compliance with the statutory obligations imposed on those who exercise public transport functions and duties.

The primary purpose of the exceptions to immunity in section 228ZZP(3) and (4) is to facilitate the prosecution of those who commit offences under the Transport Act in circumstances where the information would be required to be provided in any event.

Both of these are important purposes that advance the underlying objective of community safety as well as promoting the maintenance of and continuous improvement in the risk management of safety.

(c) The nature and extent of the limitation

Except in the two circumstances set out above, the abrogation of the privilege against self-incrimination is replaced by a full immunity against direct and indirect use. This is consistent with the decision of the Chief Justice in Major Crime. Assuming that the abrogation of the privilege and its replacement with a full immunity limits sections 25(1)(k) and 24(1) of the charter at all, the limit is therefore a minor one.

The two situations in which the immunity does not apply relate to pre-existing documents and real evidence. As already explained, the protection accorded to such documents is considerably weaker than the protection accorded to oral testimony or to documents that are brought into existence to comply with a request for information.

Considering further each of the two exceptions, the first relates only to documents that a person is required to keep under relevant transport safety laws. The second is limited by the concept of 'relevant person' as defined in section 228S, by the fact that the transport safety officer must be acting 'for compliance and investigative purposes', and by the fact that the document or thing must relate to 'rail operations'. The result is that only people participating in the regulated public transport industry can be compelled to produce items either that they are obliged to create and maintain, or that are related to and arise from their involvement in that activity.

(d) The relationship between the limitation and its purpose

The limit on the right against self-incrimination is directly related to its purpose as described above.

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

There are no less restrictive means reasonably available to achieve the purpose of the limitation. The ability to enforce the Transport Act 1983 would be curtailed if evidence from documents that people participating in public transport are legally required to keep, or which relate directly to rail operations, could not be used in criminal proceedings relating to breaches of their statutory obligations.

Accordingly, I consider that the amendments to division 4B are compatible with the right not to incriminate oneself in the charter.

Section 13(a) — the right to privacy

Under division 4B of part VII of the Transport Act 1983 a transport safety officer who enters premises for compliance and investigative purposes may inspect infrastructure, make relevant inquiries, take measurements, make tests, take samples, take photographs and videotape, inspect and copy documents, search for anything that may be evidence of the commission of an offence under the act, seize and remove certain things, and use equipment to examine or process things in order to determine whether they are things that may be seized.

These powers may in certain circumstances create an interference with a person's privacy but in my view, division 4B does not authorise interferences with privacy that are 'unlawful' or 'arbitrary' and accordingly, is compatible with section 13(a) of the charter. The powers serve the important public purposes of enabling transport safety officers to inquire into and monitor compliance with the statutory obligations imposed on those who exercise public transport functions and duties, thus advancing community safety and promoting service standards. The powers can only be exercised in the controlled and prescribed circumstances set out in division 4B.

In accordance with section 228Z, public transport premises can be accessed for the purposes of such activities at any time during which public transport operations or activities are being carried out or are ordinarily carried out. Outside of such times, premises can only be searched with the consent of the occupier or with a warrant. Searches of private residences are likewise only permitted with the consent of the occupier or under the authority of a search warrant. The process for obtaining consent is strictly regulated (see section 228ZA). Search warrants can only be obtained if a transport safety officer believes on reasonable grounds that there is, or may be within the next 72 hours, evidence of the commission of an

offence against a relevant transport safety law in or on the premises (section 228ZG).

A number of provisions further seek to ensure the accountability and transparency of the process, such as the requirement that officers executing a search warrant announce themselves before entry and provide a copy of the warrant to the occupier (sections 228ZI and 228ZJ). Officers may not use more force than is reasonably necessary to exercise these powers (section 228ZZ). The legislation provides detailed guidance as to the use, retention, access and return of seized items.

For all these reasons I have concluded that there is no limit on section 13(a) of the charter.

Section 20 — the right to property

Section 20 of the charter provides that a person must not be deprived of his or her property other than in accordance with law. The seizure powers just discussed may in certain circumstances amount to a deprivation of property but in my view, the powers are compatible with section 20 of the charter. Any seizure of property under the legislation must be in accordance with law because the circumstances in which seizure can occur are clearly specified and safeguards against arbitrary deprivation of property are provided.

These safeguards include judicial controls on retention of things seized for longer than 90 days (section 228ZW read with section 228S), the giving of receipts (section 228ZT), the provision of copies of documents as soon as practicable after seizure (section 228ZU) and the provision of compensation for damage caused to property during the exercise of these powers.

Section 25(1) — the presumption of innocence

The extension of division 4B powers to 'public transport premises' has the effect of extending the reach of a number of existing offence provisions in division 4B. Several of these contain a defence of having a 'reasonable excuse' for non-compliance with the statutory requirement: sections 228ZD, 228ZL(3), 228ZR(3) and 228ZS(2). Section 228ZO(3) takes a different approach and lists four specific circumstances in which non-compliance is justified.

In all these cases, the relevant defence provisions have the effect of imposing an evidential onus on a 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. 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 cooperation with the activities of transport safety officers. A defendant's reason for non-compliance will be best known to him or herself. The imposition of an evidential onus ensures that the defendant must put any such reason at issue but still protects the presumption of innocence by requiring the prosecution to prove the absence of any such reason to the ordinary criminal standard.

The only offence provision in division 4B that contains a complete reverse onus provision is section 228ZL(5). Section 228ZL(3) makes it an offence for a 'relevant person' to refuse or fail to comply with a direction under section 228ZL(1) unless the person has 'a reasonable excuse'. Section 228ZL(1) empowers transport safety officers to direct a relevant person to provide assistance to the transport safety officer to enable him or her effectively to exercise a power under division 4B. In addition to the defence of 'reasonable excuse' in subsection (3), section 228ZL(5) provides that it is also a defence if the person charged 'proves on the balance of probabilities that the direction or its subject matter was outside the scope of the business or other activities of the person.'

This provision was amended by the Statute Law Amendment (Charter of Human Rights and Responsibilities) Bill 2009. It was the subject of correspondence between the Attorney-General and the Scrutiny of Acts and Regulations Committee (*Alert Digest* 4 and 9 of 2009). In that correspondence the Attorney-General advised that in his view the limitation that section 228ZL(5) imposed on the presumption of innocence in section 25(1) of the charter was justified. I agree with this view for the following reasons.

(a) The nature of the right being limited

As discussed above, the right is not absolute.

(b) The importance of the purpose of the limitation

The limitation serves the important purpose of rendering prosecution an effective mechanism for ensuring cooperation with the compliance and investigative activities of transport safety officers. This, in turn, protects community safety, as well as service standards in the industry.

(c) The nature and extent of the limitation

The limit only applies to 'relevant persons' as defined in section 228S. Defendants have an additional defence of 'reasonable excuse', which is only subject to an evidential onus. The reverse onus does not apply to an essential ingredient of the offence but solely to the peripheral question whether the direction was within the scope of the person's activities. Conviction cannot result in imprisonment.

(d) The relationship between the limitation and its purpose

The limitation imposed is directly and rationally connected to its purpose.

(e) Any less restrictive means available

There are no less restrictive means available. The scope of a defendant's business or other activities is best known to them and ought not to be difficult for them to prove. Conversely, it would be extremely difficult for the prosecution to prove. Accordingly, an evidential onus would not be sufficient.

I conclude, therefore, that the limit on the section 25(1) of the charter is justified.

Section 12 — freedom of movement

Clause 70 amends section 228ZC of the Transport (Compliance and Miscellaneous) Act 1983 to extend the scope of that section to public transport premises, so that a transport safety officer may take all reasonable steps to secure the perimeter of a site at public transport premises entered into under the entry and search powers in division 4B if he or she believes on reasonable grounds that it is necessary to do so to determine whether an offence has been committed or to preserve evidence.

Section 12 of the charter provides that every person lawfully within Victoria has the right to move freely within Victoria. Assuming that this provision limits the right in section 12, in my view, any such limit is demonstrably justified under section 7(2) of the charter for the following reasons.

(a) The nature of the right being limited

The right to freedom of movement is not regarded as an absolute right in international law and can be subject to reasonable limitations.

(b) The importance of the purpose of the limitation

The purpose of the power is to enable transport safety officers to investigate whether offences have been committed and to preserve evidence relating to the commission of the offence. These are important purposes.

(c) The nature and extent of the limitation

The power can only be exercised in relation to sites at public transport premises and cannot be exercised in relation to residential premises. Any limit on a person's general freedom of movement is minor. As mentioned above, the power can only be exercised for the purposes of determining whether an offence has been committed or to preserve evidence.

Section 228ZC(2) stipulates that the site can be secured for the period the officer considers appropriate or that the safety director specifies. Implicitly, however, this must be for no longer than is required to undertake the necessary search or to preserve evidence.

(d) The relationship between the limitation and its purpose

The limitation imposed is directly and rationally connected to its purpose.

(e) Any less restrictive means available

There are no less restrictive means available to achieve this purpose. The power of exclusion from a site is essential to transport safety officers' functions of investigation and preservation of evidence.

Section 24 and the right to a fair hearing

There are a range of new decision-making procedures being inserted into the Transport Act 1983 and the Rail Safety Act 2006 by the bill which may engage 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. The new procedures that may engage section 24 of the charter include the procedure for applying to vary or withdraw an undertaking given to the safety director (clause 7) and the various decision-making procedures being inserted by part 3 of the bill relating to the accreditation schemes relating to the provision of services in the taxicab industry and to drivers of commercial passenger vehicles.

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.

Conclusion

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

Martin Pakula, MP
Minister for Public Transport

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. M. P. PAKULA (Minister for Public Transport).

Hon. M. P. PAKULA (Minister for Public Transport) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The paramount aim of this bill is to improve compliance and enforcement settings across Victorian transport regulation with particular emphasis on enhancing safety. In line with announcements made in the 2010 statement of government intentions, reforms to compliance and enforcement settings to improve transport safety and standards and continuing the process of strengthening the national rail safety regulation system are key aspects of the bill. The bill will continue Victoria's leadership in modernising and improving national harmonisation of rail safety policy and regulation.

In addition, the bill makes a range of minor, miscellaneous and machinery adjustments to current transport legislation.

Policy context

The bill falls within the broader policy and legislation envelope set out in the Transport Integration Act 2010. Members will recall that the Transport Integration Act 2010 establishes new overarching policy and legislative settings for transport in Victoria, focusing particularly on the overall integration and sustainability of our transport system.

Best practice compliance and enforcement settings are a critical area of support for an integrated and sustainable transport system. There is little point in providing a modern policy and legislative framework if people do not comply with it and agencies cannot enforce it.

One of the transport system objectives in the Transport Integration Act requires transport agencies to aspire to establishing and maintaining a transport system that is safe and supports community health and wellbeing. Having regard to this objective involves seeking to continuously improve the safety performance of the transport system.

With these considerations in mind, the government has worked hard in recent years to drive a series of major transport safety reforms to create both best practice safety schemes for the state and best practice regulators to administer the schemes. The overall aim, of course, is to maintain and enhance the high levels of safety already built into our transport settings.

Reforms endorsed by Parliament in recent years include:

a rail safety regulation scheme and revised public transport safety regulator arrangements (the Rail Safety Act 2006);

a transport safety investigations scheme and revised organisational arrangements (Transport Legislation (Safety Investigations) Act 2006);

a bus safety scheme (the Bus Safety Act 2009); and

a range of initiatives pursued in various omnibus bills (including, for example, the safety interface agreements scheme for level crossing safety improvements provided in the Transport Legislation Miscellaneous Amendments Act 2007).

Our safety reform work continues across the transport system with major reviews under way in the water and roads areas. The current policy-driven review of the Marine Act 1988 and its impact on the safety of commercial shipping and recreational boating will conclude later this year with the presentation to Parliament of a new Marine Safety Bill. The government's review of the Road Safety Act 1986 will build on current settings to establish a new road safety statute to help further reduce road trauma.

Compliance and enforcement reforms

In parallel with the major reviews, the government is continuing to undertake policy and operational scans of each individual transport safety scheme. This work has presented opportunities to adjust current schemes ahead of the major reviews, and to bring about immediate improvements.

Good safety regulation requires good regulators as well as good safety rules. Victoria's transport sector contains a number of excellent regulators such as the director, public transport safety (known as Public Transport Safety Victoria or PTSV), the director of marine safety (Marine Safety Victoria or MSV), the Roads Corporation (or VicRoads), and the director of public transport incorporating the Victorian Taxi Directorate (the VTD).

Best practice compliance and enforcement schemes give these regulators the powers and sanctions they need to enforce compliance with safety standards as well as probity, service and other regulatory standards.

As a result, a major emphasis of transport policy and legislation reform in recent years has been to provide adequate powers and sanctions so regulators can take proportionate responses to anticipated or actual breaches of the law that affect safety or other standards.

A variety of powers and sanctions are now standard across the portfolios. Compliance and enforcement tools such as infringement notices, improvement notices, prohibition notices, commercial benefits penalties and exclusion orders are in place across key parts of the transport portfolios including roads, rail, bus and marine. They are mostly clustered in the Transport Act 1983 to avoid repetition across the statute book.

This bill extends the existing arrangements to other areas of the transport portfolios.

Transport safety law infringements are introduced for the rail and bus industries, providing the safety director with additional powers to deal with minor offences and enforce regulatory standards.

Remedies for breaches of safety duties and other requirements are also extended by providing the courts with sentencing powers across the public transport portfolio.

A range of sanctions are extended to the taxi and hire car industry. These include:

exclusion orders (which enable the court to prohibit persistent offenders from being involved in the industry in question);

supervisory intervention orders (which enable the court to order a person to improve his or her compliance with relevant safety laws); and

commercial benefits orders (which enable the court to require a person to pay a fine based on unlawful profit obtained from committing an offence).

The orders will be available to courts dealing with persistent and systematic offenders.

The bill introduces a new sanction — adverse publicity orders — into transport regulation in Victoria. These orders are well known in other regulatory schemes and allow courts to 'name and shame' offenders, in addition to imposing other penalties.

The bill also introduces voluntary enforceable undertakings for the rail and bus sectors, further improving the quality, efficiency and outcomes of rail and bus safety regulation. Enforceable undertakings have proved extremely successful in other regulatory models including ACIS and ACCC. These provisions are modelled on the national model rail safety bill, with adjustments to provide greater flexibility and efficiency.

These measures, taken together, ensure that transport regulation in Victoria remains modern, flexible and responsive to changing circumstances.

Technical and other changes to regulatory schemes

The bill makes a number of miscellaneous, minor and machinery changes to improve existing transport regulation.

Rail safety is recognised as part of a national scheme. This was not possible before other states followed Victoria's lead in 2006 by implementing the national model rail safety bill.

The purpose of taxi industry accreditation is to facilitate the provision of safe, reliable and efficient taxicab services that meet reasonable community expectations. The suitability requirements for persons involved in the taxi industry remain a threshold issue in the accreditation process.

The bill makes it clear that a person's driving record and compliance with the taxi and driver accreditation regimes can be taken into account when making decisions about their accreditation. Provisions are introduced to ensure that a person cannot carry out the functions of an accredited taxi operator if not accredited.

Other technical, but important, changes are made to the taxi industry accreditation scheme.

The bill clarifies the Victorian Civil and Administrative Tribunal's powers when reviewing accreditation and disqualification decisions. It also clarifies when a person who is exempt from a working-with-children check by reason of their completely clear record ceases to benefit from the exemption.

Statutory recognition is given to the holiday surcharge that may be charged by taxidrivers and retained by them on certain public holidays.

Each of these measures is consistent with, and supports, the objective of ensuring the provision of safe, reliable taxi services throughout the state while minimising the regulatory burden on industry.

The bill further aligns the Bus Safety Act 2009 with the Rail Safety Act 2006 along with changes made by the Transport Legislation (Driver and Industry Standards) Act 2008.

The bill clarifies responsibilities for managing and enforcing fatigue management provisions associated with bus drivers. Fatigue management accreditation will be dealt with by Public Transport Safety Victoria, facilitating a one-stop shop for bus accreditation, while Victoria Police and VicRoads will continue to deal with on-road enforcement of fatigue management requirements.

Provision is made in the bill for warning notices to be left on vehicles in designated park-and-ride facilities, giving early notice of breaches of parking restrictions to station car park users.

The bill makes it clear that public transport conduct offences can be enforced in the precinct of Southern Cross station.

The bill also confirms that infringement penalties can differ on the basis of the age of the offender consistent with Victorian justice policies.

Finally, the bill makes a number of minor miscellaneous and machinery amendments.

These include:

clarifying fees for accredited rail operators; and

confirming the contents of an allocation statement not previously gazetted.

I commend the bill to the house.

Debate adjourned on motion of Mr KOCH (Western Victoria).

Debate adjourned until Thursday, 1 April.

BUSINESS OF THE HOUSE

Adjournment

Hon. M. P. PAKULA (Minister for Public Transport) — I move:

That the Council, at its rising, adjourn until Tuesday, 13 April.

Motion agreed to.

ADJOURNMENT

Hon. M. P. PAKULA (Minister for Public Transport) — I move:

That the house do now adjourn.

Planning: amendment VC56

Ms LOVELL (Northern Victoria) — My adjournment debate issue is for the attention of the Minister for Planning, and it is regarding his so-called fast-tracking of planning applications for social housing projects throughout Victoria under planning scheme amendment VC56.

The action that I seek is for the minister to refer each of the projects that he has approved under VC56 to the Legislative Council's Standing Committee on Finance and Public Administration, which is currently looking at Minister Madden's media plan that has unearthed corruption of due process on planning matters.

Under VC56 the minister gave himself the power to act as the planning authority for all social housing projects to be built under the federal government's economic stimulus package. In doing this, the minister stripped local councils of their rights as planning authorities and local communities of their rights to object to inappropriate developments. I will talk about just a couple of these projects and the anger they have caused in the community.

The first is the proposed development on the old Gordon TAFE college site in Moorabool Street, Geelong. Only stage 1 of this project is social housing, and yet the minister acted as the planning authority for both stage 1 and stage 2. The community has no objection to stage 1 but does have significant concerns

with stage 2, which has no social housing component, but which is an overdevelopment of the site and does not fit with local planning regulations and the amenity of the neighbourhood.

The second project is a development to be built at 973 Nepean Highway, Bentleigh, on the corner of Nepean Highway and South Road — an extremely busy intersection. The local council and community are concerned about this development on a number of levels, including safety, car parking, traffic congestion and public open space for families.

I have attended public meetings for both these projects, and there is a real concern that due to the fast-tracking of these projects the communities will be forced to deal with the ramifications of poor planning for many years to come. At both public meetings those who attended made it clear that they did not object to social housing projects but did object to poor planning processes.

After the exposure, through the minister's media plan, of corruption of due process on planning matters, the communities affected by approvals under amendment VC56 have a right to ask for further scrutiny of these approvals. For this reason I ask the minister to refer each of the projects that he has approved under VC56 to the Legislative Council's Standing Committee on Finance and Public Administration, which is currently looking at Minister Madden's media plan that has unearthed corruption of due process on planning matters, for further scrutiny of these planning approvals.

Maffra Secondary College: flagpole

Mr HALL (Eastern Victoria) — Tonight I wish to raise a matter for the attention of the Minister for Education. I am after a flagpole for one of the finest secondary colleges we have in Gippsland, that being Maffra Secondary College.

As the Treasurer of this state would know, Maffra Secondary College has just undergone some significant building programs, some at least funded by the federal government, and I think the state government has played a role in providing some of the funding for those buildings as well. The Treasurer was out there recently, I think, to open some of those. I say 'I think' because an invitation was not extended to coalition members.

Nevertheless, as part of the building works the flagpole needed to be removed, and because the builders were out of pocket by $100 000 — it went over budget — they were not about to readily replace the flagpole, nor was there a legal requirement for them to do so. The school also has contributed $215 000 of its own locally raised funds to improve the facilities at Maffra Secondary College, so it was short of the money required to replace the flagpole that was demolished as part of the building program.

I would have thought that the very least the Victorian government could do for this very fine school, to complement the excellent buildings that it now has, would be to ensure that a brand-new flagpole is erected at the school so it can fly the flags properly.

My request to the Minister for Education tonight is an easy one: I am simply asking the minister to make available the funds to Maffra Secondary College to enable it to put in place a brand-new flagpole to replace the one that was demolished as part of the new building work at that college.

West Gate Freeway: access ramps

Ms HARTLAND (Western Metropolitan) — My issue this afternoon for the Minister for Roads and Ports concerns the lack of transparency in decision making regarding the government's transport plan. I raised the issue a fortnight ago of the proposed on and off ramps connecting the West Gate Freeway with Hyde Street and Whitehall Street, Yarraville. These ramps will allow truck traffic to access the port without using Francis Street and Somerville Road, Yarraville.

I am told by VicRoads that the business case of the ramps was recently submitted to the government; presumably this includes final recommendations on the route and the expected social and environmental impacts of the ramps and roadworks proposed between Hyde Street and Footscray Road. However, I am also told the business case is cabinet in confidence, so I and the community are not permitted to see it.

This is a concern because the devil is in the detail of the ramps. I have supported the ramps on the ground that they would be constructed without impacting on the adjacent Stony Creek and Stony Creek reserve. I take the protection of Stony Creek and its surrounding reserve very seriously as a precious piece of open space and a precious remnant of native vegetation. It is towered over by the West Gate Bridge, but the creek, the salt marsh and the mangrove scrubland provide habitat for a range of native plants, animals and birds, including the threatened giant egret. The Friends of Stony Creek do an amazing job of both the revegetation of the reserve and making people aware how valuable it is.

I have suggested that to avoid impacting on the creek the ramps go on the south side of the freeway, but as far as I am aware this option has not been thoroughly considered by VicRoads. VicRoads tells me that a full flora and fauna study has been undertaken relating to the ramps, but we the community do not yet know what it has found. VicRoads tells me it will be releasing the flora and fauna study in around a month's time and releasing other studies that have been done, including on noise and social impact, sometime over the next six months. By this time the cabinet is likely to have made its decision and the community will have been totally unable to make use of that information in any way to influence the decision.

The action I ask of the minister is to ensure that before the on and off ramps are considered by cabinet all documents related to the truck action plan are publicly available. This will enable a properly informed discussion in the community about the benefits and costs of the ramps and enable the community to weigh up for itself whether the benefits outweigh the costs.

Ballarat: Avenue of Honour restoration

Mr KOCH (Western Victoria) — My issue is for the Minister for Roads and Ports and relates to the plight of Ballarat's Avenue of Honour since the Western Highway Ballarat bypass was built. After the Shrine of Remembrance, Ballarat's Avenue of Honour is considered Victoria's best known war memorial. At 22 kilometres it is the longest avenue of its type in Australia and probably the world. It is classified by the National Trust and is included on Victoria's heritage register. The trees remain a living memorial to the almost 4000 people from the Ballarat district who served in World War I.

The building of the Western Highway bypass annexed 750 trees on the avenue's road from the rest of the memorial. In addition, 26 trees between the railway line and the Western Highway became inaccessible. These events constituted a desecration of one of the most important war memorials in the country. It is of paramount importance to the Ballarat community that the integrity of their Avenue of Honour be restored.

Following the completion of a comprehensive strategic plan in 1996, Avenue of Honour committee members embarked on an ambitious 25-year program to restore the avenue. Due to a large and ongoing stream of community donations, 1500 of the 3000 trees between the victory arch and the Western Highway have been replaced in the last 12 years. Ballarat City Council and the community have a strong ownership of and affinity with the Avenue of Honour. Implementation of the strategic plan will ensure that Ballarat's Avenue of Honour will remain a lasting memorial for peace and enable future generations to draw inspiration from its messages.

Without offering an alternative, a letter from VicRoads to the Avenue of Honour committee last September declared that the area between the railway line and the freeway was not safe for pedestrians. The bitumen along this section of the Avenue of Honour is split in some sections and potholed in others. As the centenary of the battle of Gallipoli will be in 2015, this is an excellent opportunity for VicRoads to think outside the square and revitalise the road infrastructure along this short section of the Avenue of Honour. A walkway and cycle path could be incorporated into the revitalisation, as well as an underpass at the railway line to maintain the continuous integrity of the Avenue of Honour.

My request is for the Minister for Roads and Ports to direct VicRoads to thoroughly examine restoring the integrity of this historic Victorian landmark at Ballarat. It is an important tribute to those who have fallen while fighting for this great country and should not be left to languish any longer in its present incomplete state.

Duck hunting: season

Ms PENNICUIK (Southern Metropolitan) — My adjournment matter is for the attention of the Minister for Environment and Climate Change. Last Saturday, 20 March, I attended the opening of the Victorian duck shooting season at Dowd Morass State Game Reserve in Gippsland. When the sun came up what was most immediately noticeable was the very low water level — we had to walk 100 metres to the water from where it normally is — and the virtual absence of water birds, apart from some swans. Very few ducks were seen.

As far as I could tell, only one duck was killed that morning; another duck was injured but flew away. One wounded bird was rescued the next day and is recovering well under the care of Wildlife Victoria. Up to one in four birds that is shot manages to escape but is wounded and may suffer for extensive periods of time.

The so-called game species are native birds that are fully protected except during duck shooting season. Shooters this year can take a bag limit of eight birds per day, including one blue-winged shoveller, and three of those must be wood ducks. This is an increase on the previous season, which is amazing, because all species have been under pressure because of the long drought. The blue-winged shoveller is under the most pressure. It was taken off the hit list for a number of years, only to go back on it in 2009 and 2010.

Despite the stress that our waterways and water birds are under, the government approved a 2010 duck hunting season of 72 days. The government claims that it is following the most recent advice from the Department of Sustainability and Environment (DSE) and the Victorian Hunting Advisory Committee. The government is convinced that hunting at the levels allowed for 2010 will not adversely affect populations of ducks. I have perused the DSE's *Considerations for the 2009 Duck Season*. This is what this publication is called on the DSE website, but it is in fact about the 2010 duck season, so it has been given the wrong title. In the 'Summary' section of that publication it says:

> Total breeding index (all species combined) was below average and lower than in the previous year. However, there was an increase in breeding species diversity.

There are no details about that. It continues:

> Breeding was concentrated … in three locations — Lake Mokoan, Gippsland and Stanhope.

But as I have already said, there were no ducks seen in Gippsland.

If one looks at the Eastern Australia Aerial Waterfowl Count breeding index chart in the DSE document, it shows that the breeding numbers of game birds between 2002 and 2009 was basically zero. The last time there was any breeding activity by ducks in this state was in 1999, when there was a good season, and 2001, when there was a tiny season, so ducks that are up to 9 to 11 years old are the only ones left.

Due to this evidence, the action I seek from the minister is to immediately suspend the 2010 duck shooting season.

Woodend Winter Arts Festival: funding

Mrs PETROVICH (Northern Victoria) — My adjournment matter is for the Minister for the Arts, Peter Batchelor. I spent last Thursday evening with Minister Bachelor and Ms Duncan, the member for Macedon in the other place, at the launch of the Woodend Winter Arts Festival, along with Mrs Heide Victoria, the member for Bayswater in the other place and shadow parliamentary secretary for the arts, and other esteemed company in my home town of Woodend.

Jaquie Ogiel and John O'Donnell detailed the fabulous array of local and international artists programmed for this year's festival. There are too many to mention in the short time I have available, but the program is worth reading. This fabulous festival has been running for six years and is a wonderful opportunity to enjoy local and overseas world-class performers at a venue that is just 50 minutes from Melbourne. The festival is great for jobs and for tourism, and it provides experiential enrichment for all. In particular it is an opportunity for children and country music students to access a wide variety of arts and performance. It is a treasure trove of baroque, opera, poetry, philosophy and books.

Festival organisers have not been successful in their Arts Victoria funding application, having been knocked back on two occasions with only a pro forma letter by way of explanation. This funding is crucial to the arts festival's success. It is a small amount of money — I think it is about $10 000. The festival provides nearly $300 000 worth of performances and receives only $10 000 from the local Macedon Ranges Shire and additional grants of $13 000 from Tourism Victoria. The rest comes from donations, philanthropic sources and sponsorship.

The action I seek from Minister Batchelor and the local member, Joanne Duncan, is that instead of just enjoying the canapés and the champers, they ensure that the process for continuity — —

Hon. M. P. Pakula — On a point of order, Acting President, if I heard Mrs Petrovich correctly, she asked for an action from Minister Batchelor and the local member, Ms Duncan. It is my understanding that the standing orders only allow for an action to be asked of a minister.

The ACTING PRESIDENT (**Mr Leane**) — Order! The minister's point of order is correct: the member can only seek action from a minister. Mrs Petrovich should address her matter to the minister.

Mrs PETROVICH — It probably will not make a lot of difference anyway. The action I seek from Minister Batchelor is that instead of enjoying — —

Mr Finn interjected.

Mrs PETROVICH — That is absolutely right, Mr Finn. Instead of enjoying the canapés and champers, I ask the minister to ensure that the process for continuity of funding for this significant event be reviewed to ensure that the Woodend Winter Arts Festival remains the icon it has become.

Parliament House: dry-cleaning services

Mrs COOTE (Southern Metropolitan) — My adjournment matter this evening is for the Minister for Environment and Climate Change, and it is to do with dry-cleaning. I want to draw the attention of the house to an item that concerns the United States House of

Representatives in Washington, and I quote from a website which says:

> The US House of Representatives has chosen ClassiCleaners, a GreenEarth Cleaning affiliate, as its new, official 'green' dry-cleaning service provider as part of its Green The Capitol initiative, an ongoing effort to become a model of sustainability and reduce its carbon footprint.

When I looked up the GreenEarth Cleaning's affiliate in Australia I found to my great pleasure that there is one in South Yarra in my electorate; it is called Bancrofts. I had a look at its website, which says:

> GreenEarth Cleaning is a silicone-based dry-cleaning solvent. It shares the same base — silicone — as hair–care, make-up and deodorant products. It has no odour, yet has superior cleaning and soil removal properties. It is not harsh like traditional carbon-based dry-cleaning solvents, and it is not harmful to you … It degrades to sand —

carbon dioxide and water —

> and produces no toxic by-products.

That is the GreenEarth product. Bancrofts also has a number of other clean, green initiatives. It says on its website:

> We used to use strong chemicals such as percoethlyne in our cleaning processes and have switched to an environmentally friendly silicone-based cleaning agent …
>
> We now wrap our garments in 'oxo biodegradable' plastics which decompose without producing greenhouse gas emissions …
>
> Water conservation is a critical issue for Victorians. We have implemented a new wet cleaning system that enables us to recycle 32 per cent of our water.
>
> We have reduced our gas consumption for heating water by capturing steam from our production process and feeding it back into the hot-water unit.

This initiative has been recognised by a number of people around the world, and there is a book titled *The Sustainable MBA — The Manager's Guide to Greenbusiness* which highlights this company.

The action I seek of the minister is to investigate which drycleaners are used by the presiding officers and all department heads in this Parliament and to encourage them to switch to GreenEarth Cleaning, as has the United States House of Representatives.

School buses: Marnoo Primary School

Mr VOGELS (Western Victoria) — I raise an issue for the Minister for Public Transport, the Honourable Martin Pakula. It concerns the proposed termination of a school bus route that collects and drops off children at the Marnoo Primary School. Marnoo Primary School is only a small rural school with 12 students. Presently 6 students travel to the school by bus, and it seems that department regulations state that at least 7 students need to utilise the bus service for it to continue.

Closing down this bus run will jeopardise the viability of the school not only now but into the future. Marnoo Primary School has recently undertaken $300 000 worth of building upgrades for which the government provided grants. This taxpayer-funded money will have been completely wasted if the bus run ceases and the school closes due to a lack of numbers.

The action I seek from the minister is to ensure that the public transport directorate takes into account the enormous impact that discontinuing the school bus run for the redeveloped Marnoo Primary School will have.

Rail: timetable information

Mr BARBER (Northern Metropolitan) — My adjournment matter is also for the Minister for Public Transport, Mr Pakula. I am thinking of Flagstaff and Melbourne Central railway stations where the information boards which indicate what train is leaving and when are buried down in the bowels of the station. What this means is that when I want to use public transport, until I have gone down a series of escalators I do not know what trains are leaving and when, whereas at Flinders Street station, famously, there are clocks right across the front that can be seen from the other side of the road.

This might have been a good arrangement when most train users were people who were forced to use trains and had no real choice in it anyway, and the only thing they really needed to know was what platform to go to and how long they would be waiting. But if we are serious about public transport in Melbourne, we also have to be attracting choice users, and a choice user at the entrance to Flagstaff station could very well be someone who is considering taking a taxi, a tram, a bus or a train, so that information should be at the entrance to the station itself.

The minister may argue that it takes only a few seconds to go down on an escalator and come back up again, but there would be many investments being made in the train system to save only minutes or even seconds in people's daily journeys. Any other shop that was trying to attract choice customers would put its products on display out there on the street, and therefore I would expect that the same thing would be done for public transport if we really believe it is going to attract choice customers and compete with other transport modes, particularly the car.

The action I therefore seek is for the minister to simply investigate the cost and associated logistics of putting information about train departure times on the exterior part of Flagstaff station and, under some arrangement, Melbourne Central station, as it is now being provided at many SmartBus stops, tram stops and so forth, so that individuals can save themselves a few minutes here and there and navigate the system more easily by virtue of having better information, which in many cases is as good as a timesaving measure that could be achieved through some other management, operational or capital investment.

City of Brimbank: councillor conduct

Mr FINN (Western Metropolitan) — I wish to raise a matter for the attention of the Minister for Local Government, and it follows a great deal of concern in the Brimbank area. It is fair to say that the concerns held in Brimbank are rampant, and the cynicism has been fed by government inaction about a whole range of Brimbank City Council-related issues going back a number of years. As we know the Ombudsman's report last year merely skimmed the surface. No charges have been laid as a result of that report, and it seems that no further action has been taken since the council was summarily dismissed — even though it was the new council and not the old council that was the subject of the report to begin with.

The situation is that the Brimbank community is extremely concerned and cynical and strongly believes there has been a cover-up. There is a very strong view in the Brimbank community that all this government wants to do is to get this issue out of the way this side of the election and that it does not particularly care what happens — —

Mrs Peulich — A bit of unfinished business.

Mr FINN — Unfinished business indeed. What we need is justice for the people of Brimbank, because there is a great deal of concern in that community, but up to this point justice has not been a consideration at all. There is real anger at the neglect and the fact that the community has been ignored to this point.

As an example I bring to the house's attention a complaint that I particularly wish to raise with the minister. The former deputy mayor of Brimbank, Tran Siu, has been subject to a complaint that on election day in November 2008 he was handing out unregistered how-to-vote cards. That complaint was laid with the Victorian Electoral Commission in November 2008 and handed to the department of local government, which sat on it for 12 months. It was then passed to the Local Government Investigations and Compliance Inspectorate and has not been seen since.

This is a very serious matter, and a lot of people in the Brimbank area are asking why you would bother having laws if you do not bother upholding them or at least investigating complaints about them. I believe this matter must be investigated. It is important that justice not just be done but be seen to be done. There does not seem to have been a lot of that in the Brimbank area over the last 18 months or so. I ask the minister as a matter of urgency to ensure that this matter is properly investigated and that charges are laid if necessary.

Planning: On Luck Chinese Nursing Home

Mrs KRONBERG (Eastern Metropolitan) — My adjournment matter is directed to the Minister for Planning. It concerns the rising tide of public concern in Manningham that he has approved an amendment to the council's planning scheme without any form of community consultation. An application from the owners of the Chinese Community Social Services Centre (CCSSC) has his approval to triple the size of an aged-care facility.

I want to make it perfectly clear that providing quality accommodation for elderly people from any part of our multicultural society is vital, especially for ageing members of our Chinese community. Clearly their need is manifest. Comments on this planning process should not at all be cast as a negative for aged-care beds. A number of Manningham ratepayers approached me about this matter at an event there on Monday night. It is simply not fair that the needs and aspirations of elderly citizens and their families are now being affected by the questions arising from the approval process for this facility — a process that completely bypasses the council, thus trammelling the authority of local government and its democratically elected council. It also offends the sensibility of these people, who feel that the preservation of the green wedge is important. A lot of collateral damage is now attaching itself directly to the minister because of this decision.

Unfortunately elderly Chinese members of the community are also affected by the possible conflict of interest for the applicant, who is the council's deputy mayor, Cr Fred Chuah. He is also chairman of the nursing home, president of the CCSSC and the husband of the On Luck Chinese Nursing Home's chief executive.

The action I seek from the minister is that he refer this highly contentious matter to the Legislative Council's Standing Committee on Finance and Public

Administration's inquiry into Victorian government decision-making, consultation and approval processes. This is essential, important and time critical, given the revelations of sham consultation processes or no consultation processes at all, the current level of concern that there is possible corruption of due process and the dire need to restore public faith and confidence in the planning system in this state.

Hon. M. P. Pakula — What a crock!

Mrs Kronberg — On a point of order, President, upon sitting down I overheard Mr Pakula say, 'What a crock'. I ask that he withdraw it.

The PRESIDENT — Order! Obviously I did not hear. If I had heard, I may have said something. If the minister said what it has been suggested he said, he may like to respond.

Hon. M. P. Pakula — I withdraw it.

Australian Labor Party: local government councillors

Mrs PEULICH (South Eastern Metropolitan) — I wish to raise a matter I raised in my 90-second statement this morning for the attention of the Minister for Planning and members of the Standing Committee on Finance and Public Administration about the way that Labor Party caucus rules outlined in section 12.6 of the Labor Party rule book overlay other due processes in local government, including planning processes, and the way that these rules may pervert due process or corrupt various processes that need to be adhered to.

I now raise this matter for the Premier's attention and call on him to spearhead the banning of caucusing that currently exists in the rule book, because this is clearly impacting on local government, which is a very important level of government.

Hon. M. P. Pakula — On a point of order, President, the action Mrs Peulich says she is seeking is not within the Premier's responsibilities as Premier. She is seeking that he take action in regard to the rules of the Australian Labor Party, which is not within the conduct of his administration of the office of Premier.

Mr D. Davis — On the point of order, President, the matter of local government is clearly a broad responsibility, and the conduct of local government is something the Premier has spoken about and distributed news releases about on a number of occasions. Some of this grows out of the Brimbank matter, about which the Premier made clear points himself.

The PRESIDENT — Order! I am prepared to hear the rest of what Mrs Peulich wants before I make a ruling.

Mrs PEULICH — It is because Labor Party rules are in direct conflict with the requirements of councillors as outlined in the Local Government Act 1989. The act requires that they have an open mind as they enter the decision-making processes which they are obliged to adhere to. They are obliged to act impartially and objectively in their role as councillors. Clearly, the two requirements are inconsistent, and it has been dramatically played out as outlined in the newspaper article today by Dewi Cooke, city reporter for the *Age*, headed 'ALP suspends trio for breaking ranks'. I will briefly refer to the article, given that some of my adjournment time has been gobbled up in justifying this very important issue as it impacts on the effective functioning of local government.

The three councillors who had been duly elected by their communities were suspended for various lengths of time. One is Kathleen Matthews-Ward, a close associate of well-respected MP Christine Campbell, the member for Pascoe Vale in the other house. The other two are Alice Pryor and Stella Kariofyllidis. Two councillors were suspended for two years. The third councillor was suspended for three years, and I understand she was subsequently expelled. Clearly, this is totally in conflict with, firstly, the electoral process, and secondly, the Local Government Act. There is a lack of clarity. This is a difficult, conflicting situation that Labor Party councillors are placed in, because they are required on the one hand to adhere to the act, and on the other hand, their party rules. These three councillors chose to serve their community — —

Mr D. Davis — The Premier has made public statements on these matters.

Mrs PEULICH — The Premier has made public statements about these matters, the subject of which has led to numerous reports being tabled in this Parliament. This is a crucial issue for local government. It needs to be resolved by the Premier, because the Minister for Local Government has clearly failed to do so. I call on the Premier to resolve this unworkable conflict.

Hon. M. P. Pakula — On a point of order, President, I will refresh my original point of order. If the action Mrs Peulich seeks is that the Premier amend or do anything to the rules of the Australian Labor Party, then that is not an action that falls within the conduct of the adjournment. It is not an action consistent with his duties as Premier of Victoria.

Mr D. Davis — On the point of order, President, the action sought was that the Premier intervene and overrule the Minister for Local Government, because he has clearly failed to deal with issues around this. He has done exactly this a number of times: taken the matter of local government administration into his own hands.

Mrs Peulich — On the point of order, President, it has often been the case that various party practices and rules overlay the public duties of ministers, of government, of elected councillors — —

The PRESIDENT — Order! This is not a point of order; the member is now debating the matter. Standing order 4.11 states:

> (2) In speaking to the question for the adjournment a member must only raise matters which are within the administrative competence of the Victorian government and may not raise a matter which has been discussed in the previous six months of the same session.

I am very strongly of the view that the minister is correct in saying that neither the minister nor the Premier has any ability to change or force a rule change within the ALP. Therefore, it cannot be a matter for the adjournment. I therefore rule the matter out of order.

Mrs Peulich — On a point of order, President — —

The PRESIDENT — Order! On my ruling?

Mrs Peulich — A question.

The PRESIDENT — Order! No, Mrs Peulich does not get two.

Mrs Peulich — On a point of order, President, on a point of clarification, if I may.

The PRESIDENT — Order! There is no capacity for Mrs Peulich to ask for clarification on the ruling. There is none.

Mrs Peulich — I have been left in a very difficult position. I will write to the President formally.

VicRoads: proof of identity

Mr P. DAVIS (Eastern Victoria) — I raise a matter for the attention of the Minister for Roads and Ports, a colleague of the Minister for Public Transport, who is at the table. The matter concerns the bureaucratic resistance of VicRoads to accept a marriage certificate as proof of identity for a newly-married woman who wants to change the name on her drivers licence. A constituent in East Gippsland has complained to me that VicRoads refused to accept his official marriage certificate as proof of identity when he went to its regional office for the purpose of making a name change for his wife. This is a matter we would expect to be a straightforward formality. Instead it has become an epic of fruitless discussions with VicRoads and correspondence with the minister's officers, and is no closer to resolution.

On the day my constituent went to VicRoads he was told the marriage certificate was unacceptable. He was told he would have to pay a $30 fee to the Registry for Births, Deaths and Marriages to obtain what was described as an 'official certificate of marriage'. We could well wonder, as he did, why a certificate issued upon the event of a marriage is not recognised. If there is some aspect of it that leaves it open to doubt, why not change it so that the certificate has official status?

I was referred to the acting director for registration and licensing operations at VicRoads, and I put it to him that the matter could easily be sorted out between two agencies that after all are constituted under the same government. I had in mind that upon sighting the marriage certificate VicRoads could verify its authenticity by checking the online registration record at the Registry of Births, Deaths and Marriages. This would avoid people needing to pay for a copy of a certificate they already possess. He returned a bureaucratic maze of verbiage — for which I am sure he is not personally responsible — that seemed to imply there is somehow or other an unverifiable gap in the paper trail associated with a marriage. This beggars belief.

Accordingly, I ask that the Minister for Roads and Ports act to resolve this proof of identity issue, and suggest he has a number of options: have VicRoads recognise marriage certificates; establish an effective verification link with the Registry of Births, Deaths and Marriages; or take the matter up within government with a view to introducing a change that will enable marriage certificates to be used for formal identification.

Geelong Hospital: emergency department

Mr D. DAVIS (Southern Metropolitan) — My matter for the adjournment tonight is for the attention of the Minister for Health. It concerns the position of Barwon Health, and Geelong Hospital in particular. This is a very important hospital in Victoria's second-largest city, but it is a hospital in crisis. A day ago I asked for the minister to launch an inquiry into the situation at Barwon Health, in particular in relation to category 2 patients. The minister agreed this afternoon to launch a review of matters at Barwon Health. I welcome his decision to accept advice from the

opposition and others that he conduct such a review, and I ask that the category 2 patients be one of the main aspects of that inquiry.

There is also the issue of the performance of the emergency department at Geelong Hospital. As I said, Geelong Hospital is a very important hospital. The data that the opposition has released today relating to walkouts from the Barwon Health emergency department shows that 612 people left the emergency department in the three months between 1 July and 30 September 2009; they are the most recent figures that we have. Six hundred and twelve is a large number of people; it is just under 5 per cent of the number of people going through the emergency department at Barwon Health. As I said, Geelong is Victoria's second-largest city, second only to Melbourne, and is a very important centre servicing not just Geelong but the Barwon region in general.

An example has been referred to in this house this week of ambulance services in Geelong where a young man required a police paddy wagon to take him to hospital because on the weekend there was no ambulance available in Geelong or the region for more than an hour. There is a crisis of services in Geelong. We know that the Auditor-General, in his report on managing emergency demand in public hospitals, pointed very strongly to the issue of walkouts. Recommendation 10 on page 65 of that report says:

> DHS and hospitals should develop protocols to identify and follow-up with patients who do not wait and who are in clinical groups identified as high risk.

The case that has come to public attention today is that of a young woman, Madison, who was forced to leave Geelong Hospital and be driven up to Ballarat to get the emergency attention she needed. That is a tragic case and the community is very concerned about such instances.

I ask the minister to include the emergency department and the bed numbers in the hospital inquiry and to report publicly and as a matter of urgency on the situation at Geelong Hospital.

Responses

Hon. M. P. PAKULA (Minister for Public Transport) — Mr Hall raised a matter for the Minister for Education in regard to funding for a flagpole at Maffra Secondary College, and I will refer that to the Minister for Education.

Ms Hartland raised a matter for the Minister for Roads and Ports in regard to the truck action plan, and particularly the West Gate Freeway on and off ramps, and asked that all documents regarding it be released publicly prior to the ramps being built. I will refer that to the Minister for Roads and Ports.

Mr Koch also raised an issue for the Minister for Roads and Ports in regard to the Avenue of Honour in Ballarat and asked that he direct VicRoads to revitalise a section of the Avenue of Honour, and I will convey that to the Minister for Roads and Ports.

Ms Pennicuik raised a matter for the Minister for Environment and Climate Change asking that he immediately suspend the 2010 duck season. I will convey that to the Minister for Environment and Climate Change.

Mrs Petrovich raised a matter for the Minister for the Arts asking that he ensure continuity of funding for the Woodend Winter Arts Festival. I will refer that to the Minister for the Arts.

Mrs Coote raised a matter for the Minister for Environment and Climate Change asking that he investigate which dry cleaners are used by senior officers of this Parliament, with a view to ensuring that GreenEarth Cleaning is used — which is used by Bancrofts in South Yarra in particular, I think — and I will convey that to the Minister for Environment and Climate Change. I must say that Bancrofts has a very good advocate in Mrs Coote!

Mr Vogels raised a matter for me about the proposed cessation of a school bus service for the Marnoo Primary School. He asked that I ensure that the department takes into account the impact of that cessation on that school. I will undertake to do that, and I will respond to Mr Vogels in short order.

Mr Barber also raised an issue for me in regard to information boards at Flagstaff and Melbourne Central stations not being at street level. He raises an interesting point. I should indicate that in regard to Parliament station, where there are very good electronic information boards, while those boards may be down a flight of stairs rather than at street level, they are still pretty accessible to the vast majority of the travelling public.

He has asked me to investigate the cost and logistics of electronic train departure times and other information being available at street level, and I will take that under advice and come back to him on that.

Mr Finn raised a matter for the Minister for Local Government, and as I recall his request is that the minister investigate — —

Mr Finn — Ensure an investigation is carried out.

Hon. M. P. PAKULA — Ensure an investigation is carried out into how-to-vote cards for a particular candidate for Brimbank council in November 2008, and I will convey that to the Minister for Local Government.

Mr Philip Davis raised a matter for the Minister for Roads and Ports in regard to VicRoads investigating the appropriate documentation for proof of identity. He raised that in the context of a marriage certificate not being acceptable in the individual circumstance that he raised, and I will convey that to the Minister for Roads and Ports.

Mr David Davis raised a matter for the Minister for Health in regard to Barwon Health and particularly Geelong Hospital — I think he described it as a crisis, as he is wont to do — and asked that the emergency department figures be included in an investigation that is being carried out, and I will convey that to the Minister for Health.

Mrs Kronberg and Ms Lovell both raised matters for the Minister for Planning. Mrs Kronberg's matter related to a Chinese nursing home in Manningham which she said she supported but which was highly contentious, while Ms Lovell raised a matter in regard to social housing projects under amendment VC56 more generally and asked that the minister ensure that his decisions in regard to those developments be referred to the Standing Committee on Finance and Public Administration.

I put it to you, President, that in regard to both those adjournment matters it is not in the competence of the minister to refer those matters to that committee. It is a matter for either this chamber or for the committee on its own motion.

Mrs PETROVICH (Northern Victoria) — President, I seek leave to raise an additional adjournment matter for the Minister for Public Transport, who is in the house. There is a matter of public interest I would like to raise with the minister.

Leave granted.

Rail: Geelong service

Mrs PETROVICH (Northern Victoria) — My matter is for the Minister for Public Transport. I have just received notification that there has been a fire on the 5 o'clock Geelong train. The action I seek of the minister is that he investigate the circumstances surrounding that fire. It appears that there has been a fire in the circuits of that train and 150 people have been evacuated.

Responses

Hon. M. P. PAKULA (Minister for Public Transport) — I will investigate the matter and correspond with Mrs Petrovich as she requests.

The PRESIDENT — Order! The house now stands adjourned.

House adjourned 5.17 p.m. until Tuesday, 13 April.