PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SIXTH PARLIAMENT

FIRST SESSION

Thursday, 11 October 2007

(Extract from book 14)

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By authority of the Victorian Government Printer

The Governor

Professor DAVID de KRETSER, AC

The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

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Minister for Housing, Minister for Local Government and Minister for Aboriginal Affairs	The Hon. R. W. Wynne, MP
Cabinet Secretary	Mr A. G. Lupton, MP

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

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

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

Joint committees

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

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

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

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 Hall and Mr Somyurek. (*Assembly*): Ms Campbell, Mr O'Brien, Mr Scott and Mr Thompson.

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

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

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

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

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

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

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

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

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

Heads of parliamentary departments

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

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

Parliamentary Services — Secretary: Dr S. O'Kane

MEMBERS OF THE LEGISLATIVE COUNCIL

FIFTY-SIXTH PARLIAMENT — FIRST SESSION

President: The Hon. R. F. SMITH

Deputy President: Mr BRUCE ATKINSON

Acting Presidents: Mr Elasmar, Mr Finn, Mr Leane, Mr Pakula, Ms Pennicuik, Mrs Peulich, Mr Somyurek and Mr Vogels

Leader of the Government:
Mr JOHN LENDERS

Deputy Leader of the Government:
Mr GAVIN JENNINGS

Leader of the Opposition:
Mr PHILIP DAVIS

Deputy Leader of the Opposition:
Mrs ANDREA COOTE

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	O'Donohue, Mr Edward John	Eastern Victoria	LP
Darveniza, Ms Kaye Mary	Northern Victoria	ALP	Pakula, Mr Martin Philip	Western Metropolitan	ALP
Davis, Mr David McLean	Southern Metropolitan	LP	Pennicuik, Ms Susan Margaret	Southern Metropolitan	Greens
Davis, Mr Philip Rivers	Eastern Victoria	LP	Petrovich, Mrs Donna-Lee	Northern Victoria	LP
Drum, Mr Damian Kevin	Northern Victoria	Nats	Peulich, Mrs Inga	South Eastern Metropolitan	LP
Eideh, Khalil M.	Western Metropolitan	ALP	Pulford, Ms Jaala Lee	Western Victoria	ALP
Elasmar, Mr Nazih	Northern Metropolitan	ALP	Rich-Phillips, Mr Gordon Kenneth	South Eastern Metropolitan	LP
Finn, Mr Bernard Thomas C.	Western Metropolitan	LP	Scheffer, Mr Johan Emiel	Eastern Victoria	ALP
Guy, Mr Matthew Jason	Northern Metropolitan	LP	Smith, Hon. Robert Frederick	South Eastern Metropolitan	ALP
Hall, Mr Peter Ronald	Eastern Victoria	Nats	Somyurek, Mr Adem	South Eastern Metropolitan	ALP
Hartland, Ms Colleen Mildred	Western Metropolitan	Greens	Tee, Mr Brian Lennox	Eastern Metropolitan	ALP
Jennings, Mr Gavin Wayne	South Eastern Metropolitan	ALP	Theophanous, Hon. Theo Charles	Northern Metropolitan	ALP
Kavanagh, Mr Peter Damian	Western Victoria	DLP	Thornley, Mr Evan William	Southern Metropolitan	ALP
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

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THURSDAY, 11 OCTOBER 2007

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Thursday, 11 October 2007

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

PETITION

Following petition presented to house:

Parliamentary officers: enterprise bargaining agreement

To the Honourable the President and members of the Legislative Council of Victoria in Parliament assembled:

To the Legislative Council of Victoria:

The petition of the undersigned officers of the Parliament of Victoria draws to the attention of the house that:

1. your petitioners are officers of the Parliament of Victoria appointed under the Parliamentary Administration Act, which was enacted with the intention of distinguishing the parliamentary administration and its officers from the Victorian public service;

2. your petitioners uphold the values of parliamentary officers set out in section 5 of the act and further recognise the statement of corporate intent of the parliamentary departments, which limits their ability to take part in public life as guaranteed to other Victorians under section 18 of the Charter of Human Rights and Responsibilities Act of 2006; and

3. the alignment of the salaries and remuneration of parliamentary officers with provisions of the Victorian Public Service Agreement and with the arts agencies of the Victorian public service (which operate under a less restrictive act) fails to acknowledge the special character of the work parliamentary officers perform and the obligations imposed on them under the Parliamentary Administration Act.

The petitioners therefore request that the Legislative Council of Victoria take all necessary steps to:

apply to the salaries and remuneration of parliamentary officers the Victorian government wages policy and public sector standard announced by the former Premier in the Legislative Assembly on 19 July 2007, restated by the new Premier of Victoria in the Legislative Assembly on 8 August 2007 and the Treasurer in the Legislative Council on 18 September 2007, and subsequently reiterated on many occasions.

By Ms BROAD (Northern Victoria) (101 signatures)

Laid on table.

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Parliamentary Contributory Superannuation Fund

Mr RICH-PHILLIPS (South Eastern Metropolitan) presented report, including appendices.

Laid on table.

Ordered to be printed.

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

That the Council take note of the report.

This report arises from a Governor in Council reference from the Minister for Finance, WorkCover and the Transport Accident Commission in the other place, who is the chairman of the trustee of the Parliamentary Contributory Superannuation Fund. In undertaking this inquiry the Public Accounts and Estimates Committee took evidence, both verbal and written, from a number of sources including public submissions. In undertaking this inquiry it did a comparison of the trustee arrangements for the Victorian parliamentary superannuation fund with other similar parliamentary superannuation funds in the other state jurisdictions, in the commonwealth and with certain other public sector or private sector funds.

The report notes that the legislative requirements for trustees of superannuation funds are laid down by commonwealth legislation, and while that legislation does not apply with respect to the parliamentary superannuation fund, it is, however, relevant to compare the trustee arrangements in Victoria against the requirements of the commonwealth legislation. The basic premise of the commonwealth legislation is that the trustee of a superannuation fund should comprise people representing the employers and people representing the employees. It was the view of the committee that current arrangements for the parliamentary superannuation fund meet that requirement as laid down in the commonwealth legislation.

The trustee comprises six members, three of whom are ex officio: the minister for finance as chairman, the President and the Speaker, who are regarded as employer representatives, or as close as possible in our arrangement, and three representatives from the houses of Parliament appointed by the Governor in Council, comprising two from the Assembly and one from the Council. It is the view of the committee that the

structure of the trustee is consistent with the commonwealth framework for superannuation funds.

The report makes two recommendations with respect to the operation of the trustee. The first recommendation is that the fund's trustee appoint an independent expert, preferably a former judicial officer, to advise where necessary on potential contentious issues or matters requiring impartial opinion. This gives the scope to the trustee to receive advice in cases where the decision it is required to make is regarded as contentious. It was the committee's view that the ultimate decision should be preserved for the trustees in properly carrying out their duties as trustees of the superannuation fund.

The second recommendation is that the legislative arrangements for trustee membership of the fund be reviewed again soon after the 2010 state election to address the likely future impact on trustee and member profiles of the fund's 2004 closure. This is an important point as evidence provided to the committee indicated that following the closure of the superannuation fund in 2004, the discretionary role of the trustee will expire after the second Parliament from now because all members who are beneficiaries of this fund will have entitlements to full benefits under the fund and there will be no role for the trustee to make the types of decisions and judgements that have been raised earlier as matters the committee has considered. It was the view of the committee that these trustee arrangements should be reviewed in the future in light of the fact that the discretionary elements of the trustee's role will cease as all members of the fund pass 12 years service in the Parliament and that that will be an appropriate time to review the role the trustee has.

In closing I would like to thank the staff of the Public Accounts and Estimates Committee for their work on this report, in particular Joanne Marsh from the Auditor-General's office, who did the bulk of the work on this report. Joanne is a secondee to the Public Accounts and Estimates Committee and will shortly return to the audit office. We thank her for her work on this and for her work on other reports for the committee. I note that this report enjoys the unanimous support of the members of the Public Accounts and Estimates Committee, and I commend it to the house.

Motion agreed to.

PAPERS

Laid on table by Clerk:

Gambling and Lotteries Licence Review Panel — Report to the Minister for Gaming in relation to the current public lottery licensing process.

Members of Parliament (Register of Interests) Act 1978 — Summary of Returns, June 2007 and Summary of Variations notified between 21 June 2007 and 8 October 2007.

National Parks Act 1975 — Report on working of the Act, 2006–07.

National Parks Advisory Council — Report, 2006–07.

Ombudsman — Investigation into the Office of Housing's tender process for the Cleaning and Gardening Maintenance Contract — CNG 2007, October 2007.

Police Appeals Board — Report, 2006–07.

Public Record Office Victoria — Report, 2006–07.

Subordinate Legislation Act 1994 — Minister's exception certificate under section 8(4) in respect of Statutory Rule No. 114.

Victorian Energy Networks Corporation — Report, 2006–07.

NOTICES OF MOTION

Notices of motion given.

Mr P. DAVIS giving notice of motion:

Mr Viney interjected.

Notices interrupted.

SUSPENSION OF MEMBER

The PRESIDENT — Order! The Government Whip made reference to the member who is on his feet. Mr Viney knows the standing practice in the house, and I ask him to vacate the chamber for 30 minutes.

Mr Viney withdrew from chamber.

Notices resumed.

Mr P. DAVIS continued giving notice of motion.

Further notices of motion given.

Ms DARVENIZA having given notice of motion:

The PRESIDENT — Order! On a point of clarification, am I right in assuming that Ms Darveniza is giving that notice in the name of Mr Viney?

Ms DARVENIZA — That is correct.

BUSINESS OF THE HOUSE

Adjournment

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

> That the Council, at its rising, adjourn until Tuesday, 30 October 2007.

Motion agreed to.

MEMBERS STATEMENTS

Parliamentary Services: security and electorate properties unit

Mr DALLA-RIVA (Eastern Metropolitan) — I rise today to congratulate the Department of Parliamentary Services and in particular the security and electorate properties unit for the work it has undertaken over the last number of months in moving my office from the old area of Kew into a new location at suite 10, 477 Burwood Highway, Vermont South, particularly the work undertaken by the manager, Samantha Matthews, and Mark O'Connell, who is a property officer from the same unit. I also congratulate my staff on completing a difficult process. It has taken a long, long time — something in the vicinity of 11 months — to eventually move out of the old East Yarra Province and into the new Eastern Metropolitan Region.

I think it was summed up last week when the landlord of the property which we had moved into dropped in to see how everything was going. He raised the fact with me that he was surprised at the tough negotiations that had been undertaken by the properties unit in securing the leasehold and the work that it required he undertake before the move. It is not often we congratulate the staff of Parliamentary Services, but I think on this occasion I would like to rise and thank them for their efforts.

Water: north–south pipeline

Mr DRUM (Northern Victoria) — My members statement is about the north–south pipeline. I want to talk about the modernisation project that many people in Victoria are getting confused about. Make no mistake about it — the people of northern Victoria want their irrigation sector infrastructure improved. Everyone is in agreement about that. But yesterday the Treasurer again came into this place and started being very deceitful about the types of losses that he says currently exist within the system. The Treasurer, along with the Premier, talk about 900 gigalitres of losses in the Goulburn system. That simply is not true.

Anybody who knows anything about this issue would realise that the majority of the so-called losses occur in the natural river systems — in this instance in the Goulburn River or even the Murray River and the Broken River. But effectively what they are calling losses is everything that is released from Eildon that is not charged out to a farmer. The vast majority of those losses seeps into the underground aquifers where it is then used by the agricultural sector. The overruns are used by the agricultural sector. The metering that has a 10 per cent tolerance is used by the agricultural sector. If you are going to take this water away, you are effectively going to take water out of the agricultural sector and you are going to say it has been created by savings. It is absolutely wrong. It is deceitful.

We have a Premier who has no problem at all about breaking his promises and saying to the people of Victoria he would not do this unless he had full public support. He does not have full public support, but he just goes ahead and does it anyway.

Environment: greenhouse gas emissions

Mr BARBER (Northern Metropolitan) — In a previous debate I criticised the Labor government for not having an interim target in relation to greenhouse gases. A constituent has pointed out to me that I have actually got that wrong, so I thought I would take the opportunity to correct it.

In fact I have uncovered a document that says the government has an interim target to reduce Victoria's emissions of the main greenhouse gas, carbon dioxide, and proposes a major new tree-planting program and increased efforts to conserve energy. It says:

> The Minister for Planning and Environment, Mr Tom Roper, said the greenhouse effect is a … major social and economic issue to be addressed.
>
> 'There are no simple fixes', Mr Roper said. …
>
> The government will also aim to achieve a significant reduction in greenhouse gas emissions by the year 2005.
>
> At an international conference in Toronto, Canada, last year a 20 per cent reduction in carbon dioxide emissions by 2005 was proposed as a global goal.
>
> The Victorian government will aim for this objective as an interim target for planning purposes, subject to review in 1991.
>
> And the government will at least match any future international agreements …

This item, which comes from the *Sun* newspaper of Monday, 5 June 1989, says:

> The global target is based on 1988 levels of consumption — —

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

Community cabinet: Northern Victoria Region

Ms BROAD (Northern Victoria) — I recently attended three community cabinet meetings in my electorate with Gannawarra, Swan Hill and Buloke councils. These community cabinet meetings provided opportunities for community members to meet with and present their views to the Premier, ministers and senior public servants. The Bracks and Brumby governments have now provided more than 70 opportunities for Victorian communities to engage with members of the government through community cabinets, and the popularity of this innovation in government-community relations is as high as ever. This is just as well, because next month three more community cabinets will be held in my electorate, in Indigo, Towong and Alpine shires, taking the total number held to 73.

As well as hearing from community members firsthand, community cabinets are also good opportunities for announcements by the Premier and ministers. Most recently these have included assistance for water unbundling, extra assistance for drought relief, the release of more land for affordable housing in Swan Hill, as well as many grants. Communities in the north-east are looking forward to further key announcements during the cabinet's visit next month.

Rail: Epping–South Morang line

Mr GUY (Northern Metropolitan) — I noted with interest that the *Herald Sun* ran some data yesterday on how Melburnians get to and from their workplaces. What stood out was the fact that just 12 per cent of people use public transport to get to and from their places of work. Notably those in outer suburban areas had the highest vehicle usage and were least likely to use public transport. It is incumbent upon all of us to ask what people's options are.

I would like to look at the figures for the city of Whittlesea, which is a key growth area in my electorate. In Whittlesea 73.8 per cent of people drove to work, 2.1 per cent walked and 5.9 per cent got public transport. One cannot help but wonder whether the figure for those using public transport would be higher if there were some major public transport upgrades in my electorate's north, principally the construction of the Epping–South Morang railway line. I know Labor members hate this topic being raised — they usually look the other way, pretend not to hear it or show a great interest in the carpet — but maybe people would stop using their cars in the city of Whittlesea if the Epping–South Morang railway line were built, as promised. The planning minister belts on about trying to build a city where people do not have to use a litre of petrol to buy a litre of milk. The reality is that under this government people have to use 2 litres of petrol in the city of Whittlesea just to get to their nearest railway station. I simply say to this government: get off your backside, build this railway extension and build it now!

Migrants: Sudanese intake

Mr TEE (Eastern Metropolitan) — In this house earlier this year I raised concerns about rumours that the federal Minister for Immigration and Citizenship, Mr Kevin Andrews, was taking a submission to cabinet seeking to reduce the number of Sudanese migrants. These reports were distressing to the Sudanese migrants in my electorate — migrants who, having escaped the extreme horrors of refugee camps, were keen to sponsor loved ones who were left behind. The Sudanese in my electorate were somewhat comforted when, in response to my concerns, a spokeswoman for Mr Andrews told the *Maroondah Journal* on 24 April that the rumours of the cabinet submission were based on, I quote, a 'misunderstanding'.

The spokeswoman for the minister told the newspaper that a lower intake of Sudanese refugees was in response to a request by the United Nations. Six months later we have found that there was no such request from the United Nations. Instead of wanting a cut in Sudanese refugee numbers, the UN has criticised the minister's decision, which the UN says lacks any factual foundation. It has been a long time since such an important matter, a matter that literally affects the lives of many people, has been dealt with such incompetence, insincerity and a lack of compassion.

Doncaster East: liquor outlet

Mr ATKINSON (Eastern Metropolitan) — I wish to raise a problem concerning a Safeway supermarket in East Doncaster closing and Woolworths, the parent company, wanting to convert the store into a Dan Murphy's liquor store. This has been opposed vigorously by the local community, is subject to objections by the Manningham City Council and is a totally inappropriate use of that building, given that there is already another substantial independent liquor retailer in the same shopping centre at Jackson Court — that is, Nicks Wine Merchants. One of the proposals Woolworths has taken to the liquor commissioner on

the basis that the application to rebadge this store as Dan Murphy's should be granted is that the store will close and there will be no supermarket there.

I am here to inform the Parliament and the minister responsible that an independent IGA supermarket operator, a Mr Robert Lee, is prepared to occupy that store and continue a supermarket use in the Jackson Court shopping centre. Indeed there are other independents who are also prepared to continue a supermarket use on the site, so Woolworths' belligerence in suggesting that a food use would be lost to this community if it does not get its way and get approval to have a Dan Murphy's store is absolutely wrong. The minister and the liquor commissioner would be better advised if Mr David Kepper from the Liquor Stores Association of Victoria were put on the advisory committee.

Western suburbs: infrastructure

Mr PAKULA (Western Metropolitan) — During the past month I was with the Minister for Housing in the other place, Mr Wynne, when he opened a fantastic new public housing development in Norfolk Street, Yarraville, and with the Minister for Planning, Mr Madden, at the launch of the beautifully redeveloped pavilion at Maribyrnong Reserve, to which the state government contributed $140 000. New peak-hour train services have begun at Yarraville. Last week the Minister for Sport, Recreation and Youth Affairs in the other place, Mr Merlino, announced the installation of a new water recycling project at the Altona Leisure Centre that will save 4 million litres of water. The water saved will be made available for the watering of local sportsgrounds.

So I was a bit peeved when I saw a letter in the *Hobsons Bay Leader* last week from a Mr Adam McKee of Hoppers Crossing repeating the mantra that Labor does not care about the western suburbs. It got me wondering: is this the same Adam McKee who recently ran on the Liberal ticket to be the secretary of the University of Melbourne Student Union; is it the same Adam McKee whose My Space website describes as a conservative member of the Melbourne University Liberal Club; is he the same Adam McKee who was caught up in the race slur controversy last year with his young Liberal mates Andrew Campbell, Courtney Dixon and Sophie Mirabella staffer Brendan Rowswell?

If reports at the time were accurate, Mr McKee did not distinguish himself with his comments about African migrants. It is ironic that he chose to pop his head up with his silly letter in the same week that Kevin Andrews, the federal Minister for Immigration and Citizenship, disgraced himself with his pathetic and desperate attempt to slander Australia's African communities, many of whom have made a major contribution —

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

Mr PAKULA — to the western suburbs.

The PRESIDENT — Order! When I call the member's time has expired, it has expired.

Crime: Casey

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I draw the house's attention to the escalating crime rate in the city of Casey, which is the fastest-growing municipality in the south-eastern region. The most recent police statistics, released in July, show that in the 2006–07 year on a per capita basis we have had massive increases in serious crime in Casey, with rape up 20 per cent, robbery up 27 per cent and assault up 17 per cent. In crimes against property the figures are: arson up 11 per cent, property damage up 36 per cent, aggravated burglary up 28 per cent and deception up 72 per cent. In serious drug offences the figures are: cultivation, manufacturing and trafficking up 45 per cent.

It is not good enough for the government to claim credit when crime rates fall and then say that any increases in crime rates are recorded merely because more people are reporting crime. This is a serious issue in the city of Casey. These crimes are real and the people in the city of Casey expect them to be addressed. In 1999 the government promised a 24-hour police station at Endeavour Hills. It took five years for it to be delivered and then earlier this year the government by stealth cut back the hours to only 12 hours a day. So the 24-hour police station that was promised was delivered briefly and it is now back to 12 hours. These crime statistics indicate that that police station is required. The government promised it. It cannot hide behind police operational matters. It was a government promise, the government is responsible for delivering it and the people of Endeavour Hills deserve their 24-hour police station.

Mental health: services

Ms DARVENIZA (Northern Victoria) — I want to remind all members of the chamber that this is Mental Health Week, which runs from 7 October to 13 October. That reminder gives us an opportunity through this week to discuss mental health issues and

the impact of mental health on our community. Mental illness affects one in five Victorians and accounts for 70 per cent of disabilities among young people in this state. As a society we are still very wary of the stigma associated with a mental illness. Mental Health Week gives us an opportunity to stop and think about it and discuss the problems that face individuals, families and in fact entire communities.

The important message in Mental Health Week is that we really need to understand more about mental illness, what services are available and how they can be accessed, and, more importantly, that people who have a mental illness can recover and lead very productive lives, in the same way as people can recover from a physical illness. The government's new mental health strategy will focus on prevention and early intervention, a crisis response system, continuity of care, and building responsive and accessible services, as well as family support — —

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

Racial and religious tolerance: African communities

Mr SOMYUREK (South Eastern Metropolitan) — As someone who resided in Noble Park for many years and still has an emotional attachment to the suburb, I have been deeply saddened by the events unfolding in the suburb in the past couple of weeks and the subsequent negative media coverage that Noble Park has received. This media coverage has done a great disservice to the suburb. Noble Park is now synonymous nationally with interracial gang warfare, crime, muggings and murder.

Noble Park is very much a community of need. It has one of the highest per capita refugee ratios in the country, high levels of unemployment and high levels of unskilled blue collar workers from non-English-speaking backgrounds, and the average income is far less than the state average. Despite this the residents of Noble Park take pride in their suburb and are determined to work together to rebuild the suburb. The national spotlight of the last couple of weeks has dented morale and pride amongst the people of Noble Park. However, the Noble Park community is a resilient community and will turn the fortunes of the suburb around.

I am disappointed in the federal government, however, for exploiting the circumstances in Noble Park to play cynical wedge politics. The announced cuts to the African quota were from a decision made by the minister in August and have been mooted for more than a year. The rationale for cutting back the African quota was based on advice given to the government by the United Nations High Commissioner for Refugees — that is, Australia was advised that it could assist by taking more refugees from the Middle East and Asia. The minister's announcement in August referred to the situation in Iraq and Burma as the reason for rebalancing the refugee quota, and not African gangs and issues — —

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

Lifeline: volunteers

Ms TIERNEY (Western Victoria) — I rise to mention a vital service for not only Victorians but all Australians experiencing various difficulties in life. The Lifeline service began in 1963 after the late Reverend Dr Sir Alan Walker received a call from a distressed man who days later took his own life. Only days after the service was established, Lifeline was receiving over 100 calls daily. While I make this statement, people all over Australia are calling Lifeline in need of help. Over 450 000 calls are answered annually by Lifeline volunteers.

On 21 September I, with the Minister for Mental Health in the other place, attended the Lifeline Geelong annual general meeting for 2007. At the meeting several volunteers were acknowledged for their years of service, ranging from one year of service to a phenomenal 20 years of service by one volunteer.

More than 100 000 people volunteer at Lifeline. Without these people Lifeline would cease to exist and the many people who rely on advice, counselling and guidance or who simply want someone to listen to their problems would miss out on this essential service. I believe we need to give some thought to the fact that when we are safely tucked in our beds at night there are Lifeline volunteers leaving their homes and families to go to a Lifeline centre to work through the night to assist others. I wish to congratulate and show appreciation to all volunteers for their tireless efforts and contribution in fulfilling these roles.

Anti-Poverty Week

Ms MIKAKOS (Northern Metropolitan) — Next week is Anti-Poverty Week, a time when we reflect on the fact that half a billion people around the world continue to live in extreme poverty. As part of the Millennium Development Goals to halve global poverty by 2015, every rich country has been asked to

do more to tackle this injustice. The Australian government needs to take immediate action to increase aid to 0.7 per cent of gross national income by 2015, to support debt relief and to promote fairer global trade rules.

Anti-Poverty Week also focuses on poverty at home. Research from the Social Policy Research Centre at the University of New South Wales found that in 2004, 9.9 per cent of Australians, including 365 000 children, lived below the Organisation for Economic Cooperation and Development poverty line, which is set at 50 per cent of median disposable income for a single adult living in Australia. In 2004 this poverty line was set at just $249 per week. The reasons for poverty include the low level of social security payments, hidden unemployment, and the low level of wages for the lowest paid workers, such as cleaners, some of whom earn just $302 a week. That is why low-paid workers such as cleaners deserve a fair deal, and I commend the Liquor, Hospitality and Miscellaneous Union on its Clean Start campaign, which seeks to achieve a fairer deal for cleaners.

I ask all members of Parliament and other members of the community to support and participate in the various activities associated with Anti-Poverty Week to try to draw more attention to this terrible issue.

Information and communications technology: Skills.net Roadshow

Mr EIDEH (Western Metropolitan) — How often have we heard from adults that they did not understand the internet, could not easily access it, and were confused about such technology? The answer is: far too often. So it is with pleasure that I congratulate the Brumby Labor government on its brilliant initiative, as recently announced by the Minister for Community Development in the other place, Minister Batchelor, of a Skills.net Roadshow. To paraphrase the minister, this program will offer enormous benefits to the community, but it will be of particular benefit to older persons, people with limited English language skills and so many others who have been isolated from accessing internet technology for a multitude of reasons.

On that aspect I will respectfully disagree with the minister. He believes the program will benefit some 1400 Victorians, but I can see it extending far more broadly, both directly and indirectly. It will certainly prove to be a great plus for Victorians. As community leaders are themselves trained they will be in a far better position to assist other members of their community and therefore significantly improve access to the internet for all Victorians. This will benefit their education, their employment prospects and their communication, amongst many other areas of life. I am proud to be a member of a government that has the foresight to create such initiatives.

STATEMENTS ON REPORTS AND PAPERS

Falls Creek Alpine Resort Management Board: report 2006

Mrs COOTE (Southern Metropolitan) — I speak today on the Falls Creek Alpine Resort Management Board annual report for 2006. I would like to start by commenting on the front cover, which has a wonderful pastoral view of Falls Creek in summer. I, probably together with many of the people in this chamber, have walked all over those high plains and find them a very attractive area to visit. But this picture belies what has been happening at Falls Creek. This apparently serene site is actually a hotbed of government abuse, and we have to look no further than what was done by the former Minister for Water, Environment and Climate Change in the other place, John Thwaites, to see an example of abuse at Falls Creek. There is a litany of abuse of the system by ministers in this Brumby government. It is unacceptable, and Victorian taxpayers have a right to feel incredibly angry about how this abuse has unfolded.

It starts with Mr Thwaites and then others abusing the system and goes right through to the resignation of the chair — with, I might add, a bit of help from Mr Bill Shorten, who as we know wants to be the next federal member for Maribyrnong. They are being criticised by their own, including the Auditor-General.

I would like to go through this. Let us start with the Auditor-General. The Auditor-General prepared a report on the Falls Creek board, which amongst other things revealed inappropriate practices that included a failure to provide tax invoices to support expense claims, delays in submitting reimbursement claims, travel and mileage claims containing inconsistencies and reimbursement of $1100 to a board member for attendance at a political fundraising event. That information was obtained by the Liberal Party from the Auditor-General's report.

It goes on to be a litany of criticism of Mr Thwaites and his area of administration and other members of the Brumby government's ministry. We know that Mr Thwaites received thousands of dollars worth of free luxury hospitality at Falls Creek, as did other ministers of this government. For example,

Mr Brumby, Mr Holding and Ms Pike have all stayed in luxury apartments and availed themselves of expensive dinners at taxpayers expense.

But it is from within the Labor Party itself that we get the best criticism, and that comes from ALP powerbroker Bill Shorten, who urged the Bracks government to sack the entire Falls Creek board a year ago. This is reported in an article by Josh Gordon in the *Age* of 5 July that reads:

> In a letter to the Deputy Premier, John Thwaites, obtained by the *Age*, Mr Shorten said Falls Creek management was 'so bad it is the last choice for most prospective employees over the winter period'.

That is indeed an indictment. Suddenly we then had the chair of the board, Judy Ward, who has a glowing and extensive foreword in the front of the annual report I am speaking about, under criticism from Bill Shorten and the Auditor-General and public criticism in newspapers and right throughout the community and magically deciding to step aside. Ms Ward's resignation letter says:

> Today I advised the minister for the environment of my decision to resign as a member of the board and chairperson of the Falls Creek Alpine Resort Management Board.
>
> My decision to resign is largely due to a desire to refocus my energies on personal and family affairs rather than on public service. I am similarly exiting a number of other roles.

Read into this pressure by the Labor Party. Ms Ward was made the scapegoat.

We had Mr Thwaites disappearing after being elected in November. Under some pressure from the press, from Bill Shorten, from the Auditor-General and from other areas he decided to quit only eight months after the election, which was a cowardly thing to do. We saw the result of that in the recent by-election. The people of Victoria had no confidence in him as a minister.

I am hoping that we will see an improvement on this entire issue. Falls Creek is an asset for the entire Victorian community and for the international community. Falls Creek is beloved by many in this chamber and throughout Victoria. I think we deserve to have it better managed and better resourced. I am hoping that the current minister does not go on expensive junkets, as his predecessor did. I hope he appoints as chairman of the board someone who is much better.

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

Mr VINEY (Eastern Victoria) — I wish to make a statement in relation to the part 3 report of the Public Accounts and Estimates Committee on the 2007–08 budget estimates. These reports of the Public Accounts and Estimates Committee have been serving this Parliament very well. It has been a very longstanding tradition of the Parliament to have a Public Accounts and Estimates Committee process. Previously under the Bracks government and now under the Brumby government we have seen a tradition of ministers attending Public Accounts and Estimates Committee hearings and subjecting their administrations to the appropriate accountability that you would expect from the Public Accounts and Estimates Committee process.

It somewhat surprises me that today we have had a proposal from Philip Davis for the establishment of a standing committee on finance and public administration, given that the Public Accounts and Estimates Committee has had such a strong and valued tradition in this Parliament, as is typified in this report. Not only was I surprised that Mr Davis would now introduce a proposition for establishing a standing committee on finance and public administration but I found it extraordinary that it was done in the way it was today, without any consultation with the government and with the opposition proposing to effectively usurp the good work of the Public Accounts and Estimates Committee processes by establishing a new, stacked standing committee with only two government members.

What surprises me — and I think members of the minor parties need to really reflect on this — is that although in debate after debate in this house Mr Davis has said that this house can be run by cooperation, today he proposed new sessional orders without a skerrick of conversation with members of the government. I have just now had a conversation with the Leader of the Government about whether he was aware of this. He was completely unaware of these proposed new sessional orders. We have had debate after nauseating debate in this place in which Mr Davis has said we can run this place by cooperation and that it was always run by cooperation in the good old days, yet there has not been any cooperation in relation to this matter.

This is an appalling misuse of the power the opposition has now found itself with following negotiations with the minor parties. I suggest that members of the minor parties ought to reflect on the processes that would be put in place with these proposed sessional orders, which would essentially usurp the longstanding tradition of a

joint parliamentary committee on public accounts and estimates. That arrangement has worked incredibly well under this government and under Steve Bracks's government, unlike in the Kennett days, when ministers and the Premier attended Public Accounts and Estimates Committee hearings only on the rarest of occasions. Under the Kennett government, Bill Forwood, then the Parliamentary Secretary to the Premier, was appointed as the chair of the Public Accounts and Estimates Committee.

By contrast, this government has managed the Public Accounts and Estimates Committee process well. It has been completely committed to the process of accountability through that committee. It has worked incredibly well. Another report is being debated in this house today by David Davis, who has taken an enormous number of opportunities to discuss what happens on the Public Accounts and Estimates Committee, yet the opposition is today proposing a set of sessional orders without having engaged in one skerrick of consultation. It is an absolute abuse.

It is completely hypocritical for Mr Davis to be taking this action in the context of the continual claims that the opposition has and will always run this place by cooperation. There has been absolutely no cooperation in the proposal for a stacked committee to investigate finance and public administration, which has a longstanding tradition of being the role of the Public Accounts and Estimates Committee

Auditor-General: *Program for Students with Disabilities — Program Accountability*

Ms HARTLAND (Western Metropolitan) — I wish to speak today on the Auditor-General's report entitled *Program for Students with Disabilities — Program Accountability*, which was tabled last month. The audit was all about accountability for funding of students who gain funding. It examines the accountability framework, reporting mechanisms and so on. It makes recommendations on measuring and reporting the performance of the program. It is a solid report. It is well researched and well written, and the government should heed its recommendations.

One of major problems with this report is that it is incredibly limited. It states at the outset, on page 2, that it did not examine the 'tools and processes used to determine eligibility and level of need under the PSD'. PSD is the program for students with disabilities. On pages 10 and 11 the report also notes the introduction of a language support program and the associated change in eligibility criteria, with some students with language disorders no longer eligible for funding under the program. I do not want to criticise a good report for its limitations, but I do want to say that due to these limitations another report is urgently needed. We need to look at what the unmet need is, because I know from what parents and students tell me that so often their needs in schools are simply not being met.

The release of the report coincides with unprecedented legal action against the Department of Education and Childhood Development for its failure to accommodate children with disabilities in the system. In May this year, in the Rebekah Turner case, the Victorian Civil and Administrative Tribunal found against the department and noted:

> … there are a number of serious shortcomings in different aspects of the PSD, particularly in the language disorder category of that program. There seems to be an urgent need for comprehensive and expert review of the program. I would urge the government to undertake that review.

Unfortunately the government, rather than increasing funding to the program, appealed the decision. The department is using taxpayers money to defend breaches of the Equal Opportunity Act by denying assistance to young people with disabilities in the state education system.

In *Beasley v. State of Victoria* VCAT criticised the department of education's program for students with language disorders and called for an urgent review of the program. The Greens have also asked for a comprehensive and independent review to ascertain the real level of resources needed to support Victorian students with disabilities and to tailor the program accordingly.

My colleague Ms Pennicuik has asked a number of questions on notice about this issue, but unfortunately they remain unanswered. She asked:

> What is the rationale for capping funding for students with disabilities at 3.4 per cent when according to the Australian Bureau of Statistics the percentage of students with a disability is 9 per cent?

Other questions include:

> Does the government's expenditure review committee plan to reduce the percentage of students funded through the language disorder program?

And if so:

> To what percentage has the government's expenditure review committee decided to reduce funding for students in the language disorder program?

Those questions have not been answered to the Greens or to the community at large.

In my mind some of the key questions that have not been addressed are as follows. What percentage of children with disabilities have access to the program for students with disabilities? What sort of money is the government spending on fighting discrimination complaints and how could that be better spent preventing discrimination? How has the government acted on the recommendations of the *Better Services Better Outcomes* report to improve the program?

Recently I read an article in the *Herald Sun* which included a fantastic question from a mother of a child with autism. She said her autistic son was expected to spend 2 hours each way travelling to and from school and asked why he should have to do that. As I have said, this is a good report but there are unanswered questions and there needs to be another report. The system is in crisis now, and the government must talk to parents and students to see what can be done and to make sure the service is fully funded.

Adult Multicultural Education Services: report 2006

Mr THORNLEY (Southern Metropolitan) — I rise today to speak on the Adult Multicultural Education Services annual report 2006. I was very interested in reading the report to see some of the really substantial accomplishments this service has delivered over the last 12 months. Let me provide some highlights to the house if I may. Adult Multicultural Education Services (AMES) is the largest provider of English language services in Victoria. It directly helped settle about 3600 refugees. It has an achievement rate of 91 per cent of vocational clients being employed at the end of their program, which is a really outstanding achievement in helping people new to the country find their way into the mainstream — into the labour market and full participation in the economy and the community.

AMES donated $1 million to community development programs, it employs staff born overseas by and large, with 46 per cent of them being bilingual, and it has about 1700 volunteers and 510 newly trained volunteers. Indeed one of my electorate officers, Barb Godfrey, is a newly trained volunteer in the AMES program. She works one day a week with a Sudanese mother of six and helps her with English skills.

Recently the youngest child of this mother, a baby of only a few months, came down with a terrible chest infection. It was Barb who assisted the family in getting to the doctor's and easing their anxieties about how to interact with Australian medical services as newly arrived refugees. This is the kind of community spirit that organisations such as AMES seek to bolster. It was not Barb's responsibility, but she was concerned for members of the family and their appropriate engagement with the community, and she worked with them to assist them with their sick infant.

The service should be commended for its outstanding work in building social and community capital and providing an integrated, cohesive and collaborative approach to newly arrived migrants and refugees coming into Australian society.

I put myself down to speak on this matter before recent events simply because I thought it was an interesting annual report and because this is an excellent organisation that has done fine work. I am disappointed that subsequently we have had the re-emergence of race politics in this country. I am disappointed that the quite correct decision of the federal government to alter our refugee intake on the basis of what the United Nations required as a result of the increasing concerns coming out of Burma and Iraq, which led to the readjustment that was announced six months ago, was suddenly reannounced with new reasons. I am disappointed that we have seen — we talked yesterday about the weapons legislation and the beginnings of a cycle of violence recurring.

It is organisations like AMES, which do not get headlines, that do the work that has always been necessary with every wave of migrants and refugees into this country to help people settle, to help them fully participate in our community and to help make sure they are part of the economic and community mainstream. We know that it is people who are not part of the economic mainstream in disadvantaged communities who are most prone to have these sorts of troubles regardless of where they come from. We see tending to get involved in violence young men, whether they have been here all their lives or are recent arrivals, who have not enough to do, who are not in the workforce, who are not trained and who are alienated from society.

Mrs Peulich — They need a vocational technical college.

Mr THORNLEY — They do. I take up that interjection. Vocational and technical colleges play an important part, as do these and many other services. It is distressing to me that we could have been debating that issue — we could debate who should or should not or who could or would not, which I would be happy to take up with Mrs Peulich — but we have not had those sorts of headlines; we have had race-based politics.

What I do not understand about this is the political idiocy of it for the Liberal Party. I expected the moral bankruptcy, but I did not expect the political idiocy. If you are trying to work out why the polling is so shocking in Ryan, if you are trying to work out why it is so shocking in North Sydney, if you are trying to work out why it is so shocking in Goldstein, if you are trying to work out why it is so shocking in Higgins and Kooyong and if you are trying to work out why your 70:30 safe seats are about to become marginal, then understand what a recently retired chief executive officer of a major bank said to me, which was that he was excited to be moving into a marginal electorate so he could vote Labor because he hates racism.

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

Victorian Strawberry Industry Development Committee: report 2006–07

Mr O'DONOHUE (Eastern Victoria) — I am pleased this morning to speak on the Victorian Strawberry Industry Development Committee annual report 2006–07. I would like to make an extensive contribution about the report, but unfortunately all the minister decided to table was a piece of paper which says:

> Pursuant to section 32(2) of the Financial Management Act I report to the Legislative Council that I am in receipt of the 2006–07 annual report of the Victorian Strawberry Industry Development Committee.

The relevant act, the Financial Management Act, says in section 46(2):

> If it appears to the relevant Minister from the financial statements of the department or public body that the expenses and obligations of the department or public body in respect of the financial year do not exceed $5 000 000, the relevant Minister—
>
> (a) must report to each House of the Parliament the receipt by him or her of the report of operations and financial statements of the department or public body; and
>
> (b) if a member of either House of the Parliament so requests, must cause the report of operations and financial statements to be laid before each House of the Parliament within 14 sitting days of that House after the request.

I want to comment on this section. It would be more helpful to the Parliament if the minister laid on the table the report in its entirety and not just the covering letter to the Clerk. The strawberry industry is an important industry in the electorate of Eastern Victoria Region and more broadly to the people of Victoria, and it is inappropriate that the member has to make a formal request and then wait 14 sitting days — which under this regime could take several months — before the report is actually laid on the table. I make that statement as an introductory point for the government.

The Victorian Strawberry Industry Development Committee plays a very important role in advocating on behalf of the strawberry industry and pursuing its goals and interests. I will quote from its 2005–06 report which states:

> The committee uses these funds to: carry out or fund research and development into the production, pest and disease control, post-harvesting handling, plant breeding and variety evaluation of strawberries and advise growers about research findings; and carry out or fund domestic marketing and promotion of fresh strawberries grown in Victoria.

This committee has had bipartisan support over the years of its existence. Like other intensive agriculture industries, the strawberry industry plays a very important part in land management. Predominantly the strawberry industry is located in the Yarra Valley but it is also located in part on the Mornington Peninsula and throughout other parts of Victoria. The strawberry industry, the orchardists, the wineries and other intensive agriculture industries in areas such as the Yarra Valley and the Mornington Peninsula are very important in providing farmers and growers with adequate returns on their land. Their land is going up in value all the time as the population increases and as suburbia expands.

Without that intensive agriculture and without the revenue that can be derived from it, as opposed to growing cattle or sheep, the farmers would have little capacity to stay farming. Moreover, these sorts of industries play an important part in tourism. Tourists love to visit the Yarra Valley, or the peninsula or elsewhere, and go to a cellar door to buy some wine from the local winery, or go to the local strawberry grower to buy some strawberries, or pick cherries from a cherry grower and do other things. The role of these industries is much broader than the fruit they produce. I would like to congratulate the industry for its effective water use and for the innovative ways it has come up with to preserve water.

I comment too on the green wedge management plans in interface areas. These intensive agriculture industries require flexible land-use practices, and the fact that this government has not provided the resources for some councils, particularly the shire of Cardinia, to develop green wedge management plans has impacted adversely on these industries.

Auditor-General: *Program for Students with Disabilities — Program Accountability*

The ACTING PRESIDENT (Mr Elasmar) — Order! I call Mrs Peulich.

Mrs PEULICH (South Eastern Metropolitan) — Acting President, the pronunciation is 'Powlitch'. Thank you.

Ms Broad — I wonder how Hansard will deal with that?

Mrs PEULICH — I can assist. Unfortunately, in this multicultural community of ours there are lots of variations of pronunciations of names in particular, and I guess the onus is on all of us to deal with that. Of course, it is not always reflected in the written version of the names.

I would also like to make some comments in relation to the Auditor-General's report into the *Program for Students with Disabilities — Program Accountability*. Ms Hartland made some comments and raised some concerns about issues that have been raised with her as a member of Parliament in relation to access to funding for students with disabilities, and they are legitimate concerns unfortunately. I guess she understood the narrow parameters of the Victorian Auditor-General's report and audit which was not able to go into all these areas of concern. That occurred for one good reason, which is that the data does not exist to enable the government to make conclusive decisions about the manner in which funds are spent at a student level, with the exception of reports from teachers on individual students to their parents.

Aside from the normal reporting of schools in their annual reports and teacher reports to parents on the progress of individual students it was very difficult to achieve any sort of authoritative insight into the systemic effectiveness of the program and the manner in which the money was spent. It is really sad that in the eight years of the Bracks Labor government it obviously wasted a lot of time, and we cannot be sure that the very valuable funds spent on this important program — which does not meet all the needs, and there are many gaps — has not had the time to establish the accountability framework to make sure we are targeting those funds in the very best possible way to the most needy.

I think the Auditor-General tried to give some credit to the department for undertaking some very late work in its efforts to develop an abilities index, which is referred to on page 35 of the report in figure 4A and which according to the report is:

> … a five-year research and development project …

which

> aims to develop tools, processes and systems for the PSD to enable:
>
> > expert assessment of student abilities and risks
> >
> > identification of standardised learning pathways
> >
> > individual student educational and wellbeing targets with review every three to four years
> >
> > new curriculum tools and resources to support delivery in schools
> >
> > identification and reporting of measurable outcomes.

I guess the reason why the Auditor-General was not able to provide some answers to the sorts of questions Ms Hartland asked is that this new abilities index was only begun in 2007, probably a few weeks before the Auditor-General came knocking on the door of the department. Clearly eight years have been wasted in such work not being done, while internationally that work was already being progressed.

Similarly, if we look at the program level accountability mechanisms and reporting focus in the report, which is outlined in figure 3G on page 26 of the report, we find the information that is being reported on is fairly characteristic. They are more descriptors; they are not key performance indicators or outputs. It is the sort of usual description we have seen occurring in program budgeting, rather than looking at the really important and meaningful assessments about funding, how it is being targeted, how effectively it is being used, what sorts of results are being generated and how much more funding is required.

On the question of importance of accountability, basically the Auditor-General says it is important for accountability to Parliament, and it is a central tenet of the Westminster system. Parliament has a responsibility to hold the government and the public service accountable for the management of public sector resources and activities.

Auditor-General: *Program for Students with Disabilities — Program Accountability*

Ms LOVELL (Northern Victoria) — I also wish to comment on the Auditor-General's report on the *Program for Students with Disabilities — Program Accountability* dated September 2007. In particular I refer to page 10 of the report which talks about the

changing program for students with disabilities (PSD) and the language support program. On that page it notes that:

> In 2005, the PSD definition and eligibility criteria for students with language disorders changed.

It acknowledges that:

> Some students assessed as having language disorders were no longer eligible for funding from the PSD.

I spoke about this last week and mentioned that I had tabled several petitions on this particular subject. It just happens that this week one of the parents who had organised a petition came into my office with a speech pathology summary report regarding her son, Aiden, who is in grade 3, and who had an early history of language and behavioural difficulties and who attended regular speech therapy and reviews with his examiner up until grade 2.

Previously, Aiden qualified for the severe language disorder program. He was one of the children who lost his funding. But Aiden's recent speech pathology summary shows he has gone backwards since he has been excluded from the program. Some things mentioned in the report regarding Aiden's speech and communication problems are inappropriate eye contact, avoidance of eye contact when prompted to look, a flat effect in his conversation, his general mood varying little during conversation, with little expression. He has poor body posture and orientation, pays insufficient attention to his partner in conversation and his general alertness and response to his own name are often poor. He has a poor attention span and fails to take turns appropriately in conversation. Aiden also requires direct prompting to use greetings and farewells and often sits in conversation just looking blank.

As I said, Aiden previously had funding for this program and previously demonstrated the ability to ask questions, share news, greet, request assistance and take turns in games played at a basic level, but since he has no longer had access to the severe language disorder program Aiden has reverted to his ways as a result of his autism. The summary of the report says that:

> Aiden demonstrates significant difficulties in his use of verbal and non-verbal language to communicate with others in social interactions.

It is very sad for his mother that the program has been taken away by the state government. She has been one of the parents who have been strongly advocating for the program to be extended so that her son can get access to the severe language disorder program once again and perhaps start to make some forward progress rather than regressing, as he has done since he has no longer had access to that program. It was disappointing that the Auditor-General did not measure in the report any of the unmet needs of programs for students with disabilities in Victorian schools. I call on the Auditor-General to conduct another review and this time to audit the unmet need and the number of children who are need assistance but are not getting it at present.

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

Mrs KRONBERG (Eastern Metropolitan) — I am going to speak on the Victorian Auditor-General's report of October 2007 entitled *Improving Our Schools — Monitoring and Support*. As I trawl through this very worthwhile and commendable report by the Victorian Auditor-General's Office, I am reminded of a comment Mr Viney made earlier in this sitting that talking about certain aspects of the processes in this chamber are nauseating. I found reading this report nauseating, because it highlights things that have become symptomatic of this government — that is, there is a program or strategy announced with a lot of fanfare, all of the normal spin, and then when it is implemented no details are actually attended to. It is almost as though the dancing has stopped, the band has packed up and gone away and we are left with people falling between the cracks and areas being starved of resources, and nobody seems to care. I have to say, 'God bless the Auditor-General'.

Regarding the specifics, this report stems from the audit process of the government's Blueprint for Government Schools reform agenda of 2003. I ask the house to mark that — 2003. This strategy was meant to reduce the disparity in student outcomes across all Victorian schools. In his report the Auditor-General states that support for schools and for student outcomes below expected levels is better targeted by the department and some impact is being made by so-called targeted support initiatives. However, this is counterbalanced by the statement that more attention needs to be directed at some aspects of the support which constrain regional offices — those charged with the responsibility for the on-the-ground delivery of the program, with its responsibilities and accountabilities. We are constraining regional offices in their delivery from providing the right support at the right time. I think that might be code for too many people are asleep on their watch.

In a grand gesture regional offices were given increased responsibilities for the delivery of the blueprint reforms, but astoundingly no analysis of the capacity of regional

offices to fulfil these new responsibilities took place. It was, 'Here you are, regional offices, you are used to receiving a 10-kilogram medicine ball, but we are going to throw you an 80-kilogram medicine ball, and we hope you can withstand the shock'.

Mr Dalla-Riva — That is a pretty big medicine ball.

Mrs KRONBERG — It is a hell of a medicine ball. More attention needs to be given to ensure that regional offices are resourced in terms of human capital, intellectual firepower, people who can do the job and recurrent funding to match the local needs. Unfortunately there is an uneven distribution of schools performing below expected levels. However, this lumpiness is not reflected at all in the resourcing of regional offices. It is just a lick and a promise going back to 2003. We will plaster this blueprint all over the state, but we will not give you anything to deliver it.

In spite of differing needs, recurrent funding is comparable across the regions. No-one has done the analysis to see what is needed in a specific area where people are deprived. Teachers must be tearing their hair out across the state in dealing with these areas where so many needs remain unmet.

The Auditor-General has dimensioned unmet demand for targeted support for us. It reads like this, and these are pretty scary numbers: two of the three regions the report focused on still cannot appropriately respond to the demand for support. Schools needing support — and we are used to this from this government — are placed in queues. That has a familiar ring to it. They are placed in queues for what the Auditor-General puts as 'a considerable period'.

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

BUILDING AMENDMENT BILL

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Building Amendment Bill 2007.

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

Overview of bill

The bill will amend the Building Act 1993 to:

clarify and simplify the purposes and objectives of that act;

clarify, simplify and otherwise amend the functions of the Building Commission and the Plumbing Industry Commission under that act; and

make other minor drafting changes to improve the operation of that act.

Human rights issues

The bill does not raise any human rights issues.

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.

JUSTIN MADDEN, MLC
Minister for Planning

Second reading

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

Mr LENDERS (Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The purpose of this bill is to introduce a number of amendments that:

clarify and simplify the purposes and objectives of the Building Act 1993;

clarify, simplify and otherwise amend the functions of the Building Commission and the Plumbing Industry Commission under the act; and

make other minor drafting changes to improve the operation of the act.

When the Building Act was introduced in 1993 it transformed Victoria's system of building regulation. It has been amended over time to improve its operation. This particular bill is a 'machinery' bill which will strengthen the foundations on which the act is based. It will make matters clearer for all those who deal with the act.

The bill comes about as a result of certain recommendations made by the Victorian Competition and Efficiency Commission in its report *Housing Regulation in Victoria — Building Better Outcomes*, published in 2006. The recommendations upon which this bill is based relate to the purposes and objectives of the Building Act and the functions of the two key regulators under the act.

In its response to the report, the government indicated that it would undertake a review of these aspects of the act. The outcome of that review forms the basis for this bill.

The Victorian Competition and Efficiency Commission found that the purposes and objectives of the Building Act were unclear in several respects. The report pointed out that a system of regulation is more likely to be understood if its objectives are also understood. In this regard, the report recommended that the government simplify and clarify the purposes and objectives of the Building Act, paying particular attention to separating 'objectives', or ends, from 'instruments', or means of achieving those ends.

As a result of the government's review, the new section 4 which is to be substituted by this bill contains a simplified set of objectives for regulating building and plumbing in Victoria. The new section 1 contains a simplified set of 'means' — that is, the particular tools used in the act — for achieving those objectives. This refreshed framework provides a clearer reference point from which to make judgements about regulatory performance. In particular, this bill will give the act's objectives a new relevance by providing that, in the administration of the act, regard should be given to its objectives.

The report also examined the current roles of the regulators under the act and whether they were appropriate. The Victorian Competition and Efficiency Commission expressed the view that regulators need their independence in making day-to-day regulatory decisions, but they must also operate within a clearly defined framework that specifies the outcomes desired by the government and the types of activity in which the regulators should be involved. In particular, the Victorian Competition and Efficiency Commission emphasised that regulators should not be charged with the responsibility of providing policy advice to government in addition to their core responsibilities.

The bill will substitute a new set of functions for the Building Commission and the Plumbing Industry Commission in new sections 196 and 221ZZV respectively. The functions of each of the commissions have been simplified, to make it easier for the commissions to understand what is required of them, and for others to determine how successfully they have performed.

As part of this process, the commissions' core functions will no longer include the provision of policy advice to the government. To support the changes to the commissions' functions, the government is building an improved departmental capacity to deal with building policy matters. The commissions are key stakeholders in building policy and the new Department of Planning and Community Development will consult with them regularly.

The bill will also make some minor drafting changes to improve the operation of the act. It will bring existing provisions into line with modern drafting practice. I give the house the example of section 196, which currently fails to distinguish between the Building Commission's functions and its powers to carry out those functions. The bill will clearly separate the Building Commission's powers from its functions. This will also bring the drafting of the Building Commission's powers in line with those of the Plumbing Industry Commission.

These changes will improve the operation of the act.

I commend the bill to the house.

Debate adjourned for Mr GUY (Northern Metropolitan) on motion of Mrs Coote.

Debate adjourned until later this day.

ENERGY LEGISLATION FURTHER AMENDMENT BILL

Statement of compatibility

For Hon. T. C. THEOPHANOUS (Minister for Industry and Trade), Mr Lenders tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Energy Legislation Further Amendment Bill 2007.

In my opinion, the Energy Legislation Further Amendment Bill 2007, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The Energy Legislation Further Amendment Bill 2007 (the bill) amends the Electricity Industry Act 2000, the Gas Industry Act 2001, the Gas Pipelines Access (Victoria) Act 1998 and the Gas and Fuel Corporation (Heatane Gas) Act 1993 to:

enable the transfer of customer information from a failed energy retailer to improve arrangements for security of supply;

extend the sunsetting of the energy consumer safety net provisions from 31 December 2007 to 31 December 2008 and reduce the publication requirement for retail safety net tariffs from 60 to 30 days;

make amendments consequent to the recent review of the Victorian Energy Networks Corporation (VENCorp);

repeal redundant provisions in relation to the Port Campbell underground gas storage facility;

make minor statute law revisions; and

clarify the effect of an order made under the Gas and Fuel Corporation (Heatane Gas) Act 1993 relating to the transfer of ownership of the Heatane gas pipeline extending from Dandenong to Hastings, Long Island Point and Crib Point.

Human rights issues

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

The bill provides, in certain circumstances, for the transfer of information which includes private information such as a

person's name and address. Accordingly, section 13(1) of the Charter of Human Rights and Responsibilities Act 2006, which provides that a person has the right not to have his or her information privacy unlawfully or arbitrarily interfered with, has been considered.

The bill provides that, in the event of a disorderly exit of an energy retailer, the failed retailer or its insolvency official is obliged to transfer information about its customers to a retailer replacing the failed retailer ('a retailer of last resort'). A disorderly exit of an energy retailer would arise where the failed retailer has ceased to be licensed under the Gas Industry Act 2001 or the Electricity Industry Act 2000 or otherwise ceases trading activities. These circumstances would be exceptional and would place at risk the continued supply of the essential service of electricity or gas to the failed retailer's customers. The purpose for which the transfer of information under the bill may occur would be to ensure the continuity of energy supply to a failed retailer's customers.

The scope of information that may be transferred is defined in the bill. This information is confined to that which is necessary to identify a failed retailer's customers and their gas or electricity supply needs and billing details, so that a retailer of last resort may supply gas or electricity to those customers and obtain payment for electricity or gas supplied.

The bill provides for an appropriately transparent process for the transfer of information. A notice issued by either a retailer of last resort or the Essential Services Commission (the independent Victorian regulator of the gas and electricity industries) must specify the information to be transferred and detail the circumstances that give rise to such a notice.

For the reasons outlined I consider that the bill does not unlawfully or arbitrarily interfere with the right to privacy and therefore the bill is compatible with the Charter of Human Rights and Responsibilities.

Theo Theophanous, MP
Minister for Industry and State Development

Second reading

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

Mr LENDERS (Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The government is committed to ensuring an efficient and secure energy system, reliable and safe delivery of energy services and access to energy at affordable prices. As part of the government's commitments, this bill is making miscellaneous amendments to the Electricity Industry Act 2000, Gas Industry Act 2001, the Gas Pipelines Access (Victoria) Act 1998 and the Gas and Fuel Corporation (Heatane Gas) Act 1993.

Parts 2 and 3 of the bill make amendments to the existing Victorian arrangements designed to ensure the continuity of gas and electricity supply to customers following the disorderly exit of a retailer. These arrangements provide for another retailer to replace a failed retailer and are referred to as 'retailer of last resort' schemes. Consistent with recommendations made by the Essential Services Commission following extensive consultation, the bill requires a failed retailer or its insolvency official to provide customer information to the retailer of last resort for the purposes of the retailer of last resort:

performing its supply obligations to its new customers; and

obtaining payment for electricity or gas supplied to those new customers.

Parts 2 and 3 of the bill amend the Electricity Industry Act 2000 and Gas Industry Act 2001 to extend the sunsetting of the energy consumer safety net provisions from 31 December 2007 to 31 December 2008. These amendments preserve the energy consumer safety net provisions for 12 months pending the outcome of the Australian Energy Market Commission's review of competition in the Victorian gas and electricity markets.

To provide energy retailers with greater certainty as to the distribution charges that are to be recovered through their retail tariffs, clauses 12 and 31 of the bill reduce the publication requirement for retail tariffs from 60 to 30 days. This will mean that the retail tariffs applying from January will be those gazetted the previous December based on distribution tariffs submitted by the energy distributors to the Essential Services Commission in mid-November.

The bill also includes amendments with respect to the Victorian Energy Networks Corporation (VENCorp). VENCorp was established in 1997 as a not-for-profit state-owned corporation responsible for planning and operating Victoria's electricity transmission system and operating the principal gas transmission system. In accordance with part 8 of the Gas Industry Act 2001, a review of VENCorp was undertaken in 2006–07. The review found that the Victorian energy industry and the community generally value VENCorp's key current functions and that VENCorp is considered to undertake these functions effectively and efficiently.

The bill makes a series of amendments consequent on the review of VENCorp. In particular, it will recognise VENCorp's not-for-profit status and repeal the requirement for it to present an access arrangement under the national gas pipelines access regime. The bill will also repeal VENCorp's electricity demand management function which the review found was largely unexercised and potentially in conflict with VENCorp's transmission planning function.

As well, the bill repeals redundant provisions in the Gas Industry Act 2001 in relation to the Port Campbell underground gas storage facility and makes other, minor amendments in the nature of statute law revision to that act.

The bill also amends the Gas and Fuel Corporation (Heatane Gas) Act 1993 to clarify that an order made in 1994 under that act transferred ownership of the Heatane gas pipeline extending from Dandenong to Hastings, Long Island Point and Crib Point to Elgas Reticulation Pty Ltd.

I commend the bill to the house.

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

Debate adjourned until Thursday, 18 October.

FIREARMS AMENDMENT BILL

Second reading

Debate resumed from 20 September; motion of Hon. J. M. MADDEN (Minister for Planning).

Mr DALLA-RIVA (Eastern Metropolitan) — I rise on behalf of the state opposition in the Legislative Council to inform the house that the opposition will be supporting the Firearms Amendment Bill as presented. This bill makes a significant number of technical amendments to the Firearms Act in a range of areas right across the gamut of the principal act, as is outlined in the purposes clause on page 2 of the bill. The bill is a complex arrangement of technical amendments. If one were to read the bill as it stands, it would seem a bit obscure because there are insertions, deletions, moderations and alterations. They do not really mean much collectively; you need to put them in the context of the principal act to see how they work. For example, some of the amendments I will highlight, which have support, impose additional requirements.

Part 2 details the amendments to the principal act, the Firearms Act 1996. Page 3 talks about antique handguns. The bill substitutes a new definition of 'antique handgun' for the one in the principal act. Essentially it adds paragraph (c), which states 'that does not take commercially available cartridge ammunition'.

My understanding is that that requirement did not apply previously. Antique handguns that fitted the requirement of being manufactured before 1 January 1900 and used percussion as a means of ignition but took commercially available cartridges were previously defined as antique handguns. If such handguns take commercially available cartridge ammunition, they will now fall outside the definition of an antique handgun. Persons who hold those handguns will now have to obtain the more stringent category 1 licence, as applies to other handgun owners.

I draw the attention of the house to some other amendments. Clause 4 on page 5 of the bill inserts a new section 3A. You have to refer back to page 4 for the insertion of new provisions into the definitions of 'category D longarm', 'category E longarm' et cetera. A reference to new section 3A(1) is included in each of the definitions, so if we are talking about a category D firearm, that now includes any firearm that is declared under section 3A(1) to be a category D longarm. By itself that does not make sense, but what it means is that under new section 3A there will be firearms which in certain circumstances the Chief Commissioner of Police, in consultation with the minister, may by instrument declare to be a category D longarm, category E handgun or category E longarm as the case may be.

This gets away from the situation where there are categories that apply to those firearms, but it is the view of the commissioner, in consultation with the minister, that the firearms are in excess of their category as listed. This means that category A, B and C firearms can be recategorised as category D or E firearms for a period of 12 months, as is outlined under new section 3A(3) on page 6 of the bill.

The bill prohibits firearm owners increasing the magazine size of their weapon without first seeking the consent of the chief commissioner. I know there are stories of individuals who wish to increase their magazine size, which I agree should not occur without there at least being an acknowledgement of that being undertaken.

The bill sensibly expands the prohibited person provisions to automatically ban a person from holding a firearm licence if they have been found guilty of an offence under the Control of Weapons Act. Any licensee who is subject to an intervention order will have their licence suspended for three months and then cancelled unless they can show cause as to why it should be reinstated. It may appear to those people to be a harsh approach to their activities, but, as many would know, unfortunately firearms, like other weapons, have been used in domestic situations. This is just another way of ensuring that the misuse of firearms by individuals in certain circumstances is reduced.

I have already discussed the issue of antique firearms. The bill allows a collector holding a category 2 collector licence, which is the most stringent collector licence, to collect firearms which are classified under the category 1 collector or antique handgun collector regimes without having to apply for a second or third licence. Obviously if you have a category 2 collector licence it seems pointless to undertake the process of obtaining a category 1 licence. This will streamline that situation. Firearm collectors clubs will now be able to apply collectively to the chief commissioner to display, carry or use collector firearms at approved ranges or commemorative or historical events. Previously individual club members had to apply. Again, this is a common-sense approach.

Another amendment in the bill relates to the executor of an estate which includes firearms being required to comply with the same storage requirements as the deceased firearm owner. The death of the original licensee must be reported to the chief commissioner as soon as practicable. The bill also reduces to 14 days the period during which licensed firearm owners must inform the Chief Commissioner of Police of any change in the details of where firearms are stored.

The bill also goes to a range of other issues. The most contentious issue might be the renewal of licences. My understanding is that if a shooters licence is renewed, under part 2 of the bill there will need to be a fresh application. I say from the outset that I believe that is the appropriate course. An argument may be presented that renewals should be automatic, as happens with motor vehicle licence renewals. In my view the particular issues surrounding firearms mean that the individual's circumstances may have changed in ways that may relate to storage requirements, accessibility to the areas in which they shoot or personal issues that mean that a person who was once suitable to possess a firearm is no longer suitable.

The argument may be presented that where there have been changes to individual circumstances the Chief Commissioner of Police has an automatic right to get those firearms back. In my view that is appropriate; however, the change in circumstances would not be known unless there is some sort of reporting mechanism. Some of the organisations that represent firearms owners are concerned about the enormous amount of paperwork that members are required to complete. In my view automatic renewal would mean that the chief commissioner would have to check that individuals subject to automatic licence renewal still meet the requirements as set out in the stringent initial application.

The argument that automatic renewal would reduce the time spent by Victoria Police in processing renewal applications is short-circuited by the fact that Victoria Police would be undertaking a lot more spot checks, as it were — going to a lot more effort on sample checks on firearm owners — which would impinge upon its operations. You might well find that the amount of time Victoria Police would spend checking licence-holders who have their licences automatically renewed might far outstrip the amount of time spent on processing reapplications for firearm licences.

I have thought about the proposed amendment that may be moved by The Nationals. I understand the sentiment behind the amendment, but the practicalities are such that, while it might be intended to reduce the amount of time spent by Victoria Police and licensed firearm owners, it may have the inadvertent outcome that the police will spend more time undertaking sample reviews, spot checks and the like on those firearm licence-holders for whom renewal would have been a straightforward process. It would be quite a process to subject each firearm licence-holder to a random audit to ensure compliance six months, one year, two years or three years after their initial application. You might find that the licensing services division of Victoria Police would spend a lot more time on that process than it would spend on the renewal process.

I will outline the other parts of the bill. If you read them on their own, they probably would not make much sense. Part 3, which begins on page 40 of the bill, relates to the amendments the bill makes to acts. They are principally the Crimes Act 1958, which is amended by clause 57 of the bill before the house. The amendment changes the penalty for offences and says that a person who is found guilty of an indictable offence while carrying a firearm or an imitation firearm — and the definition of 'imitation firearm' has been enhanced in the bill, which I support — is guilty of a further offence and is liable to level 6 imprisonment for a maximum period of five years. My understanding is that that means that a person who commits an armed robbery and has a firearm will obviously be charged with the principal offence of armed robbery and will also be charged with an additional offence under new section 31A(1), which potentially means an additional five years of imprisonment.

The bill also amends the Firearms (Further Amendment) Act 2005, and it amends the Magistrates' Court Act in relation to certain offences, which I understand — unless I am corrected — are those that can be heard summarily. As I said, a significant number of changes are made throughout the bill. If you read the bill on its own, you might struggle; you need to put it in the context of the principal act, the Firearms Act.

Earlier I raised the issue of licence renewals. A spring 2007 parliamentary briefing note from the Combined Firearms Council of Victoria (CFCV), which other members may have received, refers to automatic renewal. I argued the case that this in fact would be unnecessary. I was somewhat perplexed when I read the first couple of paragraphs of the parliamentary briefing note, which states that the CFCV:

> … has confidence in the firearms consultative committee process and current government …

It appears that the CFCV is satisfied with the government and the processes that the government is undertaking.

A fascinating point is raised in paragraph 5 of the briefing note. I recall before the last state election the member for Ripon in the other place, Mr Joe Helper, before he became Minister for Agriculture, presented the argument that this government would not under any circumstances remove duck hunting. The CFCV briefing note points to the Victorian Environmental Assessment Council draft report on the Murray River red gum forests, which talks about the removal of duck hunters from those areas. It says:

> …the VEAC recommendations seek to roll 23 state game reserves into these areas. These reserves were purchased, in trust, for Victorian duck hunters with money raised from their hunting licences!

I remember at the time, which was before the last state election, warning the CFCV that the government had an agenda to remove duck hunting. I still stand by that. Mr Helper denied that, but I think the fact is that this government will slowly, through another mechanism, start to wind back duck hunters from areas into which they have had some input. I raise this again as a concern; it appeared to be dismissed at the time. I worry that sometimes the relationship between lobby groups and government can become too close, to the point where their members may actually be overridden by the government of the day. I just hope the CFCV sees the light in terms of understanding that this government has a different agenda to what may appear on the surface.

That aside, the state opposition supports the Firearms Amendment Bill as presented. Obviously we will take note of the evidence, statements and comments made by The Nationals in respect of their reasoned amendment.

Mr HALL (Eastern Victoria) — The Nationals have always taken a very keen interest in firearms legislation, and we do so again with this amendment bill before us. Particularly since the events of 1996 and subsequent incidents that have involved firearm use, we have seen significant change with national agreements coming in regarding firearm and handgun ownership and use. We have also seen complementary legislation introduced in all states to reflect that which is contained in the national agreements. Therefore I think MPs need to be aware of the sometimes complex and significant changes which can be added to their responsibilities. That is why this has been a controversial issue, particularly for those of us who represent rural electorates. We need to have a sound knowledge of and be aware of the concerns and implications the legislation is having on legitimate firearm owners and their use.

I also want to declare at the outset that as a means of assisting me in understanding these issues I joined the Field and Game Association of Australia shortly after 1996. I do not own a firearms licence and never have, and so I do not practise shooting, but as a member of that organisation at least I am closer to the views, feelings and expressions and can better understand the needs of firearm owners in this state. I have been a continuing member of the association for something close to 10 years. I respect the rights and needs of many people in our society who actually use firearms whether that be for professional or recreational purposes.

I also support the need for a regime that records and regulates firearm ownership and use. That view is held by the firearm owners that I know as well. Universally, I think that people who do the right thing, those who legally own and use firearms, accept that there needs to be some form of regulatory regime to control ownership and use. The issues with this amendment bill and previous bills relating to firearms ownership concern the degree of regulation that is actually required, because there is some difference of opinion as to that.

With this bill and others that have come before the Parliament we are both creating some new aspects of a regulatory regime and amending other aspects of the current regulatory regime. Before commenting on the bill I want to comment briefly on the manner in which various firearms groups have responded to legislative changes in recent years. Let me say quite openly and clearly at the start that some of those changes have placed some rather onerous conditions on firearm ownership and use and there has been some resentment out there in the community. One can understand exactly why that resentment is being experienced. Nevertheless, I pay the greatest commendation to the various firearms user groups who I think have responded very responsibly and fairly and have been more than accepting of what have been some onerous conditions imposed upon them. To that extent I commend them for the way in which they have responded.

While there has been concern about firearm use for criminal activity in our communities, and there is still that level of concern about illegal use of firearms, generally speaking, and certainly across the broad range of legal firearms owners and users, we do not have a real problem in our community. It is the illegal problem we need to look at and address.

I note that the *Sunday Age* of 24 June, following the tragic shooting of Brendan Keilar in the central business district area of Melbourne, ran extensive stories about illegal firearm ownership in Australia. While I am not going to quote broadly from those articles, they are compelling reading for people who have a real interest in this subject. The real problems we have in this country with firearms are in regard to their illegal ownership, illegal importation and illegal use. Perhaps there should be a greater focus of attention from parliaments, at both federal and state levels, to address these problems rather than imposing further restrictions on legal and responsible firearm users.

I want to comment on just a few particulars of the bill, and I do not want to go through a great deal of detail because Mr Dalla-Riva has gone through some of the more significant of these amendments. Also the explanatory memorandum sets out clearly what each of the amending clauses in the bill does, and it does that very well. I compliment the Department of Justice on doing that.

The first page of the explanatory memorandum lists fairly succinctly some of the changes. There are changes to: various firearms licences; reporting requirements for handgun target shooting and approved handgun target-shooting clubs; applications for firearms and the private security industry; and the storage of firearms.

There is a change to hunting on Crown land. The Nationals have previously raised the issue in this Parliament. There is a problem faced by legitimate firearm users when taking firearms across areas of leased Crown land to access game reserves, even though the firearms would be in a properly stored container. That problem is being addressed in this amending bill, which is a positive move. We are pleased that the government is addressing the problem with these amendments today.

Some amendments will impact on firearms collectors and dealers. There are also amendments regarding prohibited persons and others. I am not going to go through all of those. As I said, they are set out well in the explanatory memorandum. If people want more detail, they can look at that.

I want to talk about the process through which these amendments have come before us today. On the whole, most firearms owner and user groups generally accept that these are positive amendments. There are issues of concern with some of them, but on balance they are acceptable. One of the reasons they are generally well accepted is that there has been at least some consultative process with the establishment of the Victorian Firearms Consultative Committee. It took some time for the government to establish the committee, but at least now that it is there we are seeing some consultation with those with an interest in firearms about changes that are needed.

When you have a consultative process in place, you can usually achieve some decent outcomes. Mr Pete Steedman chairs that consultative committee — he is a character in himself, and he will not mind my saying that, but he gets the job done. Although I am not sure whether the committee agrees with all these amendments, because we do not know that, at least it has been consulted and has worked with the Department of Justice and the government in developing these amendments. It is helpful that people who have an interest in firearms have generally been consulted and, I presume, ticked off on most of these amendments.

Another reason why there is a high level of consensus with these amendments is that we have an organisation like the Combined Firearms Council of Victoria (CFCV), which is a different group of firearm users that have come together after seeing a need, when all this legislation was being put before various jurisdictions, to work as one to lobby government and to raise their issues of concern with one collective voice and so have far more impact.

The Combined Firearms Council of Victoria, to its credit, keeps in regular contact with all of us as members of Parliament and regularly sends us parliamentary briefing notes. *Spring Edition — September 2007* was provided just a couple of months ago and raises a number of issues. The council consists of organisations like Field and Game Australia, the Firearm Traders Association, the International Practical Shooting Confederation Australia, the Sporting Shooters Association of Australia, Target Rifle Victoria, the Victorian Amateur Pistol Association, the Victorian Clay Target Association, the Victorian Rifle Association and Vintagers (Order of Edwardian Gunners) Inc. That is not a comprehensive list of all firearm groups in Victoria, but it is a number of them that have come together under the banner of the Combined Firearms Council of Victoria. They express the views of firearm owners in a very responsible way. Having a single voice speaking for those groups has been helpful for both the government and the opposition in addressing some of the deficiencies in firearm legislation in this state.

I am sure that the Combined Firearms Council of Victoria contacted many members of Parliament. It

certainly contacted me with comments on the first 53 amendments contained in the bill. The further amendments beyond those are amendments to schedules and consequential amendments to other acts. The council made a brief comment about each of the amendments and agreed that there was a need for the vast majority of them, although there are some that the council disagrees with. The Nationals wondered how we should raise those issues of concern and whether we should make them the subject of amendments to this piece of legislation. We decided not to do that, mainly because they are largely technical issues, and amendments brought before the house should predominantly be based on principle rather than technicality. I would hope to see the government continue to work with organisations like the Combined Firearms Council of Victoria, the Victorian Firearms Consultative Committee and others to try to address the issues they raise as part of an ongoing process.

I encourage the government to look closely at those amendments that the Combined Firearms Council of Victoria has not been prepared to support and see if there are future opportunities to address its ongoing concerns. The CFCV has raised some significant deficiencies — that is, things that are not addressed — in the legislation. I will come to those in a minute, particularly the critical issue which is the subject of my reasoned amendment, which I am about to move. As I said, the CFCV supports the amendments being made by the bill but it suggests that there is a lot more work to be done and that there are ongoing matters that need to be addressed.

In commenting on and commending some of the groups whose members have raised issues with us as members of Parliament, I want to commend also the Antique and Historical Arms Collectors Guild of Victoria. That organisation wrote me a letter dated 12 September, in which it comments on those provisions in this bill which impact on is members who collect antique and historical firearms and handguns. The guild is the biggest antique arms collectors organisation in Victoria.

Earlier this week I had a discussion with the guild's president, Mr Ian Turner. I suppose the greatest frustration he expressed was that collectors are not represented on the Victorian Firearms Consultative Committee and therefore do not have the first opportunity to put before the government some of their concerns. Mr Turner suggested that an umbrella group representing all collectors could well be served by its having a seat on that consultative committee. I suggest that the government consider that seriously. I cannot see a valid reason for them being excluded from that particular process. If the government has a comment to make on that, I would welcome hearing it. Perhaps in due course a response on that issue will be forthcoming.

The Antique and Historical Arms Collectors Guild of Victoria, probably in the same light as the CFCV, has raised some issues with some amendments being made by the bill. It acknowledges that some amendments will assist its members in their endeavours, but again says that many things, which are highlighted in the guild's letter of 12 September to me, need to be addressed. One of those things is compensation for multiple licences. Members of the guild appreciate that amendments being made by the bill will amalgamate some of the various collectors licences, which will be of some assistance to some guild members, but they will have paid significant amounts for separate licences in some of the categories which will become redundant and they will not be getting any compensation for that.

The guild also raised the technical matter of display permits. It acknowledges that the bill enables a collectors club to gain a display permit, instead of each individual participant in a particular display being required to do so. The onus of responsibility for the safe and legal carriage of firearms to the exhibition also rests with the organisation, rather than the individual who owns that antique firearm. It seems inappropriate that the permit-holder for the exhibition should be responsible for the carriage undertaken by every single person participating in the exhibition. It may be simply a matter of clarification and interpretation, but that needs to be addressed with the guild.

The collectors guild raised also the issue of storage requirements that need to be met under collectors licences. As I understand it, with the amalgamation of the different categories of collectors licences, some of the antique firearms that did not have stringent storage requirements, because they were incapable of being fired or because commercial ammunition is no longer available for them, will also have extra storage requirements placed on them. The guild also made some comments about the costs of permits to acquire antique firearms and suggested that they were excessive, particularly for obsolete firearms for which no commercial ammunition is now available. It mentioned that there are still some problems with the recognition of interstate licences across state borders and therefore with the ability for people from interstate to display firearms at a Victorian exhibition and vice versa.

They are some of the issues raised with me by the Antique and Historical Arms Collectors Guild of Victoria. Again I implore the government to sit down

with organisations such as this and work through future opportunities for change so that those issues can be addressed.

I raise the substantial reasoned amendment, which I am happy to have circulated at this point. I move:

> That all the words after 'That' be omitted with the view of inserting in their place the words 'this bill be withdrawn and redrafted to provide for the automatic renewal of firearm licences under part 2, except in specific circumstances'.

I want to give a bit of background to the issue of the automatic renewal of firearm licences. The CFCV has raised this issue consistently for some time. I note that it is in the parliamentary briefing notes of some months ago and it has been raised with members. I am assured by the organisation that it has been raised in the past and I can recall that. In its commentary on the various deficiencies of the bill it identified the automatic renewal of licences as one of its prime concerns and said:

> The Firearms Act currently treats each licence renewal as a new application. Given the initial licence screening and ongoing monitoring of licence-holders by the Victoria Police, the requirement that renewals be treated as new applications does not add any value to the regulatory process. In fact, it adds costs to all concerned.
>
> Amending the act to provide for automatic renewals would not affect the ability of the chief commissioner to revoke a licence, and a new provision could be inserted to enable her to refuse to renew a licence that would otherwise be scheduled for automatic renewal.
>
> Moving to automatic renewals would release badly needed resources within the licensing services division to perform other functions as well as making the interface with shooters more 'user friendly'. Automatic renewals would provide administrative efficiency without having any impact on public safety — therefore providing a net benefit.

The CFCV has expressed the argument very well. There should be a requirement for any licence-holder to notify authorities when there are changes of a significant nature to the circumstances and records attached to that particular licence. I acknowledge that there is an automatic renewal process for a motor vehicle licence, but if for some reason there is a change in one's personal circumstance — for example, certain medical conditions — there is a mandatory requirement to notify VicRoads. For an automatic renewal of a firearm licence there could equally be provisions in the act that required notification to the Chief Commissioner of Police of any changed circumstances relating to the issuing of that firearm licence, with penalties attached to it if people did not do that. There could be a simple system whereby at the end of each five-year period of a firearm licence, when a renewable licence is sent out, there would be a reminder of the person's obligation to notify the chief commissioner of changed circumstances. It would not be a big deal, and it seems to me that it would be a very efficient way of doing things.

The argument against this, which was put forward by the government when The Nationals moved this reasoned amendment in the other house, is that it contravenes the national firearms agreement. On my reading of it, the agreement suggests that a firearm licence cannot be issued for longer than five years. That can be so. The Nationals are not suggesting that licences be issued for 10 years. We are saying that we can continue to have five-year firearm licences but that they be renewed automatically, rather than requiring a separate application to renew each licence. I do not see that the proposed amendment contravenes the national firearms agreement that has been agreed to by all the states and the commonwealth.

The other purpose for moving the reasoned amendment is that the licensing services division within the Department of Justice has a very heavy workload. From time to time in my office there are complaints about the excessive time it takes to have some form of licence application assessed by the licensing services division. I am aware that currently a review by the government of the licensing services division is under way, but I do not think that is any reason to look for ways of reducing the work burden of the division. As the Combined Firearms Council of Victoria said, we can provide some administrative efficiency on this matter without any impact on public safety, therefore providing a net benefit to everybody.

This is a sensible amendment: it is not earth shattering, it does not go against national firearms agreement guidelines, and it would help the relationship between government and firearm owners in this state. I think adequate safeguards can be built into the system to accommodate the automatic renewal of firearms licences. I rest my case. I put forward the reasoned amendment for consideration by the house. In the event that the reasoned amendment fails we will not be opposing the bill, but we strongly urge members to support the reasoned amendment that we will vote on shortly.

Mr BARBER (Northern Metropolitan) — Quite a few years ago I went on a holiday in Tasmania. We were driving around the island, and one night we were in Hobart and working out what we were going to do the next day. We were going to go to either Freycinet or Port Arthur. The next morning we drove right past the gate of Port Arthur, as we had decided not to go there. Within a couple of hours of that the shootings started.

I do not compare myself in any way to the victims of Port Arthur. But I know that that day I learned something very important about human nature — that is, that there are people out there who at any time can just decide that the rules do not apply to them any longer and that they have a reason, and they are not particularly worried about whether they live or die. That can happen at any time. And we should not sit here and kid ourselves that it cannot happen to us or to someone we know at any time, and that something about human nature has suddenly changed because for a period of years we have not had an event like that in Australia.

It changed my appreciation of life as we live it on a daily basis, in that it might be taken away from us at any time. It could happen right now. For that reason I do not really consider owning firearms to be a right. The basic theory of the law is that people have a right to own these guns except when they have breached certain conditions or requirements. I just do not think that is satisfactory. We cannot guarantee people's safety under that kind of regime.

Having sat here for a year, many times I have heard a group of politicians in here bemoaning the state of the world, saying how terrible circumstances are, or that human nature is this, or, 'Isn't it bad that racism exists?', or how bad it is that something else exists. But we are meant to be the ones who will step up to the problems and do something about them. We are the ones elected to do something about them. We are the ones who, in putting ourselves up for election, took responsibility for doing something about them.

My personal view is that the ownership of guns should be strictly limited to persons who are engaged in sporting activities or who are in certain professional categories, and that if persons are to hunt on public land with firearms they should do it under a strict regime. I do not think a hobby farmer should simply be able to argue, 'Look, I need it for my farm'.

It is pretty clear that the state of gun control here in Victoria is a done deal. During the last state election campaign I observed that within a few short days of the Labor government releasing its policy document *Hunting and 4-Wheel Driving Opportunities in Victoria*, the Country Alliance announced where its preferences were going — and they were going to the Labor Party ahead of certain other parties in certain electorates, which just turned out to be those electorates where the Labor Party needed them the most. It was also done in conjunction with the announcement that some millions of dollars would be sent over to shooting organisations.

In its *Hunting and 4-Wheel Driving Opportunities in Victoria* policy Labor made a number of claims. One of them was under the heading 'The contrast with the Liberal opposition'. It wanted to remind shooters:

> When it was last in government, the Liberal Party:
>
> > introduced tough restrictions for licensed firearms members without consultation.

What does that refer to? It refers to the changes introduced by the Howard and Kennett governments after the Port Arthur massacre. When it released this policy document Labor was just making sure that none of those shooters had forgotten that it was two Liberal governments that introduced those changes. In doing that Labor was pandering to all those nuts out there — the ones who say that what happened at Port Arthur was committed by the government in conjunction with the United Nations with the aim of taking all our guns away. It is really quite a cowardly little line to be slipping into a policy document, when, if pushed on it, of course the government would have to have stood up and said it supported the actions of Mr Howard at that time, as did I.

The Country Alliance is nothing but a Trojan horse for the former Shooters Party. Look at some of its members and even candidates. Of course it is not particularly up-front about it. Of course it does not put firearms up there near the top of its website and in its policies and so forth. And it does not need to, because at the moment the state of gun control is that shooters and firearms enthusiasts are completely confident that there will be no significant changes that will affect them.

There is a firearms consultative committee — made up largely of firearms enthusiasts, and a couple of criminologists and legal types are in there as well. This is the group that has close access to the government, and the secretariat is funded when these sorts of changes are being looked at. I am sure that if we were writing policy and we made up a group of slightly different members — let us say members of the Australian Medical Association or victims of firearm violence — we would get a very different set of recommendations. I am not saying that those groups do not get their own say; I am saying that the government has created for itself a consultative committee that is stuck onto the side of the government for the purposes of making sure it has the box seat whenever these sorts of issues come up for discussion.

I suppose I should work my way through this tissue of a bill that offers no protection and no confidence to the ordinary person that firearms are not in the hands of the wrong people. The act as it currently stands contains

some worthy measures, but I am disappointed that the bill we are seeing here today is not leapfrogging us to the situation that we need to be in. We will be supporting the bill because there are some small crumbs in it that improve the regulatory regime and do not lessen the administrative control that exists.

One of our particular concerns of course is the theft of firearms. The Australian Institute of Criminology is now producing regular reports on thefts. Its most recent report is for the 2004–05 year, and almost 1500 firearms were stolen in that year. That is less than 0.1 per cent of all registered firearms; nevertheless 1500 is exactly and completely 1500 too many, and nothing in this bill attempts to reduce that figure. By the way, the majority of firearms are stolen from private residences. In my preferred world people would not be storing hundreds and thousands of weapons at private residences; they would, as I said earlier, be using them in their professional capacity or in a recreational capacity where they could be more properly controlled. Certainly there is a downward trend in the number of thefts. Unfortunately, though, many of the weapons stolen were handguns, and 60 per cent of those were stolen from private residences.

There are a lot of weapons out there, because we still have duck hunting in Victoria. Many other states have banned duck hunting. The fact that Victoria has not banned it is not because the Victorian government has some superior insight and has realised that it is a great thing where every other state has not; it is quite simply just dragging its heels. In 2005 ALP members wrote a report entitled *Report on Banning Recreational Shooting of Native Waterbirds*, which pointed out that the figures for people who were participating in this activity were small and declining.

I would argue that there is an urgent need for the government to rectify its current consultative mechanism so that more balanced representative and sustainable advice on firearms issues is presented to the minister for policy formulation. There are concerns for us in this bill about the structure under which people can go for handgun instruction. A person is allowed to go for 10 instruction sessions without having to obtain a licence, and there is obviously the ability for people to go shopping from place to place.

I noticed on the front page of one of the newspapers today that the Office of Police Integrity is investigating an incident involving Collingwood football players going up to the police academy to blast away on the training range or whatever the facility is, perhaps in an effort to feel like Dirty Harry for a while before going back to their normal activity of playing football. These players belong to an organisation and a league that I thought was trying to make some inroads into addressing a culture of violence, including male sexual violence. I am not sure why they needed to be involved in this activity. I do not know how it enhanced their football playing abilities or for that matter their status in society, but it does point out the fundamental problem we have here — that is, that these sorts of policies are being written by gun enthusiasts.

This does not take into account that other group of gun enthusiasts out there — people who are enthusiastic about weapons because of the sense of power it gives them. They are the ones we really have to worry about. They are the ones who feel a little bit more powerful and a little bit more in control knowing they have a gun at hand. Martin Bryant was one of those. We need to start writing a policy that targets those types of individuals. We think that stricter regulatory regime is required in relation to that instruction issue.

Clause 35 of the bill allows shooters the right to possess and carry firearms when crossing Crown land under licence without the permission of the licence-holder in order to access a game reserve. This is obviously one of the clauses that has been commented on and was the subject of a commitment by the Labor Party in its policy during the state election. The Greens do not think this is a particularly effective approach to be taking. There are some hundreds of game reserves across Victoria where shooting is allowed. It may be that some of them are surrounded or abutted by Crown land which is also under licence.

The responsibility here is really on the Department of Sustainability and Environment, which permits, allows, regulates and organises shooting activities out on those wetlands and other places, to make sure that access and general safety in those areas is under control. DSE is licensing and regulating that activity, which should be happening in a highly controlled fashion. The points of access to those sites are strictly controlled, and everybody who is a shooter understands them and everybody who is not a shooter understands them.

This just points out that the government is aware that people are out there moving around on public land with guns in many places at any given time. If you are not part of that you probably would not know it was happening until you heard gunshots, yet the government is not prepared to take on that responsibility; it is just prepared to reduce the level of regulation that might be required. We think there are better remedies than this one.

There are also measures in the bill that change slightly the definition of who is a prohibited person. One section of the act that I strongly support is the issue in relation to intervention orders. What I was trying to point out earlier is that we do not necessarily know what the propensities are of someone who walks in off the street and puts in an application. It is very clear through this mechanism that someone who has successfully had an intervention order taken out against them in relation to family violence issues should be a prohibited person.

I am surprised by some of the sections of the existing act where people who commit offences against the act have a fairly short-term and limited prohibition. Overall this scheme is fairly weak in that it allows people who want to have a gun to have one, unless it has already been proven that their homicidal tendencies are so great that they have fallen foul of the law already.

This brings me to the amendment of The Nationals in relation to automatic renewal of licences. Currently you have to fill in a form every five years. I say, 'So what?'. It is not at all analogous to a drivers licence or any other sort of licence. I think every five years you should have to go in there, and I think the police should crawl up your backside with a microscope before you get your licence extended for another five years. If necessary they should make very intrusive inquiries into your personal situation and all sorts of changes to personal circumstances. We will not be supporting that amendment.

The two major weaknesses in our gun laws are the abysmally low level of training that is required before you are granted a shooters licence and then the organisational structure under which those guns can be legally acquired. Under the Greens scheme the number of people who would be eligible to use a gun and access one would be limited. If that were the case, then the sources under which firearms could be stored would be more limited and the people who they buy them from would be more limited.

A number of speakers both here and in the other place have raised the issue that the cost of the administration of this system would of course be reduced. The reason the system is very expensive to administer is because we recognise that guns are very dangerous, and yet we allow large numbers of people to have them, creating a very large administrative burden. There are also holes in the system, as I pointed out in relation to the issue of theft. The solution to that particular problem will come when guns are not so widespread.

In conclusion I would like to express my admiration for two people in particular. One is the Prime Minister, Mr Howard, who took action very quickly after the Port Arthur massacre — sorry that the shooters organisations did not get the level of consultation they thought they deserved at that point! — and of course the other is Bob Brown, and perhaps the Tasmanian Greens, who have an incredibly long history of pushing for gun control. It is on the basis of their legacy that the Victorian Greens continue to do the same.

Ms BROAD (Northern Victoria) — I rise to speak in support of the Firearms Amendment Bill 2007. There is no doubt in my mind that personal experience with firearms can be very powerful in shaping attitudes towards them. We have heard from Mr Barber in relation to one such experience. In my own case that experience ranges from, on the one hand, being brought up on a homestead in the outback where firearms were very much a necessary and practical part of everyday life, but one which demanded absolute respect. On the other hand, my experience also includes, 20 years ago, literally living across the road in Heidelberg Road not far from Hoddle Street when, amongst other things that happened that night, the police helicopter made a forced landing on the reserve across the road after it was shot at. Those experiences were very powerful and lead me to the conclusion that there is absolutely no doubt there is a need for the efficient, effective and practical regulation of firearms. That is what I believe these amendments to the Firearms Act 1996 deliver.

The amendments provide for a number of the objectives being met. They amend the Firearms Act 1996 by strengthening the regulation of firearms to improve their safe possession, carriage and use. They also fulfil the government's election commitment to ensure better access to game reserves for hunters. The amendments address technical issues identified by stakeholders since the Firearms Act was last amended in 1995. The amendments fulfil the government's election commitment to reduce the administrative burden on businesses and shooting clubs of complying with regulations. That reduction in red tape and streamlining is very welcome.

Can I indicate at this point that I welcome the support indicated by previous speakers, somewhat grudgingly on the part of Mr Barber, but nonetheless the indication of support for the bill is very welcome. I also wish to place on record the extensive consultation undertaken by officers of the Department of Justice over a long period with the Victorian Firearms Consultative Committee, the Victoria Police licensing service division, the Antique and Historical Arms Collectors Guild and the Australian Security Industry Association.

That consultation included the release of a discussion paper to enable broader public consultation. Over 50 submissions were received in response to the discussion paper, so when you take all that together it indicates there has been a significant engagement by stakeholders and members of the community in drawing up the amendments before the house today.

In particular I commend the chair of the Victorian Firearms Consultative Committee, Pete Steedman, and members of the consultative committee for the work they have undertaken. I think the indication from the Combined Firearms Council of Victoria that its members generally support the amendments contained in the bill indicate that the consultative committee very much deserves congratulation for the work it has undertaken. It is not just me saying that, but stakeholders, and that is a very good outcome.

In addressing some of the contents of the bill I wish to firstly deal with a matter raised by Mr Hall which is actually not contained in the bill before the house — the matter of automatic relicensing. As the government indicated in the lower house, automatic reissuing of firearm licences is something the government cannot support. The government believes it is against the spirit of the national firearms agreement, to which all states and territories signed in 1996. That agreement clearly limits the length of licences to five years.

As indicated by a number of speakers today and in the lower house, firearm licences are not the same as driver licences. There is no right to a firearm licence. Holding a firearm licence is a privilege, and it is something that needs to be carefully regulated. Applicants must have a genuine reason which must be affirmed each time the licence is reissued and, in addition, a separate licensing process allows police the opportunity to conduct appropriate background checks. However, there is nothing in the national firearms agreement that would prevent streamlining the administrative procedures around the licensing process.

I am advised by the firearms consultative committee that the licensing services division of Victoria Police is actively looking at ways to simplify and streamline the administrative processes for obtaining a licence. That is the reason the government cannot support Mr Hall's proposition on that matter. I note that the national firearms agreement was agreed to by all commonwealth state and territory ministers with responsibility in this area, and that certainly includes National Party colleagues of Mr Hall, so perhaps this is something that he may discuss with them.

I turn now to some of the amendments contained in the bill before the house. They include the provision for better access for hunters to state game reserves, implementing an election commitment by this government. This is a very practical solution to what has been a very long-running source of aggravation to hunters. It is a source of aggravation because there is a very practical problem involved with finding licence-holders over Crown land in many situations, so these amendments remove the source of aggravation. I know they are very welcome by licensed shooters who go hunting in state game reserves. Particularly in my electorate of Northern Victorian these amendments, which strive to achieve the appropriate balance between community safety and practicality for people who through choice or necessity use firearms, are very important.

There are a series of further amendments in the bill, and given the large number of them I am sure members will be relieved to hear that I do not intend to go through all of them, but there are some I wish to draw attention to. Some amendments I wish to draw attention to relate to intervention orders. The amendments provide that, where a person has had an intervention order taken out against them, the person subject to the intervention order will be able to challenge the prohibition and have their licence reinstated. This process, which is being provided for through the amendments, addresses the concerns of both firearm licence-holders and persons in favour of whom intervention orders are made, overwhelmingly women, while fulfilling the intention of the national firearms agreement. At all times until courts consider an application, a licence-holder's firearm will continue to be taken away by police and secured by licence with a dealer in order to ensure community safety.

These amendments will not affect the operations of the Crimes (Family Violence) Act 1987, which enable a court to revoke any licence permit or other authority to possess, carry or use firearms. It is important to note that the Crimes (Family Violence) Act provisions take precedence over the Firearms Act, as indeed they should. I believe these amendments are very welcome, because continuing to pursue the prevention of family violence in the community demands the support of as many members of the community as possible. Family violence is not something we are going to be able to prevent through police action authorised by legislation and through enforcement alone. It requires a change to community attitudes, and therefore engendering support from all members of the community for the prevention of family violence, including licensed shooters, is very important.

I recently had the privilege of presenting some awards for excellence in policing of family violence together with Acting Assistant Commissioner Peter Bull in the north-west Victoria police region at the Elmore field day. It was very encouraging to me and to everyone present to hear about the growing support and the successes that are being achieved in relation to the prevention of family violence. That is the reason I believe these amendments, which have been sought by licensed shooters, are significant in terms of building on that support in the wider community.

In addition to that matter, which I particularly wished to draw attention to, there are a whole series of significant amendments which go to the capacity of the Chief Commissioner of Police to make interim declarations to allow for sufficient time for regulations to be made to categorise firearms appropriately. That is a necessary amendment to take into account emerging developments in firearms technology which can move ahead of the capacity of the Parliament to legislate and regulate. The prohibitions in relation to increasing magazine capacity are also significant. There are provisions in relation to the disposal of handguns and ammunition, and provisions in relation to strengthening the law in relation to silencers and prescribed items. Of course, silencers are used in extremely limited circumstances, and permits are required for their use. The strengthening of the law around their use is very welcome. There are provisions in relation to interstate permits, which are also part of the amendments before the house.

I conclude my remarks by commending the bill to the house. I believe these updates to firearms regulations make them not only more practical but also make improvements for the safe possession, carriage and use of firearms. These are changes which will benefit all Victorians and all members of the community, including licensed shooters in Victoria.

Mr FINN (Western Metropolitan) — I rise today as someone who represents a region of Melbourne with a very high proportion of sporting shooters in particular. Shooting is a sport that is enjoyed by a good many people in the western suburbs of Melbourne, and I think it is extremely necessary that somebody represents their interests in this house on this particular issue.

The bill clarifies a number of areas with regard to firearms. But there is probably one area that needs clarification more than any other, and that is what role genuine and legitimate shooters have within our society. The point has to be made that just because somebody has a gun, it does not put them in a category of being subhuman. Just because somebody has a gun, it does not make them a potential mass murderer. Just because somebody has a gun, it does not put them in the category of being a pathological criminal. There are thousands — perhaps hundreds of thousands — of shooters in my part of Melbourne but also throughout Victoria and Australia who are good, law-abiding people who would not think for one moment about breaking any law and who have the utmost respect for the principles that enshrine the rule of law in this country.

However, we have heard and we have seen over the past decade, or a little bit more, a good number of them demonised — demonised in Canberra and demonised in various Parliaments around this country. These people are not Julian Knights; they are not Martin Bryants. As I said, these people are good, honest, law-abiding people. Many of them are from a working-class background who regard shooting as a legitimate sport. It is their sport.

I well remember back in 1996 when the first clamps came down on shooters after the tragedy in Tasmania. I was inundated, as indeed all members were at that time, with mail from the people that I speak of — these legitimate shooters — who were concerned about what was happening to them. I was reading these letters one day, and I came across one letter which has stayed with me ever since. The letter contained a very simple message. It said, 'Dear Mr Finn, how would you feel if the government banned the Richmond Football Club?'. There may have been a couple of times this year when I wished it had, but it really struck me that football is my sport and Richmond is my love, just as shooting is their sport and shooting is their love. For the government to step in and demonise these people purely because they are pursuing a recreation that they have a right to pursue is wrong; it is clearly wrong.

That is something we need to clarify in the minds of the community. These people who have guns, and who are licensed holders — legal holders — of firearms, are good people. They pose no threat to themselves, just as they pose no threat to anybody else. It annoys me beyond words when I hear those emotional extremists going around branding firearm owners as some sort of devils in disguise. That really needs to be rectified and put right in the minds of those in the community who may have been subjected to that point of view, and indeed may be inclined to believe it. It is not true. These people have a right to have their guns; they have a right to pursue their hobby; they have a right to pursue their recreation. They are law-abiding people. They respect the law just as much as anybody who does not own a gun. I will say this again and again if I have to. Just because somebody has a gun, it does not make that

individual somewhat less a member of society. That is far from the case.

I note in the legislation that with regard to collectors a number of issues have been resolved, although unfortunately there are still a number of issues that have not been resolved. But there is a degree of clarification. I have had a number of dealings with gun dealers and with dealers in antique guns and so forth over a number of years now, and they have expressed enormous concern about the damage that has occurred to their businesses. Professionals and amateurs in the area have felt encroached upon over the past decade or so. I can understand their frustration, and I can certainly understand their annoyance because they are in the same category as the sporting shooters. They pose no threat to anyone; they have never posed a threat to anyone; and they will pose no threat to anyone in the future. I am hopeful that this legislation we are debating today will go some way toward easing their minds, although as I say, and as I think Mr Hall said earlier in this debate, there is still a considerable way to go.

I noticed with some interest that clause 49 of the bill refers to the holder of a licence to own a paintball marker. This is an area of longstanding interest to me. Back some 10 years ago I was very much involved in defending the paintball industry. I have to say it is not something that I have ever played.

Mr Thornley — Try laser strike.

Mr FINN — If Mr Thornley tells me laser strike is better, that may be something we can consider one day. I may well take him up on it. The bottom line is that paintball operators were and are small businesspeople who deserve a fair go. Again, they pose no threat to anyone. They are just going about making a dollar, feeding their families, paying their taxes and doing the sorts of things that everybody else in the community does. For them to have run against them the sort of vindictive campaign that took place over a number of years was just disgraceful. It is a very good thing indeed that those who wish to play paintball no longer need a shooters licence. It was quite ludicrous that they ever needed one to start with. Of course those who own paintball markers still have to have a shooters licence, and that mystifies me, because we are not actually talking about guns. These are paintball markers; they are not guns. It mystifies me why they would even be included in the Firearms Act to begin with.

There seems to be an overexaggeration of some sort of threat that people have in their minds that paintball markers could cause some sort of massacre. That is a clearly ludicrous and absolutely ridiculous proposition. I would hope that in the not-too-distant future we will see the paintball industry removed from the Firearms Act altogether. It makes sense to me that as a community and as a Parliament we would allow those who are involved in the paintball industry to get on with their lives and operate their businesses freely, as they see fit, in a legitimate and legal manner.

I move now to the reasoned amendment proposed by Mr Hall. I have to say to the house that I believe it has a great deal of merit. If we were debating this in the national Parliament, not only would I be voting for it but I would be actively lobbying for it. This amendment would cut out a lot of paperwork and a lot of bureaucracy — and anything that cuts out bureaucracy has to be a good thing in my view. We have a situation where every five years, I think it is, people have to go through the paperwork all over again, employing so many for hours, weeks and months on something that is so unnecessary. On this occasion I will not support the amendment, because I think it is not appropriate for Victoria to go it alone, but I would certainly hope that Prime Minister Howard, upon his re-election later this year, will take this on board. Indeed if it goes the other way and Kevin .07 is elected as Prime Minister, then one would hope that even he will say, 'Me too' — he has said 'Me too' to everything else — and jump on board to make this matter a far easier proposition for people who are, as I say, legitimate operators.

This issue has raised and continues to raise passions. There are no two ways about that. Having listened to Mr Barber's comments a short time ago, I am sure once they are read by certain people they too will raise passions. Sometimes it is clear that there is a need for a major injection of good, old-fashioned common sense into a debate. Those who have a legitimate reason for owning firearms — we are talking about sporting shooters, as I have mentioned, farmers, security guards, collectors and probably a number of other categories of people as well — should be allowed to own those firearms without vilification and without harassment.

I am not talking about going down the path of the United States of America, where there is a gun in every glove box. I do not know anybody in Australia who wants that; I certainly do not, and nobody involved in sporting shooters or collectors organisations that I have spoken to wants the situation where everybody has an automatic right to have a gun or a rocket launcher and that sort of thing, which seems to be the norm in the United States. That has always been to me a bit of a mystery. I understand it is an historical thing over there, and I am sure there would be a good number of people in the United States who, if they had the chance, would turn it around, but at this point it is probably something

they cannot change anyway. I am not suggesting for a moment that we go down that path, but what I am saying is that those who are legitimate shooters should be respected as such, should not be treated like dirt beneath our feet and should be given the respect that the rest of us can expect in getting a fair go. It is as simple as that — the good, old-fashioned Aussie fair go.

We should really be concentrating our efforts — I hope the Chief Commissioner of Police reads this and takes it on board; I am sure she is an avid reader of *Hansard* and certainly of my contributions in this house — on the need to execute with vigour the battle against the importation, sale and distribution of illegal firearms, because that is our biggest challenge. It is not the bloke in the suburbs with a gun who likes to pop a bunny on the weekends; it is the sale, importation and distribution of illegal firearms through gangs, drug syndicates and a whole range of major criminal groups. That is where we as a society should be concentrating our efforts.

Let us leave alone the little bloke who wants to pursue his recreation. He is not doing anything wrong. He is not breaking the law. Let him do what he feels it is necessary to do as a form of recreation. Let us put our efforts into ensuring that these illegal weapons, which I am told are everywhere, are cracked down on in a huge way. Quite frankly I do not think that police command is putting anywhere near the sort of energy into this it should.

I support the Firearms Amendment Bill 2007. I hope it will ease some of the burden on the people I have spoken of, and I trust that my few comments here have clarified some of the issues I feel most strongly about.

Mr THORNLEY (Southern Metropolitan) — I also rise to speak in favour of the bill. It is rare in my case to be able to say this, but there was not much that Mr Finn said that I disagreed with. He may be losing his touch.

Mr Finn — I'll sue!

Mr THORNLEY — I retract that before a point of order is taken. That was obviously derogatory. As has been laid out by previous speakers, so I will not go into much detail on the specifics of it, this makes necessary changes to ensure, for all the legitimate reasons that Mr Finn and many others have outlined, that where firearms exist in our community the appropriate protections are in place. We obviously support the legitimate use of firearms, whether in a professional or recreational capacity, but we all understand that firearms are exceptionally dangerous by definition and that therefore the need to closely guard how they are used and accessed is something that we must be constantly vigilant about.

These matters also touch on the challenges posed by the small number of illegitimate firearms users who exist in any community, particularly within its criminal elements. It is because of the existence of that small number of people of a criminal persuasion, and indeed the small number of people who may have mental health and other problems and who may get access to firearms and may use them in very damaging ways, that we have to have a range of regulations and processes in place. We are trying to minimise and prevent access to firearms by those people. The unfortunate reality is that those regulations necessarily touch on legitimate users, because you cannot always work out who that small minority of problem people are and we have to try as best we can to create processes that protect us.

This bill furthers those processes in relation to silencers, for example. A silencer is a piece of equipment that has relatively few legitimate uses, and quite a lot of illegitimate uses. We are tightening those controls, and I think everybody is supportive of that. The changing magazine capacity and classification issues are about trying to make sure that the Chief Commissioner of Police has the capacity to make declarations about weapons that could be significantly dangerous and that get missed in a less comprehensive process, and ensure that those dangerous weapons are not in the hands of people. The collectors issues are all about legitimate uses of firearms.

I want to take up some of the issues raised by Mr Finn and Mr Barber in this debate about the broader discussion of guns in our society. It strikes me that this bill is a good example of the role of government in providing leadership to our community in a measured and balanced way rather than getting caught up in the extremism on either side of a contentious debate. That is what this government does repeatedly. Of all issues firearms is one where I think the community would want and would expect a government to avoid extremism of any kind and to adopt a sensible balancing of sensible interests without getting caught up in those conflicts. I do not think it is the role of us here to inflame the conflicts between the extremes on either side of this debate. I think some of the contributions in this house have tried to inflame those extremes, and that is the exact opposite of what we should be trying to do. We should be trying to reinforce the need for sensible, balanced leadership on an issue like this. We should enable the extremes to represent themselves and be seen for what they are.

I agree with Mr Finn that there is no reason sporting shooters should be in any way vilified. I am opposed to the vilification of any group of people. I wish Mr Finn and his colleagues were more universal in their desire not to see groups of people vilified for no other reason than that they are a group of people who share some common characteristic. I am a supporter of the right of sporting shooters to pursue their sport, to enjoy it and to share it with their families and friends. I have friends who are sporting shooters and I know they enjoy what they do. It is not something I have particularly engaged in, but that is entirely appropriate. I know that at our farm and all the other farms in our district and elsewhere there is a necessary use of firearms, as there is a necessary use of firearms in a range of other professions, such as security. There is no need for anybody to be out vilifying anybody.

Where this debate gets off course, and it has certainly got way off course in the USA, is in regard to the difference between the legitimate rights of legitimate users of firearms and the tiny minority who I would put in the category of active vigilantes and who believe there is a legitimate use for firearms in citizen law enforcement. That is the beginning of the type of cycle of violence we have been discussing for the last couple of days, and it never ends well. I am very happy to say there is almost no trace of that sort of vigilante tradition in this country. My hope is that the leadership on both sides of this house and other houses of Parliament will continue to act with the sort of moderation and common sense that allows this debate to continue down the centre of the road rather than inflaming passions on either side.

I have to say that I think the most irresponsible contribution to this debate today has not come from Mr Finn. I leave that on the record: Mr Finn, unusually in his case, did not make the most irresponsible contribution, as he is often known to do. I think Mr Barber wins that title today. In an effort to solidify his support among a group of people who might understandably be concerned about the dangers of firearms Mr Barber definitely went into vilification mode, in my view, in his discussion about the way he would like to see not just firearms but the owners of firearms regulated and dealt with. I do not see what possible social good comes from such extremism on his part. He does nothing but give legitimacy to the extremists and the vigilantes on the other side of the debate. He inflames passions in an issue where common sense above all else is required.

There is extremism on the other side of the debate from Mr Barber, but thankfully most of it is outside this country. However, I cannot leave this discussion without a small quote from *Time* magazine. Joe Klein was writing about the American presidential process and the somewhat hopeless situation of the US Republicans. This is the opening line of a recent article:

> By the time that libertarian congressman Ron Paul told a cheering crowd at the Iowa Republican straw poll that the 9/11 terrorist attacks might have been prevented if the passengers on the planes had been packing heat, I was beginning to wonder if the event — a goofy affair under the best of circumstances — had gone fatally exotic.

I think that is a pretty good example of the vigilante tradition in the US that, thankfully, is not represented in this country. It should not be encouraged by the sort of alternative extremism that Mr Barber put forward in the house today. The opposite of extremism, as I said in my inaugural address, is not a competing extremism; the opposite of extremism is studied and sensible moderation. If Mr Barber is concerned about the tiny proportion of people who may wish to see illegitimate use of firearms or who may wish to prevent the necessary regulation of firearms — if he wants to deal with those people — he does not advance his cause by developing a competing extremism on the other side. He will advance his cause with this sort of legislation and the sort of sensible support it has received, by and large on both sides of the house, for a middle-of-the-road, bipartisan, common-sense form of leadership that allows the vast majority of legitimate firearms users to pursue their aspirations while providing all of us with necessary protection, as much as possible, from those firearms being used by the wrong people for the wrong purposes. I hope the debate continues down that path and that we spare ourselves efforts from either side to bring competing extremisms into this debate. I commend the bill to the house.

Mr KOCH (Western Victoria) — I am pleased to rise and speak on the Firearms Amendment Bill 2007. In doing so I again indicate that this side of the house will be supportive of the bill before it. I have concerns with a couple of areas but I will raise those as we go through the bill. The principal purposes of the bill relate to reviewing gun ownership and licensing procedures, especially in the security industry, which I think also has some influence in this bill. We are further looking at defining the storage of firearms and at what alarm systems may and may not be used for the ongoing protection of the general community. We are going to incorporate the traversing of Crown land licences by recreational shooters. We are certainly going to improve the responsibility of firearm dealers, and of course improve the investigation, seizure and forfeiture of firearms where necessary.

I think the amendments are a further refining of the legislation introduced after the tragedy at Port Arthur in 1996. Shortly before that the Hoddle Street tragedy took place. Shortly after Port Arthur the carnage at Monash University took place, in that case with shortarm firearms not longarm firearms, as was the case with the other two.

In 1996 there was total community support for the introduction of the national firearms agreement, although I must say some people in rural areas of Australia were concerned that the processes for the registration and ownership of firearms not be too limiting. I can assure members, as someone who was brought up in an environment where firearms were used not only for recreational pursuits but as part of earning our livelihood, I have always been very concerned that we should retain that opportunity. My children were raised in a similar vein of understanding responsible firearm use, and it is terribly important that we keep this in perspective. I know that at the Victorian state election in 1996, for instance, there was through the ballot box in regional areas especially a movement of the vote away from the conservative parties, which related directly to the ownership and use of firearms.

As I said, I was brought up with firearms. We have respected, used, stored, cleaned and maintained them in a manner that has meant they will be in good operating condition. Quite obviously from a farming point of view we used them to contain rabbits and vermin such as foxes around our breeding programs. With cockatoos encroaching on our freshly sown crops we needed firearm scare guns et cetera to make sure we were rewarded with a crop at the end of the day. I guess as children, and the same applied with my children, one of the most rewarding times was keeping sparrows, parrots and what have you out of the family orchard so we would yield a crop there too.

Mr Thornley — Get alpacas to sort the foxes; they're wonderful!

Mr KOCH — I take up Mr Thornley's interjection. Alpacas have made a fantastic contribution in the last 10 years, but the situations I have described preceded that by a decade or two. Alpacas make a great contribution, and many people have employed their services with much success to control vermin.

From a recreational point of view we always enjoyed clay bird shooting and the open duck season, when many of us took up those opportunities and enjoyed them tremendously. We respect the situation today, where changes in breeding seasons and cycles due to climatic conditions have been very restrictive. We certainly respect what wetlands, if any, are open on an annual basis for those purposes. I have to talk with increased annoyance about the do-gooders who are doing their best to take this recreational pursuit away from many in regional Victoria and from many people from metropolitan Victoria who for recreational purposes come out and join us on these great occasions.

I also have to mention our sporting shooters. I think they have a very legitimate use, and I agree with what has been said in the house today. I believe that they enjoy this recreational activity, and I for one would hate to see that opportunity removed from those people. I do not think there is any doubt that further refining this legislation is important. We have a duty to our community in relation to firearms. The community has demanded that firearms be available on a very restricted basis, and I for one certainly support that.

I openly say that technically our firearm licensing and registration falls principally within three categories — A, B and C for recreational purposes. The categories D and E are principally for restricted and security activities. There is a recognition now that if looked at from a firepower point of view, some category A, B and C firearms might find themselves in the D and E categories. At this stage some guns will come under those latter categories as a result of declarations that may be made in relation to category A, B and C firearms. We know that those declarations will probably be in place for in the order of 12 months and at the end of that period the guns will be reclassified as necessary.

Magazine capacity is another area that is covered in the bill — that is, the altering of the size of magazines away from the manufacturers standard. Any altering of magazines will now require the consent of the Chief Commissioner of Police to become legal. That is responsible. We have seen slight changes in the definition of collector licences for both longarm and shortarm weapons, but that is principally for administration purposes. It is recognised that the manufacturing time lines or time frames for firearms that we are now familiar with will remain in place.

Storage of firearms and more effective premises alarms are now recognised as terribly important and will now fall within a national standard. We will know right across the country what is expected, and the national standards certainly meet any policy position we have put together in Victoria. From my own point of view, I store my firearms in my home legitimately. My ammunition, obviously, is kept in a shed outside the house. We certainly respect the legislation that is currently in place, and I will continue to do so.

I mentioned earlier that I had concern with a couple of areas of the bill. One is in relation to clause 35, which now gives the right for recreational shooters to cross Crown land reserves under lease to primary producers to get to game reserves. Not that this has been a serious problem to date — it has only been introduced on the back of the 2006 election platform — but I remind people who exercise this right to move across leased Crown lands without permission to respect the lessees of these lands. It would be very easy for people to leave gates ajar and livestock could move off the leased areas into game reserves. That would take another management effort by those who are trying to go about their livelihood in a correct and proper manner. I give that caution. Some people have commented to me already about breeding stock that are on some of these leased Crown lands. I ask those who exercise that right of without-permission entry to observe that and not make it more difficult for those who are leasing the land.

It is important that licence renewals are made easier wherever possible. Getting a new licence for your firearms, although not difficult, can be quite time consuming. Having renewed my licence in just the last three weeks, I can advise the house that we have to supply more evidence for the use of firearms than for anything else that is registered in our names. I think somewhere that can be tidied up.

The Nationals have moved amendments in the lower house and also here today. In principle some of these should be looked at, because some recognition of making it easier to renew those licences — more on a national basis than on a state basis — is important. The national firearms agreement of 1996 only ever made provision for a five-year licence. Motor vehicle licences can now be for up to 10 years. There is a difference with our boating licences. Where industry licences are available, they are open-ended for the likes of forklifts, front-end loaders and so on. A reasonable argument exists for The Nationals amendment to be given consideration at a later date. I believe this legislation should always be under review and modified wherever it can better the opportunity for firearm users and licence-holders.

I agree with Ms Broad that these licences are a privilege and not a right. I do not think that anyone across our community should fail to respect these things. Where they do disrespect them, I believe very strongly that the opportunity should be taken away from them.

I certainly could not support Mr Barber's comments this morning. Mr Barber's principal concern is that unwittingly he might shoot himself in the foot with one of these instruments, not that I would wish that on anyone. The line he took this morning — leading the house to believe that there may be no legitimate use for firearms, be it in metropolitan or in regional Victoria — worries me. I certainly do not agree with his thoughts there. I believe there is a legitimate use. The farming community will continue to require firearms. Sporting shooters should be given the opportunity to enjoy their recreational activities. All round these amendments certainly reflect the view that that use should go on, and these refinements continue to add certainty to our communities at large that firearms are and should be restricted and that they are licensed in the proper manner and are in the hands of those who are fit to use them. I commend the bill to the house.

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

Business interrupted pursuant to standing orders.

QUESTIONS WITHOUT NOTICE

Western Health: investments

Mr P. DAVIS (Eastern Victoria) — I direct a question without notice to the Treasurer. As noted in the *Age* today, the head of Western Health stated that the funds lost in the subprime mortgage market were 'surplus taxpayer funds'. Therefore I ask the Treasurer to inform the house what exactly are surplus taxpayer funds and, if there was a so-called surplus, why those funds were not put into treating patients rather than into high-risk financial products?

Mr LENDERS (Treasurer) — I thank Mr Davis for his question and his renewed interest in matters financial in the state. I repeat the theme I used in the response to his question yesterday: that there is a fundamental starting point in this debate that we need to get absolutely clear, if we are to have an informed debate on this.

Firstly, we have in this state a series of semi-autonomous or autonomous bodies that have actually been tasked by Parliament or the executive government to govern. To use an illustration of where that debate is in Australia today, the Prime Minister is as we speak calling for more such empowering of local health boards and hospitals boards — a greater devolution than we have at the moment. The first part is a structural question, as to what is a good form of governance for health bodies or many other bodies in government, whether local government or other authorities are actually given powers to operate under certain provisions of acts.

So that is the issue that we need to be clear on firstly: what framework we operate in assuming there is bipartisan agreement, or quinpartisan agreement in this house, to use the correct term, that it is a good thing to delegate — that is, whether it be to municipal governments, that we do not sack them all and replace them with commissioners; whether it be to hospital boards, that it is a good thing to actually have hospital boards and that we do not sack them all; or whether it be to communities and other bodies, that it is a good thing to devolve governance to them.

Assuming that that is a good form of governance and that that assumption has quinpartisan support, then it goes to the next thing: what level of governance do you put over them to be appropriate? We certainly have in Victoria bodies like Western Health, which are subject to a range of governance models. One is the prudential requirements they are meant to follow. There are also requirements under the Financial Management Act that they are meant to follow; sometimes, depending on the body, there are requirements under the trusteeship act that they are meant to follow; and sometimes there are requirements under the Corporations Law, which is commonwealth legislation, that they are meant to follow. That is the framework, and within that you actually empower bodies to do it and hold them accountable.

The second part of Mr Davis's question was: what is surplus taxpayers money and could it be spent better on treatments? As I said to the house yesterday, under this Labor government we are treating 300 000 more patients a year than were being treated in this state when we came into government — 300 000 more patients a year. We have invested more in health than any other government in 150 years of the history of Victoria as a state or colony. What we are doing is targeting health where it matters. We are forever seeking to get a better outcome by targeting resources and putting in place treatment, whether it be moving health services out to the community or finding better ways of doing it, despite a commonwealth government that has moved from an arrangement of 50 per cent state money and 50 per cent commonwealth money for health funding to 59 per cent state and 41 per cent commonwealth, because that government will not put money into services where they are required.

What I am confident our health authorities will do is use their money prudently and wisely to deal with hospital needs. If Philip Davis thinks that a health body should be not managing its own resources well, not dealing with the flows in health needs and budgeting its own operations and needs well, then he should say that he wants a centralised command economy, a Stalinist-style regime where everything is controlled from the centre. If he wants Minister Andrews to run every hospital, down to the last detail of a patient admission, he should say so.

I do not accept Mr Davis's premise that there is lazy money. What I say to him is: we empower our hospitals. We give the boards authority to administer budgets and then we hold them accountable for how they do those budgets. Whether it be on patient admissions, on financial management, on capital assessment management or on any of those other ranges, we hold them accountable. That is how good government operates. I might say that if hospitals do not meet that accountability, there are various ways they are held to account, whether it be by questions in this Parliament, whether it be by the Auditor-General, whether it be by the Secretary of the Department of Human Services, whether it be by the Minister for Health or whether it be by their own audit committees or risk committees that are all put in place to deal with this.

Supplementary question

Mr P. DAVIS (Eastern Victoria) — With respect to the Treasurer's answer and his particular reference to the Auditor-General, I ask: will the Treasurer request the Auditor-General for an immediate investigation of the extent of dubious investment practices of all public sector entities in relation to the subprime crisis?

Mr LENDERS (Treasurer) — It is ironic that Mr Davis is wearing his red tape tie once again. We have governance procedures in this state where the appropriate ministers and the appropriate authorities administer departments and are held accountable for departments. I will always be interested in good governance in this state. I will always be interested in engaging with the Auditor-General on issues in this state, as he thinks appropriate — and he can do things by his own motion. I will always respect the Auditor-General as an empowered independent public figure, whom the Bracks Labor government, I might add, gave powers to, legislated powers for. It put his powers into the constitution and gave him independence, so that the only body he is accountable to is the Public Accounts and Estimates Committee of this Parliament, not the executive government. That was a remarkable change in this state. I am confident that we have good governance in place, but if it can be improved the appropriate minister will recommend the improvement and we will deal with it speedily.

Wind energy: renewable targets

Mr VINEY (Eastern Victoria) — My question is to the Minister for Planning. Recent reports indicate Victoria is well on the way to meeting the Victorian renewable energy targets which state that 10 per cent of all electricity consumed by 2016 will come from renewable energy sources. Can the minister inform the house as to how wind energy facilities are contributing to achieving this target?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Viney's particular interest in this area, because I know that it is an area that not only interests Mr Viney but should interest many members of this chamber.

As members on this side of the chamber certainly well know — and we hope that those on the other side of the chamber would know — the Brumby government is committed to making sure that renewable energy is a key component of managing growth and the future of this state. As well as that, we are not only enthusiastic in encouraging that development but we are meeting the Victorian renewable energy target. We also look forward to meeting the national 2020 climate change target.

Members of the chamber would well appreciate that I am the minister responsible for approving wind energy facilities that generate over 30 megawatts of power. As part of that I can also report to the house that we have a comprehensive, consultative and transparent decision-making framework that delivers clarity, consistency and confidence in achieving sustainable outcomes and balanced decision making in regard to wind energy development.

I will inform the house of a few details. I can inform the house that there are now five operating wind farms in Victoria with an overall capacity of 134 megawatts and that an additional seven wind farms with a combined capacity of 1224 megawatts have been approved.

Mr Hall interjected.

Hon. J. M. MADDEN — Mr Hall, you can read the detail of that if you want, because I have separated the two of them.

Mr Hall — Where will I read it?

Hon. J. M. MADDEN — In *Hansard*. I have just given you the answer, but if you did not hear it because you were yelling out, you can read it in *Hansard*.

One of the critical elements of this is that while the Brumby state government is getting on with the job, the same cannot be said of the federal government, because it is divided on this issue. It does make our job somewhat more difficult in trying to facilitate this when on the one hand we have the Prime Minister, who says that his government is committed to new clean energy targets — he is born again in this area; a born-again environmentalist — yet on the other hand one of his own ministers, Fran Bailey, insists that wind power is unsuitable for Australia. It makes our job particularly difficult when a federal minister is contradicting the Prime Minister and what she is saying is in direct contrast to what we are trying to achieve.

Mr Atkinson — On a point of order, President, I do not believe that the federal government's activities are part of the jurisdiction of the minister. I think he has been questioned previously on the relevance of his answers and on keeping to responsiveness to the question. I think in this case he is straying again.

The PRESIDENT — Order! Mr Atkinson is correct. It is inappropriate to criticise the opposition in the asking of a question, or the federal government in the answering of a question.

Hon. J. M. MADDEN — I take up Mr Atkinson's point and say that the environment is not our issue alone; it is also the federal government's issue, and we have to work cooperatively. We do that. There is a federal environmental effects act. Members of this chamber would also appreciate that when I, as the planning authority, make decisions I often have to refer those to the federal minister for that minister to make qualifications in respect of any of those matters. It makes planning decisions in relation to this area particularly difficult, because what we have is a federal policy which is in line now with the state policy. We led in this area and the federal government has followed, but unfortunately that is not reflected through implementation or through the words that are coming from federal ministers.

We are serious about providing an efficient, secure energy system, a system is that is reliable and safe, affordable energy to consumers and environmentally sustainable energy supplies that are less greenhouse intensive. This is part of what we are committed to; it is part of where we have shown leadership. As well as that we have a comprehensive, consultative and transparent decision-making process. As a result of that we are making Victoria a better place to live, work and raise a family — but I cannot say the same of the federal government.

Water: Living Murray program

Mr BARBER (Northern Metropolitan) — My question is to the Minister for Environment and Climate Change. In relation to the Living Murray program can he detail for us any environmental water that is being made available to important wetlands and other natural features under his jurisdiction in the 2006–07 year?

Mr JENNINGS (Minister for Environment and Climate Change) — I hope the member means 2007–08, because I have been minister only during the 2007–08 period. I would not have been surprised to receive such a question but perhaps from a different vantage point than what I would anticipate would be Mr Barber's response to the issue that I am about to refer to.

Eleven gigalitres of environmental flows have been allocated for environmental protection, or for biodiversity values, including the wetlands and the flora and fauna of the region. An announcement has been made within the last week relating to a small element of that potential 11 gigalitres we have with which to try to do our best to ensure the survival of an endangered fish species within Victoria. That fish species is the Murray hardyhead. Our best estimates are that there are 7000 live individual fish within Australia. There are only six locations in the world where we believe the population of the Murray hardyhead continue to exist to this day.

After lengthy consideration about the minimal environmental flows that may be put to this purpose, the Victorian government within the last week has indicated that up to a cumulative total of 1.8 gigalitres may be put to the purpose of trying to ensure that this fish species survives. We are very confident that the representative samples of this fish within South Australia will not survive this summer. We have examined the best ways in which we can use this precious water for the best purpose to try to make the species survive.

We have announced that up to 0.6 of a gigalitre will be allocated to the Woorinen North Lake, which is downstream of Swan Hill, and indicated that a similar amount may be made available to Round Lake, which is also downstream of Swan Hill, for the purpose of providing sufficient water for the species to survive. The allocation will not be made at Round Lake unless we validate the fact that the species continues to exist in that lake. That is how precarious the situation is. We would be prepared to similarly allocate that volume, 0.6 gigalitres, to Cardross Lake, which is downstream from Mildura. We are currently undertaking some levee work to try to limit the volume of water that will be required to keep the species alive in that location.

The water will not be allocated until we have confidence that we will use this precious commodity to its best effect to ensure the species survives. We will be undertaking extensive work to try to ensure that within the very small population of this fish there is a captive breeding program and to put alternative strategies in place to keep the species alive. In fact, we will monitor the release of that water very carefully to ensure that it is used in a most diligent and vigilant fashion so that we do not waste any of it.

This is a contentious issue in the local community. The community is concerned about the release of any of the environmental flow allocation. In fact representatives of the community have made pretty clear the reasons why they believe this is a vexing issue. Many communities along the Murray within Victoria, and indeed many communities right across Victoria, are extremely stretched and stressed because of the lack of water available to them. They see every drop of water as being very precious. I share their concern. I want to make sure that the water is used appropriately, but we have made a determination that this species should be kept alive, if it possibly can be, to ensure its ongoing survival and so that we do not lose yet another species of the rich biodiversity that originally made up the precious environment we inherited.

Supplementary question

Mr BARBER (Northern Metropolitan) — In relation to the figure of 11 gigalitres that the minister quoted, would he be able to point me to some document or provide me with some sort of further information that reconciles these flows and where and when they will be delivered?

Mr JENNINGS (Minister for Environment and Climate Change) — I think Mr Barber and I may step outside at some point in time and have a conversation about these things. I have already indicated that a very rigorous analysis and assessment will be undertaken on what we should use this valuable and precarious resource for. We will be extremely vigilant in ensuring that anxiety is not raised within the Victorian community about putting to other purposes water that may otherwise be used to support social and economic activity within this state. We will be very, very careful about the way in which we release those environmental flows to ensure the survival of species and to protect environmental values while not wasting a drop of water in the meantime.

This is actually a work in progress as those environmental values and the stress that our environment is under continue to be identified and monitored. The allocations will not be made until we are confident that we can make the most effective use of those resources. There is no predetermined plan, but active consideration is undertaken each and every day by officers of my department and officers under the jurisdiction of the Minister for Water in the other place.

Employment: rate

Mr LEANE (Eastern Metropolitan) — My question is to the Treasurer, and I ask: can the Treasurer inform the house of any recent updates that confirm the health of the Victorian labour force and prove that under a Brumby Labor government — and obviously Chris Judd agrees — Victoria is a better place to live, work, raise a family, gain employment and play footy?

Mr LENDERS (Treasurer) — I thank Mr Leane for his question, but I will strip out the football metaphors, even though Chris Judd does agree that Victoria is a good place to live, work and raise a family.

With respect to Mr Leane's comment about labour force figures, I have pleasure in letting Mr Leane and members of the house know today that the Australian Bureau of Statistics has announced that Victoria's unemployment for September was 4.2 per cent, the lowest rate since statistics have been kept for this state. I repeat that unemployment is at the lowest level since statistics have been kept. What we see is that the number of jobs created in Victoria so far this year is 59 800.

Mr Drum interjected.

Mr LENDERS — I take up Mr Drum's interjection — I thought Mrs Peulich might have beaten him to it — about what the Howard government has done here. I inform the house that the number of new jobs created in Victoria is the highest in Australia. It is higher than in Queensland, higher than in Western Australia and higher than in New South Wales. It is higher than in the resource-rich states. What we are seeing in Victoria, with the economic management under a Brumby government, the reforms brought into place through skilled workforce participation, the national reform agenda, job creation and investment support, is higher employment than anywhere else.

Mr Atkinson interjected.

Mr LENDERS — I take up Mr Atkinson's interjection about WorkChoices. If it was WorkChoices, it would presumably apply nationally — equally, everywhere. What we are seeing is that the state of Victoria has the lowest unemployment rate on record. It is time for us to do a stocktake and say that the type of government we have in this state, which uses sound economic management, targets service delivery and targets infrastructure delivery, is delivering results for Victoria. As Mr Leane said, these types of policies make Victoria an even better place to live, work and raise a family.

Port Services Amendment Bill: drafting

Mrs COOTE (Southern Metropolitan) — My question is to the Minister for Environment and Climate Change. Can the minister inform the house what advice he provided to the Minister for Roads and Ports in the other place and the Minister for Planning before the Port Services Amendment Bill was drafted?

Mr JENNINGS (Minister for Environment and Climate Change) — There is a difference between how legislative proposals are developed by government and providing abstract advice and just spruiking in the community and in the media. There are determined processes within our government which relate to the coordination of portfolio responsibilities and deliberations on pieces of legislation. It goes to the heart of cabinet committee processes, the way the cabinet conducts its business and the degree of coordination between various portfolios in terms of the discipline they bring to bear and the policy outcomes they seek to obtain.

That process applies to every piece of legislation proposed by the government that comes before this Parliament. Every piece of legislation undergoes that process. It is a standard format which involves various levels of approval, from the scoping of the legislation right down to the fine detail of what a bill does. In this case, as in every case, there was full involvement by all departments and all ministers, including me.

Supplementary question

Mrs COOTE (Southern Metropolitan) — Noting that a decision has not been made on the channel deepening supplementary environment effects statement process by the Minister for Planning, what guarantees has the minister sought to ensure that the project will not begin without proper environmental considerations?

Mr JENNINGS (Minister for Environment and Climate Change) — I think all members of the community who are interested in this issue know that two environment effects statement (EES) processes

have been undertaken to specifically address a range of environmental concerns. That is in the public domain. There have been contested questions about how that process has run. There have probably been about 20 questions asked within this chamber about that process, so I would imagine the member is aware that there has been a very lengthy examination in a formal sense of a whole range of environmental effects. They have been considered by a panel and subjected to much community conversation and consideration. If nothing else, that significant body of evidence is out in the public domain.

Beyond that, government agencies that are charged with the responsibility for environmental management— obviously the agency for which I am responsible is the prime agency — are intimately involved with the consideration of those matters. In fact we were a relevant agency in terms of the consideration by the Minister for Planning of a range of environmental matters, which again is a standard format within EES processes, and the panel's considerations on which the Minister for Planning may seek advice, based on the perspective of the proponent, in this case the Minister for Roads and Ports or the minister for the environment, in relation to the environmental effects. He seeks our input into the varied nature of the proposal and its environmental considerations. That is part of what we do within government to try to ensure there is a well-rounded consideration.

The Minister for Planning is formally charged with the responsibility of balancing and assessing those matters and making recommendations about the approval process. Part of the commentary that has occurred in the Parliament this week has shown a lack of understanding about the way in which the proponent of the project has prepared a piece of legislation to enable the appropriate governance and accountability arrangements to be in place should planning approval be given to this project and it proceed. That fundamental misunderstanding has been bandied about this Parliament during the course of the week. That is the fundamental reason there is a piece of legislation — the proponent of the project has actually put forward a piece of legislation to provide for governance, accountability, funding mechanisms and other forms of regulatory control. But those provisions will not be brought to bear unless the Minister for Planning provides the approval and the project is approved.

Climate change: insulation manufacturing technology

Mr SOMYUREK (South Eastern Metropolitan) — My question is for the Minister for Environment and Climate Change. Can the minister inform the house how companies in Victoria are leading the way in business developments that deliver better environmental outcomes?

Mr JENNINGS (Minister for Environment and Climate Change) — I am very happy to respond to Mr Somyurek's question. I am very happy to respond and talk about a very exciting industrial development within the electorate that he has the good fortune to represent, as do I and three others in the chamber.

All of us in this community have an understanding of the value of insulation. Insulation plays a positive role each and every day in households in Victoria, Australia and around the world in trying to reduce the impact on weather conditions and provide comfort to residents. Insulation is a product that we have recently measured in terms of its potential to reduce our ecological footprint by reducing our energy needs.

First the Bracks government and now the Brumby government have been very pleased to support the installation and retrofitting of insulation within Victorian households. We estimate that it may save the equivalent of 50 per cent of a household's energy bills in winter and 40 per cent in summer and provide all year round comfort in homes across Victoria in the situation where perhaps 20 per cent of Victorian homes before 1990 were not insulated. We have been very pleased to promote, sponsor and provide support for the installation of insulation in households.

Beyond the value of the product itself, I am very pleased to report to the house that recently I was invited by Fletcher Insulation in Dandenong to commission two new leading technology furnaces that were established in Australia. The Intech furnaces developed by the company are of such world-leading capacity that they will be an export product in their own right. It is a very efficient way of creating insulation. The reason the furnaces are so efficient is that they have replaced gas-fired furnaces, which were larger, more cumbersome and were not able to switch on and off, depending on the production line. As a consequence of using these more efficient furnaces Fletcher Insulation is reducing its greenhouse gas emissions by 20 per cent.

Beyond that, the nature of the product and manufacturing process involves recycled material, with 70 per cent of the final product's volume being made

up of recycled glass products. It is world-leading technology. It is a recycled product, and it leads to a reduction in the ecological footprint of every household in which it is installed. This is a wonderful outcome for the Victorian community and the Australian economy. Indeed it places us in a very good position in having a growing export market for a product that is required worldwide.

This industrial development in Victoria is consistent with a program that I have referred to previously in the house — that is, the industry greenhouse program. Under that program we have one industry after another — major manufacturers in the state of Victoria — looking at ways of reducing their resource consumption, reducing their greenhouse emissions through their production processes and actually being very economically viable in achieving this sustainable development approach.

Time and again across Victoria we see this approach being adopted by progressive companies that realise their place in the commercial world will be enhanced by an approach to sustainable development. We are very pleased to be supporting it. I thank Fletcher Insulation for asking me to open their new furnaces.

GJK Facility Services: Office of Housing contracts

Mr D. DAVIS (Southern Metropolitan) — My question is to the Minister for Industry and Trade. I refer to the GJK company owned by his mate and Labor Party donor, Mr Stamas. Is it not a fact that the three cleaning contracts awarded to GJK were for amounts substantially more than other tenderers and that in the lead-up to the official opening of the tender process by the Office of Housing, he personally lobbied on behalf of his mate to get round the provisions against such lobbying when the tender formally opened?

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — First of all I want to begin my response by saying I believe that there was a member of our side of the house who was prepared to ask me a question in relation to the Ombudsman's report, which I would have been very happy to respond to. That question would have been 'What are the implications of the findings of the Ombudsman's report which was released today in the house?'.

I believe the nature of the question that has been asked of me by David Davis not only runs counter to the findings of the report in relation to my behaviour but given that the member has seen the report and the findings of the report, I would argue that he may even be in breach of the standards of this house in relation to making accusations about members in this place which are totally unfounded. Using the forms of the house I intend to take that up in relation to Mr Davis's behaviour. I put his leader on notice, because he should have read the report also. I do so because there has to be a standard which this house applies to its own members.

Mr D. Davis — On a point of order, President, the minister is debating the question and is not answering it.

The PRESIDENT — Order! Given the seriousness of the question and the fact we have a report in front of us, I will allow the minister a fair degree of leeway in answering the question.

Hon. T. C. THEOPHANOUS — Perhaps I should begin by indicating to the house my view about standards. Members in this house know that as public identities nothing matters more to us then our personal integrity. When that personal integrity is brought under question in a public way, as occurred in the series of published articles in the *Age*, it has an enormous impact on one's family, one's colleagues and on one's supporters. When accusations are made that can destroy reputations, that can destroy careers and that can hurt families, then the basis of those accusations should be solid, and particularly they should be solid if the accused vehemently denies the accusations. That is why when unsubstantiated allegations were made about my conduct by Michael Bachelard of the *Age* I was so keen to deny the allegations both in the house and publicly. I also welcomed the Ombudsman's investigation, and I did so because I knew the allegations were baseless.

Today's Ombudsman's report completely exonerates me and former Minister Broad and brings into serious question the reporting undertaken by Michael Bachelard and the *Age*. Today's Ombudsman's report clearly states that there is no evidence that any present or former minister of the Victorian government or member of Parliament attempted to improperly influence the administrative process surrounding the tender evaluation of the contracts.

Let me quote from page 9 of the Ombudsman's report:

> There was also no evidence to support the allegation that Minister Theophanous attempted to influence Ms Broad on behalf of Mr Stamas …

You cannot get much clearer than that. The Ombudsman went on to say at page 10 of the report:

> My investigation did not find any evidence that any official of the Department of Human Services (DHS) or OOH, nor any

> present or former minister of the Victorian government or member of Parliament, attempted to improperly influence the administrative actions surrounding the tender evaluation process conducted by the OOH relating to contract CNG2007.

You cannot be clearer than the findings that the Ombudsman has identified.

The Ombudsman also went on to say that the events Mr Bachelard reported in the articles did not correlate to key dates in the tender process, and further, that Mr Bachelard's understanding of the specific tender evaluation process had changed since the publication of his original articles. No wonder it changed. It changed because he could not sustain the claims he had made. That is why it had changed. I was totally appalled to read in the report Mr Bachelard saying to the Ombudsman:

> … somewhere in the murky depths of my mind put two and two together …

Here is a journalist who is prepared to take an established newspaper, a newspaper of some credit in this community, and go out and make an accusation that can destroy a career, influence families and hurt people. He goes out on the basis that somewhere in the murky depths of his mind he put two and two together. It is an absolutely appalling situation which I think all of us in this house should take great notice of.

Perhaps the most damning of all of the Ombudsman's report is on page 27, where it says:

> He —

Mr Bachelard —

> did not provide any evidence to my investigating officers that Minister Theophanous, or any other person, attempted to influence the outcome of the tender …

The independent report is an absolute vindication of my previous rejections of the baseless assertions made by the articles in the *Age* newspaper and upholds the integrity of government personnel and government processes.

Let me say that not only were these false accusations put up by the *Age*, and not only does this report vindicate — —

Mr Atkinson — On a point of order, President, I am reluctant to intervene, and I understand the gravity of the matters and appreciate the minister's feeling that he needs to canvass these matters thoroughly, but I am a little concerned about the relevance of the nature of his remarks to question time. I wonder if there is not some other process by which the minister can address some of the matters, particularly substantial — —

Hon. J. M. Madden — Your side raised the matter.

Mr Atkinson — Yes, I understand my side raised the matter. I understand there was a question and the minister is responding to a question, but the minister has canvassed fairly widely in terms of his criticism of media outlets and is, in effect, giving us a ministerial statement as distinct from an answer to the question. I do not want to stop the minister from having an opportunity to respond to these matters, but I wonder if this is the appropriate way.

The PRESIDENT — Order! The member is debating his point of order. The fact is that this question has been asked, and it has been asked on a couple of occasions by the opposition. The minister has had an opportunity previously to answer this, and we have a report. I have already indicated that I will give some leeway. I remind the house that there are no time limits in answering questions. While some people may not be altogether comfortable with the response they are getting to the question asked, that is a bit tough. I believe the minister is in order, and the member's point is out of order.

Hon. T. C. THEOPHANOUS — I am trying to portray to the house the extent to which this matter has been of great concern to me, to my family and to my supporters. Not only that, it was not just a matter of the way in which the *Age* reported this event and the basis upon which it reported it, which is outlined in the report itself, but the allegations that were made against me, which have been now clearly shown to be false, became a matter of folklore within the *Age* to the point that journalists like Suzanne Carbone made consistent, hurtful, derogatory and untrue comments linking me to Mr Stamas. They were so derogatory that she could not bring herself to refer to Mr Stamas as anything but — —

The PRESIDENT — Order! I am extremely reluctant to interrupt the minister's train of thought. While I said I would give him a degree of leeway by allowing a reasonably expansive answer, I am not sure that reference to reporters who are not part of the actual report is relevant, so I would appreciate the minister containing his answer to the question and all things relevant to it.

Hon. T. C. THEOPHANOUS — Certainly people can go and read the hurtful comments that were made by that particular journalist, and maybe she can look at

her own conscience, particularly since she has an ethnic background and should really know better.

The PRESIDENT — Order! I could argue that the minister is testing my ruling. I ask him to respect that ruling.

Mr Atkinson — On a point of order, President, on the basis that the journalist mentioned effectively does not have any rights in this place — I know she can write to us — I think the comment should be withdrawn.

The PRESIDENT — Order! The member's point of order is in fact wrong. The reporter does have a right of reply in this house, if she chooses to seek it. She simply has to follow the appropriate process and seek the right to do it. However, I am not going to allow this answer to degenerate into a massive debate and become more than simply the answering of a quite serious question. I would appreciate the house understanding that I am not going to allow this to get out of hand. Hopefully I have guided the minister enough to ensure he contains his answer to the question.

Hon. T. C. THEOPHANOUS — Thank you, President. I do not have much more to say on this issue. I think the Ombudsman speaks for me in relation to it. What I do want to say is that I believe at the very minimum the *Age* owes my family an apology for what they have had to endure as a result of this. I think Andrew Jaspin of the *Age* should ensure fair reporting of the Ombudsman's report in that newspaper.

Finally, I want to end by thanking the members of The Nationals, the Democratic Labor Party and the Greens for their principled behaviour in relation to the motion that has been put in this house and rejected by the house. I want to thank them for that principled behaviour. I simply allow members of the house to make their own judgement about how that principled behaviour stands in stark contrast to the question that I have been asked by the honourable member opposite and his behaviour during the course of these very serious allegations.

I also want to thank my colleagues, my family, my supporters, my staff, the former Premier, the Honourable Steve Bracks, and the current Premier, the Honourable John Brumby, for their support.

Supplementary question

Mr D. DAVIS (Southern Metropolitan) — Nothing the minister has said has changed my view of this business. In that light I ask: is not the truth of the matter that he lobbied his ministerial colleague, Candy Broad, on the pretext of extending the existing contract in the full knowledge that a new tender would be called and thereby sought to cover this grubby lobbying and crooked behaviour?

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — Not only does the report clearly quote me, it also quotes the former minister, Candy Broad, and the Ombudsman. All of those people have clearly stated that there was no attempt to lobby on behalf of Mr Stamas in any way, shape or form, and everyone can read the report. I just say that I think the member opposite is not doing himself any — —

Mr Pakula — Not covering himself in glory.

Hon. T. C. THEOPHANOUS — He is not covering himself in glory today, and I think it simply reinforces the description of him by his leader as treacherous and unreliable.

The PRESIDENT — Order! I am not happy with the end of that answer. The personal reflection on the member is unacceptable. In terms of questions asked and answered, it is not appropriate to overtly criticise those asking or their party. I ask the minister to withdraw that part of his answer that refers to Mr Davis.

Hon. T. C. THEOPHANOUS — May I make a comment?

The PRESIDENT — Order! The minister does not have the option of not withdrawing.

Hon. T. C. THEOPHANOUS — I withdraw, and I seek to raise a point of order. The point of order I would like to raise, President, is that I accept your ruling that comments of the sort I just made are inappropriate in describing people in this house. However, *Hansard* will show that this comment has been attributed to the Leader of the Opposition in the newspapers — —

The PRESIDENT — Order! The minister is in fact now debating his point of order. I reiterate that to use the term 'treacherous' when referring to an individual in this house is unparliamentary and unacceptable. The minister has withdrawn, and I appreciate that, but he cannot quote a newspaper or a third person.

Commonwealth-state relations: funding

Mr PAKULA (Western Metropolitan) — My question is to the Treasurer. Those of us on this side of the house know the importance that the Brumby government places on striving to make Victoria a better place to live, work and raise a family. Can the Treasurer

update the house as to the federal government's contribution to the delivery of vital state services to Victorian families?

Mr O'Donohue — Get over it, will you!

Mr LENDERS (Treasurer) — I thank Mr Pakula for his question and in doing so take up Mr O'Donohue's interjection 'Get over it'. I would think that any member of the Victorian Parliament who sits back when they find in a federation that funding to this state has been slashed again and again, budget after budget, ought hang their head in shame.

Mr Vogels — What's your surplus?

Mr LENDERS — I take up Mr Vogels's interjection and draw his attention to page 1 of today's *Australian Financial Review*. This government has run an operating surplus, and this government — —

Honourable members interjecting.

The PRESIDENT — Order! We have been going along nicely for the last couple of minutes. I ask members to use a bit of common sense.

Mr LENDERS — This government has run an operating surplus, and an extraordinary amount of that surplus has been invested in public transport and water infrastructure. I find it extraordinary — I must be confused — that we have echoing from one side of the house a chorus saying on one hand 'Debt' and on the other hand 'Obscene surplus'. You cannot have an obscene surplus and a debt at the same time, or if so, it is an accounting standard that comes from Noddyland.

Honourable members interjecting.

The PRESIDENT — Order! I ask members on my left to withhold their rage and reduce the noise level to at least a loud roar. Next time there will be warnings.

Mr LENDERS — This state operates on a budget surplus, yet — —

Honourable members interjecting.

Mr LENDERS — Yet we have an audacious roar from those opposite who mention on that particular issue that on the one hand there is an obscene surplus — —

Honourable members interjecting.

The PRESIDENT — Order! I would like whoever wants to be kicked out next to stand up now. That is a warning to the whole chamber.

Mr LENDERS — Referring back to the front page of the *Australian Financial Review*, this is not a Treasurer in a Labor government saying this, this is the *Australian Financial Review,* Australia's leading financial newspaper. It is interesting that it looks at the figures that the commonwealth government has actually spent on states. This is not a commonwealth issue: this goes to the core issues of health, education, community safety, water infrastructure — you name it, whatever this state can do. Ten years ago the national government spent 7.2 per cent of gross domestic product on payments to the states to provide services. On the commonwealth's own figures as of yesterday that figure has gone down to 6.5 per cent. So what we are talking about is that despite GST, despite state tax changes and despite everything else that has been happening, the commonwealth's share of the revenue it forwards to the states has declined by one-tenth in real terms.

Mr Vogels says we are awash with cash, and members opposite say we have got rivers of gold from the GST, but what we have is unequivocal commonwealth budget figures in the *Australian Financial Review* saying that payments to the states, on the only measure that matters — the percentage of the economy — have declined by one-tenth under the stewardship of the current federal government. Beyond that one-tenth, in there we have a further distortion: there is a skew towards the resource states. And more than that, there is a skew to the 16 federal marginal seats which unfortunately do not happen to be in Victoria.

The *Australian Financial Review* has published this article showing that this state has lost one-tenth of its federal money, but what we could do in the hospitals, which Philip Davis was talking about before; what we could do in water, which Ms Lovell is forever talking about; what we could do in community services, which Mr Drum is forever talking about — what we could do in all these areas — if we were to increase our federal expenditure by $2 billion, which an equitable share would give us, let alone if the revenue was maintained at the same rate, would be wonders.

But more than that, while this is happening, what is the federal government doing with it? The opposition says we are awash with cash, with a $1.3 billion surplus. I might say that $900 million of that was immediately reinvested into water and rail, and nobody in this house would dispute that they are two key targeted infrastructure areas that need to be addressed. What is the commonwealth government doing at the same time? Yesterday in the electorates of Page and Cowper on the New South Wales north coast $2.3 billion was provided for the Pacific Highway to hold two marginal

Nationals electorates. Is there any national interest or any nation building in this? There is not. It is a Deputy Prime Minister who is spooked that he is going to lose his seat and lose two mates.

What we are finding is that this aspirational nationalism that the Prime Minister talks about is a stake through the heart of Victoria's ambitions to have legitimate money invested in infrastructure so that we can shorten waiting lists at the Western Hospital; so that we can — for Ms Lovell's benefit — put in another billion dollars and get another 225 billion litres of water into the food bowl to be used for whatever objective purposes it should be used for, and perhaps even go to Adelaide. Ms Lovell likes water coming from one side of the Great Dividing Range to go to the other, but she then wants it to go to Adelaide rather than to other Victorians.

What I would urge members of the house to do is look at the *Australian Financial Review*, at the objective figures from Rory Robertson of Macquarie Bank, who actually says they are the worst in 30 years, not 10 years. What members opposite should do is look at those, and what Victorians should do is say, 'What sort of federation are we in that has seen our national government slash expenditure to the states for services by one-tenth over the last 10 years?'. We have a budget of $34 billion in this state. If our federal contribution were increased to what it should be, it would be more than $2 billion. Instead of the federal government raining money on marginal seats in other states — —

Mr Leane — On government ads!

Mr LENDERS — Instead of the federal government spending $1 million a day on government advertisements and spending all its money on marginal electorates in other states, it should realise that Victoria deserves its fair share, and any decent national government that had any sense of aspiration or fairness would pay the money in Victoria so this government could make Victoria an even better place to live, work and raise a family.

KPMG: former Premier

Mr D. DAVIS (Southern Metropolitan) — My question is to the Treasurer. I refer to the Victorian Auditor-General's newsletter of autumn 2003, which indicates that state audit service providers are required to avoid all situations that establish or have the potential to establish a conflict of interest or the appearance of a conflict of interest, and I ask: is the Treasurer, as custodian of the state's financial standing and probity, confident that the appointment of former Premier Steve Bracks to a senior influential position at KPMG just weeks after he stepped down as Premier has avoided the appearance of a conflict of interest, as required by the guidelines?

Mr LENDERS (Treasurer) — There are a number of things here. Firstly, the Financial Management Act is actually the responsibility of the minister for finance, just for David Davis's information, but I will make this comment: David Davis has all the piety — I will not go there, President. David Davis likes getting up in this place and appearing pious, but what I will say is that we have the most open, transparent and accountable government in the history of this state. Everybody in this chamber will have views on whether it is or is not appropriate for a person in this place to have employment after they leave this place.

Mr D. Davis — Yes, we agree he can have employment, but he has got to avoid conflicts of interest.

Mr LENDERS — David Davis says he agrees, so I would say if Mr Davis has any concerns about whether any citizen has appropriate access to government or not he should heed the laws of the state where issues are raised as to appropriateness. We had a very tense moment in this chamber earlier when Mr Theophanous was answering questions about the appropriateness of contractual relations, and my only comment on that would be that there are processes in this state to deal with that. If anyone thinks there are an inappropriate relations with government, they are tested. We have probity auditors, we have an Auditor-General, we have an Ombudsman and we have a parliamentary accounting system, so my comment to David Davis and this house is: citizens are entitled to seek employment.

If there is an issue of a conflict of interest, that will be addressed by the probity arrangements in this state. If David Davis thinks there is an issue of a perceived conflict of interest, then I would respectfully suggest to him and the house that the last person to be pointing a finger at another politician is a politician, because it has no credibility whatsoever. David Davis was silent while KPMG awarded a job to his political mate Richard Court. I am not saying that is wrong or right; I am saying David Davis is selective. Let us have a debate on probity in office, but let us not have a politician pointing a finger and saying what is a perceived conflict of interest. I will stick with the Auditor-General, I will stick with the Ombudsman, I will stick with the court of public opinion that is not made up of members of political parties.

Supplementary question

Mr D. DAVIS (Southern Metropolitan) — I am disappointed that the Treasurer is not concerned about seeing that those sorts of guidelines are followed closely. Therefore I ask: given the extraordinary appointment of Steve Bracks, should KPMG obtain the written approval of the Auditor-General prior to the continuation of any active audit or probity work, as the guidelines suggest?

Mr LENDERS (Treasurer) — My comment would be simply this: we have created an independent Auditor-General who has own-motion powers, and we have empowered an Ombudsman who also has powers if there is an issue of conflict of interest or perceived conflict of interest, let alone the risk committees, the audit committees of every single government authority and every single government department. We have layer upon layer of auditing and probity in this state. I do not think it is hyperbole to say we have probably among the highest levels of probity and scrutiny of government on this planet. I am not saying that as hyperbole, I am happy to stand corrected.

Mr Guy — Compared to Chile.

Mr LENDERS — I take up Mr Guy's interjection 'Compared to Chile' and say certainly compared to Victoria from 1992 to 1999 and certainly compared to the commonwealth from 1996 to 2007.

What I would say unequivocally is that this government will always and without exception look to the powers of the Auditor-General — —

Honourable members interjecting.

The PRESIDENT — Order! Mr Guy is warned.

Mr LENDERS — This government will always look to guidance from an Ombudsman and an Auditor-General. We will heed that, we will pay attention to it, we will act on it. But I say the Ombudsman and the Auditor-General are up on Mount Everest; David Davis is submerged in the Dead Sea.

Boating: Mallacoota ramp

Mr HALL (Eastern Victoria) — It seems at long last I have a chance to ask a question of the Minister for Environment and Climate Change. I refer the minister to the Bastion Point, Mallacoota, boat ramp EES (environment effects statement) process and in particular to the Department of Sustainability and Environment's last-minute submission that, to use the words of the East Gippsland shire mayor, 'contradicts the process that the shire is required to follow by DSE as part of the EES'. My question to the minister is: was the minister aware of the submission made by DSE? If so, why did he approve a submission that has made the whole EES process a pointless exercise?

Mr JENNINGS (Minister for Environment and Climate Change) — I understand that Mr Hall is representing some community concern in the electorate he shares with four others in this chamber. This issue has caused some concern to the East Gippsland Shire Council, which has been the proponent of the Bastion Point boat ramp to which the member refers. Some recent developments require some consideration of environmental matters. The member has quite correctly indicated that they were furnished by the local regional office of the Department of Sustainability and Environment.

In terms of the sequence of this and the degrees of approval, I can say to the house that the piece of work in question was submitted by the region prior to my approval or endorsement, and it was drawn to my attention subsequently. From my discussions with the department, I understand the matters raised in the region's submission were not items that came from outer space in terms of environmental considerations. They have been consistently expressed within the structures of the Department of Sustainability and Environment, which under the previous administrative arrangements was integrated with the planning section. The environmental concerns have been articulated on any number of occasions previously, and the region continues to be concerned about these issues.

As the member and members of his community would be aware, three options have been subject to the EES (environment effects statement) process and the panel's consideration. The regional office of the department has expressed views about the relative merits of those proposals. Some are about the order of magnitude of the proposals and how their environmental effects might differ and what they might be. They also echoed some other considerations and concerns about marine safety that are more the responsibility of other agencies. As I understand it, other agencies have expressed those concerns through the EES process and the panel, but they have been echoed to some degree by the Department of Sustainability and Environment.

My understanding of where the process sits is that the shire council, as the proponent, has sought an extension of time from the Minister for Planning to enable it to consider some of the environmental concerns and to address them appropriately in the coming months. As I understand it, at the council's instigation some time will

be given to allow it to respond to those issues. In terms of how the EES process goes from here on in, it is primarily the responsibility of my colleague the Minister for Planning. However, I am advised and I believe that the EES process and the panel's considerations will culminate early in the new year with recommendations coming to the Minister for Planning for his determination and will be subject to the various approval processes that may be relevant at that time.

Given how long this consideration has been going on, which is quite some time, the delay will probably seem to be incremental rather than a quantum change in the order of magnitude of the considerations. However, given how long this has been in digestion for the local community, and I understand there has been some degree of varying points of view about the relative merits of the various proposals, I would think the sooner we get to some resolution, the sooner the community will be in a better place. I believe the Minister for Planning is sympathetic to the request of the council to be allowed, as proponents, to consider these matters and feed them back into the process. I am very happy to play any role I can in terms of expediting the consideration of those matters and the making of a final determination.

Supplementary question

Mr HALL (Eastern Victoria) — I thank the minister for a very comprehensive answer. I must say that I concur with the information he provided in his answer. I think he has given me an accurate answer. However, it probably just begs the question: why did the Department of Sustainability and Environment instruct East Gippsland shire to advertise three options in respect to this when all along it was only prepared to approve one option in its final submission?

Mr JENNINGS (Minister for Environment and Climate Change) — I think there has been some overly fine point made by members of the community about what the black letter intent of the Department of Sustainability and Environment submission may be, and whether it was seen to be prescriptive in any way about ruling out various options. It is not the prerogative of the DSE regional office to rule out options as part of this process. The construction that has been put about in the community that DSE has exercised a form of veto in expressing views about the relative merits of the various environmental effects on various options has perhaps been overly interpreted in the community from the way I have been briefed was the intention of the correspondents.

FIREARMS AMENDMENT BILL

Second reading

Debate resumed.

Mr ELASMAR (Northern Metropolitan) — I rise to speak on and support the Firearms Amendment Bill 2007. How many times have we read in the papers horrifying stories of gunmen in other countries going berserk and shooting innocent civilians, in particular helpless children? We all thought that could never happen in this country, the lucky country. Previous speakers mentioned the tragedy in Port Arthur in 1996. We were all stunned by the viciousness of the attack. Let us not forget that the tragic Monash University shootings in 2002 saw the establishment of a national handgun agreement across the country. The purpose of this agreement was to protect our communities.

I agree with Mr Finn's statement that there are good men in Victoria who carry a shooting licence. I do not say that because I have a licence, but because there are people who have a firearms licence and care for and work for the community. They undertake many hours of voluntary work, and they are well respected — and a large number of them live in my electorate.

The amendments made by the bill seek to clarify and simplify the process of how and where handguns must be stored and registered, and at the same time provide more freedoms to legitimate and responsible gun owners. The community has an expectation that people can walk down any street in this state at any time, day or night, without fear of being shot down by a lunatic. We as legislators must provide our police with appropriate powers to enable them to safeguard us, the civilian population. Police need to be able to deter the unlicensed or unregistered firearm trade in this state, as those guns are generally used for illegal purposes.

The amendments provide that guns must not be altered by increasing the magazine capacity — for example, as with sawn-off shotguns. Security firms must house the weapons that are issued to security guards. Security guards have been known to take handguns home, only for them to be stolen in a burglary. People who have been left a deceased estate that includes firearms will have to comply with the Firearms Act by ensuring that all handguns are lodged with a licensed dealer or with a person who is registered to own a firearm.

The amendments before us are not all about restrictions. Hunters will be permitted unrestricted access to cross into game reserves. The overall objectives of these amendments are to continue to strengthen our security

and to promote an attitude of peace of mind to all families in Victoria. I commend this bill to the house.

Mr GUY (Northern Metropolitan) — I will just make a short contribution to debate on this bill, as I am aware that we have a couple more bills to go today and quite a few people have already spoken on the bill. I endorse the comments made by Mr Elasmar and, in particular, Mr Finn about responsible gun ownership and responsible use of firearms in the community.

I hope everyone in this chamber has moved on from the irrational debates that occurred in our community some time ago, when many believed that anyone who owned a firearm was a gun-toting person who wanted to shoot anything that moved, shoot signs at the side of the road and so on. The reality is that strict regulations govern the issuing of licences. Firearms owners have to abide by very strict rules, and the vast majority of them are responsible. They promote firearm safety as an absolute must. It is worthwhile placing on record my record for those organisations in our community that promote firearm safety rather than talking them down, as some have. It is also important that we acknowledge that you do not solve a problem regarding firearms by demonising those who are adhering to the law and going out of their way to comply with it and that we make sure the laws and regulations that govern firearms are tight, strong, contemporary and keeping up with the views of modern society.

It is also important for us to note that in our community firearms used in crime are almost always obtained illegally, not by lawful means. In the vast majority of cases those firearms are not legal. One of the more important things that we need to factor in when debating laws relating to firearms is about how to counter that as a problem in our society — how to combat illegal firearms entering our society, combat the obtaining of illegal firearms and prosecute those people who deal with them — not going after the people who are abiding by the law.

It is very important to consider those who think of firearms as part of their life, whether it be for sporting purposes or for their occupation. For example, most farmers find it very difficult to operate without a firearm on the premises. We will all be aware of the bushfires that occurred in north-eastern Victoria. While it does not sound terribly humane and it is not a very nice topic to talk about, when animals are severely burnt it would be very difficult for a farmer to go back to his property, call a vet, have the vet come out and dispose of the animals in any other way. Sometimes a firearm can provide the most humane way of dealing with animals that are severely burnt and left at a premises after a fire has swept through.

The control of vermin on properties is another topic that we need to factor in. There are wild dogs, foxes, rabbits and feral cats, which are a massive problem. Wild dogs are an enormous problem, particularly in the eastern part of the state. Farmers need firearms to assist with the control of those pests on their property. The small number of people in the community who run around and demonise farmers and other people who need to use firearms on their property as some type of gun-toting southerners who are out of step with contemporary society are wrong, because they are not. A firearm is an effective tool that farmers need on their property. To obtain that tool they have to go through very stringent tests. They have to comply with stringent requirements for storing ammunition and magazines and for storing the bolt, if they own a bolt-action gun. These items must be stored separately from the gun itself. It is not as if owning a firearm is some type of activity that people just have a laissez-faire attitude to, as might have been the case some 50 or 60 years ago, when people would have kept a gun in the car or under the bed. It is not like that at all, and it is worth taking that into account.

There are also people in our community who use firearms for enjoyment, such as those who are involved with clay target shooting and pistol clubs. All those activities are heavily regulated to ensure that firearms are handled and stored in a very safe manner. Those clubs are the greatest advocates of firearm safety in our community. It is worth putting that on the record for future reference.

Sport is an exceptionally big activity and interest in this country, and people remember Michael Diamond's achievements in firearm sport. At the 1996 Atlanta Olympics he won a number of gold medals, and his medal in trap shooting was the first gold medal won by an Australian. We all applauded him for his efforts, and no doubt Michael Diamond, as do other people in the firearm community, regards firearm safety as of absolute and utmost importance.

The bill before us today continues the hard work of the initiatives begun about 10 years ago by the federal Howard government and the former Kennett government at the state level to ensure that firearms safety is paramount in our community. The legislation, as it stands, recognises the legitimate rights of sporting shooters, competitive shooters, professional hunters and farming Victorians, who all use guns on either a regular or semiregular basis and certainly need them for their operations in their day-to-day lives on the farm.

If we have any criticisms of the bill, they are not criticisms of what is in the bill but rather of what is not in the bill. We have some concerns about the administrative burden of implementing parts of the legislation. We also have concerns regarding the resources of the registration system — they are not addressed by the bill — but those concerns are mild compared to what the thrust of the bill is aiming to do. I do not intend to go through the bill clause by clause. As I said, a well-regulated, legitimate firearms ownership system in Victoria is of paramount importance. The bill has the support of the Liberal Party, and thus I wish it a speedy passage through this chamber.

Ms DARVENIZA (Northern Victoria) — I am almost in furious agreement with everything that Mr Guy has had to say. It is not often that I am in a position to get up and say that. I am almost lost for words!

This legislation builds on the work that has been done in the past and the commitments we made during the last election campaign. It also takes into consideration the many stakeholders who have been involved in, consulted with and informed about the drafting of the bill that we have before us today. To echo some of the things that have been said by previous speakers on both sides of the house, and I do not want to just repeat everything that has been said, I come from a family where we have guns. I do not have one personally but my family have always been shooters — my father is, my brothers were and my grandfathers were. I have spent all of my life around guns, and I am aware of the regulations which are in place and which determine how guns are stored, kept, cared for and regulated. Not only the cabinets that guns have to be locked in, but the separation of guns from the ammunition, the sort of training that is put in place around guns and the procedures, protocols and processes used within gun clubs, are areas that I have had some experience in. I have visited a number of Victorian clay target shooting facilities. Along with many other pollies I have participated in the pollies shoot, which is an annual event held at Lilydale.

Mr Rich-Phillips interjected.

Ms DARVENIZA — I am informed by Mr Rich-Phillips that it is coming up next month. I have also had a bit to do with the club at Dhurringile, just out of Tatura. That is a club that my family has been very involved with for many years. I had the privilege of opening its new clubhouse not so long ago

As Mr Guy and Ms Broad pointed out, there are legitimate reasons why people have firearms. They are used on private land, for recreational purposes, for shooting at clay targets and are used for hunting. The bill enhances the regulation of firearms and improves the safety processes involved in their carriage and use.

As has already been pointed out and gone into, the bill fulfils the government's election commitment on hunting and four-wheel drive opportunities in Victoria and allows hunters to cross grazing land to ensure better access to game reserves. It addresses a number of technical and remedial issues identified by stakeholders, including Victoria Police and the Victorian Firearms Consultative Committee, and it fulfils the government's election commitment to reduce the administrative burden of complying with regulation. Nobody in this chamber disagrees that the carriage, use and licensing of firearms needs to be strongly regulated. The bill simply builds on existing regulations and at the same time reduces the administrative and compliance burden. The amendments made by the bill go to hunting on Crown land — as I said, giving hunters unrestricted access so that they can cross land to go into game reserves.

The bill also covers firearm categories. It gives the Chief Commissioner of Police the capacity to make a declaration about the category to which a certain firearm might belong, and the category determines the purpose for which the person with the licence might be holding the firearm.

The bill goes to firearm collectors, which Ms Broad covered comprehensively in her contribution to the debate. In the past all members have had correspondence from and discussions with those involved with collecting antique guns. The bill excludes antique handguns for which cartridge ammunition is commercially available. The changes will mean that an owner of such a handgun will be required to obtain the more onerous category 1 licence. That just means that if you have an antique gun for which cartridges are available, so that you are able to fire it, then it will be classified as a category 1 firearm and the licence will be issued accordingly.

The bill also goes to firearm storage, providing greater certainty for licensees by defining what is an effective alarm system. It refers to Australian standards in accordance with the current Victoria Police policy. The bill also deals with deceased estates, providing that, even though they do not have the licence for the gun, an executor or administrator who is in possession of a firearm following someone's death will have the responsibility for storing the gun adequately, in a way that meets the storage requirements. There are provisions relating to the notification that must be given

that an owner of a gun is deceased and of what will be happening with the firearm. Provisions in the bill also go to information exchange. The bill amends the act to impose requirements on the Chief Commissioner of Police to notify the licence-holder's club and/or employer when a licence is suspended and any subsequent reinstatement of a cancelled licence.

The other area I want to talk about briefly is that relating to intervention orders and the Crimes (Family Violence) Act. Again, Ms Broad covered this area quite extensively. This goes to community safety in areas which many in our community are very concerned about. When there is domestic violence or an intervention order has been made against a person, the last thing we want to see are people being able to use their firearms when there is high emotion. This bill ensures that people are protected by addressing the issues of family violence, intervention orders and other orders that might be made by a magistrate in relation to the Crimes (Family Violence) Act. It provides that the Firearms Act does not take precedence over the Crimes (Family Violence) Act and orders that might be made by a court that suspend or restrict an individual's right to have a licence for the use of a firearm.

There has been extensive consultation on this bill, which has been gone into by previous speakers. I take this opportunity to thank people for taking the time to have input and give us their views about how we can improve the legislation. I support the bill, of course, but I do not support the amendment moved by Mr Hall. The government does not believe it should support automatic relicensing. Members of the government do not believe it is a good thing. We do not believe it equates in any way to a drivers licence. There is far more onus on the individual and far more responsibility on the community and the government to ensure that we are doing all we can to make sure that people are licensed and have their licences reissued under very close scrutiny and all relevant matters are taken into consideration. So members of the government certainly do not support Mr Hall's proposed amendment.

This is a good bill that really looks at protecting our community. At the same time it will ensure that the regulations for licensing people who legitimately carry firearms are clear and easy to understand and that they do not have an onerous amount of red tape around them but there is enough to ensure community safety. This is a good bill that should be supported by all members of the chamber, and I wish it a speedy passage.

Mr KAVANAGH (Western Victoria) — I wish to take the opportunity to express the Democratic Labor Party view on firearms generally and on this bill in particular. The DLP is not generally very enthusiastic about gun ownership. Indeed the view we have of the United States situation is not a positive one. It seems to me to be very regrettable that what is in many respects such a great nation is rather marred by the huge number of privately owned guns and the very high rate of gun deaths.

Mr Finn expressed gun ownership in terms of rights. In my opinion it might be better to think in terms of freedom rather than rights. We should be promoting freedom wherever possible — that people, unless they are doing harm to other people, should be free to take particular actions.

In respect to firearms there seem to be three categories of ownership. The first is ownership for security purposes by security professionals, which has not been the subject of debate today, the second is by farmers and the third is for recreational purposes. I and the DLP strongly support farmers being allowed to own guns for some of the reasons expressed today concerning farming practices — for example, for scaring off vermin and for putting down injured animals — but also because of security needs on farms. As farmers often live in lonely, isolated and remote farmhouses it would seem quite appropriate that they should be allowed to own firearms.

In terms of recreational users, the DLP supports the option for responsible firearm users to own guns where they are properly regulated. Like Mr Finn, we believe that such people should not be vilified and that there are many good, decent citizens who own guns for recreational purposes and there should be no assumption that they are somehow potential criminals.

On the basis of the above I intend to support Mr Hall's amendment. It relates to a rather unnecessary and unproductive restriction on licensing that is not conducive to public safety. However, generally the bill seems to get the balance almost right between public safety and individual freedom. On that basis I intend to vote for the motion whether the amendment is won or lost.

House divided on amendment:

Ayes, 3

Drum, Mr (*Teller*)	Kavanagh, Mr (*Teller*)
Hall, Mr	

Noes, 37

Atkinson, Mr	Madden, Mr
Barber, Mr	Mikakos, Ms (*Teller*)
Broad, Ms	O'Donohue, Mr
Coote, Mrs	Pakula, Mr

Dalla-Riva, Mr
Darveniza, Ms
Davis, Mr D.
Davis, Mr P.
Eideh, Mr
Elasmar, Mr
Finn, Mr
Guy, Mr
Hartland, Ms
Jennings, Mr
Koch, Mr
Kronberg, Mrs
Leane, Mr
Lenders, Mr
Lovell, Ms (*Teller*)
Pennicuik, Ms
Petrovich, Mrs
Peulich, Mrs
Pulford, Ms
Rich-Phillips, Mr
Scheffer, Mr
Smith, Mr
Somyurek, Mr
Tee, Mr
Theophanous, Mr
Thornley, Mr
Tierney, Ms
Viney, Mr
Vogels, Mr

Amendment negatived.

Motion agreed to.

Read second time.

Third reading

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — By leave, I move:

That the bill be now read a third time.

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

Motion agreed to.

Read third time.

WORKING WITH CHILDREN AMENDMENT BILL

Second reading

Debate resumed from 20 September; motion of Hon. J. M. MADDEN (Minister for Planning).

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I am pleased to rise this afternoon to speak on the Working with Children Amendment Bill and to say that the Liberal Party will not oppose this legislation. This bill, as its title suggests, makes amendments to the Working with Children Act, which was introduced in 2005 to provide a framework which would provide some oversight in the form of a checking regime for people in the community who have a responsibility as carers, or supervisors if you like, of children. It applied to people working in a voluntary capacity in clubs and various community organisations; basically anywhere that an adult might come into contact with a young person, a child, through various activities where the child could be at risk.

The act establishes a regime that requires any person who might be in that situation to undergo a working-with-children check through the auspices of the departmental secretary, who has responsibility for allocating the check. That person is then appropriately cleared to be involved in a role where they are working with children.

I have to say that the intent of the bill was obviously very clear. It was intended to provide a framework to ensure that people working with children did not pose a risk to those children. It required applicants for the working-with-children check to go through various vetting processes, particularly in relation to criminal records. It was the view of the Liberal Party at the time, and it remains the view of the Liberal Party, that the mechanism by which this is done is unnecessarily bureaucratic and costly to those organisations, particularly community organisations, that are required to obtain these checks. It was our view and remains our view that there are better ways in which the same type of assurance can be given with respect to people working with children than by requiring an external check through the auspices of the departmental secretary.

The downside of relying upon a working-with-children check is that it does not identify anybody who may be a future offender; it is based on existing convictions. A person who has previously been an offender in any number of aspects is not necessarily going to be a future offender. It is very much a check at a certain point in history. It does not necessarily provide assurances that those people who subsequently undertake working-with-children checks will not be a risk in the roles they have when working with children.

I must say that since the act came into force in 2005 it has been a cause of concern for voluntary organisations. I have previously raised in this Parliament the concerns expressed by the Portsea Surf Life Saving Club about the amount of administration it has been required to undertake with respect to its volunteers who work with junior lifesavers. The amount of paperwork it has been required to collect from adults who are members of their club, the records that are required to be maintained and kept up to date has imposed a substantial burden on that club and has imposed a substantial burden on other clubs that provide a voluntary service that involves working with children. It remains my view that there is a better way in which the same outcome could be achieved without imposing this bureaucratic regime on voluntary organisations.

This bill expands a number of the provisions of the original Working with Children Act. When the

secretary or their delegate assesses a person for a working-with-children check, there are various things they are required to consider if the applicant has a range of relevant offences against their name. Depending on the seriousness of those offences, they fall into different categories under the Working with Children Act. At various levels the decision that the secretary or delegate is required to make is determined by a person's offence record. If they have committed offences that fall into the highest category, their eligibility for a working-with-children check is not there. At lower levels and lower categories of offences the secretary is given more discretion as to whether a working-with-children check is approved, and at the lowest level the secretary is required to provide an applicant with a working-with-children check.

What the bill does is to expand the relevant offences that are to be considered when considering an application. It adds to category 2 the offences of loitering near schools and the offence of stalking when the victim is a child. These are offences where a working-with-children authorisation can be provided where the secretary considers it appropriate. The bill also adds the offences of causing injury intentionally or recklessly and obscene exposure as category 3 offences. These are offences where the secretary or delegate is required to issue an authorisation, a working-with-children check, unless it is inappropriate to do so. Those new relevant offences that will be picked up in the act fall into two different categories, with two different requirements upon the secretary or their delegate in making an assessment of the application.

The bill also expands the discretion of the secretary or their delegate when considering whether it is appropriate to refuse an application based on an offence other than a relevant offence. This is where the secretary deems that exceptional circumstances exist and that, notwithstanding an applicant not having a relevant offence recorded against them, there is still an unjustifiable risk to the physical or sexual safety of a child that would be under the jurisdiction of the applicant.

The bill seeks to reclassify two carnal knowledge offences. The reason provided in the second-reading speech is that these offences are often offences that occur between young people who are boyfriend and girlfriend — often teenagers where one is of legal age and one is not. The bill seeks to reclassify those as category 2 offences where the secretary has discretion to issue an authorisation where they deem it appropriate.

The bill expands the capacity of the Victorian Civil and Administrative Tribunal to review decisions under the act in terms of issuing interim orders — for an authorisation to be issued or, presumably, not issued. The bill also inserts a new defence where a person is working in contravention of the act — that is, working with children without having a working-with-children check in place.

The amendments this bill seeks to make to the Working with Children Act are, with the exception of the expansion of the relevant offences, largely machinery in nature. They are matters, particularly in the application of the discretion of the secretary, that correct anomalies and fix problems with the original act. In our view they highlight the difficulties this regime creates in requiring an external party, the secretary of the department or their delegate, to make an assessment as to the appropriateness of an adult working with children in what may be very different circumstances at different sites.

Obviously when you have a piece of legislation that encompasses adults working with children in volunteer organisations and clubs — and the scenario that was canvassed at the time the original act was passed related to family farms or farms of friends et cetera — there are very different environments in which children would be working alongside adults, who therefore require a check. As I said, these changes highlight the difficulties this legislation creates when you have an external party, the departmental secretary, required to issue an authorisation that is appropriate to all these diverse circumstances. In my view it highlights why consideration of these matters would be better undertaken in the various scenarios where people are working with children.

In the club situation, I do not think it could be argued that it is not better for a volunteer organisation to be making assessments about the people it has working for it and their appropriateness in those circumstances and for informed assessments to be made as to whether their volunteers should be working with children. Yes, it must be done from an informed position with the knowledge of the types of matters that the act requires the secretary to have regard to. Nonetheless, it is certainly my view that it would be better done at a local level, where the particular circumstances are clearly known to the organisation, than at a remote level by the secretary or their delegate where the full circumstances are not known.

As I said, these provisions correct oversights in the original act and expand the relevant offences that the secretary is required to have regard to. It is the Liberal

Party's view that they are not a panacea for this issue. This legislation is not the best way we can provide the type of protection that the act intends for children. Nonetheless the Liberal Party will not oppose these amendments.

Mr DRUM (Northern Victoria) — The Working with Children Amendment Bill 2007 will not be opposed by The Nationals. Whilst we opposed the principal act, which was debated a couple of years ago, we believe that now it is in place we need to be pragmatic about how we make it better than it currently is.

This bill has a number of purposes. Changes will be made to the definition of a parent so that references to foster parents are deleted. There is also going to be an expanded category of offences for consideration as to whether a negative notice should be issued when it comes to applying for these respective police checks. The bill builds on the principal act, which as I said was opposed by The Nationals when it came through the house in the initial form. Some of the offences that have been added include loitering near a school — this is an offence under the Crimes Act 1958. It is also going to include the offence of stalking, causing injury intentionally or recklessly, and obscene exposure.

The bill provides the Secretary of the Department of Justice with discretion in exceptional circumstances, so in the event that someone who would otherwise have received a positive application for a police check, the secretary will have discretionary power to issue a negative notice.

The bill also places two specific carnal knowledge offences within category 2, which is the basis for consideration. There will be three categories in all and this provision will enable the secretary to exercise discretion in a better and more accurate manner in determining whether to issue an assessment notice.

As I said earlier, The Nationals opposed the principal act and argued that it was messy and cumbersome. We argued that it would not provide protection for children in the manner that we all aspire to provide. The statistics show, and those supplied by the department indicate, that over 60 000 assessment notices were checked to 30 June 2007 and only six were issued with a negative notice. Upon appeal to the Victorian Civil and Administrative Tribunal the six negative notices were cut to three. It seems that the arguments put forward by The Nationals in the debate on the principal act, with the advent of hindsight, have proven to be accurate, logical and true. The main points we put forward were that the provisions would not hit the mark and that has been proven. The legislation is not hitting the mark. We also said using such a cumbersome and regulatory piece of legislation to deal with the problem would impact on volunteers throughout Victoria.

One of the problems we have with the police checks required by the Victorian legislation as it currently exists is that people have to make multiple applications depending on the type of activity they are involved in. Different sets of rules apply to those working with children in their employment as opposed to those working with children in a volunteer capacity. Those who are in a commercial venture may have to get one type of police check, but if they want to coach the kids football team after work they have to obtain a different type of police check. It is really quite confusing.

In comparison to this model, in 2004 the Queensland government introduced a bill called the Commission for Children and Young People and Child Guardian Amendment Bill. It was based around a blue card. Former Premier Beattie was quoted as saying:

> The Queensland blue card is unique because it represents a criminal history clearance by a single independent agency — the Commission for Children and Young People and Child Guardian.

This blue card or clearance is transferable across categories of regulated employment, business and volunteering in Queensland. When that somewhat simplistic model is compared with what we are dealing with in Victoria the contrast is stark.

Across Victoria if you are a volunteer for Meals on Wheels, you have to get one police check, and if you are working in a job that has contact with children, you will have a totally different police check. We believe that should be simplified. There are two stark alternatives. Government members in this place should realise that we should look at a system that will filter some of the problems and not just make it harder for our volunteers to do their work and continue to help make Victoria what it is.

The Nationals also have concerns about the process and the way this is managed throughout Victoria. The Department of Justice handles applications, whereas in Queensland and New South Wales an independent authority handles the applications. There is some merit in taking this away from government departments and putting all the information, or all the applications, into a totally independent agency outside of government.

When researching the facts on this issue we found that 80 per cent of offences that had occurred in the manner that the legislation is trying to protect were committed

by family members, as horrible as that sounds. Obviously this legislation will not catch that cohort. The privacy commissioner of Victoria, Paul Chadwick, stated in his submission to the Scrutiny of Acts and Regulations Committee that the legislation — the principal act:

> … may still be regarded as disproportionate in that it will impose a check on many individuals who may reasonably be believed to present less risk to children than some of those who are now excluded. Evidence suggests children are most at risk of abuse from those in their close circle.

He went on further to say:

> The point, for present purposes, is that the bill for the working-with-children check scheme now excludes the groups who pose the greatest risk, and that is relevant to assessing whether the adverse effect of the scheme of those who remain covered by it is proportionate.

The privacy commissioner, who has studied this bill, acknowledges that the legislation is not likely to catch those people who are the greatest risk to our children. It is a very important issue and the government should be applauded for attempting to have regulations and restrictions around those people who come in contact with our children. It needs to also have some humility when it looks at the issue and realise that when something is not working as well as it could, or as well as it should, it should adopt a better option and a better plan.

On that note I will conclude my contribution by stating that we will not be opposing the bill, but we urge the government to look at adopting a universal police-check system that works across different sectors — one that could be administered by a totally independent authority as opposed to the government department model which is used here in Victoria.

Ms PENNICUIK (Southern Metropolitan) — I say at the outset that the Greens will support the Working with Children Amendment Bill. The bill makes some amendments to the Working with Children Act 2005 which the Attorney-General says are designed to address some practical and legal issues that have arisen in the first year of the operation of the act. The amendments are as outlined in the second-reading speech and include some additional offences under category 2, including the offence of loitering near schools without a reasonable excuse and stalking where the victim is a child. Also included are the offences of causing injury intentionally or recklessly, and obscene exposure, which are to be included in category 3. Categories 2 and 3 allow the department secretary some level of discretion. Also included are assessment mechanisms to provide the secretary with limited exceptional circumstances discretion for offences that are not named in the act either now or after the amending bill has passed.

The amendments appear to fall within the policy framework of the act. Of course, it is important that people who work with children, either as their occupation or in a voluntary capacity, do not pose a risk to the physical or sexual safety of those children. In principle, the working-with-children check is a good idea, but when introducing such schemes we should always have an eye on the possible unintended consequences.

In a letter dated 12 September the Law Institute of Victoria says it has some concerns about the operation of the working-with-children scheme under the act. Many of its concerns relate to the potential for discrimination and were raised in its submission to the Department of Justice in 2003. It also says that it is currently preparing a submission to the Department of Justice on the issue of spent convictions and criminal record discrimination. It says that its submission will consider the operation of the working-with-children scheme in that context. In essence, a lot of the problems with the act are to do with the lack of discretion, and stakeholders have been highlighting that.

In the debate on the Justice and Road Legislation Amendment (Law Enforcement) Bill on Tuesday I mentioned the case of a teacher in Orbost, and I think I made a mistake by saying the teacher lost his job because he was on the sex offenders register. I think it was actually because he had undertaken a working-with-children check and it had been found that as a 20-year-old he had pleaded guilty to the sexual assault of a 15-year-old girl, even though it was a consensual act and the complaint was made by a third party. As I understand it, he received a payment from the education department. This teacher was described by his former principal as outstanding, highly regarded by the community and a loss to Victorian schools. It is because the operation of the act is black and white and because of the lack of discretion that somebody who poses no threat to the physical or sexual safety of children has been caught up.

While people who are a threat to the safety of children must be prevented from working in occupations or from undertaking voluntary activities with children, we must also ensure that people who are not a threat to children and who in fact may be excellent people to work with children are not excluded from doing so as a result of there being no room to move in the legislation. I am not sure, but I am hoping that the provision which reclassifies the carnal knowledge offence into a

category 2 offence, whereby the secretary can exercise his discretion in determining whether to issue an assessment notice provided that doing so does not pose an unjustifiable risk to the safety of children, may be a response to the error that was made. Perhaps it will ensure that it does not happen again because there was no risk to the safety of children. Maybe another speaker can enlighten me on that.

Mr Rich-Phillips and Mr Drum outlined some of the problems with the bill in terms of its burden on voluntary organisations. They said it may in fact be a disincentive to volunteering in an era when we know that because of other problems in the community, including people working long and unhappy hours, the number of people able to work — for example, with sporting clubs — is already falling. The cost of going through a working-with-children check may also be a disincentive. Certainly Mr Rich-Phillips raised a concrete example of that being the case. It could lead to people not applying for positions working with children when they have a criminal record, even though the offence is not really relevant to their ability to work with children. Although the Working with Children Act does not seek to cover irrelevant offences, people may feel that it does and may therefore not apply for a working-with-children check when they may be good people to do so.

There is also the effect on low-paid and part-time workers such as school service officers when the cost of a working-with-children check is $70. We asked a question in the budget estimates hearings about this issue, and we were told that it is a difficult issue which requires policy discussions. I urge the government to have those policy discussions because if it is bringing in legislation which is well intentioned — I am not saying it is not — it needs to look at the implications and work towards ameliorating any problems to facilitate a smooth operation.

The statistics mentioned by Mr Drum for the period from April 2006 to June 2007 show that 62 465 assessment notices were issued and that 16 were interim negative notices. Six negative notices were issued finally, and three of those were successfully appealed against at the Victorian Civil and Administrative Tribunal (VCAT). I am informed that some of them related to foster parents aged over 50 years who had been charged with the old offence of carnal knowledge, which had been committed when they were young, and I mentioned that in an earlier example. Emergency hearings had to be held at VCAT to make sure those people were not unintentionally caught up by this act.

That there are so few negative assessments points to the fact that people who know they have a conviction which would exclude them from working with children are probably not applying for a working-with-children check, which the government foreshadowed when it introduced the legislation. That is a good thing, because if they do not have the working-with-children check, they cannot work with children. It is having that effect. The other side of that is that the Australian Bureau of Statistics figures on the attrition of sexual assault through the criminal justice system suggest that only 0.9 per cent of sex offenders are ever proven guilty; therefore the register can only ever target 1 per cent of sex offenders, and that may create a false sense of security. People who may in fact pose a risk to the physical or sexual safety of children may be getting a working-with-children check, but they are not picked up through this because they do not have a conviction.

Obviously that is going to be a hard issue to deal with, but it is one that needs to be recognised so that the whole scheme is put in context in terms of it being one way of preventing children coming to harm, but it is not the be-all and end-all. If we are saying that only 1 per cent, or thereabouts, of sex offenders are ever found guilty, then 99 per cent of them are not found guilty. But they may have perpetrated physical or sexual harm on children and not had a conviction registered against them, so they will not be picked up under this scheme. That is just by way of saying we need to keep in perspective what this legislation can actually achieve, even though it has achieved something and is well-intentioned and a good thing.

Mr Drum also raised the issue of the administration of the act perhaps not best being done through the Department of Justice. He mentioned the Queensland model, which I have had a look at too, and which seems good. It is good to have an independent body doing these things, and it seems as if the blue card system is a little less bureaucratic than this one. It is perhaps something that could be looked at in further reviews of the Working with Children Act and its implementation.

The other issue I want to raise is that of a children and young persons commissioner under the Child Wellbeing and Safety Act conducting annual reviews of the Working with Children Act. These reviews are not public, as I understand it. It would seem to me that for such a serious issue of public interest, if reviews are being undertaken by the commissioner, they should be public — obviously not public in a way that would identify individuals, but public in a way that would allow the public to know from an independent person's point of view whether the act is working as well as it could be, and if it is not, how it could be improved.

With those comments I say that the Greens will support the bill, but I think the act needs in its infancy to be open to constant review and improvement where necessary.

Mr TEE (Eastern Metropolitan) — The working-with-children checks have been in place now for some 12 months. They are a product of the Working with Children Act and are critical in helping to protect children from sexual or physical harm. They are a vital tool, giving parents and the community confidence about the appropriateness of those working with children. This system requires that those working with children, whether in a voluntary or paid capacity, have their suitability checked by reference to, amongst other things, their criminal records.

The government has very much got the balance right. It has in place a rigorous regime but at the same time has ensured that community groups have not been burdened by delays, red tape and cost. It is not, as Gordon Rich-Phillips indicated, bureaucratic. This does not have delays. It is not, as Ms Pennicuik has suggested, burdensome. There is no cost for volunteers to obtain a permit. There is a cost of $71 for a permit to those who are employed, a cost that covers five years, which must be a small price to pay for a uniform screening process which helps to keep our children safe. In the 12 months that the system has been in place we have had some 120 000 applications processed, which reinforces the absence of delays. The process has been made as easy as possible. Applications can be made at participating post offices, and there is a very clear website.

There have been issues raised about the mechanism that is in place, and there appear to be two clear views about the mechanism. Mr Rich-Phillips wants to add a layer of bureaucracy to each of the community organisations by requiring that they undertake the tests themselves, which of course has a number of immediate problems, including the privacy of criminal records being exposed when those records may indeed have no relevance to the capacity of employees or volunteers to work with children. Requiring community organisations to administer the act will result in inconsistency in the application of the tests. It will result in an increased workload. It will result in individuals working for two or three organisations having to go through the test on each occasion, which appears to be completely unworkable.

The other mechanism suggested by Mr Drum and Ms Pennicuik is to have independent oversight. They will be pleased to know that the child safety commissioner already provides an independent annual audit, the results of which are reported annually in the child safety commissioner's report and are there to be seen by all. The summary of the report that is provided by the child safety commissioner is entirely a matter for the independent child safety commissioner.

Mr Drum and Ms Pennicuik raised the issue of numbers. In fact there have been 20, and not 3, who have been refused, 6 of whom appealed to the Victorian Civil and Administrative Tribunal on the basis of the carnal knowledge requirement or offence. We will make changes with regard to that issue if this bill goes through.

The other issue Mr Drum raised and asked us to have a look at is the situation where if you are employed to work with children and you do voluntary work, you require two permits. Again, that is not the case. One permit — your employee permit — is sufficient to cover you if you want to work in a voluntary capacity.

After 12 months of a new and comprehensive system, as you would expect, a number of issues have emerged, and this bill seeks to build on that success and experience with these amendments. The amendments include the introduction of a number of new offences against which an application to work with children will be considered. These new offences include stalking a child and someone who is loitering in or near a school, having been charged with a specified sexual offence. These offences are predatory in nature, and an applicant convicted of these offences will be refused a permit unless it can be demonstrated that they do not pose an unjustifiable risk to the safety of children.

The other new offences against which an application will be considered are the offences of causing injury intentionally or recklessly, and obscene exposure. These offences can cover a range of circumstances, some more serious than others. Only some of them will be relevant in determining whether it is appropriate for a person convicted of those offences to be working with children. The bill provides a regime which allows people convicted of such offences to work with children unless, again, in all the circumstances it is inappropriate for them to do so.

The bill downgrades convictions for carnal knowledge, the issue raised by Ms Pennicuik. These offences are often committed when young people who have consensual sex are reported by their parents and a conviction may occur. Ms Pennicuik raised the issue of teachers caught in this situation. Teachers have their own regime; they are not covered by the working-with-children checks. However, other people who work with children who have carnal knowledge convictions will be affected by these amendments.

Currently those convicted of carnal knowledge offences must be excluded. Under this bill an individual who is convicted of such an offence will be able to get a permit in some limited circumstances. In so allowing the system provides the discretion Ms Pennicuik seeks. However, they will, as you would expect, need to overcome a presumption that the permit should be refused by demonstrating that granting the permit will not pose an unjustifiable risk to the safety of children. A permit will only be issued in those circumstances.

The other part of the bill is an exceptional circumstance discretion provided for the secretary of the department. This is a catch-all provision dealing with individuals who have been convicted of a number of offences which, taken individually, do not meet the act's criteria for refusing a permit, but when the individual's record is considered as a whole it is clear that the individual poses an unjustifiable risk and it is not appropriate that that individual work with children. Under the provisions in this bill these individuals can be refused a permit.

As I have indicated, these changes build on the very successful record of the government in this area. They achieve this outcome in a way which does not place an onerous administrative burden on the many community groups that work with children. This is as it should be. As we know, many of these organisations are staffed by volunteers who give freely of their time. Considering the number of children involved and the number and diverse range of organisations working with children, the success of the permit system has been a remarkable achievement. I want to congratulate the government and the community on working together to ensure the success of the scheme, and commend the bill to the house.

Mr PAKULA (Western Metropolitan) — I rise to support the Working with Children Amendment Bill. As other speakers have indicated, the bill is designed to enhance the mechanisms that already exist in the Working with Children Act 2005. I am certain that all members of the house and all well-intentioned members of the community accept and support the key aim of the act and the bill, which is about protecting children — the community's most vulnerable members — from physical and sexual harm.

The purpose of this bill is to iron out some practical and legal issues which have become apparent to the government during the first year of operation of the principal act. It is entirely appropriate to refine the categories of offending behaviour that ought to be considered when assessing a working-with-children application. Briefly those new categories are as follows. There is the category of loitering near schools. That applies when a specified sexual offence occurs near a place frequented by children. Those characteristics of the offence restrict its scope and ensure that people going about their everyday business which happens to be near a school are not caught up by this offence because of the restriction of it having to comprise a specialised sexual offence committed near a place frequented by children.

The bill also adds the category of stalking, but only in circumstances where the victim of the stalking is a child. It adds the categories of causing injury intentionally or recklessly and the offence of obscene exposure. This does not mean that if you have been convicted of any of those offences your application for a working-with-children permit will automatically be denied. It means that your conviction for those offences is included in a suite of things that are considered. That is entirely appropriate. It is entirely appropriate for the departmental officer to have all that information at hand and to be able to properly consider those things when assessing the application.

The bill also, and again I say quite appropriately, vests an exceptional circumstances discretion in the Secretary of the Department of Justice. That is necessary because in many cases violent criminal histories should be considered, even if those histories do not fall into the specified categories added as part of this bill. As I said, the government has found that these additions are necessary given the first 12 months of operation of the act. Importantly the house should note that rights of appeal to the Victorian Civil and Administrative Tribunal have been retained in the case of individuals who think their applications have been unfairly denied.

Like many members here, I am a parent. My children are both in the under six-years-of-age bracket — a two-year-old and a five-year-old. They are very small and very vulnerable. Like most parents, certainly like any parent I know, my expectation is that if the law and the Parliament — we who are vested with the enormous responsibility of legislating for the benefit of Victorians — are to err, then we should err on the side of protecting our children. If the tightening up that is provided for in this bill leaves less room for doubt, less room for error and less room for perverts to work with children, it is tightening up which is quite appropriate and which should be supported by all members.

It is not just about people with perversions or things that would commonly be regarded as perversions. The bill also captures people who may have, for instance, uncontrollable tempers that could lead them to beat children or otherwise behave inappropriately with them.

It also captures those people with a more general criminal history, provided that the history is relevant.

To the extent that it provides robust protection of the defenceless without unnecessarily or capriciously impacting on people's livelihoods, their ability to get a job and their ability to pursue their chosen profession, the bill should be supported. The bill strikes that balance. It unashamedly leans towards protecting the rights of vulnerable children, as it should. It should be supported by all members of the house.

Debate adjourned on motion of Mr EIDEH (Western Metropolitan).

Debate adjourned until next day.

EDUCATION AND TRAINING REFORM MISCELLANEOUS AMENDMENTS BILL

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Education and Training Reform Miscellaneous Amendments Bill 2007.

In my opinion, the Education and Training Reform Miscellaneous Amendments Bill 2007, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill amends the Education and Training Reform Act 2006 by introducing a range of measures to assist in the administration of that act and to reflect recent machinery of government changes. It will also make statute law revision changes and technical amendments to improve the drafting of the act, and address other matters which have arisen since it was passed.

The more significant provisions establish a process for the approval of providers of overseas student exchange programs; prevent double payments in respect of personal injuries to volunteer school workers; permit the registration of homeschooling for students up to 18 years of age, require criminal records checks for registered teachers to be undertaken every five years, enable the Victorian Institute of Teaching to obtain teacher details from their employers, and widen the category of criminal offences which the Chief Commissioner of Police must inform the Victorian Institute of Teaching where a teacher is charged or convicted.

Human rights issues

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

The only human right that might be impacted by the bill is the right to privacy under section 13(a) of the Charter of Human Rights and Responsibilities. That subsection states that a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. The word 'arbitrary' requires that any interference be reasonable in the circumstances.

It is considered that although clauses 9, 10 and 11 of the bill engage the section 13 right, they do not limit that right.

Clause 9 of the bill inserts a new section 2.6.22A in the act to require the Victorian Institute of Teaching to undertake a criminal record check on a registered teacher every five years.

Clause 10 of the bill inserts a new section 2.6.26A in the act and enables the Victorian Institute of Teaching to obtain from the employers of teachers the names of the teachers, the teacher's registration number and date of birth.

Clause 11 of the bill amends section 2.6.31 of the act so as to widen the category of criminal offences which the Chief Commissioner of Police must inform the Victorian Institute of Teaching on becoming aware that a teacher has been charged with, committed for trial or convicted of any of those offences.

None of the clauses involve an 'unlawful' interference with privacy. They will not be unlawful as the bill, or the act once it is passed by Parliament, will provide for the action referred to in those clauses to occur.

For the following reasons, none of the clauses involve an arbitrary interference with privacy.

The requirement under clause 9, for the Victorian Institute of Teaching to undertake a criminal record check on a registered teacher every five years, is being introduced for consistency with criminal record checks under the Working with Children Act which last for five years, and to ensure that any criminal conduct engaged in interstate by a teacher is identified. Whilst section 2.6.22 of the current act requires the chief commissioner to notify the Victorian Institute of Teaching if a registered teacher is charged with or convicted of a sexual offence against a child, the chief commissioner's records only relate to offences in Victoria. A full criminal record check on the other hand is undertaken on a nationwide data base, and will also pick up offences other than sexual offences against children. These other offences might also be relevant in assessing a person's suitability to be a teacher.

Clause 10, which enables the Victorian Institute of Teaching to obtain from the employers of teachers the names of the teachers, the teacher's registration number and date of birth, is being introduced to enable the Victorian Institute of Teaching to crosscheck its teacher registration details against details of persons employed in schools as teachers. It is vital that our children are taught by properly trained and registered teachers, and that any that have been deregistered for criminal offences are not teaching in our schools.

Clause 11, which widens the category of criminal offences which the Chief Commissioner of Police must inform the Victorian Institute of Teaching on becoming aware that a teacher has been charged with, committed for trial or convicted of any of those offences, will mirror the change to the Victorian Institute of Teaching Act 2001 that was made under section 53 of the Working with Children Act 2005. The offences cover violent offences like murder, and various drug offences. As stated earlier, section 2.6.22 of the current act requires the chief commissioner to notify the Victorian Institute of Teaching if a registered teacher is charged with or convicted of a sexual offence against a child. These extra offences are all relevant to the issue of whether the teacher should continue to be registered.

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

As the bill does not limit human rights, it is not necessary to consider section 7(2) of the charter.

Conclusion

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

Hon. John Lenders, MLC
Treasurer

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

Members may recall that the Education and Training Reform Act 2006 introduced significant reforms, and also merged and updated 12 separate acts dealing with education and training. The purposes of this bill are to introduce a range of measures to assist in the administration of that act and to reflect recent machinery of government changes. It will also make statute law revision changes and technical amendments to improve the drafting of the act, and address other matters which have arisen since it was passed.

As the provisions of the bill can be grouped under those three main purposes, I propose to deal with them in that order.

The first group of measures are designed to assist in the administration of the act and implement recent machinery of government changes. A number of the bill's provisions fall into this group, and I will focus on those that are more significant.

The measures include the ability to enable fees to be paid by instalments. The act currently enables the minister to fix the various fees that are payable under the act by education providers for things like the registration of schools or education and training organisations, the registration of bodies wishing to deliver higher education courses, and providers of courses to overseas students. The amendment is based on section 35A of the repealed Victorian Qualifications Authority Act 2000 which empowered the minister to fix a fee for matters chargeable under that act, and for the minister to authorise the fees to be collected in periodic instalments or other methods. As some fees are payable in respect of registrations covering a five-year period, and the revenue of education providers is spread over the same period, it seems reasonable to enable them to pay the fee by instalments, rather than requiring them to make an up-front fee at the start of the five-year registration period.

The measures will also enable the Victorian Curriculum and Assessment Authority to appoint a committee without first having to obtain the minister's approval to appoint a committee. This is a power that the other education authorities have, and there appears to be no good reason to continue this anomaly.

The measures also require the Victorian Registration and Qualifications Authority to have regard to the suitability of a course for overseas students when considering whether to approve a person to provide a course to an overseas student. This change will mirror section 27(3)(da) of the repealed Victorian Qualifications Authority Act 2000, which enabled the former Victorian Qualifications Authority to have regard to the suitability of the course for overseas students when considering whether to approve a person to provide a course to an overseas student.

The regulation of education providers to overseas students is done in compliance with the Commonwealth's Education Services for Overseas Students Act 2000, and an offence occurs under section 8 of that act if a person provides a course to an overseas student without first being registered by the relevant state authority. The relevant state authority in Victoria is the Victorian Registration and Qualifications Authority, and section 4.5.1(2) of the Education and Training Reform Act 2006 states that in deciding whether to grant an approval, the authority may have regard to the national code and any guidelines issued by the authority and matters relating to the management of the education institution. Whilst subsection (3) enables the authority to issue guidelines dealing with all or any of the matters referred to in subsection (2), none of the matters in subsection (2) refer to the suitability of the course. The proposed amendment will address this issue and enable the authority to have regard to the suitability of the course.

Another measure involves permitting full-time employees of universities to be paid a fee for membership of an authority such as the Victorian Registration and Qualifications Authority. The university employees undertake their role as board members outside their role as employees — however, schedule 2 of the Education and Training Reform Act 2006 prevents them receiving any fees. It is important that the VRQA and other authorities continue to attract members with relevant expertise and experience, and the proposed amendment will remove the current restriction.

The bill also increases by one the membership of the Victorian Registration and Qualifications Authority. This change reflects recent administrative arrangements and ensures that the Secretary, Department of Education and Early Childhood Development, and the Secretary, Department of Innovation, Industry and Regional Development, are members of the authority. The administrative arrangements also supported amending the bill

to remove the mandate that the secretary must be a member of the Adult, Community and Further Education Board.

Administrative efficiencies will be achieved by the amendment enabling the regulations under the act to incorporate matters in documents as published from time to time. The education and training portfolio is governed by various national guidelines and frameworks, such as the Australian Qualifications Framework and the standards for registered training organisations, and at the state level through instruments such as guidelines, ministerial orders, or directions. The regulations sometimes need to refer to the above documents; however, the current regulation-making power under the Education and Training Reform Act 2006 is restricted to referring to documents as issued or published at the time the regulations are made. The current regulation-making power cannot refer to documents as published from time to time, or as amended from time to time. To accommodate changes in published documents without having to remake the regulations, the amendment will enable the regulations to incorporate matter contained in a document as amended from time to time. Section 32(4) of the Interpretation of Legislation Act 1984 will be relevant to this amendment, as it requires the minister to table in Parliament a copy of the relevant documents, and for copies to be kept in the department for inspection by the public, as well as notices to be published in the *Government Gazette*, so as to provide information to the public of the documents as amended.

The bill will also permit the secretary to delegate his employment powers in respect of school services employees to a government school principal. This change will mirror current practices and will reflect the recent transfer of these employees to employment by the secretary in the teaching service under part 2.4 of the Education and Training Reform Act 2006. It will also be consistent with the delegation of other powers to principals of government schools in respect of teaching service positions in the teaching service.

Another administrative-type measure effects an amendment to permit the minister to delegate to the chairperson of the merit protection boards the power to appoint an acting member of a merit protection board. These boards hear reviews and appeals in respect of the teaching service. Due to the volume of business, there are seven merit protection boards. Section 2.4.45 provides that a merit protection board consists of three members appointed by the Governor in Council of whom —

> one shall be the chairperson nominated by the minister;
>
> one shall be a person nominated by the secretary;
>
> one shall be nominated by the minister after calling for expressions of interest from teachers employed in government schools.

The absence of a member for illness or other cause is addressed by section 2.4.47, which permits the minister to make an acting appointment in the absence of a member. The number of boards and the urgency within which acting appointments need to be made favour administrative arrangements being put in place to enable the chairperson of the boards appointing an acting member from a list previously agreed to by the minister. This will be achieved under the bill by enabling the minister to delegate to the chairperson the power to appoint an acting member.

The second last matter in this group of administrative-type provisions will update the volunteer school worker compensation sections in the Education and Training Reform Act 2006. Those sections currently provide for payment of compensation to volunteer workers for personal injuries incurred whilst engaged in school work. They also provide that compensation is to be paid under the Accident Compensation Act 1985 and that the Victorian WorkCover Authority is to represent the Crown in the proceedings. Until recently, proceedings under that act were taken before the County Court, the Magistrates Court or VCAT.

However, part III of the Accident Compensation Act 1985 was updated recently to enable the parties to a dispute to refer the dispute to conciliation by the Accident Compensation Conciliation Service, which can also involve a referral to medical panels. The amendment will ensure that the Victorian WorkCover Authority will be entitled to reimbursement of its reasonable costs and expenses in representing the Crown in those conciliation proceedings and which might also include referrals to medical panels.

The last matter in this group of administrative-type provisions will permit teaching service disciplinary proceedings to be conducted under the teaching service provisions in part 2.4 of the Education and Training Reform Act 2006, irrespective of when the relevant facts occurred, provided proceedings have not already commenced under the repealed Teaching Service Act 1981. The reason for making this change is because although the discipline provisions for the teaching service are identical under the Teaching Service Act 1981 and Education and Training Reform Act 2006, the law requires that the proceedings be commenced under the Teaching Service Act 1981 if the relevant facts occurred before 1 July 2007 (being the date on which the Education and Training Reform Act 2006 came into operation) and under the Education and Training Reform Act 2006 if the facts occurred on or after 1 July 2007. This division causes confusion and is an arbitrary and unnecessary division when preparing allegations or holding hearings. The amendment is based on section 83 of the Teaching Service Act 1981, which introduced a similar capacity to hear matters under amendments to that act.

The next group of provisions are those that make statute law revision changes or technical amendments to improve the drafting of the act. Again, a broad range of matters is covered in this group. They all improve the quality of the expression or clarify what is intended or make some correction to the current wording in the Education and Training Reform Act 2006.

An example involves ensuring the consistent use of terms throughout the act, such as ‘prescribed minimum standards for registration’ and ‘award, confer or issue a qualification’. Other examples involve changing the title of a director of an adult education institution to the term currently used of ‘chief executive officer’, correcting references to ‘the TAFE institute’ to read ‘the board of the TAFE institute’, and referring to ‘a member’ instead of ‘a director’ of a board of an adult education institution. There is a substantial difference between referring to the board of a TAFE institute instead of just the TAFE institute, as the board is a body corporate whereas the institute is not, and whilst these changes may appear minor they are of substance.

The more significant measures involve amending the definition of ‘higher education award’ in section 1.1.3 so as to only exclude a VET sector graduate certificate from the

definition and not a higher education graduate certificate. The current definition excludes all graduate certificates and is too wide. The amendment will mirror the definition that existed under the former Tertiary Education Act 1993.

Another notable measure is the update to section 2.6.31 so as to widen the category of criminal offences which the Chief Commissioner of Police must inform the Victorian Institute of Teaching on becoming aware that a teacher has been charged with, committed for trial or convicted of any of those offences. This amendment will mirror the change to the Victorian Institute of Teaching Act 2001 that was made under section 53 of the Working with Children Act 2005.

A further measure includes placing the Department of Education and Early Childhood Development on the state register kept by the Victorian Registration and Qualifications Authority as a provider of courses to overseas students, and updating section 11 of the Child Employment Act 2003 to refer to section 2.1.5 of the Education and Training Reform Act 2006 instead of section 74G of the repealed Community Services Act 1970. Section 11 of the Child Employment Act 2003 prohibits a person from employing a child during normal schools hours on any school day unless the minister has granted the child an exemption from attendance at school under section 74G of the Community Services Act 1970. Section 2.1.5 of the Education and Training Reform Act 2006 now contains the minister's powers to exempt children from attending school and should replace section 74G of the Community Services Act 1970.

I have previously mentioned that the regulation of providers for overseas students is done in compliance with the commonwealth's Education Services for Overseas Students Act 2000, and requires providers to be registered by the relevant state authority. Under arrangements with the commonwealth, the Department of Education and Early Childhood Development was listed as the provider of courses through its government schools and the bill will continue that arrangement, rather than having individual government schools being registered.

The last group of provisions are those that address matters which have arisen since the passing of the act. This last group covers the following five matters.

The first involves an amendment to the volunteer school worker provisions so that payments under those provisions will cease if the volunteer school worker receives an award at common law and/or agrees to a compromise of a common-law claim in relation to the same injuries. The amendment largely repeats the contents of section 134AB(36) of the Accident Compensation Act 1985, so as to prevent persons from 'double dipping' by receiving damages on the one hand and continuing to receive compensation under the statutory compensation scheme.

The second matter involves the transfer of the function of registering student exchange organisations from the department to the Victorian Registration and Qualifications Authority. Student exchange organisations arrange accommodation and schooling placements for Victorian school students going overseas. Under arrangements between the states and the commonwealth, these organisations have to be registered by the relevant state authority in order to qualify for special entry and exit visas for an equal number of students travelling out of and into Australia. The registration of these organisations in Victoria to date has been undertaken by the department under the minister's common-law powers.

Having regard to the other registration functions of the Victorian Registration and Qualifications Authority, it seems logical and preferable that this function be transferred to it, so it continues to be the one-stop shop for education providers. The new provisions give a statutory base to this function and enable student exchange organisations to be registered with the authority and enable it to issue guidelines and set conditions and forms for registration.

The third matter requires the Victorian Institute of Teaching to ensure that every registered teacher has a criminal check every five years and for the institute to undertake the check and invoice teachers. The proposal will mirror the requirements of the Working with Children Act, which requires a criminal check every five years. A recent audit of institute's records revealed that criminal checks have not occurred at the same time as initial registration and that some checks have occurred prior to or after initial registration.

The next matter involves the Victorian Institute of Teaching being able to obtain relevant details of teachers from schools to enable it to crosscheck its details of registered teachers. The amendment will enable the institute to seek the relevant details from the employer of teachers, for example, the secretary or school council in the case of teachers in government schools, or the employer of teachers in non-government schools. It is proposed that the institute will obtain the information through an annual online census, although it will also be able to require the relevant details in specific cases.

The last matter involves amending section 4.3.9 to permit children to be registered for homeschooling up to 18 years of age. The reason for this amendment is because section 4.3.9 of the Education and Training Reform Act 2006 enables the Victorian Registration and Qualification Authority to register students for homeschooling. The word 'student' is not defined in the act, but the section is part of the scheme which gives parents of compulsory school-aged children the option of registering their child for homeschooling. The purpose of the amendment is to ensure that the authority may continue to register students for homeschooling past their 16th birthday and enable parents to continue to receive government support available to registered homeschoolers. The amendment will also reflect arrangements previously operating in the department.

In conclusion, in one sense this bill provides the finishing touches to the current act. On the other hand, it builds upon the current act by making some significant changes to provide the right framework upon which we can continue to lead in the field of education and training.

I commend the bill to the house.

Debate adjourned for Mr P. DAVIS (Eastern Victoria) on motion of Mrs Coote.

Debate adjourned until Thursday, 18 October.

EMERGENCY SERVICES LEGISLATION AMENDMENT BILL

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Emergency Services Legislation Amendment Bill 2007.

In my opinion, the Emergency Services Legislation Amendment Bill 2007, as introduced to the Legislative Council, is compatible with human rights protected by the charter. I base my opinion on reasons outlined in this statement.

Overview of the bill

The general purpose of the bill is to amend the Emergency Management Act 1986, Country Fire Authority Act 1958, Metropolitan Fire Brigades Act 1958, Victoria State Emergency Services Act 2005 and Summary Offences Act 1966. The bill will clarify the powers and roles of the emergency services commissioner ('the commissioner') and strengthen the role of the commissioner to report to the minister on emergency-related matters. It will also make routine amendments to agency-specific legislation to better enable them to discharge their emergency response roles.

This bill recognises that the impact of emergencies is often severe and that the nature and range of emergencies has significantly changed over time. The community values the significant efforts of emergency services in responding to and recovering from emergencies, and the dangers in which emergency services workers and volunteer emergency workers are placed. This bill will reflect the values of promoting a safe and secure Victoria and of protecting our emergency services from harmful activities by increasing penalties. It will also create new offences to mitigate risks that undermine effective emergency responses.

Human rights issues

1. Human rights protected by the charter that are engaged by the bill.

The following human rights protected by the charter are relevant to the bill:

1.1 Section 13: Privacy and reputation

(a) A person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

The right to privacy is engaged by three separate provisions:

1. Clause 62 amends the Emergency Management Act to empower the commissioner to require an agency to disclose information which the commissioner reasonably believes is necessary to:

   monitor compliance with a standard prepared under part 4A,

   monitor the performance of an emergency services agency, or

   advise, make recommendations and report to the minister.

   Information provided for these specific purposes may involve the disclosure of personal information to the commissioner. This may be necessary to, for example, determine whether an emergency services agency attended at the correct premises by reference to the address of a person given during a '000' emergency call.

2. Clauses 34 and 93 amend the Country Fire Authority Act and Metropolitan Fire Brigades Act (respectively) to enable the Country Fire Authority (CFA) and Metropolitan Fire and Emergency Services Board (MFESB) to access any information regarding the location of water supplies on a person's property. The proposed amendment also clarifies existing rights to use water. Such powers are necessary to enable the CFA and MFESB to readily and promptly access sufficient water supplies to fight fires. Where the CFA or MFESB access water from a person's well or tank for firefighting purposes, the loss of water would be deemed to be fire damage within a person's insurance policy against fire, under the fire services' legislation.

3. Proposed amendments to the Country Fire Authority Act, Metropolitan Fire Brigades Act and Emergency Management Act to enable the emergency services to direct a person to leave premises may also involve an interference with a person's home by providing powers of entry and evacuation. Where firefighters use reasonable force to evacuate a person who refuses to withdraw, bodily privacy may also be affected. These amendments are at clauses 11, 13 and 35 in relation to the Country Fire Authority Act; clauses 79, 90 and 92 in relation to the Metropolitan Fire Brigades Act; and clause 92 in relation to the Emergency Management Act.

To comply with section 13(a) of the charter, a person's privacy must not be unlawfully or arbitrarily interfered with.

Unlawful interference

No interference with privacy can take place except permitted by law. The circumstances in which the bill will authorise agencies to provide and access information are precise and circumscribed. The CFA may access information and premises for firefighting purposes, and emergency services can do so for the purpose of evacuating persons from emergency situations. The powers do not give broad discretions to the agencies to interfere with privacy.

Arbitrary interference

An interference with a person's privacy is not to be arbitrary where it is in accordance with the provisions, aims and objectives of the charter and is reasonable in the circumstances. It is clear that the charter aims to protect life. Each proposed amendment is consistent with the protection of life. The commissioner has an advisory role to assure the government that emergency services agencies are performing to an appropriate standard, and that emergency services are not prevented from discharging their emergency response functions.

In each case, the proposed amendments involve powers which are exercisable to protect life, and which are constrained by clear and reasonable parameters. As such the proposed amendments do not involve unlawful or arbitrary interferences with privacy. Therefore while the right to privacy may be engaged, it is not limited.

1.2 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 right to property is engaged by three proposed amendments.

1. Emergency services may direct evacuation from premises in an emergency area or state of disaster under the Emergency Management Act, from burning premises under the Country Fire Authority and Metropolitan Fire Brigades acts ('the fire services acts'), and remove persons from land or premises where they interfere with the operations of the fire services. Further, provisions will clarify the emergency services' ability to direct movement around, and prevent entry to, the affected area. Directing the withdrawal of persons or directing movement around emergency areas can temporarily deprive a person of that person's property if a person is forcibly evacuated from a burning premises or is unable to retrieve their property. If the property is subsequently destroyed, the deprivation is permanent. These amendments are at clause 66 in relation to the Emergency Management Act; clauses 11, 13 and 21 in relation to the Country Fire Authority Act; and clause 92 in relation to the Metropolitan Fire Brigades Act.

2. Clause 39 in relation to the Country Fire Authority Act and clause 105 in relation to the Metropolitan Fire Brigades Act create an offence to wilfully reset or interfere with a fire indicator panel. This may result in a person being denied access to, and use of, his or her property. However, fire indicator panels have a significant impact on public safety as they provide the location of the fire and facilitate a prompt response to the fire. Resetting fire panels can endanger public safety, as it may delay rescue attempts within the building or enable the spread of fire beyond the building.

3. Clause 34 in relation to the Country Fire Authority Act and clause 93 in relation to the Metropolitan Fire Brigades Act clarify existing rights to water. The chief officers can access and use persons' water or water from any wells or tanks for the purposes of discharging their functions under their acts. While the use of a person's water deprives the person of their property, there are existing provisions within the fire services acts that can compensate the owner of the water under policies of insurance.

Deprivation of property under these provisions would be in accordance with the lawful exercise of a statutory power to direct the withdrawal of persons (including those with a pecuniary interest where they are interfering with the fire services or during a state of disaster), direct evacuation or movement, or to use water. Further, these powers are not arbitrary as they are in place to better enable the fire services and Victoria Police to protect life. Limitations on the right to property are more readily justifiable than limitations on the charter right to life. As such, these provisions also accord with the aims and objectives of the charter. Therefore, the right to property is not limited by these provisions.

1.3 Freedom of movement

Section 12 of the charter states 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.

The right to freedom of movement is limited by four separate proposals.

1. Emergency services may order the withdrawal from premises affected by fire or declared emergencies and use 'reasonable force' if a person refuses to comply with an order to withdraw. Ordering the withdrawal and forcibly evacuating persons limits the charter right to free movement as it may prevent a person from remaining on property and requires a person to relocate to another place, which is a safer location away from the emergency. The use of force must be reasonable in accordance with the charter right not to be subjected to inhuman or degrading treatment under s 10. These amendments are at clause 13 in relation to the Country Fire Authority Act and clause 79 in relation to the Metropolitan Fire Brigades Act.

2. Victoria Police in a declared emergency under the Emergency Management Act and the chief officers under the fire services acts will have clearer powers to direct the movement in emergency areas and fire-affected areas. While these powers exist in the current legislation, this bill clarifies powers with respect to preventing persons entering an affected area, closing roads and directing traffic in emergency areas or areas likely to be affected by fire, and directing persons to leave such areas by the safest and shortest route. These amendments are at clause 66 in relation to the Emergency Management Act; clauses 11 and 21 in relation to the Country Fire Authority Act; and clause 92 in relation to the Metropolitan Fire Brigades Act.

3. Enable the fire brigades to direct the removal of a person if that person interferes with, or obstructs, the fire services in the course of their duties. This proposal limits free movement by directing a person to leave a particular area and if the person refuses, to remove with reasonable force a person from the area. These amendments are at clauses 13 and 35 in relation to the Country Fire Authority Act; clauses 64 and 66 in relation to the Emergency Management Act; and clauses 90 and 105 in relation to the Metropolitan Fire Brigades Act.

4. Clause 134 amends the Summary Offences Act 1966 to create an offence to assault, resist or delay an operational CFA or MFESB member. Clause 105 will also provide an offence under the Metropolitan Fire Brigades Act to interfere with a fire brigade's appliances or equipment.

In particular, it will be an offence under new section 75C of the Metropolitan Fire Brigades Act to drive over a fire hose. This has the effect of denying a person free movement in an area where the fire brigade is extinguishing a fire.

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

As the right to freedom of movement is limited by the bill, it is necessary to consider whether the limitation is reasonable under s 7 of the charter.

(a) The nature of the right being limited

The right to move freely in Victoria is an aspect of the right to freedom of movement under section 12 of the charter. The right to freedom of movement is not an absolute right at international law. While the right to free movement is an element of personal autonomy, there are circumstances that justify its limitation, for example, the protection of public safety.

(b) The importance of the purpose of the limitation

The limitation is important to better protect human life and facilitate an effective response to emergencies. The objective of providing for the removal of persons who interfere with fire brigades is to ensure that fire brigades can protect life and property in extremely difficult conditions.

The fundamental objective of the limitation is to protect human life while also recognising property rights. As fires are unpredictable and can cause significant damage and injury within a short time, the risk of injury or death is often extremely high for persons who remain in burning premises. Typically, fire brigades are the best qualified to determine the risk posed, based on an understanding of fire patterns, firefighting capabilities and the structural environment of the premises. The fire brigades may also protect a person's life in circumstances where a person may not fully understand or appreciate the dangers with which they are faced.

(c) The nature and extent of the limitation

Free movement is restricted by requiring that a person be removed from, or restrict his or her entry into, an area in circumstances where:

an 'emergency area' has been declared because the circumstances are such that it is necessary to exclude persons from the area

an area is affected by fire, or is likely to be affected by fire (based on a number of considerations, such as roads on which visibility is impaired due to smoke)

a state of disaster has been declared

a person is in premises that are burning, or are threatened by fire, and

a person is interfering with a fire brigade or its equipment in the performance of the fire brigades' duties.

If a person does not comply with a direction to withdraw or to refrain from interfering, he or she may be removed with reasonable force, but will not be detained. However, where a person interferes with equipment, the person may be charged or imprisoned.

(d) The relationship between the limitation and its purpose

The limitation of freedom of movement is rationally connected to the purpose of the promoting of public safety and accords with the state's duty to take positive steps to protect life. By removing persons from a fire scene where such persons interfere with firefighters in the course of their duty, that person is not only removed from an immediate danger, but is also unable to jeopardise the brigade's operations and potentially other persons' safety. Further, directing movement in and around the emergency better enables emergency services to protect the safety and security of persons affected by the emergency.

The limits imposed by these proposed amendments are proportionate to the objectives sought. Persons are directed to withdraw from the fire scene and are not detained against their will. The bill provides for persons to be directed away from the fire scene to a safer location by the safest and shortest route. Persons will generally be able to return to the fire scene once it is safe to do so.

The proposed amendments also aim to protect the MFESB against interference with appliances and fire hoses. Driving over a fire hose may cause extensive damage not only to the hose, but also to the water pump to which the hose is attached. If such equipment is damaged, the fire brigade's ability to effectively respond to the fire is compromised and the safety of crew and other persons may be affected. Significant public moneys are also wasted to replace damaged equipment.

While it is reasonable to assume that the MFESB will take measures to minimise the restrictions of movement (for example, by providing a ramp over the fire hose where practicable), this is not always possible or effective. Instances have been reported of persons driving over fire hoses despite warnings of the potential damage.

Attaching a criminal penalty to wilful interference with apparatus or driving over a fire hose is an effective means to help prevent damage to MFESB equipment, and deter behaviour that may compromise firefighting efforts and risk public safety.

(e) Any less restrictive means reasonably available to achieve its purpose

A less restrictive means of protecting firefighters from interference with their equipment would be to cordon off access to the area in which the MFESB is conducting its response activities. However, this would involve expending significant amounts of time and resources to establish a cordon, which may waste valuable time in responding to the fire. Further, the emergencies are often unpredictable and can affect a large area. Response to such emergencies requires a mobile and flexible effort, and so a cordon would not always be effective. A cordoned-off area would not necessarily have

the ability to deter certain behaviour that may put safety of firefighters and others at risk.

There does not appear to be any other less restrictive means reasonably available. Creating an offence provision achieves the objectives of the proposed amendment and is most appropriate for the unpredictable nature of emergencies.

(f) Any other relevant factors

No other factors are considered relevant.

Conclusion

I consider that the bill is compatible with the charter of Human Rights and Responsibilities. A person's right to free movement under section 12 of the charter is limited. However, this limitation is reasonable and proportionate and demonstrably justifiable in accordance with section 7 of the Charter.

Justin Madden, MP
Minister for Planning

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

The purpose of this bill is to amend the Country Fire Authority Act, Metropolitan Fire Brigades Act, Victoria State Emergency Service Act, Emergency Management Act, Summary Offences Act and other acts.

Since 1999 the Victorian government has strengthened the capability of the emergency services by rebuilding facilities, updating equipment and providing state-of-the-art communications technology. However, the emergency landscape is constantly changing and we need to continue to work hard to make our world-class emergency services even stronger. This bill strengthens Victoria's already effective emergency management framework to better equip our emergency services to face an increasingly diverse range of emergencies.

The devastating impact of emergencies is fresh in the minds of Victorians. The most recent bushfire season burned over 1.1 million hectares of land, affected communities, resulted in the loss of property and had significant costs to tourism and local industries. In a number of Victorian communities severe floods followed the bushfires. This was during a time where the whole of Victoria remained in severe drought.

Emergencies such as bushfires and floods are likely to be more frequent and more severe. When combined with increased security risks since September 11, 2001, it is essential that the legislative framework continues to adapt with the changing risk environment. This bill will amend these acts in several ways to ensure our emergency workers are operating under a more modern legislative framework.

Better protection for volunteers and emergency workers

Firstly, the bill provides better protection for volunteers and emergency workers. The Victorian government values and supports the efforts of our dedicated emergency workers in protecting the lives of all Victorians every day of the year. Victorians are especially grateful to the thousands of volunteer emergency workers in the Country Fire Authority (CFA), Victoria State Emergency Service (SES) and other emergency services organisations who give their time and energy to protect Victorians and their property.

The government recognises that volunteer emergency workers often place themselves in physical danger to perform their vital roles. This bill will make it clear that the compensation provisions under the Emergency Management Act apply to volunteer emergency workers injured while performing their emergency response or recovery responsibilities. This will ensure that volunteers will be protected regardless of whether the activity is performed as a single agency or in a multi-agency response.

SES volunteers will also be able to have their claims for injury compensation determined by the Accident Compensation Conciliation Service and medical panels, in accordance with the Accident Compensation Act. This means that SES volunteers will no longer need to go through costly, stressful and lengthy court proceedings to have compensation entitlements determined by the courts.

In the 2006 Victorian bushfires firefighters from New Zealand were injured while supporting our fire services in firefighting activities. The government appreciates the efforts of interstate and international units and wants to ensure that international units are protected against personal liability when they come to Victoria to assist during emergencies. To ensure that Victorian, interstate and international units respond to fires in a coordinated and seamless manner, the bill clarifies that members of interstate and international units must follow the directions of the CFA or Metropolitan Fire Brigade (MFB) as appropriate. The bill will also require that any equipment for assisting in the firefighting operations is placed under the CFA or MFB's control, for as long as it is within Victoria.

CFA and MFB officers will be able to perform their work more safely as a result of this bill. The bill provides greater protection to firefighters by inserting an offence to assault, resist or delay firefighters in the course of their functions and duties.

Every second counts in an emergency response. Our firefighters must be confident that they will not be impeded or injured, or have their equipment damaged while discharging their responsibilities. To this end, the bill amends the MFB act to insert an offence to damage or interfere with certain MFB equipment.

Stronger emergency management provisions

The second area of amendment is in relation to enhancing emergency services capabilities to respond effectively to emergencies.

The emergency services commissioner

Since the Victorian government established the Office of the Emergency Services Commissioner in 2000, the commissioner has played a vital role in strengthening the emergency management arrangements in Victoria. The commissioner has undertaken a number of investigations, including the 2005 Melbourne Airport emergency and the 2003 Victorian bushfire inquiry. The commissioner has also been important in engaging the Victorian community in emergency management. The work of the commissioner is critical in enabling us to learn from past experience and build upon our emergency management arrangements.

This bill better supports the commissioner's current role with respect to reporting, advising and making recommendations to the government on matters relating to emergency management, emergency activity or emergencies.

The bill provides that the commissioner may monitor the non-financial performance of emergency services agencies in relation to emergency management, emergency activity or emergencies. For the purposes of performing his or her functions, the commissioner's existing power to obtain information will extend to urgently requiring information.

Directing movement at fire scenes

The fire brigades are the experts at understanding and predicting fire behaviour, weather conditions, and safety risks posed to persons near the scene of a fire. The bill clarifies and extends the powers of the chief officers of the CFA and MFB to close roads and direct traffic on roads affected, or likely to be affected, by fire or smoke from a fire, where it is necessary to do so to protect safety. The chief officers may also direct persons in the vicinity of the fire to leave the area by the safest and shortest route.

Access to water

The bill clarifies that the fire brigades may access and use water for the purposes of their functions or duties under the CFA act and MFB act. This would include emergency response or preventing a fire reigniting. Free access and use of water also includes free access and use of water infrastructure, and information regarding the location of water. Where the CFA or MFB takes water from a person's well or tank for firefighting purposes, this loss of water would be deemed to be fire damage within a person's insurance policy against fire.

Pecuniary interest

The pecuniary interest exemption will no longer apply to any person during declared states of disaster. States of disaster are a 'last resort' option for extreme catastrophes facing Victoria or a part of Victoria and in these instances it is appropriate to remove persons from their property where there is immediate danger. It will also no longer apply to a person interfering with, or obstructing, the fire services in the course of their duties.

Fire prevention measures

The third area of amendment is to increase penalties and create new offences to deter behaviour that could lead to significant emergencies or jeopardise an effective response to emergencies.

For example, the bill provides an offence for wilfully damaging, interfering with or resetting a fire indicator panel. A fire indicator panel is often the first point of call for the responding fire brigade, as it gives clear and immediate information of the location and source of the fire, or a fault in the fire detection system.

Resetting a fire indicator panel removes this information so it cannot be accessed by the fire brigade. The potential effect is to obscure the location of the fire or fault, so that fire brigades cannot immediately identify the source of the alarm. Instead, they must waste valuable time identifying the fire's location. In large premises, the time wastage may be considerable and lives may be put in danger.

The bill also creates an offence to wilfully give or cause to be given a false report of an emergency to a fire brigade.

Fire services funding

Amendments were made to the fire services acts in 2005, to enhance equity among insurance companies under the insurance-based fire services funding system.

After extensive consultations with the insurance and insurance-broking industries on the deductibles formula it was determined that the changes would be overly complex, costly to administer and place an implementation burden on Victorian businesses that would have exceeded the equity gains of the deductibles formula.

This bill removes the changes made in 2005. It reinserts a longstanding equity provision that deems a policy-holder with a high deductible to be uninsured — and liable for the costs of providing the service — if the amount of the fire damage is between $10 000 and the amount of the deductible.

Without this provision the situation is inequitable. It would mean that a person who is uninsured is liable to pay for the services of the fire brigade, but a policy-holder who is effectively uninsured through the use of a deductible is not liable for such costs.

General amendments

The bill also provides a more effective framework for managing the functions and operations of the CFA, MFB and SES. This includes providing the SES with more appropriate management and administration powers, including a more active role in registering units and more flexible delegation powers.

The last general amendments made by the bill provide for greater consistency in terms used within and between acts. The bill removes redundancies, rectifies drafting ambiguities and makes other procedural amendments to the powers and duties contained in the Emergency Management Act, MFB act, CFA act and Victoria SES act.

I commend the bill to the house.

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

Debate adjourned until Thursday, 18 October.

GRAFFITI PREVENTION BILL

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities (referred to as 'the charter'), I make this statement of compatibility with respect to the Graffiti Prevention Bill 2007 (referred to as 'the Graffiti Prevention Bill').

In my opinion, the Graffiti Prevention 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 Graffiti Prevention Bill seeks to:

reduce the significant financial and social costs of graffiti to the Victorian community;

provide a strong deterrent to perpetrators of graffiti and promote the accountability of those perpetrators for their actions; and

reduce the incidence of graffiti in Victoria.

Human rights issues

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

Structure of the Graffiti Prevention Bill

Various clauses in the Graffiti Prevention Bill raise various human rights concerns.

Clause 5 of the Graffiti Prevention Bill makes it an offence for a person to mark graffiti on property that is visible from a public place without the property owner's consent.

Clause 6 makes it an offence for a person to mark graffiti that is visible from a public place if the graffiti would offend a reasonable person and provides an exception for graffiti that is reasonable political comment.

Clause 7 makes it an offence for a person to possess a prescribed graffiti implement without lawful excuse while on the property of a transport company, in an adjacent public place or in a place where the person is trespassing.

Clause 8 makes it an offence for a person to possess a graffiti implement with the intention of contravening clause 5 or clause 6 of the bill.

Clause 9 makes it an offence to advertise for sale a prescribed graffiti implement if the advertisement is likely to incite or promote unlawful graffiti and the person intends the advertisement to incite or promote unlawful graffiti. Clause 9(2) provides that evidence that the advertisement was placed in a publication, including on an internet site, that itself contains images that incite or promote unlawful graffiti, is proof that the advertisement is likely to incite or promote unlawful graffiti in the absence of evidence to the contrary.

Clause 10 makes it an offence to sell a spray paint can to a person under the age of 18 unless the person demonstrates that he or she needs the paint for employment purposes.

Clause 12 provides for the issue of a search warrant where there are reasonable grounds for believing that an offence against the bill has been or is being committed.

Clause 13 allows a police officer, in certain circumstances, to search a person without warrant and to seize a prescribed graffiti implement or evidence of the commission of an offence against the bill.

Clause 14 regulates how a search of a person aged under 18 years can take place. The clause allows for a person aged between 14 and 17 years old to be subjected to a 'pat-down' search. No search can take place of a person aged under 14 years.

Clause 15 sets out how a search of a person must be conducted under the bill. A search must be conducted in a manner that affords reasonable privacy to the person being searched and must be conducted as quickly as is reasonably practicable. If, before or during a search, the officer reasonably suspects that the person is aged under 18 and is inhaling or will inhale a volatile substance, the officer must stop the search and deal with the person under division 2 of part IV of the Drugs, Poisons and Controlled Substances Act 1981.

Clause 18 provides that a local council may take any action necessary to remove or obliterate graffiti on private property if the graffiti is visible from a public place. This includes entry to private property if entry is necessary to remove or obliterate the graffiti and consent has been obtained from the owner or occupier.

Clauses 24 and 25 prescribe the forfeiture of seized graffiti implements and their return in certain circumstances.

Section 8: Recognition and equality before the law

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

Clause 10 of the Graffiti Prevention Bill prima facie limits this right because it draws distinctions between people based on age, which is an attribute in the Equal Opportunity Act

1995. However, the right is not absolute and is subject to reasonable limitations pursuant to section 7 of the charter, as discussed in part 2.

Clause 25(6) raises the right of every person to be equal before the law in that it means that a person aged under 18 must be accompanied by a parent or guardian when collecting a graffiti implement that was previously seized. However, this clause is designed to ensure that the child, in returning home with the graffiti implement, does not unwittingly become further entangled with the law. In this way, the clause seeks to give effect to section 17(2) of the charter by giving the child protection in his or her best interests because he or she is a child.

Section 12: Freedom of movement

Section 12 of the charter states 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.

Clause 7 of the Graffiti Prevention Bill limits the freedom of movement of a person by preventing a person from legally entering upon certain defined property while possessing a spray paint can without a lawful excuse. However, the right is not absolute and is subject to reasonable limitations pursuant to section 7 of the charter, as discussed in part 2.

Clauses 12 and 13 limit the right to freedom of movement because they allow a person to be stopped and searched for evidence that they have committed an offence under the bill. While being so searched, the person will be prevented from moving. However, as stated above, the right is not absolute and is subject to reasonable limitations pursuant to section 7 of the charter, as discussed in part 2.

Section 13: Privacy and reputation

Section 13(a) of the charter requires that a public authority must not unlawfully or arbitrarily interfere with a person's bodily privacy or home. The right to privacy concerns a person's 'private sphere', which should be free from government intervention or excessive unsolicited intervention by other individuals. An interference with privacy will not be unlawful provided it is permitted by law, is certain, and is appropriately circumscribed. Arbitrariness will not arise provided that the restrictions on privacy are in accordance with the objectives of the charter and are reasonable, given the circumstances.

Clauses 12 and 13 of the Graffiti Prevention Bill raise the right to privacy because the clauses allow a person or a person's premises to be searched in certain circumstances. However, both clauses limit the circumstances in which a search of a person or of a person's premises can take place. In clause 12, those circumstances arise only when a police officer has made out on oath that there are reasonable grounds for believing that an offence against the bill has been or is being committed. If this leads to the issue of a search warrant, the warrant must be issued in accordance with the Magistrates' Court Act 1989. In clause 13, those circumstances arise only when a police officer has reasonable grounds for suspecting that a person has in his or her possession a prescribed graffiti implement on property or in a place referred to in clause 7 and that evidence could be lost or destroyed if a search is delayed until a search warrant is obtained. Clause 13 also sets out matters that the officer may take into account when determining that there are reasonable grounds for his or her suspicion and it regulates how the search can take place. The interferences with privacy enabled by the clauses are not unlawful as the powers to search are confined and structured and are reasonable in the circumstances. The interference with privacy is authorised on a case-by-case basis according to the specific circumstances involved. Therefore, in neither case is the right to privacy unlawfully or arbitrarily interfered with and there is no limitation of the right provided for in section 13 of the charter.

Clause 18 raises the right to privacy in that it allows persons to enter private property and remove from it graffiti. However, the right in section 13 guarantees privacy where it is not unlawfully or arbitrarily interfered with. Clause 18 allows entry only in circumstances in which both notice is given to the owner or occupier of the property at least 28 days before the entry is to take place. Furthermore, the notice must specify: particulars of the action proposed to remove the graffiti and the proposed date and method of the removal. Finally, the owner or occupier must give consent to the entry and removal; in the absence of that consent, no entry takes place. Accordingly, the clause does not allow any unlawful entry nor does it permit it to take place arbitrarily.

Section 15: Freedom of expression

Section 15(2) of the charter provides that every person has the right to freedom of expression, which includes freedom to seek, receive, and impart information and ideas of all kinds, whether within or outside Victoria and in any medium, including by way of art. Section 15(3) provides that special duties and responsibilities attach to the right of freedom of expression under section 15 of the charter and the right may be subject to lawful restrictions reasonably necessary to respect the rights and reputation of other persons, or for the protection of national security, public order, public health or public morality. Public order may be defined as the sum of rules which ensure the peaceful and effective functioning of society. Common public order limitations on the right to freedom of expression include prohibitions on speech that may incite crime, violence, or mass panic.

Clause 5 of the Graffiti Prevention Bill interferes with a person's right to freedom of expression by making it an offence for a person to mark publicly visible graffiti on property without the consent of the owner of that property. However, the clause protects the property rights of the owner by requiring the property owner's express consent to the marking of graffiti on their property. The clause is therefore a lawful restriction reasonably necessary to respect the rights and reputation of other persons, pursuant to section 15(3) of the charter.

Clause 6 of the Graffiti Prevention Bill also interferes with a person's right to freedom of expression by making it an offence for a person to mark publicly visible graffiti on property if the graffiti would offend a reasonable person, regardless of whether the owner of the property consents. An example of such graffiti might include a racist or sexist slogan painted on a wall that offends a reasonable person. The clause protects public order and public morality by preventing the marking of publicly-visible comments that would offend the community, while still allowing reasonable political comment. The clause is therefore a lawful interference with the right to freedom of expression as permitted by section 15(3) of the charter.

Clause 9 of the Graffiti Prevention Bill also interferes with a person's right to freedom of expression by making it an offence to advertise a prescribed graffiti implement if the advertisement is likely to incite or promote unlawful graffiti. However, the right may be subject to lawful restrictions reasonably necessary to protect public order. In this context, public order includes the need to prevent people from profiting from the sale of items advertised in such a way that the marking of illegal graffiti is incited or promoted. An example of this has been described in a Melbourne newspaper of a store that advertises its business on an internet graffiti website that depicts images of clearly illegal graffiti on Melbourne's public transport system. The business specialises in the sale of spray paint cans, nozzles for spray paint cans adapted specifically for graffiti, and books and magazines relating to graffiti culture. The clause protects public order by preventing someone from attempting to profit through another's illegal activities. The clause lawfully and reasonably restricts the right to freedom of expression as permitted by section 15(3) of the charter.

Clause 10 of the Graffiti Prevention Bill also interferes with a person's right to freedom of expression by restricting access to a medium of expression (that is, spray paint cans) to persons under the age of 18 years old. However, the right may be subject to lawful restrictions reasonably necessary to protect public order. In this context, public order includes the need to protect the public from the application of unlawful graffiti to private and public property. More graffiti in Victoria is applied by spray paint than by any other form of graffiti implement and most offenders apprehended for graffiti-related offences are aged 18 years or under. Limiting the availability of spray paint to those aged under 18 will continue the work already being undertaken by a number of municipal councils who have passed by-laws that restrict the sale of spray paint in their local government areas and who have reported a decline in graffiti applied in those areas. The clause lawfully and reasonably restricts the right to freedom of expression as permitted by section 15(3) of the charter.

Section 17: Protection of families and children

Section 17(2) of the charter provides that every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by reason of being a child.

Clause 14 of the Graffiti Prevention Bill provides that a member of the police force must not search a person who is or appears to be under 14 years of age. This clause upholds the right of the child to such protection as is in his or her best interests by reason of being a child. Furthermore, any search of a person aged under 18 under the bill can only be a pat-down, and not a full, search.

Clause 15(3) of the Graffiti Prevention Bill states that a police officer must take a welfare, rather than a law enforcement approach to a person aged under 18 years whom the officer suspects of both contravening clause 7 and inhaling a volatile substance. In the absence of clause 15(3), the officer would be obliged to enforce the law against the person in circumstances in which it would not be appropriate to do so. Clause 15(3) therefore ensures consistency with the right that a child has to such protection as is in his or her best interests as is needed by him or her by reason of being a child. The clause enhances that right by recognising that it is in the best interests of a child who is inhaling a volatile substance to be subject to a welfare response.

Section 20: Property rights

Section 20 of the charter provides that a person must not be deprived of his or her property other than in accordance with the law.

Clause 13 of the Graffiti Prevention Bill raises rights relating to property because, in certain circumstances, it allows a police officer to seize a prescribed graffiti implement or other evidence of the commission of an offence under the bill. However, the right in section 20 of the charter only prohibits a deprivation of property that is carried out other than in accordance with law. Property can lawfully be seized pursuant to clause 13 if a police officer has reasonable grounds for suspecting that a person has in his or her possession a prescribed graffiti implement on property or in a place referred to in clause 7 and that evidence of this could be lost or destroyed if a search is delayed until a search warrant is obtained. The clause also sets out matters that the officer may take into account when determining that there are reasonable grounds for his or her suspicion and it regulates how the search can take place. The power to seize property is therefore devised precisely to guide those who apply the law. The power is confined and structured, formulated in a precise manner and accessible to the public. Further, the power to deprive a person of property to which this clause applies will take place under powers conferred by legislation. The deprivation of property will therefore be in accordance with law, and there is no limitation of the right granted in section 20 of the charter.

Clauses 24 and 25 of the Graffiti Prevention Bill raise rights relating to property rights. Clause 24 provides for the forfeiture of a graffiti implement that has been seized from a person who has been found guilty of an offence against the bill, or found not guilty of such an offence because of mental illness, or in certain circumstances when the person has been served with an infringement notice for such an offence. Clause 25 provides for the return of that implement when proceedings against the person are not brought or are discontinued. The effect of the two clauses is that a graffiti implement will generally be forfeited when a person is found guilty of an offence under the bill and generally returned to the person when the person is not found guilty of an offence under the bill. The provision for the forfeiture of property is formulated in a precise manner and will occur only under powers conferred by legislation. Therefore, the deprivation of property will occur in accordance with the law and there is no limitation of the right to property section 20 of the charter.

Section 21: Personal liberty and security

Section 21(3) of the charter provides: that every person has the right to liberty and security; that a person must not be subjected to arbitrary arrest or detention; and that a person must not be deprived of his or her liberty except on grounds, and in accordance with procedures, established by law.

Clauses 12 and 13 of the Graffiti Prevention Bill engage with the right to personal liberty in that they allow a person to be detained in order that the person may be searched for evidence that indicates that a breach of the bill has occurred or is occurring. However, the deprivation of liberty will occur on grounds and in accordance with procedures established by law. Both clauses set out in detail the circumstances in which a person may be subjected to such a search. In addition, clause 14 regulates how the search may be carried out. It provides that a search must be carried out in a manner that

affords reasonable privacy to the person being searched and as quickly as is reasonably possible. Any deprivation of liberty caused by a person being searched pursuant to the bill will be short-lived and temporary and proportionate to the purpose of preventing the continuance of an offence under the bill or to seek evidence of the commission of such an offence. There is therefore no impermissible limitation on the right in section 21 of the charter.

Section 25: Rights in criminal proceedings

Section 25(1) of the charter provides that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

Clause 7 of the Graffiti Prevention Bill interferes with the right in section 25(1) of the charter because the clause places on the accused an evidential burden to demonstrate the existence of a lawful excuse for carrying a spray paint can in a designated geographical area. However, the right is not absolute and is subject to a reasonable limitation pursuant to section 7 of the charter, as discussed in part 2.

In certain circumstances, clause 9 of the Graffiti Prevention Bill may interfere with the right in section 25(1). The clause creates an offence with two elements. The prosecution must prove the existence of both elements for it to secure a conviction. The first element is that the person advertised for sale a prescribed graffiti implement that is likely to incite or promote unlawful graffiti. The second element is that the person intended the advertisement to incite or promote unlawful graffiti.

Clause 9(2) provides that evidence that the advertisement was placed in a publication, including on an internet site, that itself contains images that incite or promote unlawful graffiti, is evidence that the advertisement is likely to incite or promote unlawful graffiti. That is, evidence of the first element of the offence. To counteract this evidence, the accused could offer evidence that showed that those images were not in fact likely to incite or promote unlawful graffiti. In the absence of any contrary evidence brought by the accused, the court must accept that the first element of the offence has been proved. This interferes with the right in section 25(1) of the charter because the clause places on the accused an evidential burden to demonstrate the existence of evidence that shows that the advertisement is not likely to incite or promote unlawful graffiti. However, as is stated above, the right in section 25(1) is not absolute and is subject to a reasonable limitation pursuant to section 7 of the charter, as discussed in part 2.

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

Section 8 of the charter: Recognition and Equality before the Law and clause 10 of the Graffiti Prevention Bill

(a) What is the nature of the right being limited?

The prohibition of discrimination is one of the cornerstones of human rights instruments and this is reflected in the preamble to the charter. However, the right is not absolute and can be subject to reasonable limitations in accordance with section 7 of the charter.

(b) What is the importance of the purpose of the limitation?

The purpose of the limitation is to assist in reducing the incidence of graffiti vandalism to a significant extent by making it more difficult for minors to access the most common and preferred graffiti implement. The purpose is important because it seeks to reduce the defacing of private and public property, which involves a considerable cost to, and diminishes feelings of security and confidence within, the community.

(c) What is the nature and extent of the limitation?

The nature and extent of the limitation is the restriction of the sale of a specific item, namely a spray paint can, to a person under 18 years old. The limitation on the right does not extend to possession or use of such items, except in contravention of the offence in clause 7 of the Graffiti Prevention Bill. The proposed restriction, and the bill overall, does not affect the general use of a spray paint can except where it is used for the prohibited marking of graffiti. A person under 18 years old may still use a spray paint can at work, at school, at home or elsewhere. However, the restriction will also affect those people under the age of 18 who wish to purchase a spray paint can for a legitimate and lawful purpose, and will have to approach an adult, such as a parent, to obtain one. The restriction will operate so as to discriminate against those persons on the ground of their age.

(d) What is the relationship between the limitation and its purpose?

There is a rational connection between the limitation on the right and its purpose in that the restriction on the sale of spray paint cans to minors aims to stop those persons who intend to mark graffiti from obtaining the means to do so. Statistics from Victoria Police indicate that of all persons apprehended for graffiti crimes in the five years between 2001 and 2006, on average nearly 69 per cent were aged 18 years or under. There is evidence available that such a restriction is likely to have the effect of reducing the incidence of unlawful graffiti. For example, a number of local councils, such as the City of Casey and the City of Boroondara, have already passed local laws that restrict the sale of spray paint to persons under the age of 18 and have reported a reduction in the amount of graffiti applied in their local government areas as a result of these local laws. Casey indicated that it has achieved a 70 per cent reduction in the area of graffiti requiring removal following introduction of the law.

(e) Are there any less restrictive means reasonably available to achieve its purpose?

Other means already exist for the reduction of unlawful graffiti by minors and some additional ones are proposed in the bill. Such measures include the criminalisation of certain graffiti marking, early clean-up and general removal initiatives, education for minors and offenders, prohibition of the possession of graffiti implements in certain places, and new search and seizure powers. Some of these measures are less restrictive and some are more restricted than the restriction on the sale of spray paint to minors. Given the inherent difficulty in preventing widespread marking of graffiti on public and private property across Victoria, the restriction will operate simply as one of a range of measures designed to reduce the illegal marking of graffiti.

(f) Are there any other relevant factors?

There are no other relevant factors.

(g) Conclusion

In conclusion, the limitation is compatible with human rights because there is a rational connection between the purpose of reducing graffiti by minors and the restriction, the purpose is both legitimate and important, and is proportionate to the discrimination against persons under the age of 18 years so as to be reasonable and demonstrably justified in a free and democratic society.

Section 12: freedom of movement and clause 7 of the bill

(a) What is the nature of the right being limited?

The ability to move about freely in public spaces in Victoria is a right granted to all Victorians and visitors to this state. However, the right is not absolute and can be subject to reasonable limitations in section 7 of the charter.

(b) What is the importance of the purpose of the limitation?

The purpose of the limitation is to prevent the marking of graffiti on and around Victoria's public transport system. Marking graffiti by way of spray paint on Melbourne's public transport system, particularly on metropolitan trains, is thought to elevate the status of such offenders within their offending community.

(c) What is the nature and extent of the limitation?

Clause 7 of the Graffiti Prevention Bill limits the freedom of movement of a person by preventing a person from legally entering upon public transport or on land adjacent to public transport infrastructure while possessing a spray paint can without a lawful excuse. The clause does not forbid the person from entering on this land; it simply makes it a condition that if the person does enter that land and is carrying a spray paint can, the person must have a lawful excuse for carrying that can.

(d) What is the relationship between the limitation and its purpose?

There is a close relationship between the limitation and its purpose. That is, the limitation will restrict the legal ability of would-be graffiti offenders from entering the space upon which they wish to mark unlawful graffiti.

(e) Are there any less restrictive means reasonably available to achieve its purpose?

The limitation restricts the possession of spray paint on public transport only to those persons who do not have a lawful excuse for that possession. Accordingly, the limitation represents the least restrictive way of preventing the application of unlawful spray paint graffiti on the public transport system.

(f) Are there any other relevant factors?

There are no other relevant factors.

(g) Conclusion

In conclusion, the limitation is compatible with the charter because, even though it limits human rights, those limitations are reasonable and proportionate.

Section 12: Freedom of movement and clauses 12 and 13 of the bill

(a) What is the nature of the right being limited?

The ability to move about freely in public spaces in Victoria is a right granted to all Victorians and visitors to this state. However, the right is not absolute and can be subject to reasonable limitations in section 7 of the charter.

(b) What is the importance of the purpose of the limitation?

The purpose of the limitation is to enable the investigation of the commission of an offence under the Graffiti Prevention Bill, which is of crucial importance in achieving its objects.

(c) What is the nature and extent of the limitation?

Clauses 12 and 13 of the Graffiti Prevention Bill allow a person to be searched for evidence that indicates that a breach of the bill has occurred or is occurring. A person's freedom of movement is limited during such a search because the person is unable to walk away from it. However, the bill states that such searches must be carried out quickly and, as a consequence, the limitation on freedom of movement will be of a very temporary nature.

(d) What is the relationship between the limitation and its purpose?

The limitation is necessary to ensure that evidence of the commission of an offence under the bill is taking place or has taken place. Prosecuting graffiti offenders is a central object of the bill and, without the ability to gather such evidence, no convictions could be obtained.

(e) Are there any less restrictive means reasonably available to achieve its purpose?

There is no other way in which, for instance, a spray paint can could be uncovered in the possession of a person who is hiding one in his or her clothing or bag in the absence of such a search, which, by its nature, must limit the ability of the person to move freely about for a short time.

(f) Are there any other relevant factors?

There are no other relevant factors.

(g) Conclusion

In conclusion, the limitation is compatible with human rights because there is a need for certain persons to be searched in order to give effect to one of the central objects of the bill and the temporary limitation is justifiable in the circumstances.

Section 25 of the charter: rights in criminal proceedings and clause 7 of the Graffiti Prevention Bill

(a) What is the nature of the right being limited?

The presumption of innocence is a well-recognised civil and political right and a fundamental principle of the common law. However, the right is not absolute and can be subject to reasonable limitations in section 7 of the charter.

(b) What is the importance of the purpose of the limitation?

The purpose of the limitation is to assist the prosecution in securing convictions of graffiti offenders because relevant and adequate evidence is ordinarily very difficult to obtain and consequently convictions are difficult to secure.

(c) What is the nature and extent of the limitation?

The effect of clause 7 of the Graffiti Prevention Bill is that where a person is caught carrying a spray paint can in defined geographic areas the person will have the evidential burden of showing that he or she had a lawful reason for doing so. This means that, to avoid conviction, the accused will be required to point to evidence that they have a lawful excuse for being in possession of the graffiti implement. However, it will remain up to the prosecution to prove all the elements of the offence.

(d) What is the relationship between the limitation and its purpose?

The imposition of an evidential burden with respect to establishing a lawful excuse will assist the prosecution to secure convictions. There is a direct relationship between the limitation and its purpose.

(e) Are there any less restrictive means reasonably available to achieve its purpose?

There are no less restrictive means reasonably available to secure convictions against offenders who apply graffiti to Victoria's public transport system and infrastructure. In any event, the clause must be structured in this way as the evidence of the lawful excuse will be in the possession of the person and not in the possession of the police or the prosecution. Accordingly, that evidence can only come from that person.

(f) Are there any other relevant factors?

There are no other relevant factors.

(g) Conclusion

In conclusion, the limitation is compatible with the charter because, even though it limits human rights, those limitations are reasonable and proportionate.

Section 25 of the charter: rights in criminal proceedings and clause 9 of the Graffiti Prevention Bill

(a) What is the nature of the right being limited?

The presumption of innocence is a well-recognised civil and political right and a fundamental principle of the common law. However, that right is not absolute and can be subject to reasonable limitations in section 7 of the charter.

(b) What is the importance of the purpose of the limitation?

The purpose of the limitation is to secure prosecutions of offenders under clause 9 of the bill. It is important that persons who breach the clause should be brought to justice as a warning to others who similarly set out to encourage, and profit from, illegal behaviour.

(c) What is the nature and extent of the limitation?

Clause 9 of the Graffiti Prevention Bill creates an offence with two elements. The prosecution must prove the existence of both elements for it to secure a conviction. The first element is that the person advertised for sale a prescribed graffiti implement that is likely to incite or promote unlawful graffiti. The second element is that the person intended the advertisement to incite or promote unlawful graffiti.

Clause 9(2) provides that evidence that the advertisement was placed in a publication, including on an internet site, that itself contains images that incite or promote unlawful graffiti, is proof that the advertisement is likely to incite or promote unlawful graffiti in the absence of evidence to the contrary. If the accused offers evidence that the advertisement is not likely to incite or promote unlawful graffiti, it will be up to the prosecution to prove beyond reasonable doubt that it does incite or promote unlawful graffiti. Accordingly, the nature and extent of the limitation of the right is confined.

(d) What is the relationship between the limitation and its purpose?

The imposition of an evidential burden with respect to demonstrating that the publication does not incite or promote unlawful graffiti will assist in securing convictions. The limitation is directly related and proportionate to its purpose.

(e) Are there 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.

(f) Are there any other relevant factors?

Clause 9 has been drafted so that it will impact solely upon businesses that profit from selling materials used to undertake illegal activity and will not apply to persons and organisations who sell spray paint cans to persons who use the product for legitimate purposes.

(g) Conclusion

In conclusion, the limitation is compatible with human rights because it is important that persons who seek to encourage, and profit from, illegal behaviour are brought to justice as a warning to others.

Conclusion

I consider that the graffiti bill is compatible with the human rights charter because, even though it does limit human rights, those limitations are reasonable and proportionate.

JUSTIN MADDEN, MLC
Minister for Planning

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

As part of its commitment to tackling graffiti in Victoria, the government is introducing the Graffiti Prevention Bill. The bill will establish a legislative framework that will underpin graffiti prevention and removal. The new legislation will raise awareness that graffiti is a serious criminal offence and provide a clear deterrent to graffiti vandals.

The bill:

creates new specific graffiti offences with tough new penalties for graffiti offenders

gives police stronger powers to search people and property for evidence of graffiti offences, and

establishes a system under which graffiti can be removed from private property.

These new offences, penalties, and powers will greatly assist the police in apprehending and charging graffiti vandals.

The bill contains tough new penalties. Convicted graffiti vandals will face up to two years imprisonment or a fine of over $26 000. The penalties are tougher than in some other states — in New South Wales and South Australia the maximum penalty for property damage and destruction under the Crimes Act will remain available for the worst cases.

In addition, the bill prohibits the sale of spray paint to a person who is aged under 18, unless they need the paint for their employment, and so will seek to prevent a destructive and commonly used graffiti implement getting into the wrong hands. Also the bill will endeavour to prevent persons from profiting from other people's illegal behaviour by outlawing the advertising of spray paint in a publication or on the internet in such a way that promotes or incites the marking of unlawful graffiti.

The new laws make it easier for police to apprehend and prosecute graffiti vandals. Currently, the police have difficulty charging graffiti vandals unless they catch them in the act. The new offence of possessing spray paint without lawful excuse on or around public transport or when trespassing will enhance the operational ability of police officers to arrest graffiti offenders.

In addition, there will be a new offence of possessing a graffiti implement with the intention of using it to mark illegal or offensive graffiti. To obtain a conviction under this provision, the prosecution will need to demonstrate that the person possessed the implement and intended to mark unlawful graffiti as currently occurs in the prosecution of similar summary offences against property.

Further, the bill grants clearer powers to the police to search people and places for evidence concerning the commission of a graffiti offence.

The bill also establishes a process whereby authorised persons will be empowered to enter private property and clean publicly visible graffiti from it. These new provisions will minimise repeat graffiti attacks.

The bill reflects the community's desire to more appropriately deal with graffiti and follows the receipt of around 70 submissions on the draft bill that was released for public comment.

I commend the bill to the house.

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

Debate adjourned until Thursday, 18 October.

TRANSPORT ACCIDENT AND ACCIDENT COMPENSATION ACTS AMENDMENT BILL

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities ('the charter'), I make this statement of compatibility with respect to the Transport Accident and Accident Compensation Acts Amendment Bill 2007.

In my opinion, the Transport Accident and Accident Compensation Acts Amendment Bill 2007, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The proposed bill:

improves benefits under the Transport Accident Act 1986 ('the TA act');

improves the efficiency of the operation of the Transport Accident Commission (TAC) scheme;

ensures that people who suffer permanent spinal injuries in the workplace or in a transport accident are provided with compensation on the basis of their permanent impairment;

confirms that superannuation is not included for the purpose of calculating weekly payments for people injured in the workplace or in a transport accident.

Human rights issues

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

The right not to be deprived of property other than in accordance with law — section 20 of the charter.

The property right protected by the charter is a limited one. There must be some 'property' and it must be deprived other than in accordance with law.

Assessment of permanent impairment

The proposed bill changes the way in which permanent impairment is assessed for injured workers with spinal injuries who have surgery. For some injured workers, the assessment under the new provisions may result in less compensation. For others it may result in more. Property rights could arise by reason of existing entitlements or existing proceedings challenging those entitlements. Insofar as any injured workers could be said to have property rights, the proposed bill does not deprive any person of that property. Injured workers who have already been assessed for compensation for non-economic loss under section 98C of the Accident Compensation Act 1985 will receive compensation in accordance with that assessment, and will have any proceedings disputing the assessment considered under the existing law.

In relation to any injured workers who are yet to have their impairment assessed (as well as all people injured in a transport accident), there is no property to be affected by these amendments.

Accordingly, the provisions do not limit the property right in section 20 of the charter.

Exclusion of employer-paid superannuation from the definition of pre-injury average weekly earnings

This amendment seeks to clarify what has always been the position in Victoria — namely, that for the purposes of assessing the quantum of weekly benefits paid to people injured in the workplace or in a transport accident, employer-paid superannuation is not included. In preserving the status quo, the amendment cannot be said to unlawfully deprive people injured in the workplace or in a transport accident of their property.

People who have legal proceedings on foot challenging the longstanding approach by the VWA or the TAC to the calculation of weekly benefits may be said to have limited property rights in respect of those proceedings. However, any existing legal proceedings seeking the determination of a court on this question will not be captured under the amendment.

Accordingly, the provisions do not limit the property right in section 20 of the charter.

Conclusion

I consider that the proposed bill is compatible with the Charter of Human Rights and Responsibilities. Although it may raise human rights issues, it clearly does not limit any human rights.

JOHN LENDERS, MP
Treasurer

Second reading

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

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

That the bill be now read a second time:

Incorporated speech as follows:

The main purpose of the bill is to improve the benefits available under the Transport Accident Act 1986. The bill also provides clarity on two important issues relating to Victoria's transport accident and workers compensation schemes.

The changes are consistent with the government's commitment to maintaining fair and financially viable statutory compensation schemes and, where affordable, introducing benefit improvements.

TAC benefit enhancements

The TAC administers a comprehensive and fully funded 'no fault' benefits scheme, providing injured Victorians with the financial support and other assistance they may need as a result of a transport accident.

Since the TAC was established in 1987, the scheme has provided more than $11 billion in compensation on more than 320 000 unique claims. In 2005–06, the TAC helped more than 40 000 injured Victorians, providing them with around $675 million in support and services.

The Brumby government is committed to maintaining and, whenever possible, improving the benefits available under this world-class scheme.

The benefit improvements outlined in this bill are focused primarily on those with severe injuries, and their families.

Family member

The bill contains an expanded definition of the term 'family member', which is included for two important purposes:

first, to ensure that the statutory medical excess applies only once in circumstances where more than one family member is injured in a single transport accident; and

second, to provide for the payment of travel and accommodation expenses to the parents and siblings of those injured in a transport accident. Previously, only partners and dependent children were eligible for this support.

Mobility equipment

The bill also contains a new definition of 'mobility aides', which is included to allow the TAC to fund the cost of replacing or repairing items such as wheelchairs and mobility scooters, should they be damaged in a transport accident.

The Transport Accident Act 1986 currently limits the types of property that can be replaced to items such as glasses, hearing aids and crutches. This amendment recognises that, even in less serious accidents, the loss of essential mobility equipment can be particularly distressing, especially for the elderly and the disabled.

Enabling the TAC to fund the replacement or repair of these essential aids will help clients return to their normal lives more quickly, and with less disruption.

Substitute care

The bill also contains a new benefit to support those who provide care for an elderly or disabled family member. Pursuant to this amendment, the TAC will fund substitute care for up to 12 weeks in circumstances where the person injured in an accident was the primary carer for a disabled or elderly family member.

School travel expenses

The bill also provides for the payment of travel expenses for clients who would otherwise be unable to get to and from school because of their transport accident injuries.

This will provide much-needed assistance to many families, removing what might otherwise be a significant barrier to their child's continuing education.

Employment safety net

The bill includes a new section 54A, which will provide an important safety net for clients who have returned to work after suffering a severe injury, but who subsequently lose their job due to changes such as employer or business insolvency, site closure, restructure or redundancy.

The Victorian government recognises the difficulty people with serious injuries face in returning to work, and the even greater difficulty they experience in finding alternative employment in the event they lose their job.

The TAC will now provide access to income support and vocational assistance to help these seriously injured Victorians find alternative employment.

I should make it clear that the Transport Accident Act 1986 already contains a safety net for TAC clients with severe injuries who are unable to keep working due to an aggravation or worsening of their accident-related injuries.

Daily living cost contribution cap

In 2003, the Transport Accident Act 1986 was amended to confirm that clients living in supported accommodation were required to make a contribution towards their ordinary daily living costs, such as food, rent or utilities.

This remains an important principle, although it should be noted that the requirement to contribute to such costs only takes effect 18 months after a client is discharged from hospital.

Nevertheless, it is important to ensure that these costs remain affordable. Accordingly, the bill provides that a limit be placed on them. This will be done by way of an order in council.

Improving the efficiency of the TAC

The bill contains the following initiatives to improve the efficiency of the TAC scheme, including:

enabling the TAC to make reimbursements to private health insurers where treatment for which the TAC is liable has been claimed through private health insurance;

reducing the need for clients to enter into agreements in relation to home and vehicle modifications by increasing the threshold above which they are required to enter into a formal agreement with the TAC; and

enabling the TAC to enter into bulk payment agreements with the providers of ambulance and hospital services, averting the need for people injured in a transport accident to make a claim where, for example, the only expenses incurred relate to ambulance transportation.

Taylor and superannuation

I turn now to two important emerging issues that the bill seeks to clarify, namely:

the point at which spinal injuries are assessed for the purposes of determining a person's 'permanent impairment'; and

the TAC and VWA's liability for injured Victorians' employer-paid superannuation contributions.

Spinal injuries

The VWA and TAC's longstanding approach to the assessment of spinal injuries arises from their interpretation of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (fourth edition) ('the AMA guides'). This approach adheres to the principle that the provision of compensation should be based on the impairment the injured person is left with after maximum medical improvement (that is, after all that can be done is done). It is also consistent with the approach taken under the Wrongs Act 1958, and with most comparable schemes in other Australian and overseas jurisdictions.

Using the AMA guides in this way has allowed the two schemes to take into account the positive and the negative effects of any corrective surgery, providing clients with a level of financial support that reflects their level of impairment.

A recent decision of the Victorian Court of Appeal — *Mountain Pine Furniture v. Taylor* — has overthrown the VWA's approach to the assessment of spinal injuries, holding that workers should have their spinal injuries assessed prior to having surgery rather than after surgery.

The court's decision is not only inconsistent with the longstanding principle of providing compensation on the basis of an injured person's permanent impairment, it stands in stark contrast to the leading TAC case in this area (the Bayliss case), which supports a diametrically opposed position to that taken in Taylor.

Fundamentally, the Taylor decision threatens to create significant inequities among those Victorians supported by the TAC and VWA schemes.

It is not fair that a person whose spinal injury improves as a result of surgery be entitled to the same compensation as a person whose injury worsens as a result of the same treatment.

The bill restores a sensible position to this issue.

Although the Taylor case only applies in relation to the VWA scheme, similar amendments to the Transport Accident Act 1986 will ensure a consistent assessment methodology is adopted for both schemes.

The proposed amendment will ensure much-needed clarity in relation to this issue. Importantly, it will also ensure that Victorians injured in the workplace or in a transport accident continue to be appropriately and fairly compensated.

In supporting the court's decision in the Taylor case, some stakeholders have suggested that workers with spinal injuries are currently not adequately compensated under the VWA scheme.

With the reintroduction of common-law rights and successive improvements in statutory benefits, Victorian workers now have some of the most generous support available for the seriously injured across Australia.

These improvements have been implemented without destabilising the workers compensation scheme and have been complemented by reforms to the premium system to make it fairer and simpler.

Notwithstanding this, the government considers that there is some scope to review the impairment benefits available to those who suffer serious spinal injuries. Accordingly, I will be directing that this issue be considered as part of an upcoming review of the Accident Compensation Act 1985.

Superannuation and Hastings Deering

The second area of the law requiring clarification relates to employer-paid superannuation and the provision of weekly benefits to injured Victorians by the TAC and VWA.

As with all other similar schemes in Australia, it has never been intended that weekly benefits under either the TAC or VWA schemes include any allowance for employer-paid superannuation.

The Northern Territory Court of Appeal in the case of *Hastings Deering v. Smith* has cast some doubt, however, about the position taken by the TAC and VWA in relation to this issue.

There, the court ruled that employer-paid superannuation was remuneration within the meaning of the Northern Territory's Work Health Act 1987, and therefore formed part of 'normal weekly earnings'.

If the Hastings Deering case were to be replicated in Victoria, the costs to the VWA and TAC would be substantial.

For the VWA, preliminary costings suggest the scheme could face an immediate liability in the order of $610 million. It is estimated that there would also be an ongoing liability of $40 million per annum.

The immediate, one-off liability impact to the TAC scheme is estimated to be $126 million, with annual ongoing costs of around $8 million.

It is important that the past and current practice of calculating weekly benefits under both schemes is enshrined in law, putting the issue beyond doubt.

In making this clarification, however, the government recognises that a growing proportion of the population is reliant on the retirement savings generated by their superannuation schemes.

With this in mind, the government will give thorough consideration to the question of whether superannuation could in some way in the future be taken into account when compensating people injured in the workplace or in a transport accident.

This will also be done as part of the upcoming review of the Accident Compensation Act 1985.

Conclusion

This bill delivers further improvements to the benefits available under the TAC scheme, reflecting the government's commitment to introducing benefit improvements where they are affordable and sensible.

The bill is also financially responsible, addressing areas of the law that require clarification to ensure the financial stability of Victoria's statutory compensation schemes.

I commend the bill to the house.

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

Debate adjourned until Thursday, 18 October.

TRANSPORT LEGISLATION AMENDMENT BILL

Introduction and first reading

Received from Assembly.

Read first time for Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) on motion of Hon. J. M. Madden.

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Transport Legislation Amendment Bill 2007.

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

Overview of the bill

The bill is another step in the reform and modernisation of Victoria's transport legislation. It provides the legislative underpinnings for a number of important government public transport initiatives, including the new ticketing solution and the introduction of new SmartBus services among other key matters such as a major new reform initiative aimed at improving safety at level crossings.

The main purposes of the bill are:

(a) to amend the Transport Act 1983—

(i) to facilitate the use of smartcards for public transport; and

(ii) to otherwise improve the operation and enforcement of that act; and

(b) to amend the Public Transport Competition Act 1995—

(i) in relation to bus contracts; and

(ii) to otherwise improve the operation of that act; and

(c) to amend the Rail Safety Act 2006 to improve the operation of that act; and

(d) to make miscellaneous amendments to—

(i) the Marine Act 1988;

(ii) the Rail Corporations Act 1996;

(iii) the Road Safety Act 1986;

(iv) the Terrorism (Community Protection) Act 2003;

(v) the Transport Legislation (Further Amendment) Act 2006;

(vi) the Transport (Taxi-cab Accreditation and Other Amendments) Act 2006.

Human rights issues

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

The human rights that the bill will have an impact upon or engage are as follows.

Section 8 — recognition and equality before the law

Clause 23 engages the right to recognition and equality before the law provided by sections 8(2) and 8(3) of the charter.

The clause will amend section 220D of the Transport Act to confirm the power of the director of public transport to determine and publish a condition that provides that overseas students or specified classes of overseas students are not eligible for student concession entitlement to use a public transport service. Overseas students are defined as excluding Australian citizens, permanent residents, persons with refugee status, overseas exchange students and persons in receipt of an Australian development scholarship from the commonwealth government.

In *Sydney University Postgraduate Representative Association (SUPRA) v. Minister for Transport Services* (2006) NSWADT 83, the New South Wales Administrative Decisions Tribunal held that the concession scheme was the provision of a service and that exclusion of full fee-paying overseas students from the New South Wales concession scheme was discriminatory. Similar proceedings have been brought in Victoria, but have yet to be determined.

Following the New South Wales decision, the eligibility for student concession entitlement has been reviewed. The government has decided not to extend the student concession entitlement to overseas students who are on temporary student visas. The concession entitlement will continue to apply to full-time students who are Australian citizens, permanent residents, persons with refugee status, overseas exchange students and students in receipt of an Australian development scholarship from the commonwealth government.

In discrimination, context is everything. This is particularly so in the area of taxpayer-funded benefits. Unless a government is able to afford a universal benefit or decides to provide no benefit at all, the redistribution of wealth through the provision of targeted welfare benefits often involves distinctions on the basis of attributes specified in the Equal Opportunity Act, such as age, impairment, marital status, parental status and carer status. These distinctions are considered normal and necessary in the welfare context, whereas in other contexts they might be highly discriminatory.

The same can be said for targeting benefits, including public transport concession entitlements, on the basis of citizenship, residency and visa status. Citizenship and residency are commonly used as criteria for eligibility to taxpayer-funded benefits, such as welfare and health care. The reason is simple. Provision of a particular taxpayer-funded benefit cannot be considered in isolation. It must be considered in the context of the taxation and welfare schemes as a whole. It is fair and reasonable to exclude visitors and temporary residents from receiving taxpayer-funded benefits (welfare schemes, health care etc.), because their residency status is such that they do not participate in or contribute to the taxation scheme in the same way as long-term or permanent residents, or Australian citizens.

Provision of subsidised public transport for students represents an investment for Victoria and Australia. The scheme is primarily aimed at persons who are likely in the future to contribute to the generation of a 'knowledge economy' and the creation of a skilled workforce in Australia. These students will also contribute as taxpayers once they enter the workforce. Some will have already made such a contribution. Accordingly, the scheme covers students whose residency or visa status indicates a long term connection with Australia. The scheme is not limited to Australian citizens. Persons of foreign nationalities will be entitled to a student concession entitlement if their status is such that they are likely to have an ongoing connection with the taxation system, that is if they are permanent residents or have been granted refugee status.

To amount to discrimination under the Equal Opportunity Act, a person must be treated less favourably by reason of nationality than a person of a different nationality in the same or similar circumstances. The interlocking nature of the tax and welfare systems in redistributing wealth has led the House of Lords to conclude that no discrimination arises in respect of differential treatment of recipients of retirement pensions based upon residence in the UK.[1] Their lordships considered that the fact that the plaintiff was living outside the UK and therefore was not currently contributing to the UK tax regime meant that her circumstances were 'materially and relevantly different' and different treatment was justified.

For the same reasons as the House of Lords found the UK pension scheme did not amount to discrimination, the exclusion of those overseas students who are in Australia on temporary study visas is not discriminatory. These students do not have the same ongoing connection with the Australian tax system as students who are Australian citizens. They are not in 'same or similar circumstances'.

Even if the scheme could be regarded as discriminatory for the purposes of the Equal Opportunity Act, the discrimination is justified for the purposes of section 7(2) of the charter. The following addresses the factors set out in section 7(2).

The nature of the right

The right to be free from discrimination is an important right, but as already set out above, it can be limited and context is important.

The importance of the purpose of the limitation

The government considers it is critical to encourage and support education. Investment in education is an investment in Victoria's future economy. The purpose of the provision is to enable public moneys to be targeted in the most effective way.

Nature and extent of the limitation

This is not a case where persons are being excluded from access to public transport by reason of their nationality. Overseas students are the recipients of a heavily subsidised public transport system in the same way as all other public transport users. The limitation relates to their access to additional subsidies.

The student concession scheme does not distinguish between all foreign nationals and Australian citizens. Nor does it treat students of one foreign nationality less favourably than another. A large number of non-Australian citizens will be eligible for a student concession entitlement by reason of their permanent residency or refugee status. The scheme also provides for student concession entitlement for overseas exchange students and persons in receipt of an Australian development scholarship from the commonwealth government. This recognises the reciprocal nature of student exchange programs and Australia's contribution to aid programs.

The relationship between the limitation and its purpose

The limitation is directly connected to the purpose of the provision. It excludes from the definition of overseas students those persons whose citizenship, residency or visa status is such that there is likely to be an ongoing connection with Australia.

Any less restrictive means reasonably available

The government recognises that some overseas students studying in Australia will go on to apply for work visas or permanent residency and will ultimately contribute to Australia's economy in the longer term. However, there is no simple way of accurately identifying those persons in advance.

The costs of extending the existing concession entitlement scheme to all overseas students is significant and would necessarily mean less money being available elsewhere. Reduced subsidies or a means-tested scheme for all students would not achieve the purposes of the existing scheme to the same extent. Further, establishing a means-tested scheme for students would be costly and therefore reduce the moneys available for subsidies. It is difficult to link the student concession scheme to receipt of commonwealth welfare benefits because of the complexities surrounding eligibility of students for such benefits.

All public transport users, including overseas students, are subsidised by approximately 60 per cent in the use of their public transport. The government considers that a targeted scheme in respect of additional subsidies is the best use of public moneys.

Other relevant factors

Also relevant to the issue of whether any limitation is reasonable and justifiable is that full fee-paying overseas students come to Australia and are granted study visas on the basis that they are able to meet their expenses, and will not need to rely upon taxpayer-funded benefits. Overseas students must provide evidence of their capacity to meet living expenses and education costs for the duration of their studies. In addition, many new overseas students are required by the Department of Immigration and Multicultural Affairs to sign a legal document (called an 'assurance of support').

Section 24 — right to a fair hearing

Clause 23 makes clear that the publication of conditions excluding overseas students from the student concession scheme is authorised by the act and does not constitute discrimination under the Equal Opportunity Act. The provision applies retrospectively to the existing conditions, but expressly preserves the current complaint in the Victorian Human Rights and Equal Opportunity Commission.

Section 24(1) provides that a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. The right to a fair hearing is said to be a procedural right that affects the way a hearing is conducted, rather than affecting the substantive rights between the parties. Even if the section affects substantive rights, it applies only to a party to a civil proceeding. It does not apply to persons who have not yet issued a proceeding. As the current complaint is expressly preserved, the provision is compatible with section 24 of the charter.

[1] *R v Secretary of State for Work and Pensions; Ex parte Carson and Reynolds* [2005] 2 WLR 1369.

Section 13 — privacy and reputation

Section 13(a) of the charter provides:

> A person has the right —
>
> (a) not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with …

In international human rights law, 'home' includes a place where a person resides or carries out his or her usual occupation.[2]

Clause 12 inserts a new regulation-making power into the Transport Act to enable regulations to be made to collect information from equipment that is used in taxicabs. Although the home has been interpreted to include the workplace, it is questionable whether collection of information from equipment used in taxicabs is covered by the right.

In any event, the requirement will be made lawful through the clause, and it is not arbitrary. The information is needed to provide for access to information to assist in the administration of the taxicab accreditation scheme. It is also needed to facilitate longer term planning and regulation of the taxi industry and to assist with broad overall public transport planning.

Accordingly the provision does not limit the right to privacy in section 13 of the charter.

Section 15 — freedom of expression

Clause 10 raises but does not limit the right to freedom of expression provided by section 15(2) of the charter.

The provision seeks to restrict commercial expression by amending the offence on touting for the hire of a motor vehicle.

The right may be subject to lawful restrictions reasonably necessary to respect the rights of other people and for the protection of public order.

In this instance, the right needs to be balanced against the property rights of legitimate commercial vehicle passenger operators who are operating in accordance with their licence which has been granted under the Transport Act. The right also needs to be balanced against the potential disruption to public order if the legitimate licensing regime was undermined and touting became more prevalent.

Therefore, it is considered that the provision provides for a lawful restriction that is reasonably necessary.

Section 20 — property rights

Division 5 of part 3 raises the right not to be deprived of property other than in accordance with the law, as provided by section 20 of the charter. It does not, however, limit the right for the reasons explained below.

The division will amend the Public Transport Competition Act which provides legislative support for a contractual mechanism that provides for the transfer of property used in provision of regular passenger services under certain circumstances, for example the insolvency of an operator.

The purpose of the mechanism is to enable service continuity in the event that an operator is unable to provide the bus service. The type of property affected includes buses and bus depots. The consideration payable for the relevant property is determined under the contract and will already be agreed by the parties to the contract. In addition, the transfer will be subject to any encumbrances, so as not to prejudice existing third-party rights.

In any event, it is unlikely that a person will be affected by the provision as the property in question will be owned by companies, which do not enjoy human rights under the charter. In the event that the property is owned by a person, it will not be allocated except in accordance with the law. The allocation will not be arbitrary. In fact, the terms under which the property can be allocated will be specifically agreed by the parties in the new performance-based bus contracts. The division will simply provide legislative support for those contractual terms.

Therefore, it is considered that the division does not limit the property right provided by section 20 of the charter.

Clause 27 raises the right not to be deprived of property other than in accordance with the law, as provided by section 20 of the charter. It does not, however, limit the right for the reasons explained below.

The clause will amend section 228ZX of the Transport Act to enable forfeiture of a seized thing under certain circumstances without a court order. The current provision requires an order by the Magistrates Court.

The deprivation of the property rights is in accordance with law and will not be arbitrary. Officers receive appropriate training on the use of coercive powers and other relevant matters. The circumstances under which the property can be deprived are very limited and align with those in section 109 of the Occupational Health and Safety Act 2004, namely where the transport safety officer —

> cannot find the owner of the seized thing despite making reasonable enquiries;
>
> cannot return the thing to the owner despite making reasonable efforts; or
>
> considers it necessary to retain the thing to prevent the commission of an offence against the relevant act or the regulations.

Therefore, it is considered that the clause does not limit the property right provided by section 20 of the charter.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because:

> To the extent that some provisions raise human right issues they do not limit those rights.

[2] General Comment 16, United Nations Human Rights Committee.

To the extent that some provisions may limit human rights those limitations are reasonable and justified in the circumstances.

Theo Theophanous, MP
Minister for Major Projects

Second reading

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

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

That the bill be now read a second time:

Incorporated speech as follows:

This bill supports a number of important public transport reform initiatives, including the new ticketing solution and new SmartBus services among other key matters such as a major new reform initiative aimed at improving safety at level crossings.

The bill represents a further step in the work of improving Victoria's transport policy and legislation settings. We are doing this to give the state a best practice framework that supports the modernisation and improvement of our transport sector. While the results of this reform activity can be seen most clearly in recent major proposals, such as the Rail Safety Act 2006 and the Accident Towing Services Act 2007, at the same time the government is improving the central Transport Act 1983. Examples of this important work include recent major reforms in taxi regulation and public transport enforcement.

We are in the midst of the most far-reaching transport policy and legislation reform review program for the last 25 years. This work continues at pace. It will ultimately result in new overarching settings which will better support the essential project and service delivery reforms being delivered within the framework of the *Meeting Our Transport Challenges* (MOTC) statement released in May 2006.

New ticketing solution

In September 2006, the government unveiled the myki card, an innovative smartcard-based ticketing initiative developed by the Transport Ticketing Authority as part of the new ticketing solution project (NTS). Similar smartcard ticketing systems are already in place and working successfully in a number of major cities, such as Hong Kong, London, Taipei and Singapore.

The myki card will open the door to a new era in public transport and it will give Victorians a new world-class ticketing system. It will provide access to a wide range of public transport services across the state. Passengers will simply scan their myki cards across an electronic reader as they get on and off a tram, bus or train platform. Myki will then calculate the best fare for the journey and deduct the amount from money stored on the card.

This innovative system will provide easier use of public transport as part of the government's ongoing commitment to modernising public transport in Victoria.

Legislative change is necessary to ensure appropriate support for this exciting new technology. The amendments in the bill facilitate the implementation and operation of the new ticketing system and, in particular, they support the enforceability of the system and the control of fare evasion. While fare evasion has declined in recent times due to government and operator initiatives, it is still estimated at around $50 million per annum and is therefore still too high.

Under the current ticketing system, information showing whether a ticket is valid is printed on the ticket. This information can include the zone for which the ticket is valid and the time or date when the ticket expires. With NTS, this information will instead be contained in the microchip on the card and will need to be read by a hand-held electronic device.

Amendments to the Transport Act are needed to assist the taking of evidence for existing fare evasion offences when the new ticketing system commences. New, robust evidentiary provisions will facilitate enforcement. Other regimes are similarly reliant on technology: for example, blood alcohol controls for drivers, operators and workers in the road, marine and rail safety sectors. These regimes include simple and effective certificate-based means of proving technical evidence such as that proposed in the bill for the new ticketing system.

Without the amendments, the ability to conduct efficient and effective prosecutions, and to control fare evasion will be undermined as the organisational and administrative burden involved in proving offences would otherwise be overwhelming. This would be so even in circumstances where there is no real challenge to the reliability of the technology, devices and system. Experts would be required to attend and give highly technical evidence for each court case. Such an increased use of expert evidence would inevitably result in an increased number of contested cases. This would lead to the enforcement regime being seriously compromised as well as needlessly burdening our court system.

Metropolitan bus contracts

MOTC is aimed at better addressing travel demands and providing greater public transport availability for Victoria into the future. To help achieve these aims, the government has committed $1.4 billion over 10 years to develop a new cross-town transport network. This includes $660 million to extend the existing SmartBus network.

Some amendments are required to the Public Transport Competition Act 1995 to support the introduction of the new SmartBus services as well as to reflect the negotiations for the new bus contracts which are currently under way. The changes will provide legislative support for some contractual conditions that have been included in new service contracts and which have been subject to extensive consultation with the bus industry. The provisions are based upon commercial principles that have been settled with the Bus Association Victoria on behalf of the bus industry.

The amendments make various changes including:

enabling the procurement of the new orbital SmartBus services through an open tender process. Four new

orbital routes will now link suburbs surrounding the city rather than relying solely on the more traditional radial routes. Under the current act, the allocation of contracts for such services is constrained and they are unable to go out to open tender;

providing continuity of bus services where a termination event occurs under a service contract, for example where an operator withdraws from providing a service. When a termination event occurs, the service contracts will enable transfer of assets such as buses and depots to the director of public transport to secure service continuity;

supporting a performance-monitoring regime for patronage and operations. The regime will provide incentives for good performance but will also enable penalties to be imposed if operators fail to comply with the required standards.

Rail safety initiatives including safety interface agreements

Victoria is proud of its recent efforts at the forefront of rail safety reform. We have been determined to both maintain rail safety levels and drive safety improvements across the board. As part of that endeavour, we have worked with the National Transport Commission, other jurisdictions, industry and unions since 2004 to drive the development and delivery of new policy and legislation as an important means of generating improved safety performance on the ground.

A new contemporary rail safety regulatory framework has emerged from this work. It includes the imposition of safety duties aimed at the parties who form the rail safety 'chain of responsibility', an enhanced risk-based accreditation regime for rail operators and a new range of compliance sanctions. These reforms were contained in the state's first dedicated rail safety statute, the Rail Safety Act 2006, which also led to the establishment of the state's first independent safety regulator, the director, public transport safety, and through separate cognate legislation, the state's first independent accident investigator, the chief investigator, public transport and marine safety investigations.

National consistency

Victoria's reforms now form part of an emerging national framework since the approval of a rail safety bill proposal by the Australian Transport Council in mid-2006. I am proud that Victoria delivered this reform through its Rail Safety Act a full 11 months ahead of a Council of Australian Governments deadline for national implementation. Having delivered the substantive reform early, all that remains now through this bill is for Victoria to make some final minor, miscellaneous and machinery amendments to the Rail Safety Act.

The national bill is being progressively implemented in the other states and territories. Once that work is completed Australia will have a nationally consistent rail safety framework for the first time in its history.

Action on level crossing safety

The tragic level crossing accident at Kerang in June which led to the loss of 11 lives shows that we must continuously strive for improvement on rail safety issues. Accordingly, the bill includes a further major reform proposal aimed at improving safety at level crossings.

The government already has a series of initiatives under way to improve safety at railway crossings across Victoria. These include:

Australian Level Crossing Assessment Model (ALCAM) risk assessment works;

driver education;

the state road and pedestrian level crossing upgrade program.

These are complemented by the government's level crossing safety package announced on 25 June. That package includes:

installation of automated advance warning signs;

installation of rumble strips;

trialling of red light cameras at Springvale Road, Nunawading and on the Midland Highway, Bagshot;

the proposed introduction of rigorous level crossing offences, for example, speeding through a level crossing before an oncoming train;

works to remove ALCAM visibility problems;

research into new technological applications which may increase safety such as GPS.

To add to these initiatives, the bill amends the Rail Safety Act to require safety interface agreements particularly where railways and roads intersect. This proposal has been developed by the National Transport Commission in conjunction with Victoria, other jurisdictions, industry and unions. Subsequently, the Department of Infrastructure has consulted with local government regarding the proposal.

Safety interface agreements are designed to manage the risks to safety that are identified and assessed by those parties at designated locations. Apart from largely continuing the existing requirements on rail operators to enter into safety interface agreements for rail infrastructure, the bill introduces new requirements on rail infrastructure managers, relevant road authorities and private land-holders to enter into such agreements if the risk circumstances require it.

Accordingly, the proposal requires rail infrastructure managers, road authorities and where necessary, private land-holders, to identify and assess safety risks at level crossings and to seek to enter into safety interface agreements with the other party. Overall, the agreements provide for joint undertakings which will assist in reducing level crossing safety risks.

Private full-fee-paying international students — concession travel on public transport

Victoria has a generous public transport concessions program available across the state. In 2006, the government spent over $170 million on concessions for a wide range of public transport users. The program is kept under constant review. Last year, for example, we announced further concessions for seniors in our community as part of the MOTC statement.

It is, however, critical that resources continue to be carefully targeted especially considering the subsidies which already apply for all users of public transport travel.

Victoria very much welcomes the private full-fee-paying overseas students who choose to study here and we acknowledge their important contribution to the state. However, for sound policy reasons, this government has not considered providing concessions assistance to this particular group of students a priority, and therefore the students do not receive the entitlement. The previous government held the same view.

Providing transport concessions to private full-fee-paying overseas students would be very costly. The money used to pay for extending the scheme to these students would have to come from another area of budget and could impact on other service improvements if the entitlement was granted. In addition, it would be inconsistent with the terms of the students' entry into Australia. When private full-fee-paying overseas students gain a visa to study in Australia, they must demonstrate that they are already fully self-sufficient and able to meet all their living expenses, including public transport expenses, while they are here. The students are required to pay substantial fees to study for their degree and, at the same time, they are also not eligible for benefits such as Medicare, Newstart allowance or Austudy. Unlike Australian citizens, permanent residents and students with refugee status whose intention is to live and work in Australia on an ongoing basis, there is no expectation that private full-fee-paying students will continue to live in Victoria beyond completing their education.

In these circumstances, Victorian taxpayers should not be expected to further subsidise private full-fee-paying overseas students' travel on public transport. New South Wales, like Victoria, does not provide concessions to this group of students and in 2006 it passed special legislation to exclude the entitlement following a finding by the NSW Administrative Decisions Tribunal under antidiscrimination law in that state.

While the government does not believe the current policy is discriminatory, the purpose of the amendments is to continue the current policy of not providing public transport concessions to private full-fee-paying overseas students. As part of that, the amendments confirm that the policy does not constitute, and has never constituted, discrimination on the basis of race for the purposes of the Equal Opportunity Act 1995. However, the bill expressly preserves the right of the complainant to pursue the argument in a current matter which is before the Victorian Equal Opportunity and Human Rights Commission. But the government is otherwise acting through the bill to prevent further complaints and cases being brought or parties or persons being added to the current matter.

Finally, the amendments also empower the making of conditions under section 220D of the Transport Act for the purposes of section 32 of the Charter of Human Rights and Responsibilities Act 2006 to put beyond doubt the possibility of their validity being affected.

Financial assistance for traumatised train drivers

Tragically, a number of people in Victoria commit suicide each year by placing themselves in front of moving trains. This phenomenon is an international one and the causes are very complex. The Department of Infrastructure is working with Connex, V/Line, the police, the coroner's office, the Rail Tram and Bus Union, the Department of Human Services, academic researchers and other organisations to try to gain a better understanding of the causes and of possible means of reducing the occurrences.

International research shows that train drivers involved in such fatalities can suffer significant mental distress and injury. The research shows that train drivers in these situations often feel a particularly poignant sense of helplessness as, no matter what a driver does, it is generally impossible to stop the train in time to prevent death occurring. This is the case with both suicides and fatal accidents and it differentiates the experience from deaths witnessed by most other workers.

Workers compensation, under the Accident Compensation Act 1985, covers the lost weekly earnings and medical costs of drivers who suffer injury as a result of these incidents. Counselling and other support services are also provided by Connex. Compensation for pain and suffering, however, is only payable for significant permanent impairment. For a train driver to be eligible for this compensation, the mental impairment must be of such a level that he or she would most likely not be considered fit to drive a train again.

A modest payment of financial assistance is sometimes paid to train drivers under the Victims of Crime Assistance Act 1996. That act provides assistance to persons who suffer injuries (including 'mental illness') resulting from 'acts of violence' that are 'criminal acts' as defined in the act.

However, in 2003 the Victims of Crimes Assistance Tribunal ruled that a train driver was not eligible for compensation under the act. This was so even though the driver was traumatised by an incident where a person had committed suicide by placing himself on the tracks in front of the train. The decision was subsequently taken on appeal to the Victorian Civil and Administrative Appeals Tribunal in *Dennison v. Victims of Crime Assistance Tribunal* but the appeal was dismissed. Judge Higgins ruled in that case that the action of the deceased was not a criminal act in the sense required. His Honour considered that it was not possible to infer that the person intended to cause serious injury to another person, namely the train driver. Judge Higgins made it clear that in other circumstances, such as where a person deliberately parked a vehicle in front of a train, such an inference could be drawn and drivers would be eligible.

As a result of this decision, not all drivers receive assistance where deaths occur as entitlement now depends on the circumstances of relevant incidents. This is clearly inequitable. Accordingly, the bill requires that the director of public transport pay financial assistance to train drivers who drive trains which strike people resulting in death. This will fully restore driver eligibility at the same level as was previously available under the Victims of Crime Assistance Act. The bill also expressly excludes the possibility of double dipping under both the transport and victims of crime regimes.

Controls on illegal touting by commercial passenger vehicle operators/drivers

Unauthorised touting for the hire of commercial passenger vehicles — for example, taxi and hire car — is prohibited by the Transport Act. Touting is often a systematic and varied operation which can involve professional 'spotters'. Spotters approach potential customers and guide them to drivers waiting at short-term car parks or other adjacent areas. Touting tends to be more common in peak periods and at

night and it is particularly prevalent in high-profile locations such as Melbourne Airport.

Besides people being troubled by unwelcome and unsolicited approaches, touting undermines the work practices and earnings of law-abiding taxidrivers who may often have waited an hour or more in queues leading to taxi ranks. Complaints are often received and some incidents lead to threats of violence from people who are detected touting.

The existing anti-touting offence, however, is deficient and difficult to enforce. This is widely known and the result is regular and persistent illegal touting by some taxi and hire car drivers as well as by people using private or unlicensed vehicles.

As a result of these issues, the Transport Act is being amended to more effectively address the touting problem.

Road rules parking control problems in park-and-ride facilities

Park-and-ride facilities are an important part of the state's public transport network. The increasing popularity of public transport across Victoria means that more and more people are now choosing to drive to their local station and use public transport. This government is committed to ensuring there is the necessary infrastructure available so people have that choice. The government committed $90 million to providing additional park-and-ride facilities as part of the MOTC action plan.

It is also important that parking in park-and-ride facilities is both safe and orderly. Currently, the parking control provisions in the Victorian road rules are rarely enforced in metropolitan and regional park and ride facilities by police and local government officers. In particular, under the current settings, these common parking controls cannot be readily enforced by the authorised officers employed by transport operators.

This leads to parking-related safety problems at park and ride facilities, such as vehicles parking in loading zones, in disabled parking bays and on raised footpaths and kerbed areas. Vehicles are also regularly found to be parked in front of pedestrian and vehicle access points. The latter, where the vehicle access point is set aside for train drivers, can sometimes result in late or cancelled trains since drivers are unable to park their cars and get to work.

This situation is unsatisfactory and, as a result, requires some appropriate amendments to the Road Safety Act. The amendments will facilitate park-and-ride facilities being clearly designated with appropriate signage and also enable routine road rules parking controls to be enforced by transport operator authorised officers.

Miscellaneous minor and technical amendments

The opportunity has also been taken in the bill to make a number of largely miscellaneous minor or machinery amendments to public transport and related legislation.

For example, the bill will enable the delegation by ministers of administrative-type powers under the Terrorism (Community Protection) Act 2003. At present, the Premier is able to delegate certain responsibilities under the act to the 'relevant minister'. Responsibilities to be delegated include overseeing the actions of a declared operator of essential services, for example declared transport operators. The relevant minister oversees preparation of risk management plans and participation in training exercises. However, currently the minister cannot delegate any of these responsibilities, thereby involving the minister in detailed administrative work which is better and more efficiently undertaken by the department. The amendments proposed enable the minister to delegate such tasks.

Some of the other general amendments will:

make minor and miscellaneous modifications and clarifications to the operation of the taxi accreditation scheme and the commercial passenger vehicle driver accreditation scheme;

clarify the scope of the safety-based accreditation scheme for operators of larger passenger vehicles (buses) so that it could if necessary be extended to require accreditation of operators of non-motorised vehicles, for example horse-drawn carriages, should it be decided to develop future regulations suitable to those vehicles;

make it clear that the director of public transport can include reference to external material (for example, lists of bus routes) when determining certain conditions, such as those in Victorian Fares and Ticketing Manual;

enable prosecutors from the public transport division in the Department of Infrastructure to prosecute marine offences;

better facilitate vegetation clearing near railway tracks for safety purposes.

Various other minor and technical amendments are also proposed.

This bill introduces further substantive policy and legislation changes as part of the government's continuing drive to modernise and improve transport across Victoria.

I commend the bill to the house.

Debate adjourned on motion of Mr KOCH (Western Victoria).

Debate adjourned until Thursday, 18 October.

ADJOURNMENT

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

That the house do now adjourn.

Public land: management

Mrs COOTE (Southern Metropolitan) — My adjournment issue this evening is for the attention of the Minister for Environment and Climate Change, and it is to do with public land being taken out of the hands of the Department of Sustainability and Environment (DSE) and put under the jurisdiction of Parks Victoria.

I have a newsletter from an organisation called Push for the Bush. It has some very eminent members, it is a good local supporter, it is at the coalface of issues facing people within the bush and it has some major concerns about the management of national parks and public land in this state, as indeed do many Victorians. We know that the management of Parks Victoria and public land in this state is less than satisfactory. Our national parks are full of noxious weeds and feral animals, and the fire plans are less than satisfactory. Today we have seen a report on the National Parks Act released. The report contains some quite extraordinary statistics about fires and about fires being out of control. I remind this chamber that 99 per cent of the Avon Wilderness Park was burnt in bushfires last year, which is absolutely outrageous.

The most concerning thing is that the newsletter from Push for the Bush says:

> We understand that the government intends that Parks Victoria will take over the existing DSE responsibilities for recreation, including the management of camping areas, walking and bridle tracks and any use that may affect camping areas and visitors. This new edict will apply to all state forest and Crown land in Victoria.

One of the organisers, Mr Richardson, is quoted as saying:

> This news confirms our worst fears that all public land will eventually be managed with almost identical rules as national parks. Roaming the bush, having a camp fire, enjoying riding your horse and walking your dog will be restricted or gradually taken away.

My request is that the minister clarify for Victorians if public and Crown lands will be administered by Parks Victoria or the Department of Sustainability and Environment.

Livestock exports: feed contamination

Mr VOGELS (Western Victoria) — I raise an issue for the Minister for Agriculture in the other place concerning the 4 October decision by Federal Court of Australia Justice Peter Gray in regard to the civil case of *Rural Export and Trading v. Ralph Hahnheuser*. Mr Hahnheuser is a former Animal Liberation activist. This case related to an incident in 2003 in which processed pig meat was placed in feed troughs from which sheep intended for live export to the Middle East were eating. According to an article in the *Herald Sun* of 5 October 2007 this incident resulted in 70 000 sheep scheduled for export being delayed for two weeks at the Portland feedlot, and another 1800 not being exported because of feed contamination. The cost of this sabotage was $400 000 for additional feeding, $9000 for additional berthing, $2500 for additional supervision and a loss on 1800 contaminated sheep valued at $74 000.

This case has demonstrated that because of legal technicalities the Trade Practices Act is not sufficiently robust to be used to defend legitimate livestock practices from occurring amidst extreme activity — in other words, the Trade Practices Act needs to be amended by the federal government to provide greater protection for livestock producers against radical tactics employed by animal rights groups. I believe the Brumby government needs to consider other avenues within the state legislative framework that could be used to provide this protection.

Division 4 of the Crimes Act relating to the contamination of goods states that a person must not contaminate goods with the intention of causing public alarm or anxiety or of causing economic loss through public awareness of the contamination. The question is: does the minister believe there exists sufficient legal protection within the state of Victoria to protect livestock producers and exporters against the tactics used by radical animal rights groups? If so, under which sections of which act? If no such protection exists, I ask the minister to take action and work with his federal counterparts to develop such legislation and also strengthen Victoria's powers. We need to protect the rights of farmers, who farm animals in line with mandated codes of practice, against interference from radical animal rights groups and their members.

Bendigo Volunteer Resource Centre: funding

Mr DRUM (Northern Victoria) — My adjournment matter tonight is for the Minister for Community Development in the other place, Peter Batchelor. The matter I raise is about sustainable funding arrangements for the Bendigo Volunteer Resource Centre. As the minister would be aware, volunteers are the backbone of many successful communities, especially in our regional cities and towns. But their effectiveness is sometimes only as good as the ability to coordinate, resource and direct their efforts.

The Bendigo Volunteer Resource Centre has been going for five years and has established a strong track record for linking up volunteers with organisations and vice versa. It has built very strong partnerships with a range of Bendigo organisations including the City of Greater Bendigo, the Bendigo Chinese Association, the Bendigo Trust, Neighbourhood Watch and local service clubs. It now operates far beyond its original brief and has a unique and pivotal role right across central Victoria. It now operates on a cocktail of funding from the federal government, the City of Greater Bendigo

and other one-off project-based funding. It is seeking a more sustainable funding arrangement with the state.

The centre advisory committee is seeking the support of the Department of Planning and Community Development to allow it to appoint an assistant manager, to expand its operations from three days to five days a week, to develop its communications and databases, and to provide volunteer training. It is seeking funding in the order of $72 000. Considering the centre's recent history of achievement and the importance of supporting those volunteers who in turn support their communities, this seems a reasonable investment for the state. I am sure that, in the language of the marketplace, this proposal would represent a good bang for your buck. I urge the minister to look favourably on this request and consider it as soon as possible through the Department of Planning and Community Development and create a sustainable funding arrangement for the Bendigo Volunteer Resource Centre.

Water: irrigators

Ms BROAD (Northern Victoria) — My adjournment matter is for the Minister for Water in the other place, Tim Holding. The Brumby government recently announced that $18 million will be provided to Victorian councils to substantially reduce the impact on council rates of separating the value of water rights from farmers land values. As a result, this $18 million in assistance from the Brumby government will also substantially reduce the impact on regional communities, businesses and families. This much-needed assistance by the Brumby government recognises the struggle many regional communities, businesses and families are experiencing due to the ongoing drought, and it is very welcome. I am pleased to say that the government has so far delivered more than $178 million in drought-assistance measures across Victoria to support drought-affected families, businesses and communities.

The separation of the value of water rights from farmers land values, otherwise known as unbundling, is part of important water reforms that provide greater flexibility to irrigators to trade water and reduce the council rates they are required to pay. The $18 million in assistance will allow councils to continue delivering services while making adjustments over time to secure the income required for maintaining those services and infrastructure.

The action I seek from the Minister for Water is to provide me with information about the allocation of this $18 million to councils in the Northern Victoria Region which will be affected by water unbundling over the next four years. I wish to congratulate the minister and all the stakeholders who have worked to deliver this outcome, including government departments, councils and the Municipal Association of Victoria.

Planning: Moonee Ponds land

Mr FINN (Western Metropolitan) — I wish to raise a matter for the attention of the Minister for Environment and Climate Change. It is a matter that I am sure the Minister for Planning is familiar with because it concerns a piece of Crown land on the corner of Bent and Johnson streets in Moonee Ponds which he, I understand, has declared surplus. I raised this matter with the minister during the last sitting week and he handballed it very nicely indeed to his ministerial colleague. I understand the Minister for Finance, WorkCover and the Transport Accident Commission is also involved in the disposal of that particular piece of land.

Since I raised this matter I have met with the chief executive officer and other officers of the Moonee Valley council. They inform me that the government has asked the council if it will keep that particular parcel of land as open space and has asked for $600 000 from the council to do that. However, the government has asked for $1.2 million, if the council wants to make it available for a block of flats. The Moonee Valley council has made it very clear that it wants that piece of land to remain as open space. There is not a great deal of open space in Moonee Ponds, particularly in that part of the Moonee Valley council area. It is crucial that that land be preserved for the good of the community so that members of the community who live in that area can use and enjoy it, because open space is so rare.

Last time Minister Madden informed the house that the member for Essendon in the other place, Judy Maddigan, had been going in to bat for the people of Moonee Valley and Essendon in this regard. Well, I am told a very different story. I am told by those who know such things that Mrs Maddigan has backed the plan to scalp the Moonee Valley council of $600 000 and indeed has dumped her community in a fairly significant way.

Mr Guy interjected.

Mr FINN — It is disgraceful, indeed, Mr Guy. What I ask of the Minister for Environment and Climate Change, who I understand is responsible for this, is that he get together with the Minister for Finance, WorkCover and the Transport Accident Commission, who also may be responsible for this, and

stop the handballing and confusion, because we really want this fixed. We really want this land in the hands of the public for recreational uses and a number of other things.

I ask the Minister for Environment and Climate Change to sit down with whoever it is necessary to sit down with and get this sorted out and ensure that that land is retained as open space and handed over to the control of Moonee Valley council, whose officers have said that they are more than happy to bring it up to standard and maintain it. I ask the minister to act on this immediately.

Rail: Brighton level crossing

Ms PENNICUIK (Southern Metropolitan) — My adjournment matter is for the Minister for Public Transport in the other place, Ms Kosky, and is in regard to the New Street, Brighton, railway gates. The New Street railway gates are of historical significance for their rarity as the last remaining functioning and most intact hand-operated railway gates in the state. The heritage significance of the New Street site has been recognised by the Bayside City Council through the inclusion of the site in a heritage overlay by the National Trust of Australia (Victoria) and by Heritage Victoria through inclusion of the site on the Victorian Heritage Register.

The preservation and continued use of the hand-operated railway gates on New Street has been a matter of concern to local residents and Bayside councillors for some time. I know that the issue has been raised in the other place and that indeed a petition has been presented. This issue has recently been brought to a head with an accident which occurred on 10 September in which a northbound train struck the partially open gates. Since then New Street has been closed, to the considerable inconvenience of road users, who must now use either South Road or Beach Road as alternatives. The South Road intersection was not designed to deal with the volume of traffic that this closure is currently generating.

As a result of an accident of the same nature some 18 months ago, a system of sensors was proposed to make the gates' operation fail-safe. That work had commenced prior to the second accident. However, the work was subsequently suspended, without explanation from either Connex or the Department of Infrastructure. This system was meant to ensure that there would not be a repetition of the type of accident that occurred last month.

However, when works were not completed during the following fortnight and the road remained closed, the Bayside City Council wrote to the minister requesting that the works be finished immediately and highlighting the need to reopen New Street, as it is a vital local through road. At the same time council officers have attempted on numerous occasions to talk to Connex, but those phone calls are not returned and promises to provide information or to set a time line for the completion of works are not forthcoming. The minister has yet to respond to a letter of 26 September from the mayor of the Bayside City Council.

The situation now seems to be that the council wants the New Street gates reopened immediately; Connex wants the road closed, which is a position it stated before the accident; the Department of Infrastructure considers the current gate operation is not acceptable and wants the manual gate system made fail-safe or the road closed; and nobody wants boom gates.

My request of the minister is that she ensure that the detection system at the New Street gates is completed without further delay and that the crossing is reopened, and that at the very least the minister direct that the matter be discussed between officers of her department, the Department of Infrastructure, Connex and the Bayside City Council.

Police: Bendigo station

Mrs PETROVICH (Northern Victoria) — My adjournment matter is directed to the Minister for Police and Emergency Services in the other place, Bob Cameron. The matter relates to issues surrounding the new Bendigo police station on High Street, Golden Square.

I recently became aware of the displacement of some of the large panels on the front of the Bendigo police station, which have had to be removed because of cracking. They have been replaced with ply sheeting. They are very unsightly and are a reminder of the shabby way in which this government and Minister Cameron have provided police resources in Bendigo.

I hope this is not a sign of other structural problems with the building, which ran significantly over time in its construction. Since the rush to move into the building on 19 March this year, it has become apparent that there are a number of issues surrounding occupational health and safety, suitability of design and sun glare and heat in at least one office, rendering it unusable.

Minister Cameron is not only responsible for this station as part of his ministry but is also the local member for Bendigo West, and when I last checked, Golden Square was part of this electorate. Although Bob Cameron briefly attended an open day at the station, it has not been officially opened.

The action I seek from the minister is that he ensure that the issues affecting the Bendigo police station be addressed, and finally, that he officially open a building which has been operating since 19 March this year.

Abortion: legislation

Mr KAVANAGH (Western Victoria) — My adjournment matter is for the Attorney-General in the other place and relates to the government's referral of the abortion question to the Law Reform Commission. The Victorian government seems determined to eliminate any support, even if only in principle, for the unborn. Fearing an electoral backlash at the state and federal level, the government has taken the less-than-courageous option of telling the Law Reform Commission to in effect advise the government to remove abortion from the Crimes Act.

The Law Reform Commission is told, through its terms of reference, to have regard to 'current community standards', by which is meant that the Law Reform Commission should accept the assertion that a majority of people accept abortion while ignoring the complexity of community views on the issue. The Law Reform Commission is not asked to consider the rights of the unborn. The Law Reform Commission is not asked to consider the excruciating pain of many abortions. The Law Reform Commission is not even asked to consider the question of coercion of women into abortion — an issue which is raging across the United States as I speak.

'Cowardice' is defined as showing cruelty to those who are weak or defenceless. There is no-one weaker or more defenceless than the unborn. It is hard to imagine a crueller practice than painfully killing the extremely young. The government is using this loaded and ersatz reference to disarm the potential allies of the unborn, who might be moved to express their support at the ballot box. The terms of reference given to the Law Reform Commission amount, without exaggeration, to calculated cowardice.

I ask the Attorney-General to amend the terms of reference to the Law Reform Commission so that the Law Reform Commission is not told to advise the government to remove abortion from the Crimes Act but is asked to advise on the problems of women being forced or coerced into abortion, and to allow a longer period for concerned Victorians to make submissions to the Law Reform Commission.

Springvale Secondary College: site

Mrs PEULICH (South Eastern Metropolitan) — Violence is unacceptable, be it the types of violence which have led to the loss of — —

The DEPUTY PRESIDENT — Order! Can the member tell me to which minister she is referring her matter?

Mrs PEULICH — I raise a matter for the attention of the Minister for Education in another place. Violence is unacceptable, be it the type of violence which has led to the loss of a young life or the type of violence which has seen a police officer being assaulted and hospitalised while doing his job on behalf of his community in Springvale. My sympathies go to the family of Liep Gony, and my best wishes go to the Springvale detective in his recovery.

Everyone who knows and cares about the Springvale and Noble Park community knows that there are some endemic problems. A Leader journalist, Melinda Marshall, has written several articles in the *Oakleigh Monash Leader* and the *Springvale Dandenong Leader* looking at some of the issues and citing some of the local experts. Basically there is common agreement that there are some serious problems, in particular those facing refugees, especially those coming from Africa. They are to do with a lack of skills and education, difficulty with integration, cultural conflict, the need for greater access to language services and generational problems that stem from coming to another culture and having parents who are unable to deal not only with the process of integration and adjustment to a new life but also the new problems they have to contend with.

A number of key people locally have raised with me the need for a technical vocational college to be built at the Springvale Secondary College site, which has been part of a district provisional school amalgamation review — or whatever is the current term — which will see four schools reduced to two sites. One of the sites that will be disposed of will be the Springvale Secondary College site, which is on the railway line and is best placed for the establishment of such a facility. It is much needed so that these young people, many of whom do not have literacy or language skills, can attend a convenient institution, acquire skills, get jobs, get off the streets and build lives in a new country, which will hopefully see all concerned in the

Springvale-Noble Park community healthier and more fulfilled.

I call on the Minister for Education to make sure that the review of educational services affecting the four schools takes into account the emerging needs, which are well documented, and to look at the establishment of a vocational technical college at the Springvale Secondary College site rather than flogging off land for housing.

Crib Point: bitumen plant

Mr O'DONOHUE (Eastern Victoria) — I raise a matter this evening for the attention of the Premier. Many of the communities of Western Port have transformed themselves over the last 15 or 20 years from industrial towns or towns with bleak futures to towns with prosperous futures based on tourism, and have experienced population and jobs growth, which is fantastic. One of those towns is Crib Point. One of the key pre-election issues before the last state election was: what sort of outlook do the people of Crib Point see for themselves — a reindustrialisation or a future based around tourism as a seaside location?

The then member for Hastings in the other place, Rosy Buchanan, wrote to all residents of Crib Point on 22 November — three days before the election — and said:

> I also wish to reassure you that, contrary to statements made by the Liberal candidate, I am categorically opposed to a bitumen plant or any inappropriate development in Crib Point. Following my representation, the Bracks government has already said no to a bitumen plant in Crib Point.

The people of Crib Point were relieved. So it was to their shock and horror that they learnt that this state government — through its arm, the Port of Hastings Corporation — has allowed Boral Construction Materials Group Ltd to lodge on its behalf a planning application with the Mornington Peninsula Shire Council to build and construct a bitumen storage facility. This has caused huge concern to the community of Crib Point, not least because they were given that cast iron guarantee by the then member.

The action I seek from the Premier is that he clarify for the people of Crib Point whether he stands by the commitment made by the then member, whether he stands by the commitment made in the name of Premier Bracks and whether he will meet with representatives of the Crib Point community to explain how this disgraceful situation has arisen and what he will do about it.

Metung Yacht Club: tenure

Mr P. DAVIS (Eastern Victoria) — I would raise a matter for the attention of the Minister for Environment and Climate Change, if he were here. I refer specifically to a matter on behalf of the Metung Yacht Club, which is located on Metung Road away from the water on the inland side of what is a very busy road. It has no access to the waterfront other than via the marina currently managed by the East Gippsland shire. Sailors must rig their boats and small craft, and children, particularly, sailing small yachts must rig them up on the front lawn and carry them over busy Metung Road to launch. They have to retrieve them in the same manner, which is a hazardous journey.

The marina was built in the early 1980s. It has been managed under a committee of management by the shire ever since and is now in such a state of disrepair that it is falling down and parts of it are condemned. The shire does not have the funds to rebuild the marina. There were representations to the former minister for the environment in the other place. The responses from the government have been typical, with an inability to make a decision, although Tourism Victoria has funded a marina precinct master plan which the shire is working on with consultants. At the present time the yacht club has been advised that the government will take no action while the planning process funded by Tourism Victoria is under way. Meanwhile the marina continues to fall down and children continue to be in harm's way.

The Metung Yacht Club is seeking to have the Department of Sustainability and Environment grant it long-term tenure over the waterfront and marina seabed so that once the tenure has been established it can arrange finance and a major rebuild of the marina. This seems an eminently sensible approach to solving what is a major problem for the yacht club, the shire, the community at large and is clearly a traffic hazard.

I therefore request that the Minister for Environment and Climate Change take action to ensure that a long-term tenure arrangement can be effected for the Metung Yacht Club.

Responses

Hon. J. M. MADDEN (Minister for Planning) — Andrea Coote raised the matter of parks on public land. I will refer this to the Minister for Environment and Climate Change.

John Vogels raised the matter of changes to the Trade Practices Act. I will refer that to the Minister for Agriculture in the other place.

Damian Drum raised the matter of the Bendigo Volunteer Resource Centre. I will refer that to the Minister for Community Development in the other place.

Candy Broad raised the issue of water unbundling, and I will refer it to the Minister for Water in the other place.

Bernie Finn raised the matter of land in Moonee Ponds. I will refer this to the Minister for Environment and Climate Change.

Ms Pennicuik raised the matter of the New Street, Brighton, railway gates. I will refer that to the Minister for Public Transport in the other place.

Mrs Petrovich raised the matter of the Bendigo police station. I will refer this to the Minister for Police and Emergency Services in the other place.

Peter Kavanagh raised matters around a referral by the Attorney-General in the other place to the Law Reform Commission. I will refer this to the Attorney-General.

Mrs Peulich raised the issue of youth violence. I will refer this to the Minister for Education in the other place.

Edward O'Donohue raised the matter of Crib Point and a current planning permit proposal. I will refer this to the Premier.

Philip Davis raised the matter of the Metung Yacht Club. I will refer that to the Minister for Environment and Climate Change.

The DEPUTY PRESIDENT — Order! The house stands adjourned.

House adjourned 5.18 p.m. until Tuesday, 30 October.