PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SIXTH PARLIAMENT

FIRST SESSION

Thursday, 20 September 2007

(Extract from book 13)

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By authority of the Victorian Government Printer

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Legislative Council committees

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

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

Select Committee on 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 Viney.

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

Joint committees

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

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

Economic Development and Infrastructure Committee — (*Council*) Mr Atkinson, Mr D. 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

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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
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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, 20 SEPTEMBER 2007

Thursday, 20 September 2007

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

PUBLIC SECTOR ASSET INVESTMENT PROGRAM

Budget information paper 2007–08

Mr LENDERS (Treasurer), by leave, presented public sector asset investment program — budget information paper 1.

Laid on table.

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Budget estimates 2007–08 (part 3)

Mr PAKULA (Western Metropolitan) presented report, including appendices and minority reports.

Laid on table.

Ordered to be printed.

Mr PAKULA (Western Metropolitan) — I move:

That the Council take note of the report.

The report concludes the Public Accounts and Estimates Committee's consideration of the budget estimates for 2007–08. For the first time the report dealt with key fiscal and economic matters, including productivity, economic reform and staffing. Those matters were the subject of extensive analysis.

The report also contains significant analyses of key fiscal parameters, including contingency items, efficiency initiatives and carryover funds. That is not the view of the opposition. Unfortunately, we did not have to wait until today to see the Public Accounts and Estimates Committee's report and the Liberal minority report to figure that out, because comments about them appeared in an *Age* article by Paul Austin yesterday. Every time there has been a leak from the gaming committee, the allegation by the opposition has been that the Labor Party did it.

Honourable members interjecting.

Mr PAKULA — This one could not have been the Labor Party, because we did not have the Liberal minority report. In his article Mr Austin says that the Public Accounts and Estimates Committee (PAEC) report was nothing more than a whitewash. And guess what? Mr Austin got it exactly right, because that is exactly what the Liberal Party says in its minority report. The article by Mr Austin went on to say that the report contributes nothing towards improving transparency, and again Mr Austin had it exactly right, because that is word for word what appears in the minority report by the Liberal Party.

The only people who had this minority report were members of the Liberal Party; Mr Austin cannot have got it from anywhere other than the Liberal Party. Mr Rich-Phillips, Mr Dalla-Riva and the member for Scoresby in the other place, Kim Wells, describe themselves in their minority report as being incredibly disappointed with the PAEC's report. The government is disappointed as well.

It was very disappointed with the irresponsible, churlish and immature way in which the opposition approached the preparation of the report; otherwise its approach was entirely unremarkable. I am not going to go into the substance of the deliberations themselves — it would not be appropriate — but it was apparent from the first deliberative meeting that the opposition members were intent on presenting a minority report and that they were not prepared to adopt a constructive approach to the deliberations.

The allegation that there was no independent analytical vigour and that the report relies solely on the budget speech of the Treasurer is simply wrong. The committee's chair was prepared to bend over backwards to accommodate changes to reach consensus if there was anything that the opposition wanted to change. But the Liberal Party's approach was to say, 'No, no. Just leave it in', because changing it and adopting a consensus view did not fit the plan. The Liberal plan from the get-go was to put in a minority report. It was always the plan. The outrage that was apparent during those meetings was confected, and it is still confected today.

If there was anything from the budget papers, the opposition's cry was, 'Where is the analysis of that? Where is the analysis of what appears in the budget papers?'. Despite the claims by the Liberal Party, the traditional role of PAEC in the budget estimates inquiry does not extend to an analysis to verify policy statements made by ministers or the Treasurer, or if the information prepared by the Department of Treasury and Finance is well founded. Instead it has been to focus on transparency and clarity of reporting.

Mr Wells, the shadow Treasurer in another place, in his approach wanted to turn the estimates report into an instrument of Liberal Party propaganda. If anyone in this Parliament was going to analyse in detail whether the government's budget stacked up, I would have thought that job would be the responsibility of the shadow Treasurer; that is his job. It has been almost five months since the budget was handed down, and you would think in that time the shadow Treasurer might have done a bit of work, might have uncovered some flaws — —

Mr Atkinson — On a point of order, President, Mr Pakula is actually speaking to a report. It is the convention of this house that one confines one's remarks in the presentation of a report to the substance of the report and the committee's deliberations. I would suggest that in fact Mr Pakula has now wandered on to attack a member in another place, and that is inappropriate under our standing orders.

Honourable members interjecting.

The PRESIDENT — Order! Mr Atkinson's point is well made. I alert Mr Pakula to the fact that he should contain himself as much as is reasonable to the actual report.

Mr PAKULA — I will do so, President, but I note that there is a Liberal Party minority report contained in the report which is intensely critical of the report and of the process. I am giving it some context, given that the opposition's allegation all the way through the process was that the Public Accounts and Estimates Committee staff ought to do the opposition's job for them. It is not the job of the PAEC staff and it is not the shadow Treasurer's role to contract out his job to the PAEC staff.

Mrs Peulich interjected.

Mr PAKULA — Mrs Peulich might want to hear this bit because it is important. Members of the committee were given the opportunity to ask for detailed research to be done on specific areas as nominated by them. Every member was given that opportunity. The opposition declined that invitation, with one exception, which was total estimated investment reporting and unallocated capital contingency analysis, and that analysis was done by the staff and was completed to the opposition's satisfaction. But that was the sole request that the opposition made for detailed analysis. Also, on a very brief reading of the minority report, it appears to me that none of the matters raised by opposition members in the minority report were the subject of questions by them to ministers during the estimates hearings. They did not raise any of these matters when they questioned ministers during the estimates hearing, because all of that is hard work. Asking the appropriate questions in hearings, reading the papers in detail, getting specific research requests in and preparing amended chapters is all hard work.

I have seen this sort of thing for years. In every enterprise agreement negotiation I was ever involved in there was always one bloke who sat with his arms folded, saying, 'This is all rubbish. You're just going to do what you want anyway. What's the point of getting involved?'. That was always the bloke that it was all too hard for, because carping and whingeing is easy and being constructive is difficult. Being prepared to argue through your point is difficult. Giving a document some proper consideration and finding common ground is all work, and it is obviously too hard for the shadow Treasurer.

I think I detected — and I do not want to verbal him — a little bit of embarrassment from Mr Rich-Phillips at this tactic during the deliberations. It is probably appropriate to say that maybe the reshuffle that the Leader of the Opposition in the other place, Mr Baillieu, carried out should have gone a bit further. It is a good report and I commend it to the house.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — This report — the third report on the budget estimates for 2007–08 — marks the latest politicisation of the Public Accounts and Estimates Committee (PAEC). When the first report of this series, part 1, was introduced to this Parliament immediately following the budget, the Liberal members of that committee included a minority report. We did so because we were concerned that the committee had taken a decision not to include any analysis whatsoever in that report and in the subsequent part 2 report. If members look back at those two reports, they will see that they are made up merely of transcripts and records of correspondence received from ministers who appeared before hearings. This was a huge departure from the way in which the PAEC had prepared estimates reports in the past. It was following the embarrassment the government suffered over those two reports, which lacked any analysis and any consideration of the budget estimates, that the concession was made that a part 3 report would be prepared.

It is the part 3 report that the committee has tabled in the Parliament today, but I have to say this part 3 report falls well short of what the PAEC traditionally produces as an estimates report. Members need look no

further than the mere size of the report; at 180 pages, plus appendices it is barely one-third the size of a normal estimates report. It is absolute rubbish for Mr Pakula to come in here and say on behalf of the government that the committee has undertaken new analysis and there is more analysis than the government has ever done before. The report itself is only one-third the size of a normal report, so it is simply not possible that this report anywhere near encompasses the range of issues and matters that have been considered by the committee in the past.

It is true that the Liberal members of the committee — the member for Scoresby in the other house, Kim Wells, Mr Dalla-Riva and I — have included a minority report, but it is not the only minority report. Independent of my Liberal colleagues, the member for Benalla in the other place, Bill Sykes, has also chosen to include a minority report. I can tell the house, and I can tell Mr Pakula in particular, that that was done independently of the Liberal Party members. So it is not only the Liberal Party that has concerns about the nature of this report and what has been excluded from it.

This main report has been dumbed down; it has been reduced to a marketing tool for the government. Our concerns relate to the blatant way in which this report has been used as a tool of propaganda for the government. What used to be key findings of the committee have been reduced to reproducing statements out of government press releases. No longer was the committee making its own key findings; it was simply reproducing government press releases.

I draw the attention of the house to the sourcing of the material in this report. If the Parliament is in any doubt as to the source of this material and the veracity of the claims of the Liberal Party that this is merely propaganda, they need look no further than the sources that have been included in the report. We see, for example, sources like reference no. 6, 'The Honourable S. P. Bracks, office of the Premier, statement from Premier Steve Bracks, media release' and the next source, no. 7, 'The Honourable J. Brumby, MP, Premier' with the media release headed 'Premier announces new cabinet'.

Throughout this report are sources as light as government press releases. It has never been acceptable in the past for the PAEC to base its analysis and its findings on, or to use as authoritative sources, government press releases. It is a matter of disappointment for the Liberal members of the committee that that is now the approach being adopted. Even the layout of the report has followed government propaganda. We no longer have a report that is structured around the departmental structure, around the budget structure; we have a report that is based around the structure of government propaganda. If members of this house or members of the public were to look for any analysis on public transport, where would they find it? They would not find it under the Department of Infrastructure, and they would not find it under a chapter on public transport. They would find it under a chapter called 'Vibrant democracies', a chapter which picks up the rhetoric of the government and is based on brochures, publications and spin put out by the government.

This report is light on analysis, and that is the fundamental concern that the Liberal members of the committee have had as it merely reproduces the rhetoric of the government. It does not undertake analysis. As the extract of proceedings indicates, there were serious issues raised in relation to matters that the then Treasurer, who is now the Premier, stated during his evidence — matters that the committee would not investigate. Matters that the committee would not provide clarity on that remain unclear to this day as far as the analysis in this report is concerned because the government members did not want to embarrass the new Premier.

Mr Pakula — Such as what?

Mr RICH-PHILLIPS — Such as the claim by the Premier that there is $2.9 billion unallocated capital in the budget when clearly there is not.

Mr Pakula — It was dealt with. It is in there.

Mr RICH-PHILLIPS — It was not dealt with. This report does not live up to the expectations of the Public Accounts and Estimates Committee. Over the last 15 years this committee has gained a reputation as the best Public Accounts and Estimates Committee in Australia and throughout the Asia-Pacific region. This report, particularly the first two parts of it, undermines that reputation. The Public Accounts and Estimates Committee should not be used as a marketing arm for the government, as we have seen happen with this report.

Mr Pakula made the accusation that the Liberal members did not take every opportunity to correct this report — to fix up the government's report.

Mr Pakula — Did not take any!

Mr RICH-PHILLIPS — Mr Pakula's claim is refuted by the evidence. In the back of this report there

are extracts of proceedings in which the Liberal members sought to have matters changed. Frankly we are happy to see the government's draft of this report on the public record so the public can see the way the government is using this report and this committee for political propaganda. We are happy to have statements, such as the Premier's press releases, used as authoritative sources and to have them stand on the record so the public can see the way in which this committee is being used.

The key concerns of the Liberal members are articulated in the minority report. My colleague, Mr Dalla-Riva, will turn to those in detail. This is a disappointing report. It undermines the previous high regard in which the Public Accounts and Estimates Committee has been held. It is not the role of that committee to be used as a marketing arm of the government.

In closing I would like to thank the committee secretariat for its work: Jennifer Nathan, a longstanding member of the secretariat and acting executive officer during most of this process; Valerie Cheong, the new executive officer, who took up her position part of the way through this process; and the longstanding members of our research staff. I make no criticism of the work they did in preparing this report; it was done at the direction of the chair. This report, as happens with all committee reports, started as a draft from the chair, articulating what the chair wanted it to do. The concern of the Liberal members about this report is not a reflection on the staff.

I add that we reject very strongly the way in which certain Labor members of the committee attempted to politicise the staff, as is evidenced at the end of the extract of proceedings, where the member for Mordialloc in the other place, by way of motion articulated in the extract, attempted to implicate the staff in the political bias of this report. We completely reject the motion.

Mr Guy — What a disgrace!

Mr RICH-PHILLIPS — It is a disgrace. We thank the staff for their work on this report. We in no way regard them as responsible for the political bias of this report and make the point that it is simply not good enough for the public accounts committee to be used in this manner.

Mr DALLA-RIVA (Eastern Metropolitan) — I join with my colleague Mr Rich-Phillips in condemning the part 3 report tabled today and speaking to the minority report contained in it. It was interesting to hear Mr Pakula's contribution. He indicated to the house that he may be good as a union hack but would struggle to earn a living as an accountant. In his contribution he did not go to the content of the report. He went straight to the jugular about us and the process but did not actually talk about the report.

He avoided talking about the report because he understands deep down that there is really no substance in it. I join with Mr Rich-Phillips in acknowledging the work of the staff. I, like Mr Rich-Phillips and the member for Scoresby in the other place, Mr Wells, were absolutely astounded at the way a motion was put forward as this report was being completed, to segregate the staff in the political process. I thought it was disgraceful behaviour, and for those who want to have a look, it is tabled in the minutes of the proceedings on page 355. I think it was inappropriate in the circumstances to indicate that the staff were in some way not being rewarded for the work they did.

I also join in acknowledging the outstanding job Jennifer Nathan did in trying to coordinate all this with Karen Taylor, and, as Mr Rich-Phillips said, Valerie Cheong, who joined the committee subsequently.

It was interesting to note in Mr Rich-Phillips's contribution that he spoke about the references that were made in the report. He said there are quite a lot of references to press releases from ministers. One of the most astounding ones to fascinate us is reference 146 on page 121. We must remember this is meant to be a report on the estimates, but one of the references as the foundation of this report is the Australian Labor Party policy for the 2006 Victorian election. We could not comprehend that they would actually believe the rhetoric that comes not only from the ministers' own press statements but also from the ALP as being gospel and foundation for the $38 billion or $34 billion or $36 billion estimate, depending on which way you look at it. The figures are rubbery, as we know.

We had a huge debate — and details are in the minority report — about the then Treasurer and now Premier repeatedly talking about the unallocated budget of $2.9 billion, which is available in the forward estimates period, being used for major infrastructure and water projects. We went through that ad nauseam. There is actually only $1.6 billion. It was interesting to hear the rhetoric. The government has made that statement, and there is no counter to it. It was very heavily weighted to demonstrate that the government was looking at it.

I say to Mr Pakula that we were critical in the early stages about the fact that there should be more analysis. We put in a minority report in the part 1 report to that

effect. What we were fascinated to see was that in the part 3 report the committee continued on the process of not doing any detailed analysis. It was an absolutely disgraceful way of doing this report. We found it was peppered throughout with references from the budget speech of the Treasurer.

It was fascinating to be part of the committee and to hear the Labor members. If a statement had been made by Mr Brumby or Mr Bracks, it was gospel — that was it; hallelujah, they had spoken! There was no variation whatsoever from what had been stated by those ministers. What we now find is that they used them as references to substantiate what they were doing. They use ALP policy documents, government media releases and departmental responses as key findings of this committee. That is all outlined in chapter 2, where we see that the committee chose not to investigate whether the Treasurer's statements on the budget were true. They were just debated, and that was it. We had that debate — and we went on and on!

We then went on to other areas. One thing that fascinated me was that this is a government with a substantial amount of money to spend on the community. It is interesting to see the analysis of Labor Party members in chapter 13, which is entitled 'Quality health and education'. The two biggest portfolios which the state government has direct responsibility for are health and education.

Mr Pakula said that analysis was detailed and very thorough, and members will be surprised to learn how many pages of analysis there were in total. Although there are billions of dollars spent every year by the state government, the analysis done by this committee and this government amounts to six pages. There were only six pages on the two most critical portfolios that affect the community.

Mr Pakula — How big is your minority report?

Mr DALLA-RIVA — Our minority report went for longer than the analysis on health and education. The fascinating question is: how many recommendations were there regarding health?

An honourable member — One hundred?

Mr DALLA-RIVA — Zero! There was not one recommendation in the health portfolio. So everything is fine: there are no troubles with the hospitals, there are no people waiting on hospital beds and there are no ambulance bypass problems! This has all been forgotten. Praise the Lord, the Premier and the Treasurer have spoken and we should believe them forever! The production of only six pages is absolutely disgraceful behaviour. The government has delivered to the people of Victoria a critical analysis which goes no more than six pages and includes no recommendations regarding health and only three minor recommendations regarding education. This clearly indicates the state of things in Victoria.

The opposition also considered Mr Rich-Phillips's suggestion of a vibrant democracy. That suggestion includes police numbers, prison numbers and public transport — it makes sense. You would have thought that the government would have had a separate section in its report on public transport, but it does not. I guess the government could not fill out its own report; there would have only been two pages. The government has amalgamated that and made the process an absolute mishmash.

In summary, the report is a disappointment for the people of Victoria who were looking for a more transparent approach to the $34 billion which is spent by this government. We are not the only ones who have put forward a minority report. As it has been indicated, Dr Sykes, the member for Benalla in the other place, has also done so. This report is an indication of the state of the estimates process. I welcome the fact that we have this report, but it is a shame that the people of Victoria, who want a more detailed analytical review of the moneys that are about to be spent in the forward estimates period, cannot get that information.

Motion agreed to.

PAPERS

Laid on table by Clerk:

Ombudsman's Office — Report, 2006-07.

Statutory Rules under the Subordinate Legislation Act 1994 — Nos. 95, 96, 97 and 98.

Subordinate Legislation Act 1994 — Ministers' exception certificates under section 8(4) in respect of Statutory Rule Nos. 95, 97 and 98.

BUSINESS OF THE HOUSE

Adjournment

Hon. J. M. MADDEN (Minister for Planning) — On behalf of the Leader of the Government I move:

That the Council, at its rising, adjourn until Tuesday, 9 October.

Motion agreed to.

MEMBERS STATEMENTS

Rail: free morning travel

Mrs PEULICH (South Eastern Metropolitan) — The state government has placed the 'con' into Connex. It wants train travellers to leave home between 16 minutes and up to an hour earlier each morning to catch the 5.44 a.m. train from Frankston to reach Flinders Street before the 7.00 a.m. deadline for free morning travel. While this new scheme may benefit very early morning travellers, the thousands of commuters who do not need to arrive at work before 7.00 a.m. will not benefit. How will those who have purchased an annual ticket benefit? Those who arrive in the city for free will now have to queue with thousands of other people to purchase their one-way ticket home.

Train travellers on the Frankston line feel ripped off and conned by the Brumby government, as they did not receive any new peak train services following the recent announcement and have been told to arrive at their train station at least 16 minutes earlier than they do now so they can hang around their workplace until their usual starting time. Are school children expected to arrive at their destination before 7.00 a.m.? What will happen when the train is delayed, as one in six trains on the Frankston line are late? Will Connex inspectors let people pass through the gates without a ticket? How will Connex monitor how many commuters are travelling during this period?

The government has had eight years to improve public transport and has failed miserably. It is an absolutely appalling let-down of people who use the Frankston line. A Labor member whose — —

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

Water: north–south pipeline

Mr DRUM (Northern Victoria) — Yesterday during the debate in this chamber on Mr Hall's motion proposing an inquiry into the potential options for Melbourne's water supply, Mr Leane questioned opposition MPs as to why they had been so quiet and were not up in arms over the federal government's plan to invest its money in Australia and particularly in the Murray–Darling Basin. Whilst noting that we have been stringently opposed to the Victorian Labor government's plan to pipe water to Melbourne — and rightly so — Mr Leane wondered why we would have no objection to the federal government's $10 billion improvement plan. The reason we support the federal government plan is quite simple. If Premier Brumby were to sign up to the national water plan and abandon the north–south pipeline, up to $8.5 billion of the $10 billion could be available to address the issues within the Goulburn Valley. But here is the clincher for Mr Leane and for the Treasurer, who showed his ignorance on water issues during that debate yesterday: all the savings generated by the federal plan will stay within the Murray–Darling Basin. That water will be shared fifty-fifty between the environment and irrigators. This plan has 97 per cent irrigator support as opposed to practically no support for Premier Brumby's plan to take the first 75 gigalitres out of the Goulburn Valley and send it to Melbourne. Whilst the Labor government says there are 225 gigalitres of savings, that is certainly unproven, and, as we know, the first 75 gigalitres are going straight to Melbourne.

Victoria University: council entertainment expenses

Ms HARTLAND (Western Metropolitan) — Victoria University is an important resource in the western suburbs. It was set up to give tertiary education opportunities to working-class people. I did my community development course at Victoria University as a mature-age student. The university is facing grave financial difficulty and has been forced to cut about 70 staff, including teaching staff, and important student support services. Two courses have been cut. A number of concerns have been raised with me by members of staff on these issues, and because of that I obtained documents under freedom of information provisions. Those documents show that in the midst of all this belt tightening, last summer the university threw a lavish New Year's Eve party costing $25 000 — over $250 per person — for the university councillors and selected guests. On top of that the university councillors spent over $71 000 on entertainment expenses over 18 months, very little of which was spent in the western suburbs.

The community has expectations of what is a reasonable use of public money. I regularly eat in fantastic places in Footscray for about $12. I suggest that the university check out some of these wonderful restaurants. As the university has told all its other departments that they have to live within their means, I suggest that next year this should also apply to the university councillors.

Water: fluoridation

Ms PULFORD (Western Victoria) — Data from the Victorian school dental service shows that children who live in areas of Victoria which have a fluoridated water supply experience considerably less tooth decay

than those in non-fluoridated areas. Six-year-old children living in areas with fluoridated water supply experience 36 per cent less tooth decay in their baby teeth than those in non-fluoridated areas, and forensic dentists can tell at a glance whether a Melbourne resident was born before or after the introduction of fluoride in our water in the 1960s.

I was alarmed to learn that every single week in Ballarat, three to four preschool children have to undergo treatment of dental problems under a general anaesthetic. Fluoride is but one important part of a comprehensive dental health strategy. In a discussion I had with the Minister for Health in the other place, Daniel Andrews, we talked about the injustice of his children, who live in Mulgrave, having all the benefits of dental health care provided by growing up in a area with a fluoridated water supply, in contrasts with children who grow up in the Ballarat region and who do not have fluoridated water. I congratulate the Ballarat Health Service, the City of Ballarat, the Committee for Ballarat — —

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

Terrorism: Israeli soldiers

Mrs KRONBERG (Eastern Metropolitan) — During a cross-border incursion into Israel at the height of the Lebanon war in July last year, two Israeli soldiers were kidnapped. The unit held responsible for this outrage is the crack Hezbollah Unit 1800. This militia unit is answerable to the super-terrorist and kidnapper, Imad Mughniyeh. The two soldiers are Ehud Goldwasser and Eldad Regev. The soldiers have left behind families who are agonising about their welfare and praying for their safe return. Nothing has been heard about their whereabouts or their conditions since they were kidnapped. No-one really knows whether they are dead or alive. Their capture now brings the total of kidnapped Israeli soldiers to three, with Gilad Shalit having been kidnapped and taken into Gaza in June 2006.

On Tuesday, Mr Schlomo Goldwasser, the father of one of the kidnapped soldiers, visited this Parliament. Many parliamentary colleagues from both sides attended the meeting with him. I was moved, and I feel many others were too. It is important for us to highlight the suffering of the families and the awful plight of the captured soldiers. Members may feel helpless because they have no way of influencing the behaviour of terrorists who have perpetrated these gross violations of human rights. However, we can talk about these abuses and we can remember the missing soldiers and their families in our prayers.

Bundoora Football Club: pavilion

Mr ELASMAR (Northern Metropolitan) — On Sunday, 26 August, I was very pleased to attend the opening of the Bundoora Football Club pavilion. The club has been operating since 1975 and is one of the largest clubs in the region, with around 340 players in over 22 teams. The club accommodates girls and boys teams in the under-18s and seniors, and conducts a goal-kick program for children aged under seven years. On the Sunday in question the mayor of Whittlesea officially opened the new Hillsview Recreation Reserve pavilion, and to our delight, after the ceremony more than 300 children played a junior football game.

Lebanon: assassination

Mr ELASMAR — On another matter, I would like to speak about the assassination of a member of the Lebanese Parliament, which happened yesterday in Lebanon. In addition, another 9 people were killed and 60 were injured. It really hurts me when I hear bad news coming from my country of origin. I offer my condolences to the Lebanese people in Lebanon and in Victoria, and especially members of the Kataeb Party. I rise to speak about the issue even for a short while, to make sure that the whole world listens to accounts of what is happening in Lebanon and especially that Victorians listen. As a Lebanese-born member of Parliament I know we have a large Lebanese community whose members would also be concerned about the situation in Lebanon.

Keith Meerbach

Mr KAVANAGH (Western Victoria) — I wish to take the opportunity to commend the actions of Mr Keith Meerbach of south-western Victoria, who has been organising support for a south-west-based emergency helicopter service. Recently Mr Meerbach's sister-in-law was injured in a road accident. Due to the lack of a south-west-based emergency helicopter service, the injured lady was forced to wait for 4 hours before being airlifted to Melbourne for emergency brain surgery. Her Melbourne surgeon observed that the delay in treatment was detrimental to her health. Unfortunately, this lady was only one of many in similar situations.

I understand that local member Denis Napthine, the member for South-West Coast in the other place, is to present a very large petition calling for a south-west-based emergency helicopter service. That

petition was organised by Mr Meerbach. I commend Mr Meerbach on his initiative, concern and loyalty, not only to his sister-in-law but to all the citizens of the south-west.

Border anomalies: officials meeting

Ms BROAD (Northern Victoria) — I recently attended a briefing by officers of the Victorian Department of Premier and Cabinet for Victorian MPs representing electorates along the Murray River and local government representatives regarding progress on resolution of cross-border issues between Victoria and New South Wales as well as discussion of priorities for future action. A similar briefing was provided by New South Wales officers to New South Wales MPs and local government representatives. These briefings, which were held in Albury, were followed by a morning tea attended by elected representatives and department secretaries from New South Wales and Victoria. Following the briefings and morning tea, department secretaries from New South Wales and Victoria met to consider ways to drive the resolution of cross-border issues.

This is the second time this group has met. Progress since the last meeting, in June 2006, has included the introduction of reciprocal policies for school enrolments, joint tourism promotion through the Brand Murray marketing campaign, a border bridge strategy, and a range of further actions to address the day-to-day and long-term issues that affect families living and working in border communities. This work complements broader initiatives through the Council for the Australian Federation and the Council of Australian Governments, including mutual recognition of trade qualifications and national accreditation and registration of health professionals. I am pleased to say that the importance of effective communication and feedback with local government representatives and MPs was recognised at the meeting.

Emergency services: south-western Victoria helicopter

Mr VOGELS (Western Victoria) — It is a sad and sorry state of affairs when the state government concludes that one-third of the state is not worthy of an all-emergency rescue helicopter. It believes the service is not warranted in the south-west, yet all other parts of the state are fully serviced by all-emergency rescue helicopters that are fully supported by the Victorian government. Vigorous professional, apolitical and political campaigns launched over many years have sadly all proven futile. Today in the Assembly we see the tabling of a petition bearing 7500 signatures calling for this service. Past attempts have included a $20 million injection of funds and ongoing costs to be provided by Woodside Energy. Its offer was rejected.

There are many aggrieved families in and visitors to the south-west, and many more will be aggrieved by the lack of this service, which has cost lives. That is not to mention the trauma of the sick and injured when every minute can be critical to recovery time. As it promised in the lead-up to the 2002 and 2006 state elections, the Liberal Party stands as firmly committed today as ever to providing an all-emergency rescue helicopter to south-western Victoria. We will continue to pursue this issue with the Brumby government on behalf of south-western Victoria and hold it accountable for its lack of action for the region.

Victorian Ladies Bowling Association: centenary

Ms DARVENIZA (Northern Victoria) — I take this opportunity to congratulate the Victorian Ladies Bowling Association on reaching its centenary year. The VLBA was created in 1907 by six Melbourne bowling clubs coming together. It is the oldest bowling association in the world. A number of events have been held to celebrate the centenary. Recently a gala function was held at the Hawthorn town hall, and a centenary luncheon at the Hilton on the Park in Melbourne was attended by Mrs de Kretser, the Governor's wife, Brian Marsland, OAM, the president of Bowls Australia, and Mrs Betty Collins, OAM, the president of World Bowls. Some 500 people from across Victoria and interstate attended this function.

I acknowledge the work of the centenary organising committee, particularly the chair, Mrs Margaret Radford, and Mrs Joan Adams, the president of the Victorian Ladies Bowling Association. A centenary bowling carnival will be held in Melbourne in April next year, with the finals being held at the Darebin City Bowls Club, the home of the Commonwealth Games bowling event. Congratulations to the Victorian Ladies Bowling Association on reaching its centenary year.

Water: north–south pipeline

Ms LOVELL (Northern Victoria) — I am pleased that Ms Broad and Ms Darveniza are in the house to hear this, because I rise to encourage the Minister for Water in the other house and the two Labor members for Northern Victoria Region to attend a public meeting in the Goulburn Valley to hear firsthand the concerns of the community over the government's decision to build the north–south pipeline, which will rip 75 billion litres of water out of the Goulburn Valley. To be fair to the

minister, during recent visits to Yea and Kerang he has spoken with a couple of small protest groups. After one of these chance encounters in Yea, the minister made the misguided statement that he thought support for the pipeline was growing. This could not be further from the truth, as opposition to the pipeline continues to build throughout northern Victoria.

Since the announcement of the pipeline, it has been the practice of the Premier and the minister to sneak into a town unannounced and meet with only those in agreement with the plan. The government needs to consult with the whole community. It has nothing to fear, because country people are generally polite. It certainly would not be like attending one of the professional protests that Labor Party members are used to attending. I would be happy to organise a public meeting, and I urge the minister and Labor's two representatives for Northern Victoria Region to attend and hear the community's concerns firsthand.

Migrants: citizenship test

Ms TIERNEY (Western Victoria) — In recent weeks I have attended many citizenship ceremonies in a number of towns across Western Victoria region, including Kyneton and Ballarat. It is fantastic to see the strong numbers at the ceremonies epitomising the strength of multiculturalism in Victoria. The recent Geelong citizenship ceremony was moved to a larger venue to accommodate some 120 people who were granted citizenship, which was around 70 more than usual. As members of Parliament we get the privilege to attend citizenship ceremonies and see the facial expressions of people at the moment when they are awarded their certificates for Australian citizenship.

However, the new laws recently passed in the federal Parliament create another barrier in the way of migrants fulfilling their dreams of citizenship. Michael Martinez of Diversitat, the operational arm of the Geelong Ethnic Communities Council, stated:

> The government said they wanted to introduce a test to encourage citizenship, but those who will be sitting the test are likely to be from non-English-speaking backgrounds. What has speaking English got to do with being a good citizen? …

An amount of $123 million will be spent on Australia's new citizenship test. That money would be better spent on widening settlement and support services for migrants, instead of on damaging multiculturalism in Australia.

Gaming: Intralot contract

Mr ATKINSON (Eastern Metropolitan) — I note that a report in the *Herald Sun* today states that Greek executives from the gambling company Intralot are coming to Victoria to negotiate with the Brumby government a new contract for scratchie tickets. I am most concerned about this. The report states that the company's Melbourne chief, Mr Sheehan, was advised of the opportunity to negotiate this licence with the government just days before he was to appear before the Select Committee on Gaming Licensing. I think that is outrageous and is another contempt of and very deliberate intervention in the proceedings of that select committee of this house.

What concerns me more gravely is the extension of gambling into supermarkets, as proposed by Intralot. I think it is outrageous that we would have a situation likely to develop under this proposal where Coles and Woolworths would enter this industry in a very substantial way and that people could be required to make a choice between bananas and lottery tickets. That might sound like an outrageous proposition, but the reality is that some of the most vulnerable people in the community will be confronted with in-your-face gambling at their local supermarket. It is outrageous.

Anti-Semitism

Mr THORNLEY (Southern Metropolitan) — Along with members from both sides of this house, earlier this week I was privileged to listen to Mr Shlomo Goldwasser telling the very disturbing story of his son, who has been abducted by Hezbollah and from whom we have had no sign. I believe Mr Finn has moved a notice of motion in relation to that matter. I wholeheartedly endorse and support that action and will second the motion if it comes to the floor of the house. It is heartening to see a bipartisan approach to the these important issues.

What was less impressive, however, was an article in the *Age* recently in which Mr Julian Sheezel tried to claim it was the Labor Party's fault that we had given no. 8 preference to Mr Adrian Jackson in the Albert Park by-election. It is not the Labor Party that needs to apologise for Adrian Jackson. He was not president of our St Kilda branch for a long period of time. It is not the Labor Party that needs to apologise for Ken Aldred. It is not the Labor Party that needs to apologise for Pauline Hanson. It is not the Labor Party that needs to apologise for Gary Anderton. It is not the Labor Party that needs to apologise for the Liberal Party's anti-Semites and its racists. If Mr Sheezel wants to raise those issues, if he wants to break a bipartisan

consensus, then he should at least do so by apologising for his grubs and not blaming us for them. While we are at it, Mr Nairn, the federal Special Minister of State, ought to tell his chief of staff that comparing serving army officers to Belsen guards is not exactly the form either.

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

STATEMENTS ON REPORTS AND PAPERS

Auditor-General: *Promoting Better Health through Healthy Eating and Physical Activity*

Mrs KRONBERG (Eastern Metropolitan) — I would like to speak on the Victorian Auditor-General's report of June 2007 on promoting better health through healthy eating and physical activity. In regard to health promotion for Aboriginal people, there is a recognition in this report of the need to improve the prevention and management of chronic disease among Aboriginal people. As many of us already realise, Aboriginal people are disproportionately affected by preventable chronic disease and are more exposed to risks underpinned by unhealthy eating and physical inactivity. Existing plans to prevent chronic disease have been strengthened through target programs. There is a four-year funding program set up by the Department of Human Services (DHS) that aims to help Aboriginal organisations and other local agencies to better plan, deliver and evaluate health promotion programs. Nine Aboriginal health promotion and chronic-care funded areas include Dandenong, Whittlesea, Whitehorse and East Gippsland.

So far as the performance of local agencies is concerned, the Auditor-General finds that their plans need to be improved. Furthermore, local agencies should be pressed to deliver reporting and evaluation frameworks that demonstrate an understanding of the impacts of local plans. East Gippsland was commended for its development of a three-year plan to improve chronic disease management. Its program was regarded as more comprehensive and detailed than others. Its focus and commitment had been the collection of baseline information on current practices, the population characteristics, the risk factors driving chronic disease and, finally, an evaluation framework to scrutinise actions in terms of health impacts and outcomes.

The Auditor-General has stressed that so far as the approach to promoting healthy lifestyle messages to Aboriginal people is concerned, both the quality and comprehensiveness of the Aboriginal health promotion and chronic-care funding program need planned improvement. Furthermore, there should be rigour to ensure that well-founded strategic evaluation frameworks actually demonstrate an understanding of the impacts of their plans, thus giving guidance and assistance to local areas and allowing them to build and apply consistent and local well-rounded strategic evaluation frameworks. The Department of Human Services believes that program delivery is suffering because of staff shortages, delays in recruitment and lack of training. A reporting framework needs to be developed that gives the department an understanding of the impacts of plans as well.

With regard to health promotion for school students, of course we all recognise that schools are important settings for encouraging children to be physically active and to eat healthy food. In this report seven local council areas were reviewed. Schools deliver a range of physical activity and healthy eating activities through the school curriculum, secondary school nursing plans, a school's individual programs and those sponsored by the government. Areas where the Auditor-General sees the need for improvement include improving the monitoring of risk factors, forming plans based on what works best, better coordinating plans and activities to address these risk factors and evaluating the impacts to understand their effectiveness. Currently the extent to which schoolchildren are encouraged to develop healthy habits, apart from the minimum requirements, varies across schools. Agencies responsible for health promotion activities in schools need to implement improvements through a statewide plan to tackle obesity.

Obesity is very much on the agenda for us in Parliament House today because, interestingly enough, an obesity health and lifestyle issue forum is being conducted here at 1 o'clock. I hope the forum will take on board comments by Professor Terry Dwyer, who heads up the Murdoch Children's Research Institute. I am very pleased to say that my colleague Andrea Coote and I visited the institute a few months back. Part of its emphasis is stressing the need for a national network and a national approach, and especially the notion of national sharing of longitudinal data so that people can actually see and analyse trends. The institute also stresses the need to avoid knee-jerk solutions, such as just giving free fruit to schoolchildren, which was a signature of the Bracks government.

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

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

Mr DRUM (Northern Victoria) — I wish to make a statement on the Auditor-General's report on the program for students with disabilities (PSD), which deals with program accountability. The report was tabled in Parliament this week. We also had a briefing on it yesterday in room K. The report talks about the actual program for students with disabilities. That is an important program in the education system that results in more than 17 000 primary and secondary school students with a disability receiving an education. This program is administered by the Department of Education and Early Childhood Development.

Funding is allocated to Victorian mainstream and special schools in line with the assessed needs of eligible students. That means about 56 per cent of PSD-funded students are in mainstream schools and only 44 per cent are in the special or specialist schools. In other words, the majority are in mainstream schools. The 81 special schools across the state include schools that specialise in autism, physical disabilities, intellectual disabilities and visual and hearing impairments, as well as hospital schools.

In 2007 the Department of Education and Early Childhood Development allocated $369 million to support students with disabilities in Victorian government schools. This is a really solid report, which we have come to expect from the Auditor-General. There is a huge issue that is not listed in this report, and that pertains to the lack of state government investment into students with disabilities in non-government schools. That is an area that needs to be addressed. This government has created a scenario where a family might send its oldest one or two children to a private school but is unable to send a third child who has a disability. Simply because of the lack of state government funding that family is unable to send its youngest child to the same school as their older brother and sister because that child does not attract enough funding to have an intervention aide with them. That is a problem that the government has to deal with. Certainly it has so far decided to refuse to deal with that situation.

In relation to this program the report talks about program accountability. This report is not based around what we are doing and what we are achieving; it is simply based around the programs in place. This Auditor-General's report is based around the question: are they accountable for what they are doing, and are they monitoring the program effectively?

The program accountability refers to the way the performance and outcomes of the program are monitored, assessed and accounted for by the responsible government agency. The performances enable the government agencies to answer the questions on key aspects of performance, such as how effective they are, what is the quality of the programs and of the inputs and the outcomes, and how effective is the program, and is its performance improving over time?

The report effectively found that the Department of Education and Early Childhood Development is monitoring and accounting for the PSDs (programs for students with disabilities), and for their inputs and outcomes as well. However, it is mentioned that the department has yet to establish a clear and consistently stated objective for the program for students with disabilities and is yet to identify the performance indicators to effectively monitor and evaluate the program outcomes for reporting to the minister.

There are some real challenges ahead. The way we were briefed on this report in Parliament yesterday was that it was put to us, in effect, that this is the first report and there may be a second and even a third report that will go into talking about where we go from here. Now that we have seen what we want to be achieving in relation to accountability, now that we have seen how we are going to report and monitor the program for students with disabilities, the next phase of it — within the next year or two — is to put in place further reports from the Auditor-General's office and to work out better ways of working through this area and making the most of things for our students with disabilities, especially in those early years up to age 6.

Primary Industries: code of accepted farming practice for the welfare of pigs

Ms PENNICUIK (Southern Metropolitan) — In my inaugural speech I mentioned that animals need people to advocate for them and that I would work to end anachronistic activities such as duck shooting and cruel and unnecessary intensive farming practices.

In the context of that statement, I would like to say that I am of the strong view that intensive farming or factory farming is cruel, because it is uncomfortable, it deprives animals of their basic need for space and movement and their ability to display natural behaviours, including socialising with other animals.

My major comment on this code of practice — the 'code of accepted farming practice for the welfare of pigs, revision 2', and I note with interest that on the front cover it is called 'Code of Accepted Farming

Practice' — is that it is just another lost opportunity to move Australia and Victoria away from cruel farming practices that cause pain, suffering, discomfort and loss of dignity to animals, by denying them their basic needs rather than moving towards a more humane system of animal husbandry that is being introduced in other places.

It is basically a status quo document in the face of mounting disquiet with current husbandry practices in Australia, and it runs counter to what is happening in Europe, the USA, Canada, and even to a minor extent in other parts of Australia, where, along with community expectations, people are moving away from these factory farming methods towards more free-range methods and phasing out things like the use of sow stalls.

In adopting this code, Victoria will be going against the trend of seeking to improve pig welfare by reducing the use of sow stalls and farrowing crates in particular. Like similar farming codes, this code undermines the cruelty provisions in the Prevention of Cruelty to Animals Act. For example, factory farming of pigs usually involves housing of sows in stalls which are so small that the pig cannot turn around. Many stalls are barely bigger than the pig's body. Many people would regard this practice as cruel, but if a farmer keeps a sow in a stall which complies with the dimensions specified in the code, he or she is immune from prosecution under the Prevention of Cruelty to Animals Act.

What is wrong with this code and what are some of the major problems with it? As I have mentioned, it allows the continuation of keeping sows in stalls for the entire duration of their pregnancies — that is, about 16 weeks — and for this to continue for 10 years, and the keeping of sows with piglets in farrowing crates not much bigger than the sow's body. Existing stalls which do not comply with the recommendations can still be kept indefinitely under certain conditions. There are significant exemptions to allow farmers to continue to keep sows in stalls for their entire pregnancy.

All references to a requirement that people who look after pigs should be trained, which were in the original draft, have been removed, and in fact the code states that the standards in the code form the basis for an assessment of compliance with good welfare. The code may be used as a reference for auditors and inspectors, of which there are not enough, I am told, and they do not have the ability to go into factory farms and see what is happening but everything in the new code is only recommended practice and guidelines and is advisory only.

There are other cruel farming practices that are still allowed under this code. These include the lack of any requirement for bedding or nesting material for sows or manipulable materials for these curious animals; no requirement for fibrous food for pregnant sows, such that their hunger can be chronic; the tail-docking of piglets without any pain relief; the teeth clipping of piglets without any pain relief; and the castration of male piglets without any pain relief.

It is the view of the Greens that this code should be rejected and an independent scientific review of pig housing and husbandry procedures should be allowed to produce a — —

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

Goulburn Ovens Institute of TAFE: report 2006

Ms BROAD (Northern Victoria) — It gives me great pleasure this morning to speak to the Goulburn Ovens Institute of TAFE 2006 annual report. The institute is one of the largest in regional Victoria, with more than 15 000 students enrolled and major campuses at Shepparton, Wangaratta, Seymour and Benalla, all of which are in my electorate of Northern Victoria Region.

The 2006 annual report outlines many new initiatives by the institute, and I wish to place on record my congratulations to Sandra Walker, council president, and the members of the council as well the chief executive officer, Peter Ryan, and staff for their many achievements outlined in the report. I would like to draw attention to just some of the significant initiatives of the institute in 2006.

These initiatives include the establishment of the technical education centre at Wangaratta, which is one of four in Victoria. This is a partnership between the institute, Wangaratta High School and Ovens College, with funding from the Victorian government. Contained in the report is a comment on why Wangaratta was chosen to be the first technical education centre by the then Minister for Education, Lynne Kosky, in which she acknowledged the significant work undertaken by the institute, schools, industry, employers and the community to improve technical education in Wangaratta over the last couple of years.

As well as that we have seen the establishment of the National Centre for Dairy Education Australia, the establishment of the National Centre for Equine

Education at Wangaratta and a further initiative which I particularly would like to draw attention to, which is the Wangaratta joint library. This is another initiative which I am pleased to say the Victorian government has committed funding to. Members in this place would have heard me speak enthusiastically about libraries on many occasions. This library is particularly significant, because as well as receiving funding from the Victorian government, it also involves a partnership between the Rural City of Wangaratta and the Wangaratta Docker Street campus. This partnership, which is operated by the High Country Library Corporation, provides library services both to the Wangaratta community and the staff and students of the institute. The many opportunities that libraries can provide to community members of all ages as well as staff and students at the institute is a terrific outcome. It is a unique arrangement and one which I hope other communities will look at as a model for ways to make the best use of resources in relation to library services.

Although it is estimated that some 62 per cent of jobs require a vocational qualification, currently only around 30 per cent of the Australian workforce have a vocational qualification — less than half the proportion required. Business and the community realise the need to dramatically increase the number of working-age people who participate in vocational education and training. That need is particularly acute in regional Victoria; this is despite the fact that Victoria had 43 900 apprentice and training completions in 2006, which is more than any other state. I am pleased to say that the Brumby government is meeting this challenge, with $38 million allocated in the budget to upgrade TAFE infrastructure, bringing the total investment in TAFE capital to $359 million since 1999. This allocation means that Victoria will have more skilled workers and better training facilities to help address the skills shortage and drive further job growth. Currently the regional unemployment rate is 4.6 per cent — the lowest on record — and regional Victoria recorded a 4.1 per cent jobs growth in the year to the August quarter, second only to regional Queensland and well above the national average. We realise, however, in light of the challenge associated with a severe drought, that there is more that needs to be done. Investing in skills and jobs growth is part of meeting that challenge.

Human Services: drinking water quality in Victoria report 2005-06

Mr VOGELS (Western Victoria) — I would like to make some comments on the annual report on drinking water quality in Victoria for 2005–06. In its foreword the report states:

> Victoria's drinking water quality regulatory framework recognises the importance of safe drinking water to the ongoing social and economic wellbeing of Victorians. Water is necessary for life, and clean drinking water is necessary to maintain public health. This has been brought into sharp focus by the ongoing drought conditions that much of Victoria has experienced during the past several years.

Yesterday in this house we spent 4 hours debating the concerns we all share for Victoria's water supplies, following another winter of below average rainfall. We talked about the collection of stormwater, the reuse of treated water, the use of groundwater, desalination plants and any other water source options, which leads me to question the quality of drinking water. We saw the furore in Queensland when the then Premier Beattie tried to introduce the use of recycled water into, I think, the Toowoomba water system. Presently many communities are outraged that they will have fluoride added to their water supplies without a local plebiscite being held to give them an opportunity to say whether that is what they really want. We are already hearing concerns expressed about desalinated water and whether it will pose problems when added to our present water supplies.

I often wonder how the cost of providing world best quality drinking water stacks up. I fully agree that the water we drink needs to be top quality. I have no figures at all, but I suggest that the water we actually drink would be less than 1 per cent of the water that is treated to world-quality potable drinking water standard. Treating water to high drinking water standards and then using 99 per cent of it for other purposes must be enormously expensive. I only pose the question; as I said before, I do not have the answers. In country Victoria we have rainwater tanks, bottled water, and perhaps a filter or some sort of attachment so that the water that goes into a home to be used for human consumption is of that quality standard.

There is no doubt that as the years go by our water supplies are becoming more stretched. We need to look at other options. I grew up on a property, and still live in country Victoria, and our family has never been connected to a reticulated water supply system. We survive on rainwater tanks and farm dams, with no treatment of drinking water — it comes straight out of the water source. Obviously for a reticulated system health standards need to be closely monitored and controlled, but I still often wonder why treating 100 per cent of water to human drinking water quality is really necessary when less than 1 per cent would be actually used for human consumption.

The foreword in the report says:

> The act and regulations provide a comprehensive regulatory framework that encompasses a catchment-to-tap, risk-based approach to the management of drinking water quality across the state. The key objectives of this regulatory framework are to ensure:
>
> > where water is supplied as drinking water it is safe to drink —

and I fully endorse that —

> > any water not intended to be drinking water cannot be mistaken for drinking water
> >
> > water quality information is disclosed to consumers and is open to public accountability.

I commend the report to the house and congratulate our water authorities right across the state for their handling of complaints. There are always complaints out there because things can happen, but they have been dealt with expeditiously.

I will be interested to watch progress as we head down the track of recycling, desalination et cetera. I believe this will have to be carefully managed because our consumers have been spoilt; they are very spoilt, and they probably have a right to be spoilt. But as we go down the track of less and less water availability, desalination and recycling will become an option. When you start to put these into our water supplies, the outcomes need to be made very clear so that Victorians know what they are actually drinking. I reiterate: I find that somewhere along the line the treatment of 100 per cent of water to world-quality drinking standard, when less than 1 per cent would actually be used for human consumption, needs to be looked at.

Box Hill Institute: report 2006

Mr LEANE (Eastern Metropolitan) — I rise to comment on the excellent outcomes for Box Hill Institute of TAFE as outlined in its annual report for 2006. Box Hill Institute is a major education provider located in the eastern suburbs. In 2006 35 500 students were enrolled. The Box Hill Institute provides courses at all levels from short courses to degrees. It is also a provider of workplace training for corporate clients. Approximately half of the students are funded by the state government, with more than 12 600 enrolled in non-apprenticeship traineeship courses and an additional 4224 enrolled in apprenticeships and traineeships. The other half of the institute's total enrolment is made up of students who participate in short courses, fee-for-service courses, vocational education and training in schools programs, international students and 227 students undertaking the newer degree courses.

It is very pleasing that the institute recorded that each of its major apprenticeship streams in the centres for building and furniture studies, electrical and refrigeration trades, and hair, beauty and floristry all exceeded their target number of apprentice contact hours. The centre for building and furniture studies has taken possession of a new multipurpose training facility to improve capacity in the delivery of apprenticeship training in carpentry and plumbing. Additionally Box Hill Institute carpentry apprentices were successful in taking out six of the seven HIA apprentice awards.

The centre for electrical and refrigeration trades at Box Hill Institute is the largest combined electrical and refrigeration training centre in Victoria. This centre offers courses in four main areas of study, being electrical, refrigeration, air conditioning and security systems, and also telecommunications cabling. During 2006 the centre also implemented a certificate IV in signal rail course — which is topical at the moment — for major rail infrastructure employees. I would also like to touch on the refrigeration trades training. Refrigeration technicians are probably the biggest skills shortage area in this type of field, so I commend Box Hill Institute for pushing that trade.

The centre for hair, beauty and floristry is also experiencing strong demand, particularly in the areas of school-based apprenticeships as part of the Victorian certificate of applied learning program in secondary schools, and also for places in a diploma program for hairdressing and beauty. The centre has also had a busy year involving its students in a range of community and charitable activities. Notably, the hairdressing students were involved with the opening and closing ceremonies of the Commonwealth Games.

The institute has more than 450 effective full-time teaching staff and a further 380 effective full-time non-teaching staff. I was particularly impressed that throughout the institute's annual report an emphasis was placed on the ongoing education, learning and development achievements of staff in each of the departments. This is crucial to Box Hill Institute's ability to continue to provide highly relevant and cutting-edge courses for its students.

The year 2006 was a great year for Box Hill Institute in major awards. The TAFE institute was in the finals of the Victorian training awards in the large training provider of the year category for the sixth year in a row and was the first TAFE institute to win a Microsoft education award at the Australian export awards for

best exporter of education and training; normally this award goes to universities.

Box Hill Institute undertook a number of projects in 2006 which made great contributions to the local and wider community. Through the activities and contributions of a wide variety of staff, students and fundraising events, the institute opened its first house for homeless youth, and has commenced a second house. This is a great initiative which provides hands-on opportunities for students to learn on the job, such as electrical apprentices installing electrical components on the building, but it also offers them the opportunity to participate in a project which helps others and makes them feel that they have achieved something. In 2006 the Box Hill Institute was featured on a television program called *Jamie's Kitchen*, and it was interesting to discuss this with the teacher involved, who is now in great demand for speaking engagements because he did such a great job on the show. I commend the report to the house.

Box Hill Institute: report 2006

Mr ATKINSON (Eastern Metropolitan) — I also wish to comment on the Box Hill Institute of TAFE's annual report, and I certainly join with Mr Leane in acknowledging the considerable number of achievements by the institute in the past year. I note also that on a previous occasion Mrs Kronberg made remarks about this institute, which has really had some extraordinary accomplishments and has been an innovator and a leader in the tertiary education sector. I do not want to canvass all the same statistics and matters that Mr Leane has brought to the attention of the house today and those members who take an interest in the record of Box Hill TAFE, but I certainly agree with him that its record, particularly in regard to apprenticeships and vocational training, has been excellent.

Indeed it has been my observation of the institute that it has been something of an innovator in the way it delivers some of those courses. I note particularly that there have been programs in the small business sector to take some of the training courses out into regional Victoria and tailor them to the time and flexibility requirements of small business operators as distinct from trying to fit them into a rigid curriculum that suits the institute. I know that it has a remarkable record in some of the apprenticeship training. I have attended some the apprenticeship training awards nights. What surprises me is the number of people who have had other careers and who go back to do apprenticeships in tertiary institutes as the basis for a career change. Invariably those people, certainly at the Box Hill Institute of TAFE, have been remarkable students and amongst the leading apprentices of their year.

The area I particularly want to make some remarks on is the export activity of the Box Hill Institute of TAFE. Last night Mr Thornley was talking in another context about the importance of the quality of education in Victoria as an export service. When I look at the achievements of the Box Hill Institute of TAFE I am particularly encouraged about the quality of the services that it provides. As Mr Leane mentioned, the Box Hill Institute of TAFE has won both a Governor of Victoria export award and the Microsoft education award at the Australian export awards as a result of its international activities. The TAFE is delivering training programs on extended campus arrangements with countries such as Vietnam, Singapore, Columbia, Chile, Fiji, Sri Lanka, China, Saudi Arabia, Malaysia and Thailand. It has also delivered some vocational or tailored programs for industries, particularly in Indonesia and Thailand. The achievement in this regard has been very significant. I believe it is certainly amongst the very best performances in terms of education exports in the TAFE sector.

Box Hill has invested a considerable amount in designing and developing its partnerships with other education providers and extending its services to a range of areas. I notice that in 2006 the Box Hill Institute of TAFE commenced some educational activity in Macau, the Middle East and Papua New Guinea. It has partnered the Raffles campuses from Singapore in their education programs throughout South-East Asia. That has included countries such as Indonesia, Malaysia, India, Dubai, Saudi Arabia, Vietnam and China. This is a remarkable effort by Box Hill TAFE, and I congratulate it on the work it is doing in developing education — not just education but indeed quality education — as an export while also meeting the needs of students and industry here in Victoria.

Anti-Cancer Council of Victoria: report 2006

Mr THORNLEY (Southern Metropolitan) — I rise to speak on the Anti-Cancer Council of Victoria annual report for 2006. The Anti-Cancer Council of Victoria is an organisation that is primarily concerned with cancer control. It conducts research, delivers programs and advocates for policy and activity that help reduce the rate of cancer in Victoria. The Anti-Cancer Council of Victoria is a branch of the larger national organisation, the Cancer Council of Australia.

In this report the council details the main points of its strategic plan. These points give the community and the

Parliament a good sense of what the aims of the organisation are. They are: firstly, reducing the impact of cancer in the community; secondly, maintaining a highly capable organisation to achieve those goals; thirdly, building a knowledge base for cancer control; and, fourthly, to advocate effectively for cancer control.

The specific point I wanted to make about this today that ties in with where this government is moving is that we have been able to produce an outcome that fits into the scope of the Anti-Cancer Council of Victoria's strategic plan. I am talking of course about the recent announcement by the Minister for Health in the other place on solarium regulations. The council speaks in this report about promoting environments and behaviours that facilitate cancer prevention and control. The solarium industry has grown rapidly over the last decade — by about 500 per cent nationally and, according to research conducted by the council, by 576 per cent in Melbourne over the last 10 years. Melbourne currently holds the record for the highest number of tanning salons.

Melanoma is the most common form of cancer in 15-to-30 year olds. The World Health Organisation's International Agency for Research on Cancer has shown that people who regularly use sun beds before the age of 35 increase their risk of melanoma by as much as 75 per cent. The Anti-Cancer Council of Victoria's report discusses the research activities of its Centre for Behavioural Research in Cancer and the importance of adhering to a voluntary code imposed on solariums. It found that 52 per cent of solarium operators who were studied took participants under the age of 16 without parental consent and that 90 per cent of solarium operators were not taking into consideration skin variances and people's ability to achieve a tan.

The tragic story of brave Clare Oliver — sadly, the late Clare Oliver — only serves to reaffirm the critical importance of tighter regulation in this area. The Brumby government has announced a mandating of the voluntary code. The regulations that will be in place by the end of the year will be developed through a drafting process and will involve room for a regulatory impact statement. The proposals that are currently being looked at include provisions requiring that operators provide mandatory health warnings to the users of solariums, requiring that operators be licensed, with third-party audits to ensure compliance, making it illegal for anyone under the age of 15 to use a solarium and ensuring that 16 and 17-year-olds can use solariums only with informed parental consent. Reflecting the aims highlighted in its most recent annual report to Parliament, the Anti-Cancer Council of Victoria has given its full support to the new measures that the Minister for Health has announced. It is certainly exciting and rewarding to see the government responding to the needs that are evident both from what we see in this report from this very important organisation and from our own observation of recent tragic events.

Sustainability and Environment: code of practice for timber production

Mr O'DONOHUE (Eastern Victoria) — I am pleased to make a statement on the *Code of Practice for Timber Production 2007* produced by the Department of Sustainability and Environment. It is instructive to read the foreword by the then Minister for Water, Environment and Climate Change. It states:

> Through the Our Forests Our Future strategy the Victorian government has demonstrated its commitment to managing forestry sustainability for the long term.

It concludes by saying:

> Despite the many challenges facing the timber industry, such as climate change with its associated drought and bushfire risks, I am confident Victorian forestry will be providing future generations with quality, durable and sustainable wood products.

Things change quickly. If that comment were true when it was made, which would be a separate matter for debate, it is certainly not true now. I echo the comments made by Mr Vogels yesterday when he asked the Treasurer about the supply of timber for the Victorian timber industry. As part of a painful restructure process in return for what the industry thought would be a security of supply, the industry accepted a reduction to 576 000 cubic metres per annum under the Our Forests Our Future policy. Very sadly the present projections suggest that less than 350 000 cubic metres are now available and that there is no surety of supply beyond 2010.

It is worth making the threshold comment that we all use timber products in our daily lives, whether it is writing paper, the desks we use, the timber in our cars or in various other ways. To me the reduction is environmental vandalism and it is not facing facts. We use timber products and not having a sustainable timber industry that is self-sufficient means we are importing timber products from clear-felled rainforests in places such as Indonesia, Vanuatu, Papua New Guinea and elsewhere.

It is a disgrace to turn our backs on the communities which rely on timber. My region in particular, including the communities of East Gippsland, central Gippsland and elsewhere, rely on the timber industry for their

economic viability and the vibrancy of their communities. The towns of Cann River and Orbost and those elsewhere are really struggling as a result of this government's attitude towards the timber industry, which is in a perilous state; its continued viability is under threat. While that remains the case, we continue to import more forest products from places such as Indonesia. Indonesia is destroying its forests at an alarming rate. It is these sorts of policies which have a greater impact on climate change than a lot of other factors which get talked about in this place. In addition to the viability of the industry, I am also concerned about the comments made about plantation roading. The report says:

> The management of all roads that are part of plantation operations takes account of environmental and cultural values, the safety of road users and the intended use of the road.

The report then outlines mandatory actions, but none of them relate to safety. I have been contacted by constituents in the South Gippsland area who share timber roads with the timber industry. They are most concerned about their safety and about the fact that funding provided by the state government for timber-impacted roads and other road funding simply does not keep pace with the requirements of maintaining timber roads, particularly because of the introduction of B-doubles. While B-doubles are more efficient and welcomed, they require more space on roads and they destroy roads faster. Therefore the state government, because it reaps significant revenue from the timber industry, needs to reinvest some of that revenue to protect not only the timber industry but also road users. I would particularly like to talk about the Yarram-Morwell Road between Egans Road and Turpins Road which has 12 corners which need benching and significant work. I ask the government to look at this seriously and increase road funding for timber-impacted roads, particularly the Yarram-Morwell Road between Egans Road and Turpins Road.

Goulburn Ovens Institute of TAFE: report 2006

Ms DARVENIZA (Northern Victoria) — I rise to make some comments about the annual report of the Goulburn Ovens Institute of TAFE. There are a number of areas which I would particularly like to mention in the short time that I have available. Firstly, the report is excellent, and I would like to congratulate all of those people who were involved in putting it together. It is a very colourful report; I think it is the most colourful report I have ever seen. It is very easy to read and to understand what the institute has been working on and what its priorities and achievements are.

One of the areas that I wanted to focus on was the institute's multicultural education centre. In 2006 this centre received the Victorian Multicultural Commission's award for excellence in multicultural affairs in the category of education. This education centre provides quality education and services to clients from culturally and linguistically diverse backgrounds. In 2006 the institute had some terrific academic results of which it should be proud. The results showed the highest pass rate for certificate I: 24 students graduated. A further 18 students and 10 students successfully completed certificates II and III respectively. A project was initiated by teachers in regard to certificates III and IV to provide a hands-on learning experience for students. It also involved the students being placed in and completing a job placement in organisations such as Vision Australia and child-care centres as well as aged-care service providers. The volunteer job placement initiative was set up to provide students with an experience of and a hands-on insight into what Australian workplaces are like and what our work place culture is like, with the aim of building the confidence of students and providing them with a range of opportunities in areas that might be of interest to them, opportunities for further studies in those areas and ultimately being employed in those areas.

A series of information sessions was provided by the multicultural education centre for English-speaking clients and students attending the institute. The sessions covered such issues as the Nurse on Call initiative, which was introduced by the Labor government; road safety, which is particularly important to newcomers to the country; women's health; changes to family support; and Red Cross tracing services. In the Goulburn Valley region we have a very high proportion of new settlers and new migrants as well as migrants who have been in the area for generations or a long period of time.

The institute was commissioned by the federal Department of Immigration and Citizenship to deliver the integrated humanitarian settlement strategy across the Goulburn Valley. Goulburn Valley and Shepparton, in particular, are well known across the country for their achievements in attracting new migrants, in being able to settle them in the area and in being able to maintain and retain those migrants. This program provided very intensive settlement assistance to refugees.

I congratulate Sandra Walker, the council president; members of the council; Mr Peter Ryan, the chief

executive officer of the institute; and of course all the staff involved at the institute. I encourage all members to take a good look at the report; it is well worth a read.

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

Ms LOVELL (Northern Victoria) — I rise today to make some comments on the Auditor-General's 2007 report entitled *Program for Students with Disabilities — Program Accountability*, and in particular page 10 of that report. Page 10 contains a chart that shows that we have 17 298 students who participate in programs for students with disability. Of those students, there are 9640 in mainstream schools and 7658 in special schools. It goes on to list the various categories of disabilities, and amongst them it lists 2457 students with autism spectrum disorder. Autism is one of the issues that I have dealt with most since I have been a member of Parliament. It is an area where I have been lobbied heavily by parents for assistance for their children because there is not enough assistance available to students with autism in this state. In fact we have seen some of the services cut back during the past five years, and parents are at their wit's end.

It is well known that students with autism need early intervention in order for them to achieve their maximum potential, and unfortunately many of them are slipping through the cracks and not getting that assistance. Children with autism have a variety of problems, not only learning difficulties but also behavioural difficulties, and it is very stressful on families to have an autistic child. When you meet groups of parents who have these children you can see that these parents are extremely tired. They are tired because they have a variety of behavioural problems to deal with in their home. They are tired of fighting for their children, and they are tired of fighting this government to get the assistance that their children need.

Page 10 of the report talks about the changing program for students with disabilities and the language support program. It actually acknowledges that in 2005 the program-for-students-with-disabilities definition of and eligibility criteria for students with language disorders changed, and some students who had been assessed as having language disorders were no longer eligible for funding from the program for students with disabilities. I had many parents come and lobby me about that, and we still have people lobbying us about the cuts to the severe language disorder funding. I have presented four different petitions from parents to this Parliament in the past on the Labor government's cutting back of severe language disorder funding.

We continue to have parents who write to us about problems in getting funding for their children with autism. Just recently I had one parent write to me saying:

> I am the single parent of a girl Breanna who has been diagnosed with autism. She attends a mainstream school and has no intellectual disabilities; however, her autism means she has problems with communication and behaviour. This adversely impacts on her education. Breanna needs one-to-one assistance in the classroom and playground; without this she is unable to reach her full potential. Presently there is no funding provided for her schooling. She has no aide time or special assistance available to her.

The letter goes on to say:

> There are so few services available for families living with autism, particularly in the Shepparton area.

When we wrote to the minister about Breanna, the minister wrote back suggesting that Breanna should access the language support program and also contact the senior programs officer for student wellbeing in the Hume region. When we gave that information to the parent of this child, the parent informed us that Breanna does not have access to the language support program because she has been assessed as being high-functioning autistic and therefore she is outside the guidelines, which obviously need to be reassessed. Also, the parent had been in contact with the student wellbeing officer at the Hume region but was unable to speak to her directly and was unable to get the assistance her child needed.

We also had another parent write to us recently. He said:

> What the government has done —

in cutting back this funding —

> is absolutely disgusting and all it seems to be about for them is money, not people. They are picking on a percentage of people who can't fight back, but hopefully their parents can.

It was disappointing to find out at the briefing yesterday that the Auditor-General had not actually inquired into the unmet need for assistance for students with disabilities. I would encourage a further inquiry so that we can see that unmet need actually qualified.

CRIMES AMENDMENT (RAPE) BILL

Statement of compatibility

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

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

In my opinion, the Crimes Amendment (Rape) 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 Crimes Act 1958 ('the act') to clarify the jury directions relating to the offence of rape and to alter the offence of rape to include situations where an accused person did not turn their mind to the issue of consent. More specifically, the bill amends the act by:

restructuring the jury directions in relation to rape to improve the clarity of the provisions;

adding a new jury direction to correctly focus the jury on 'awareness' as the fault element in rape;

adding a requirement that the judge direct the jury in relation to consent issues in relevant cases;

amending the jury direction about belief in consent to provide more guidance on assessing the fault element in the offence and to strengthen the communicative model of consent; and

amending the offence of rape (and other sexual offences to which the issue of consent is relevant) to provide that inadvertence or indifference to the issue of consent is an alternate fault element.

Human rights issues

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

There are three human rights protected by the Charter of Human Rights and Responsibilities Act 2006 (the charter) that are relevant to the bill. Each of these rights together with the relevant clauses are outlined below.

Right to a fair trial and the right to be presumed innocent

Clauses 5, 6, 7 and 8 of the bill amend the offences of rape, compelling sexual penetration, indecent assault and incest respectively. Consequently, they have the potential to raise the right to a fair trial (section 24 of the charter) and the right to be presumed innocent (section 25(1) of the charter), should the amendment in any way shift the legal or evidential burden from the prosecution to the accused. However, the bill does not alter either the legal or evidential burden, which remains with the prosecution. Consequently, these rights are not engaged and therefore, are not limited.

Retrospective criminal laws

As the alteration to the offences set out above broaden the offences, the bill could potentially raise the right not to be subject to retrospective criminal law set out in section 27(1) of the charter. However, clause 9(2) of the bill provides that the amendment to these offences only applies to offences alleged to have been committed on or after the commencement of the Crimes Amendment (Rape) Act 2007. Consequently, it will not operate retrospectively and therefore the right is not engaged and therefore, is not limited.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because the amendments in the bill either:

do not raise human rights issues; or

to the extent that some amendments do raise such issues, these amendments do not limit human rights.

JUSTIN MADDEN, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated on motion of Hon. T. C. THEOPHANOUS (Minister for Industry and Trade).

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

That the bill be now read a second time.

Incorporated speech as follows:

This bill is the third bill to be introduced by the government in response to the findings of the Victorian Law Reform Commission's *Final Report — Sexual Offences Law and Procedure*. In its report the commission found that there is a high incidence of sexual assault, a low disclosure rate, serious health consequences for victims of sexual assault, relatively low prosecution and conviction rates and a criminal justice response that, in many cases, causes further trauma to victims.

The commission made a large number of wide-ranging recommendations in recognition of the need for a broad systemic response to the problem of dealing with sexual assault. Most of the commission's legislative recommendations have already been implemented with the passage last year of the Crimes (Sexual Offences) Act 2006 and the Crimes (Sexual Offences) (Further Amendment) Act 2006. As with the earlier legislative changes, the amendments in this bill represent one component of a broader policy initiative to make the criminal justice system respond to sexual assault in a fairer way, and in a way that does not re-traumatise victims.

In summary, the bill:

restructures the jury directions in relation to rape to improve the clarity of the provisions;

provides a new jury direction to correctly focus the jury on 'awareness' as the fault element in rape;

includes a requirement that the judge direct the jury in relation to consent issues in relevant cases;

amends the jury direction about belief in consent to provide more guidance on assessing the fault element in the offence and to strengthen the communicative model of consent; and

amends the offence of rape (and other relevant sexual offences) to provide that inadvertence or indifference to the issue of consent is an alternate fault element.

Amendments to jury directions

There have been previous amendments to these aspects of the law relating to rape, primarily in 1991 and 1997. However, the commission found that those amendments had not been as effective as intended in achieving a fair balance within a rape trial between the rights of an accused person and the rights and needs of a complainant to preserve, as far as possible, her or his dignity.

The commission raised concerns about the operation of the statutory jury directions contained in the current section 37 of the Crimes Act 1958 including the circumstances in which a judge is required to give such directions. Of particular concern to the commission was the distinction between the current direction relating to an accused person's 'belief' in consent and the fault element of the offence of rape, which is 'awareness' of lack of consent or 'awareness' that the complainant might not be consenting. The relationship between these two concepts has caused confusion.

The amendments to the jury directions in the bill are designed to provide this much-needed clarity by taking a more narrative approach to the directions. The directions are restructured to directly relate to the elements of the offence. They also provide that, where relevant to the facts in a particular case, the judge must provide the appropriate direction, and relate that direction to both the relevant facts and element of the offence. Conversely, they provide that the judge must not give those directions when not relevant to the facts of the case.

On the issue of consent, in addition to retaining the existing directions on consent, the bill requires the judge, where relevant, to direct the jury:

on the meaning of consent under the act; and

that the law deems a circumstance set out in section 36 to be a situation where the complainant did not consent. Section 36 includes such things as the complainant was unconscious or incapable of understanding the sexual nature of the act, or they submitted to the act because of force or fear of harm to themselves or anyone else; and

if the jury finds that one of these factors exists, they must find that the complainant did not consent.

This is intended to further promote the communicative model of consent.

The bill provides for separate directions in relation to the fault element of the offence of rape, namely, the awareness of the accused regarding consent. These amendments recognise that it is common in sexual offence trials for an accused person to assert that they believed the complainant was consenting. This evidence or assertion is most likely to arise either when police interview the accused or when the accused is giving testimony.

Where this occurs the bill seeks to assist the jury with the task of assessing what, in their view, was inside the mind of the accused when determining whether the prosecution has proven beyond a reasonable doubt that the accused was aware that the complainant was not or might not be consenting. The jury will have to make an assessment of that evidence or assertion in order to come to a conclusion about whether the prosecution has proven this element of the offence.

The directions provide some guidance to juries about assessing the evidence or assertion about the accused's state of mind. In cases where an asserted belief in consent is relevant, the jury will be directed to consider whether that belief is reasonable in all the circumstances. Those circumstances include whether the accused was aware of a vitiating factor set out in section 36, such as where the complainant is asleep or unable to understand the sexual nature of the act, and whether the accused took any steps to ascertain whether the complainant was consenting and, if so, what those steps were.

The directions make it clear that an asserted belief in consent, even if accepted by the jury, is not the end of the story. The jury must proceed to decide whether the prosecution have proven beyond a reasonable doubt that the accused was either aware that the complainant was not or might not be consenting. That is to say, belief in consent and awareness of the possibility of an absence of consent are not mutually exclusive.

New alternate element of inadvertence

As previously indicated, these amendments seek to clearly support the communicative model of consent. In a rape trial, Victorian law currently requires the prosecution to prove that the accused was aware that the complainant was not or might not be consenting to an act of sexual penetration. This requires the accused to have actively turned their mind to the issue of consent. That is to say, if an accused person effectively does not care one way or the other whether the person they are having sex with is consenting, and therefore does not even turn their mind to this issue, then the offence of rape is not committed. This also applies to a range of sexual offences which have the same fault element.

The community expects that where someone is intending to engage in a sexual act with another person, they will ensure that the other person is freely agreeing to engage in that act. It is not acceptable for a person to engage in a sexual act whilst being completely indifferent to whether the other person agrees. Where there is any doubt in the mind of the person instigating the sexual act, there is a responsibility upon that person to communicate with the other person in order to remove that doubt.

These amendments make it clear that a person will be guilty of the relevant sexual offence both if they are aware that the other person was not or might not have been consenting to the sexual act or if they do not turn their mind at all to the issue of consent.

General

The amendments in this bill pertaining to the fault element of a number of sexual offences will apply to offences committed after the commencement of the bill. The remaining

provisions, which relate to jury directions, will apply to any trial that commences after the commencement of the bill.

In conclusion, this bill seeks to support the communicative model of consent to sexual relations and assist juries in relation to the determinations which they are required to make on the elements of the offence of rape. It is part of the much broader package of reform this government has delivered aimed at improving victims' experience of the justice system.

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, 27 September.

JUSTICE LEGISLATION AMENDMENT BILL

Statement of compatibility

For Hon. J. M. MADDEN (Minister for Planning), Hon. T. C. Theophanous 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 Justice Legislation Amendment Bill 2007 ('the bill').

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

Human rights issues

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

The bill raises human rights issues in the following regards.

Control of weapons

Section 25(1): presumption of innocence

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.

Clauses 6 and 7 of the bill amend sections 6 and 7 of the Control of Weapons Act 1990 to provide that carrying controlled weapons or dangerous articles without lawful excuse in or around licensed premises is an offence. A controlled weapon includes a knife, baton, spear-gun, bayonet, imitation firearm and cattle prod. A dangerous article is one that has been adapted or modified so as to be capable of being used as a weapon or any other article carried with the intention of being used as a weapon.

These offences engage section 25(1) of the charter because, pursuant to section 130 of the Magistrates' Court Act 1989, the accused is required to present or point to evidence that suggests a reasonable possibility of the existence of facts that, if they existed, would establish a lawful excuse.

The prosecution need not prove absence of lawful excuse unless the defendant discharges the evidential burden by adducing or pointing to that evidence. However, once the defendant discharges that burden, the prosecution must prove absence of lawful excuse beyond reasonable doubt.

In respect of possession of dangerous articles, the definition of what amounts to a dangerous article is such that the absence of lawful excuse is not central to culpability for the offence. In that case, the prosecution must prove that the article has been adapted for use as a weapon or is carried with the intention of being used as a weapon.

Similarly, the inherently dangerous nature of controlled weapons is such that the absence of lawful excuse is not central to culpability for the offence of possessing or carrying a controlled weapon in a public place.

Accordingly, it is questionable whether the right to be presumed innocent is limited by these provisions. However, to the extent that it may be, the limitation is reasonable and justifiable, having regard to the factors in s. 7(2) of the charter.

Nature of the right

The right to be presumed innocent is an important right. It is already recognised at common law, but has always been able to be subject to statutory exceptions.

Importance of the purpose of the limitation

In the context of controlled weapons and dangerous articles, any lawful excuse is a matter peculiarly within the knowledge of the defendant. In the absence of a requirement to disclose the lawful excuse to the police it would be difficult, if not impossible, for the police to investigate and prove a negative, that is absence of any lawful excuse.

The nature and extent of the limitation

The burden only applies to the defence of lawful excuse. It does not relate to the central elements of the offence. Further, it only places an evidential burden on the accused. Once the accused presents to or points to sufficient evidence to raise the defence, the burden is on the prosecution to disprove the lawful excuse beyond reasonable doubt.

Less restrictive means

There are no less restrictive means reasonably available that would achieve the purpose of the provisions.

Victims register

Section 13(a): privacy

Clauses 14 and 17 of the bill will amend the Corrections Act 1986 to clarify that victims of offences of culpable driving causing death, dangerous driving causing death or serious injury, and failing to stop and render assistance at an accident where a person has been killed or injured are entitled to be included on the victims register.

The purpose of the victims register, which has been in operation since August 2002, is to provide a measure of support and protection for persons who have been victimised

by criminal acts of violence. Victims of certain violent crimes who are entitled to be included on the victims register will receive particular information about the administration of the offender's sentence of imprisonment including the length of the sentence and the date and circumstances in which the prisoner is entitled to be released.

This amendment engages the right to privacy in section 13(a) of the charter; specifically, the right of persons convicted of the above offences not to have their right to privacy unlawfully or arbitrarily interfered with.

However, prisoners' rights in this regard compete in this instance with the right of victims to liberty and security of the person, protected by s. 21 of the charter; and also their right to privacy under s. 13(a). That is, without the relevant information to which a victim is entitled under the victims register, a victim's right to liberty and security of the person, and privacy, may be limited. It is noted that under the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power[1] (which is incorporated by the Victims' Charter Act 2006 (Vic)) states are obliged to provide victims with the necessary social assistance through governmental means; and that the responsiveness of administrative processes to the needs of victims should be facilitated by taking measures to minimise inconvenience to victims and to protect their privacy and safety. Thus the proposal to include a new class of victims on the victims register serves to protect the rights of victims in ss 13 and 21 of the charter, and satisfies this obligation of the state.

The proposed use of information about the offender's sentence of imprisonment is 'lawful', as it is prescribed and circumscribed by the Corrections Act 1986. Information about an offender's sentence of imprisonment will also be released to victims of such crimes in accordance with the principles enshrined in privacy legislation.

Further, the proposed amendment is not considered to be 'arbitrary' as the proposed use of the information is reasonable in the particular circumstances and in accordance with the objectives of the charter. There is therefore no limitation on the right in section 13(a).

Clarification of governors powers to intercept or censor letters

Section 13(a): privacy and reputation

Clause 17 of the bill engages the right to privacy in section 13(a) of the charter; specifically, the right of persons not to have their correspondence unlawfully or arbitrarily interfered with. Under the proposed amendment, this right is engaged in four particular situations:

> when prisoners seek to write to victims or other intended recipients;
>
> when an intended recipient is prevented from receiving a letter from a prisoner;
>
> when a person is prevented from sending a letter to a prisoner; and
>
> when a prisoner is prevented from receiving a letter from a person.

It is noted, however, that the right in s. 13(a) is only limited if an interference with privacy, family, home or correspondence is 'unlawful' or 'arbitrary'.

'Unlawful' means that no interference with privacy can take place except if the law permits it. The United Nations Human Rights Committee has said that a law which authorises any interference with privacy must be precise and circumscribed so that governments are not given broad discretions in making such authorisations. This means that:

> legislation must specify in detail the precise circumstances in which interferences with privacy may be permitted; and
>
> a decision to interfere with privacy by a public authority should be made on a case-by-case basis in accordance with the merits of each case.[2]

The proposed amendment to clarify governors' powers to intercept or censor letters that contain distressing or traumatic content cannot be characterised as 'unlawful', given that the amendment will clearly specify the circumstances in which the interference with correspondence can take place. Further, the proposed amendment allows prison authorities to exercise their discretion in considering whether to intercept or censor letters under the relevant section (i.e. the governor may intercept or censor a letter based on his or her reasonable belief). This ensures that interferences will only occur on a case-by-case basis in accordance with the merits of the particular case. In other words, the letter can only be stopped or censored, if that interception is assessed as being 'proportionate' to the relevant risk.

In order to avoid being characterised as an 'arbitrary interference', the interference must be in accordance with the provisions, aims and objectives of the charter and should be reasonable and justifiable in the particular circumstances.[3] Further, arbitrariness must be interpreted broadly to include elements of inappropriateness, injustice and lack of predictability.[4]

Protecting the community from harm is a key principle underpinning the charter (and other similar human rights instruments) that is implicit in the enumerated rights of the charter and its preamble, insofar as it refers to 'human dignity' and 'freedom'; and a 'democratic and inclusive society that respects the rule of law'. The proposed amendment is therefore in accordance with the provisions, aims and objectives of the charter, as it seeks to protect victims against harm that could flow to them from correspondence that is distressing or traumatic, and thereby compromising of their 'human dignity', etc.

It is also in accordance with the interests of justice that correspondence to prisoners be stopped or censored if it

[1] Adopted by the General Assembly of the United Nations by resolution 40/34 of 29 November 1985.

[2] United Nations Human Rights Committee, General Comment No. 16: *The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation* (art. 17): 08/04/88.

[3] Ibid.

[4] *Van Alphen v. The Netherlands*, Communication No. 305/1988: 15/08/90, UN Doc CCPR/C/39/D/305/1988

would be regarded by a victim as traumatic or distressing. As suggested above, and as envisaged by s. 5(1) of the Sentencing Act 1991, three important objectives associated with custodial sentences are that prisoners are rehabilitated; the potential for recidivism is reduced; and the community is protected. It is therefore not 'unjust' to stop or censor correspondence that may jeopardise these outcomes by adding to a victim's distress or trauma; or glorifying, encouraging or excusing criminal behaviour.

As noted above, under the proposed amendment a decision to interfere with prisoner correspondence to a victim is made on a case-by-case basis. However, the proposed amendment clearly defines the basis upon which such a decision is made (i.e. on the basis of a reasonable belief that it would be distressing or offensive to a victim); and as such, the nature of the interference is reasonably 'predictable', whilst allowing for a necessary degree of discretion to be applied in each particular case.

In view of these principles the proposed amendment in clause 17 is not 'arbitrary'.

As the interference with correspondence is not 'arbitrary' or 'unlawful', clause 17 does not create a limitation on the right in section 13(a) of the charter.

Section 15(2): freedom of expression

Clause 17 also engages the right to freedom of expression in section 15(2) of the charter. Under this section, every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds, whether orally, in writing, etc.

The proposed amendment potentially limits the right to impart information, insofar as it may prevent prisoners from writing to victims or other intended recipients; and it may prevent any person from sending a letter to a prisoner.

It also potentially limits the right to receive information, insofar as it may prevent intended recipients from receiving a letter from a prisoner; and prisoners from receiving a letter from any person.

However, s. 15(3) of the charter qualifies the right to freedom of expression, by recognising that special duties and responsibilities are attached to the right; and that it may be subject to lawful restrictions reasonably necessary to (inter alia) respect the rights of other persons (s. 15(3)(a)).

The proposed amendment sits within the exception envisaged by s. 15(3)(a). This is because:

> the proposed amendment is 'lawful': this characterisation applies, as the amendment itself will set out grounds upon which correspondence may be censored or stopped;
>
> the proposed amendment serves a 'legitimate purpose': the principal purpose of the proposed amendment is to prevent any further harm flowing to victims of crime. In other words, the proposed amendment seeks to protect the 'rights' of 'other persons' — a necessary component of a free and democratic society[5]. By way of analogy, in *Otto Preminger Institute v. Austria* (1991) 19 EHRR 34, ECt, HR it was held that the seizure and banning of a film which was potentially offensive to Christians was justified as pursuing the legitimate aim of protecting the religious rights of others guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. Similarly, the rights of victims of crime have been given 'legitimacy' in this jurisdiction, through, for instance, the Victims' Charter Act 2006 ('the victims charter'), the objects of which are based on the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.[6] Thus in seeking to protect the 'particular needs of persons adversely affected by crime' (which are acknowledged in s. 6 of the victims charter) the proposed amendment serves a 'legitimate purpose';
>
> the power to intercept or censor distressing or offensive correspondence is 'reasonably necessary': prison authorities are responsible under s. 21(1) of the Corrections Act 1986 for the 'safe custody' of prisoners. Implicitly this duty includes the duty to protect the community from any harmful contact that a prisoner might engage in if he/she were otherwise at liberty and not in the secretary's custody. On account of this and other provisions in the Corrections Act 1986 conferring duties on the secretary, the community (and in particular victims) have a right to expect such protection; and moreover, it constitutes a 'pressing social need'.[7]

In seeking specifically to protect the community from harm, the proposed amendment is also distinguishable from cases where interferences with prisoner communication have been found to be incompatible with the right to freedom of expression, insofar as it does not posit a rebuttable 'blanket ban' on communication.[8]

It is a well-established principle in European case law that it is necessary for the party seeking to justify the interference with a right to show that the doctrine of proportionality has been complied with.[9] Thus the proposed amendment would fall foul of this principle, if, for instance, a blanket ban applied on all correspondence to a victim as if it were all distressing or traumatic, and the onus was on the prisoner to demonstrate why his or her letter should not be automatically stopped, or why it was not 'distressing or traumatic'. In contrast to *Hirst v. Secretary of State for the Home Department*, where a blanket ban on prisoners' oral communication with the media was found to be outside the exceptions envisaged by article 10(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, in this instance the restriction on the right is limited solely to communication

[5] *Shayler* (2003) 1 AC 247

[6] Adopted by the General Assembly of the United Nations by resolution 40/34 of 29 November 1985. This relevantly recognises that victims should receive the necessary social assistance through governmental means; and that the responsiveness of administrative processes to the needs of victims should be facilitated by taking measures to minimise inconvenience to victims and to protect their privacy and safety.

[7] *Observer and Guardian v. United Kingdom* (1991) 14 EHRR 153, ECt HR

[8] *Hirst v. Secretary of State for the Home Department* (2002) EWHC 602; *R (Daly) v. Home Secretary* (2002) UKHL26

[9] *Hirst v. Secretary of State for the Home Department* (2002) EWHC 602, Mr Justice Elias at 29; *R (Daly) v. Home Secretary* (2002) UKHL26, *de Freitas v. Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing* (1999) 1 AC 69

that is reasonably considered to be traumatic or distressing (i.e. harmful) by a victim. It does not interfere with the crucial right of communication with the classes of persons listed in s. 47(1)(m) of the Corrections Act 1986. Further, the onus is on the governor of the prison to assess whether a letter should be stopped or censored. In exercising this discretion, the governor would be obliged to weigh up the interests of the prisoner to freely express him or herself and the interests of the public in hearing matters of social importance; against the right of the victim to be protected from harm, thus ensuring that any interference is 'proportionate'.

In Hirst the High Court of Justice also recognised that some restriction on freedom of speech is an inevitable feature of incarceration.[10] However, it was acknowledged that freedom of expression could not be restricted where the interference was directed at an important right of a citizen (such as communicating with a lawyer). Thus the case law suggests that the 'qualitative value' of the speech in question must be identified and dealt with accordingly, when considering whether to limit the right to freedom of expression.

Where prisoners' speech is likely to cause harm then it is reasonable to restrict it and in doing so to construe that constriction as an 'inevitable consequence of [prisoners'] detention in custody'.[11] For example, as stated by Lord Steyn in Simms, 'no prisoner would ever be permitted to have interviews with a journalist to publish pornographic material or to give vent to so-called hate speech'.[12] In such a case 'the prisoner's right to free speech is outweighed by deprivation of liberty by the sentence of a court, and the need for discipline and control in prisons'.

Thus it is clear that where an interference is directed at preventing harmful contact with prisoners and therefore the 'rights' of other persons, then it might be said to follow from a sentence of imprisonment and can be justified as an exception under s. 15(3) of the charter.

As the proposed amendment therefore falls within the exceptions envisaged by s. 15(3)(a), the right in s. 15 is not limited.

Offence of sending a distressing or offensive letter

Section 13(a): privacy and reputation

Clause 18 of the bill engages the right to privacy in section 13(a) of the charter, specifically, the right of persons not to have their correspondence unlawfully or arbitrarily interfered with.

This right is potentially limited insofar as the creation of the offence has the effect of limiting a prisoner's capacity to send the relevant correspondence.

However, as noted above, the right in s. 13(a) is only limited if an interference with privacy, family, home or correspondence is 'unlawful' or 'arbitrary'.

The proposed offence is not 'unlawful', as it is precise and circumscribed as far as is possible to do so, whilst allowing a necessary degree of discretion to be applied by authorities in assessing the nature of any given correspondence and whether it could reasonably said to be 'distressing or traumatic' to a victim.

It is also not 'arbitrary', as it seeks to protect the community from harm — an aim that is in accordance with the provisions, aims and objectives of the charter. Providing the recipients of such correspondence with an effective legal remedy (by seeking to have the prisoner charged with the proposed offence) is also an aspect of the proposed amendment that accords with the provisions, aims and objectives of the charter.[13]

It is also 'reasonable and justifiable in the circumstances' (hence not arbitrary), given that prison authorities may not always have the operational capacity to intercept every potentially distressing or offensive letter, while the creation of this offence ensures that prisoners instead turn their minds to the question of whether their correspondence may be distressing or offensive to a victim, before seeking to send it. In other words, the creation of the offence has an important deterrent effect.

Ensuring that victims do not receive unnecessary letters from prisoners that are distressing or offensive is also not an 'unjust' objective. Nor is it 'unjust' to create an offence in relation to such correspondence, given the very real harm it may cause victims (i.e. it is readily conceivable that correspondence to a victim from a prisoner would add considerably to the victim's trauma).

Where there is potential for harm in certain conduct, it is 'appropriate' that an offence be created to deter and prevent that conduct. In addition, it is 'appropriate' to impose criminal penalties on those who do cause harm or attempt to engage in conduct that causes harm to others.

In view of these principles the proposed offence is not considered to be arbitrary.

As the interference with correspondence that is posited by the proposed offence is not 'arbitrary' or 'unlawful', there is no limitation on the right in section 13(a).

Section 15(2): freedom of expression

The proposed offence also engages the right to freedom of expression in section 15(2) of the charter. Under this section, every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds, whether orally, in writing, etc.

[10] *Hirst v. Secretary of State for the Home Department* (2002) EWHC 602, at 42

[11] *R v. Home Secretary ex parte Simms* (2000) 2AC 115. Note also that 'community protection' is also an objective of sentencing under s. 5(1) of the Sentencing Act 1991.

[12] *R v. Home Secretary ex parte Simms* (2000) 2AC 115, Lord Steyn, p.127

[13] Similarly, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (which is incorporated by the Victims' Charter Act 2006) states that judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Providing a mechanism whereby redress can be sought by the victim for ongoing distress and offence caused by a prisoner therefore satisfies this principle.

The offence potentially limits the right to impart information insofar as it may prevent prisoners from writing freely to victims and other intended recipients.

It also potentially limits the right to receive information, insofar as it may prevent intended recipients from receiving a letter from a prisoner.

However, s. 15(3) of the charter qualifies the right to freedom of expression, by recognising that special duties and responsibilities are attached to the right; and that it may be subject to lawful restrictions reasonably necessary to (inter alia) respect the rights of other persons (s. 15(3)(a)).

The proposed offence sits within the exceptions envisaged by s. 15(3)(a). This is because:

> the proposed offence is 'lawful'. This characterisation applies as the offence will be provided for by way of statute law, and will include clear elements;
>
> the proposed offence serves a 'legitimate purpose'. That is, it prevents any further harm flowing to victims. In other words, the proposed offence seeks to protect the 'rights' of 'other persons' — a necessary component of a free and democratic society. To be characterised as 'necessary' for this end does not mean it need be 'indispensable'; rather, it suffices if it would be 'useful', 'reasonable' or 'desirable';[14]
>
> the creation of the offence, in addition to the power to intercept or censor distressing or offensive correspondence is 'reasonably necessary', given that prison authorities cannot be expected to stop or censor every letter containing potentially distressing or offensive material. It therefore deters prisoners from writing such letters and places some responsibility on them to ensure that they cause no further harm to victims through contact in writing;
>
> it is also 'reasonably necessary', insofar as it is necessary to stop persons serving a custodial sentence from having harmful contact with victims. Other legislation in this jurisdiction (and in many other states and territories and overseas) which seeks to prevent 'harm' through words (e.g. vilification or 'hate speech' legislation) often uses offence provisions to deter that conduct.[15] This supports the notion that it is 'reasonably necessary' to create an offence in respect of correspondence by prisoners which causes harm through distress or trauma. As noted above, it is readily conceivable that a letter from a prisoner to a victim could cause both.

As noted above in relation to clause 17, European case law suggests that it is necessary for the party seeking to justify the interference with a right to show that the doctrine of proportionality has been complied with.[16] This principle is satisfied in respect of the proposed offence, as naturally if police sought to prosecute a prisoner for the offence, the onus of proof would be on the police to demonstrate to the court that the elements of the offence are made out.

Further, in construing the words 'distressing or traumatic', the court would need to bear in mind both the prisoner's right to freedom of expression and any other public interest matter that the correspondence may invoke by way of subject matter. This element of the offence could not be made out where, for instance, a prisoner wrote to his victim, who happens to be his wife, and informs her that he is seeking a divorce. The victim may find this correspondence 'distressing' in the ordinary sense of the word, but it is anticipated that courts would recognise that the 'distress' associated with such correspondence is not of the kind contemplated by the section. Instead it is directed at distressing or traumatic communications to victims that are unwarranted or uncalled for; and not necessary or unavoidable communications.

Further, it is noted that the offence also does not capture communications with the classes of persons listed in s. 47(1)(m) of the Corrections Act 1986, thereby ensuring that these crucial rights of communication are maintained.

As the proposed amendment therefore falls within the exception envisaged by s. 15(3)(a), the right in s. 15 is not limited.

Use of firearms

Section 9: right to life

Clause 20 of the bill will prima facie restrict an individual's right to life by ensuring that prison officers are properly authorised to discharge firearms in the limited situations prescribed by regulation 10 of the Corrections Regulations 1998.

The validity of this power was raised in the Supreme Court case of *DPP v. Federico* (2006) VSC 24. This case involved the murder trial of prison officer Fab Federico as a result of an incident in which Mr Federico shot and lethally wounded remand prisoner Gary Whyte whilst he was trying to escape from St Vincent's Hospital. In this case Justice Cummins suggested that regulation 10 could be invalid as it may extend beyond the regulation-making power in the authorising act, or beyond common-law powers to use force without clear statutory authority.

2. Consideration of reasonable limitations

Firearms — limitation on s. 9 of the charter: right to life

(a) the nature of the right being limited

Section 9 of the charter states that 'every person has the right to life and has the right not to be arbitrarily deprived of life'.

The right to life is an 'absolute right' that is recognised in international law under article 6 of the International Covenant on Civil and Political Rights (1980) ATS 23; and article 3 of

[14] Lord Bingham of Cornhill in *Shayler* (2003) 1 AC 247 at 286, para. 23; *Handyside v. United Kingdom* (1976) 1

[15] For instance, ss 24 and 25 of the Racial and Religious Tolerance Act 2001 (Vic.), create offences in relation to serious racial and religious vilification (these also attract a maximum penalty of six months imprisonment). Similarly, s. 471.12 of the Criminal Code of the commonwealth creates an offence of using a postal or similar service to menace, harass or cause offence.

[16] *Hirst v. Secretary of State for the Home Department* (2002) EWHC 602, Mr Justice Elias at 29; *R (Daly) v. Home Secretary* (2002) UKHL26; *de Freitas v. Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing* (1999)1 AC 69

the Universal Declaration of Human Rights, adopted in 1948 by the General Assembly of the United Nations.

However, section 7 of the charter states that '[a] human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors'.

In recognition of the philosophy underpinning section 7 of the charter, when considering the right to life, the UN Human Rights Committee ('HRC') has acknowledged that it may be limited in certain situations. In particular, the HRC has stated that where killings are perpetrated for the purposes of the defence of self or others, the execution of an arrest, or the prevention of an escape, they may be justified.[17]

These exceptions mirror the express 'law-enforcement' exceptions to the right to life in article 2(2) of the European Convention of Human Rights. This states that:

> 'Everyone's right to life shall be protected by law. No-one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force that is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection'.

Similarly, principles 9 and 16 of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide that firearms may be used in defence of others against the imminent threat of death or serious injury and to prevent a prisoner's escape, and only when less extreme means are insufficient to achieve that objective.

International jurisprudence on the right to life and its relationship with the lethal use of force has also established a number of principles intended to safeguard the circumstances in which such force is used.

Principles enunciated include that any use of force must be no more than 'absolutely necessary'[18] and 'strictly proportionate' to achieving a clearly defined lawful purpose[19]. Lethal force should only be used when other means are insufficient to achieve the objectives of preventing escape, self-defence, or the execution of an arrest warrant[20]. Law enforcement operations should be planned and controlled to minimise to the greatest extent possible recourse to lethal force or incidental loss of life[21] and states should ensure that strict limitations are in place on the use of lethal force[22].

Clause 20 of the bill and policy informing this principle accords with these principles of international law. The proposed amendments to the regulation-making power in the act assist in circumscribing the 'lawful' purposes for which correctional officers may use firearms, so that it may be resorted to only in a select few situations.

It is proposed that the Corrections Regulations 1998 ('the regulations') will further enshrine strict limitations on the lethal use of force by correctional officers, in terms of when firearms may be issued and when they may be used. Under the current power, prison officers may only use a firearm where such use is the only practicable way to prevent escape or defend themselves or others. Officers are also trained to appropriately assess security risks and apply the use of force at a level that is proportionate to the relevant risk, and to utilise lethal force only where it is their assessment that no other options would achieve the purpose of preventing escape or defending themselves or others. Thus the bill balances the necessity of prison officers to have lawful authority to use firearms for the purposes of safety and security, against a number of safeguards on the exercise of this power.

(b) the importance of the purpose of the limitation

Clauses 20 and 21 of the bill primarily serve an important purpose in confirming the power to make regulations for the use of firearms in restricted circumstances; specifically to prevent death or injury against another person in the prison, or in respect of an officer acting in the course of their duties or a prisoner outside the prison, and to prevent the escape of a prisoner.

The primary purpose of the policy underpinning the limitation is to ensure the security and safety of others in the community and within the corrections environment. This purpose has a number of aspects, as follows.

Operational experience suggests that high-security and maximum-security prisoners also present a danger to the community, as they may use violence to further their escape and to avoid recapture if they are at large in the community. A risk of serious injury or death in the community is reasonably foreseeable as reasonably 'imminent', given that some prisoners will resort to violence to maintain their freedom.

The issuance and, hence, potential use of firearms also serves the important purpose of deterring prisoners who might otherwise contemplate escaping custody. Given the rarity of the actual use of firearms, the greatest utility of firearms in the corrections context is this deterrent effect, rather than their actual use. By corollary, without the authority to use firearms, it is likely that there would be an increase in the number of prisoners who attempt to escape from custody and of the willingness of other people to assist them in doing so. This would then pose an increased risk to the safety of officers, prisoners and the community; and compromise the good order and security of prisons.

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[17] *Suarez de Guerrero v. Colombia*, HRC 45/79

[18] *Hugh Jordan v. the United Kingdom*, Eur. Court HR, Application no. 24746/94 (4 May 2001)

[19] Ibid

[20] UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

[21] Ibid

[22] HRC *Concluding Observation on Cyprus*, 1994

The bill also serves the purpose of meeting important community expectations that prison officers are able to use force, including lethal force if necessary, to prevent a high-security or maximum-security prisoner from escaping. This expectation forms part of a broader and legitimate expectation that prison authorities and correctional officers fulfil their role in contributing to public order and public safety.

Similarly, by taking responsibility for prisoners in his or her custody under part 1A of the act, the Secretary of the Department of Justice implicitly has a duty of care to the community to ensure that high-security and maximum-security prisoners are retained safely in his or her custody and cannot cause further harm to others in the community. Further, the bill necessarily provides for a discretion to issue firearms in any circumstance where they are believed to be necessary (i.e. where their use would be 'proportionate') for the security or good order of the prison or for the safety of a prisoner, correctional officers or other persons.

The secretary also has an implicit duty of care to ensure a safe working environment for escort officers, which may require the use of a firearm to prevent a risk of serious injury or death to any person in a prison (staff, visitors and prisoners), a prisoner outside a prison, or to any officers acting in the execution of their duties outside a prison. Therefore, it is necessary that correctional officers be equipped with the means to control these prisoners and keep such criminal conduct in abeyance.

These purposes of ensuring the safety of a range of persons and protecting public order have also been recognised in the Siracusa Principles on the Limitation and Derogation Provision in the International Covenant on Civil and Political Rights as legitimate purposes for limiting human rights, so long as there are adequate safeguards and effective remedies against abuse.

Public order is expressed as 'the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded'.[23] It is suggested that maintaining the security of high-security and maximum-security prisoners forms a vital part of the effective 'functioning of society' and the maintenance of such 'public order' and community safety.

(c) the nature and extent of the limitation

The extent of the limitation on the right to life is limited to exceptionally rare circumstances, and, in accordance with principle 34 of the Siracusa Principles on the Limitation and Derogation Provision in the International Covenant on Civil and Political Rights, the limitation is circumscribed by a number of safeguards on the exercise of the power.

For example, regulation 10 of the Corrections Regulations 1998 currently provides that firearms may only be discharged if a prison officer believes it is the only practicable way to prevent:

> the escape of a prisoner; and
>
> a person using force or threatening force from causing death or serious injury to any person in a prison, a prisoner outside a prison, or to any officers acting in the execution of his or her duties outside a prison.

In addition, regulation 10 currently ensures that before discharging a firearm at a person, the prison officer must, where practicable, give an oral warning to the effect that the person will be shot at if he or she does not stop escaping, attempting to escape or using or threatening force; and the prison officer must also satisfy himself or herself that shooting at the person does not create an unnecessary risk to any other person.

Existing operational procedures also ensure that the use of lethal force is always proportionate to the relevant safety risk and an absolute last resort. For instance, correctional officers, in their assessment of potential risks to the safety of all persons, may only use such force as is reasonable and necessary to resolve the situation and must identify possible courses of action that involve the use of all other tactical options before having to resort to the use of lethal force to manage those risks.

(d) the relationship between the limitation and its purpose

There is a rational connection between preventing death or serious injury to community members and those in the prison environment and empowering correctional officers to use firearms to prevent those outcomes where necessary.

Whilst the use of firearms may result in a lethal use of force in exceptionally rare circumstances, it is likely that community members would consider this a proportionate response to the risks outlined above and in guaranteeing the purposes of this proposal.

(e) 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. The current scheme provides that firearms may only be used when there is no other 'less restrictive means reasonably available' to protect life and prevent harm to a community member. As noted, the regulations currently provide that the use of firearms be only resorted to when it is reasonably believed that use of a firearm is the only practicable option to:

> prevent the escape of a prisoner; or
>
> prevent a person from using or threatening force against any person in a prison, a prisoner outside a prison, or to any officers acting in the execution of his or her duties outside a prison.

In other words, prison officers must firstly consider other tactical options or 'less restrictive means' under a 'hierarchy' of force. These include:

> verbal direction, communication, dialogue or negotiation;
>
> open hand/closed hand techniques;

[23] United Nations, Economic and Social Council, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, Annex, UN Doc. E/CN.4/1985/4 (1985); principle 22.

OC spray;

chemical agents; and

canine teams.

If a high-security or maximum-security prisoner attempts to escape the custody of a correctional officer and these other options are not available (such as when a high-security or maximum-security prisoner is running away from a prison officer and an approved dog is not available to detain them), then the use of firearms may be the only way of ensuring that the prisoner does not escape and threaten the safety of the community. It is therefore an absolute last resort.

Conclusion

To the extent that amendments to the Control of Weapons Act 1990 may limit the rights in the charter, the limitations are reasonable and justifiable when measured against the importance and significance of their objective, which is to support individual and community safety and to reduce violence in the community.

The powers of escort officers to use firearms to prevent the escape of a prisoner and injury or death to other persons are in keeping with international human rights principles on the lethal use of force by authorised officers. They also support individual and community safety, the rule of law and the integrity of the justice system — factors that are essential to a 'free and democratic society'. As such, the implicit limitation on the right to life that is posited by the bill can be justified.

Additionally, the power of prison governors to intercept or censor distressing or traumatic correspondence; and the related offence of sending, attempting to send or causing to be sent such correspondence accords with the philosophy underpinning human rights, that is, protecting the community from harm. As such, these aspects of the bill do not limit the charter rights of privacy and freedom of expression.

I therefore consider the bill is compatible with the Charter of Human Rights and Responsibilities.

JUSTIN MADDEN, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated on motion of Hon. T. C. THEOPHANOUS (Minister for Industry and Trade).

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

That the bill be now read a second time.

Incorporated speech as follows:

This bill will implement a range of important community safety initiatives that will build upon existing measures introduced by the government.

The bill implements one of the government's 2006 community safety election commitments; to fight violent crimes that are of concern to the community by strengthening the weapons control regime.

The bill will also enhance protections for victims of crime and their families. The bill will introduce amendments to enable prison governors to stop or censor letters from prisoners to victims which may cause further trauma and distress. The bill will also extend the application of the victims register to the offence of failing to stop and render assistance after a motor vehicle accident causing death, and confirm its application to the offences of culpable driving causing death and dangerous driving causing death or serious injury. This measure is in recognition of the profound effects of such crimes on the victim's surviving family members.

Control of Weapons Act 1990

Part 2 of this bill fulfils the government's election community safety policy commitment to 'take a zero-tolerance approach' to offences involving weapons other than firearms, such as knives and daggers.

In December 2006, the government introduced a bill to deal with the first element of the commitment — the doubling of penalties relating to the possession of either prohibited or controlled weapons. The increased penalties commenced on 1 July 2007.

This bill will now implement the second phase of the government's election policy commitment by further amending the Control of Weapons Act 1990 to:

increase most penalties under that act;

treat carrying a weapon in or around licensed premises as an aggravating circumstance, with even higher penalties;

ensure that 'dangerous articles' cannot be carried for self-defence; and

clarify the obligations of individuals, corporations and other entities authorised to possess, carry or use prohibited weapons.

This current package of amendments will further strengthen efforts to reduce disorder and violent crime involving weapons in our community.

In particular, the amendments will clamp down on crimes involving weapons in and around licensed venues such as hotels, clubs, bars and restaurants. Excessive consumption of alcohol by persons carrying weapons is often a contributing factor to the aggressive use of such weapons. The presence of weapons in or near licensed venues, where alcohol-related aggression is more likely to flare, significantly increases the threat of serious injury or death resulting from the use of weapons and puts public safety at risk.

To deter alcohol-related violence at such venues and make existing sanctions more effective, the penalties for unlawfully possessing, carrying or using weapons or dangerous articles in and around licensed premises will be doubled.

These new penalties will apply both in licensed premises and in any public place within the immediate vicinity of licensed premises. The term 'immediate vicinity' is defined in the bill as being within 20 metres of licensed premises. The objective is to deter violent behaviour involving weapons not only in licensed venues but immediately outside the venues to prevent these areas becoming a focus for disorder and violent crime.

The venues that are subject to the new penalties are licensed pubs, hotels and taverns, licensed clubs, and licensed restaurants, bars and cafes.

The bill also increases penalties for a number of other offences under the Control of Weapons Act 1990, such as failing to comply with requirements for the sale of prohibited weapons. The increased penalties for these offences will better reflect the seriousness of crimes involving weapons, and enhance deterrence.

Under the Control of Weapons Act 1990, the carriage of prohibited or controlled weapons for self-defence is already prohibited. To further safeguard public safety, this bill now removes self-defence as a lawful excuse for carrying dangerous articles.

A 'dangerous article' is any item (for example, a broken bottle or a pair of scissors) that is adapted or carried for use as a weapon. It is not appropriate in our society that such articles should be carried solely for self-defence when their use could result in serious injury or death.

However, this amendment is not intended to adversely impact on persons forced to use everyday items to defend themselves if attacked. An example would be a tradesperson on the way home who is attacked and uses a screwdriver in self-defence. In such cases, the lawfulness of the possession and use of the item in response to an attack will be evaluated by the court.

The bill makes a range of other amendments to the Control of Weapons Act 1990 to clarify the obligations of corporations, partnerships and their employees when carrying or using prohibited weapons under authorisation. It is important that when weapons are carried or used for lawful reasons, they are handled responsibly and safely, and that organisations and their officers and employees understand they will be held accountable if they are found to have contravened the act.

Corrections Act 1986

This bill amends the Corrections Act 1986 in two ways with intention to further strengthen the recognition that this government has given to the needs of, and harmful effects of crime on, victims as follows.

Extension of governors powers to intercept or censor letters

The emotions of victims and the general community are still raw 20 years on from the tragic Hoddle Street massacre in which Julian Knight's rampage left 7 people dead and 19 people injured. The trauma continues to haunt Julian Knight's victims, and indeed the community.

The recent judgement of the Supreme Court case of *Knight v. Anderson* (2007) VSC 278 which granted Julian Knight leave to commence an application for judicial review in relation to the stopping of the letter to one of his victims has caused community outrage.

The government recognises that crime affects each person differently, often leaving its victims devastated and violated, and that such effects can be severe and long lasting. There can also be an enormous toll on the families and friends of victims, as well as on their communities and on society at large.

In response, the government gave a commitment to further protect victims' rights by giving correctional officials the power to stop offenders, such as Julian Knight, from contacting their victims. The government has acted swiftly to fulfil this commitment.

This bill will amend the Corrections Act 1986 to enable prison governors to intercept or censor letters sent by prisoners to any person if they reasonably believe that the letter contains material that may be distressing or traumatic.

This amendment will validate the prison governor's decision to stop the letter that Julian Knight wrote which was the subject of the decision of the Supreme Court in *Knight v. Anderson*.

This bill will also make it an offence for a prisoner to send, cause to be sent, attempt to send or cause to be sent, a letter to a victim, or the family member of a victim, that contains such material and that the prisoner knows or ought reasonably to have known would be regarded in this way. The maximum penalty for this offence is six months imprisonment.

This new offence is intended to capture situations where a prisoner writes to their victims or their family members or where another prisoner writes to victims (other than victims of their own offences) or family members of these victims, and thereby causes distress and trauma.

The Victorian correctional system has had experience of situations in the past, where one prisoner uses another prisoner to cause distress to their victims and their families.

This amendment will protect victims and their families from such communications and thereby protect them from experiencing any further distress or trauma.

I now turn to changes with respect to the victims register.

Victims register

In recognition of the profound effects on victims and their families of these crimes, the government is also taking action to clarify the application of the victims register to victims of the serious road safety offences of:

culpable driving causing death;

dangerous driving causing death or serious injury; and

failing to stop and render assistance in a motor vehicle accident where a person is seriously injured or killed.

The victims register, which has been in operation since 30 August 2004, enables specified victims to be given information about the administration of the offender's sentence of imprisonment. Information that victims may receive includes the length of the sentence and the date and circumstances in which the prisoner is likely to be released. Persons included on the victims register may also make a 'victims submission' to the adult parole board for consideration in determining whether to make a parole order.

Currently, victims of the offence of failing to stop and render assistance after a motor vehicle accident causing death or serious injury are not eligible to be placed on the victims register, and therefore, to receive information about the administration of the offender's sentence of imprisonment and to make victims submissions.

This is because the definition of 'criminal act of violence' in section 30A(1) of the Corrections Act 1986 includes an offence that involves 'an assault on, injury, or threat of injury to a person which is punishable by imprisonment'. It is arguable that this offence does not fall within this definition as the offence occurs after the act of driving causing the death of or serious injury to the victim.

The bill therefore clarifies that victims of failing to stop and render assistance after a motor vehicle accident causing death or serious injury, as well as culpable driving causing death and dangerous driving causing death or serious injury, are eligible to be placed on the victims register.

In recognition of the profound effects on victims and their families of these crimes, it is considered appropriate that victims of these serious road safety offences be eligible for inclusion on the victims register.

The effect of these amendments will be to provide victims of these offences with a greater degree of security by enabling them to receive important information relating to the sentence of the perpetrator of a crime against them. Assisting victims of crime to recover from the effects of offences committed against them benefits both victims and the community generally.

I now turn to the last of the amendments to the Corrections Act 1986.

Use of firearms by correctional officers

The bill amends section 112 of the Corrections Act 1986 to improve the effective operation of the Victorian correctional system by confirming existing powers set out in regulations in relation to the issue to, and use of, firearms by prison officers.

It is the intention of the government to review these regulations with a view to making new regulations that set out the circumstances in which firearms are issued to prison officers. These new regulations will reflect current practice, whereby firearms are issued for the escort of high and maximum-security prisoners, and otherwise only in emergency situations, or where safety and security considerations require it.

The issue of, and hence potential use of, firearms serves the important purpose of deterring prisoners who might otherwise contemplate escaping custody. Given the rarity of the actual use of firearms, the greatest utility of firearms in the corrections context is this deterrent effect, rather than their actual use. The escape of prisoners from custody would pose an increased risk to the safety of officers, prisoners and the community, and compromise the good order and security of prisons.

This amendment also addresses the expectation in the community that prison authorities and correctional officers can fulfil their role in contributing to public order and public safety.

The integrity of the justice system is maintained through the safeguards that are required of officers in the exercise of the power to use firearms. The principles governing the use of force ensure that the use of lethal force is proportionate to the safety risk posed by prisoners and is considered as a last resort. Correctional officers, in their assessment of potential risks to the safety of all persons, may only use such force as is reasonable and necessary to resolve a situation and must identify possible courses of action that involve the use of all other tactical options before having to resort to the use of lethal force to manage those risks.

Legal Aid Act 1978

Part 4 of the bill makes an administrative amendment to the Legal Aid Act 1978 to extend the maximum period that a practitioner may be included on a specialist panel convened under section 29A of that act, from three to five years. In practice, the current arrangements mean the panels must be reconvened every three years, which involves a considerable administrative burden for both Victoria Legal Aid and the applicants to the panel. The proposed extension of time will reduce this administrative burden.

In relation to the commencement of the bill, clause 2 of the bill provides that certain provisions will commence operation immediately upon the bill receiving royal assent. The provisions relating to the extension of prison governors' powers to stop or censor letters will be deemed to have commenced on 1 July 2005. All provisions of the bill will be operational by 1 July 2008.

This bill demonstrates the government's continuing commitment to strengthening community safety and protecting victims of crime and their families from further trauma and distress. The amendments proposed in the bill build on a range of initiatives introduced by this government to tackle crime and violence.

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, 27 September.

GENE TECHNOLOGY AMENDMENT BILL

Second reading

Debate resumed from 23 August; motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr D. DAVIS (Southern Metropolitan) — I am pleased to rise and make a contribution to the debate on the Gene Technology Amendment Bill 2007, and in doing so I indicate that the opposition will support this bill. It is an important bill, one that tweaks the current arrangements and does so at a timely point. There is a complex background, but I think that is worth conveying to the chamber and worth understanding.

The purpose of the bill is to improve the operation of the regulatory system for gene technology by bringing it into line with nationally agreed amendments in the legislative framework. Nationally agreed provisions were initially adopted in 2001 in the Victorian Gene Technology Act, and this bill will make a number of

changes that flow from the changes that have occurred nationally.

The background to this is that the intergovernmental gene technology agreement was established in 2001, when all states and territories came to a common position. Victoria, as I said, introduced the Gene Technology Act in 2001 as this state's component or part of that set of arrangements. At the time the act aimed to protect the health and safety of people and the environment by identifying risks posed by gene technology and managing those risks by regulating or controlling certain activities, dealings and so on with genetically modified organisms (GMOs).

In 2005–06 there was a significant review of the commonwealth act, and some recommendations were made to improve it. In October 2006, the Gene Technology Ministerial Council — a council of ministers from around the country — agreed to implement the recommendations of that review. The bill amends our act to remain consistent with the commonwealth Gene Technology Amendment Act 2007, ensuring national consistency; that commonwealth act came into operation in July this year.

I will give a short list of the main provisions of this bill, and then come back and discuss each one. The main provisions relate to emergency-dealing determinations; the gene technology ethics and community consultative committee; the assessment of applications — the areas of so-called limited and controlled release and consultation on significant risk; variation; clarification of the regulator's power; and inadvertent dealings. As I said, I will come to each of those in due course.

In regard to the emergency-dealing determinations, sections 5 to 24 of the commonwealth act allow the responsible minister to make an emergency-dealing determination in response to an emergency. This allows an identified genetically modified organism to be used quickly in response to an emergency without the need to go through the lengthy licensing provisions that would normally apply. The commonwealth minister is required to take proper scientific advice, and that is only proper. He must make a determination that there is an emergency, and the states and territories must also be consulted. This Victorian bill will allow the Victorian minister to make a corresponding emergency-dealing determination when one has been made by the federal minister.

The sort of cases where these decisions may be made are those where there is a threat of disease, a threat from an animal or plant — for example, a pest or a new species — and potentially where there is an industrial spillage. There may well also be a case where a genetically modified organism may be used as a vaccine or for human or other veterinary uses. The bill gives examples of those conditions for emergency-dealing determinations, and I think that this is appropriate.

The second provision is the gene technology ethics and community consultative committee, a committee formed by the amalgamation of two existing committees. The new committee will carry out the functions of the two amalgamated committees, and it will be able to give advice on risk communication and community consultation.

The third set of changes relates to the assessment of applications. There are two types of amendments here. The first type of amendment will alter the order of events for an initial licence application. The regulator will no longer be required to consider whether an application poses a significant risk to the health and safety of people or the environment before developing a risk assessment and a risk management plan. This is simply sensible.

The second amendment will introduce a new category of licence, to be known as a limited or controlled release application, and it distinguishes between the licences for a limited and controlled release, such as an experimental field trial, and licences for intentional release. A limited and controlled release application will be able to be granted by the regulator if the regulator is satisfied on three grounds: firstly, that the principal purpose of the licence sought is to enable experiments; secondly, that the release of the GMO under licence would be limited and that the controls would be in place to limit the dissemination of the organism; and thirdly, that it is appropriate for section 53 of the act — which requires the regulator to seek advice from the states, the gene technology technical advisory committee or other agencies — not to apply to the licence. Licences for intentional release would obviously need to undergo more rigorous assessment.

The provisions in this bill relating to variation — clauses 36 and 37 — are to allow license variation and to increase the clarity of the act. The regulator will have the power to vary a licence, whether unilaterally or after receiving an application from a licence holder.

The regulator's power to direct is clarified in clauses 38 and 39. Part 7 of the bill, which contains clauses 40 to 46, is about inadvertent dealings. These amendments allow the regulator to grant a temporary permit to a

person who finds himself or herself inadvertently dealing with an unlicensed GMO. They will be able to dispose of a GMO. This inadvertence aspect simply makes sense; you would want those clauses to allow a clean-up, for example, or allow proper management of something that has occurred that was not necessarily planned.

As I said, the opposition supports the bill, but the context is significant. Victoria is placed at a point where we need to think very carefully about moving forward on the issue of genetically modified organisms and their use in agriculture and elsewhere. I think the state has been hampered by the moratorium that has been in place, and I certainly would look to see some steps taken there. That will be controversial in some sections of the community. I know that the Premier has commented on this matter, as has the Leader of the Liberal Party, Ted Baillieu, who has been very supportive of removing that moratorium.

There is every reason for the Liberal Party to strongly support these steps that we need to take to maximise Victoria's position, particularly in terms of the agricultural industry. At the moment we are hampered. Growers of crops in other states can compete more effectively than growers in our state. The truth is that genetically modified organisms are right through our food chain in any event, despite the moratorium. Somebody was pointing out to me the other day that the oils used in fish and chip shops are overwhelmingly from genetically modified organisms and appear to have had no negative consequence in the community. I pick up on that as just one of many examples.

I see Mr Koch nodding. I know that his agricultural district through the western side of the state would benefit significantly. The better drought and weed resistance in grains and canola would deliver benefits to those districts. Significant groups in the community, like the farmers federation, are supportive of changes and the removal of the moratorium. For those reasons I think there are strong agricultural industry arguments for removing the moratorium, and I regard those arguments as well established.

I think there are trade arguments as well. Victoria needs to compete price-wise and quality-wise with its agricultural products overseas. Personally I am not persuaded by the argument that is put by some — that is, that there is some green advantage to be gained in terms of a non-genetically modified arrangement in the state. As I have said, I do not think that sticks in any event, but even assuming there were some marketing arrangement, I simply do not believe it is of sufficient significance. The truth in international trade is that price, quality and reliability of supply are key determinants. In the case of genetically modified organisms, those organisms and those crops in particular will give us a significant edge with those three key factors.

I also make the point that Victoria is the centre of Australian biotechnology, and for that reason alone it is important that we are not hampered by the presence of restrictions that prevent the growth and development of biotechnology research and related industries. Victoria needs to have the maximum opportunities, and I believe that this is a part of the signal we need to send out — that is, that we are prepared to embrace a modern world in a thoughtful, calculated and safe way.

For that reason I was prepared to host — with the member for Narre Warren North in the other place, Luke Donellan, and with a member of The Nationals — a recent forum at Parliament, run by the Institute of Public Affairs, which looked at what steps could be taken to remove the moratorium on genetically modified organisms. I am sure that the industry minister, who is in the chamber, has a similar view to mine. We can take constructive steps and position the state well, and this bill is one small step in doing that.

Mr BARBER (Northern Metropolitan) — The Greens' main concern with this bill is the ability of the federal and state ministers to make what are called emergency-dealing determinations. The Greens oppose that part of the bill, and we foreshadow an amendment — in fact, I am happy for the amendments to be circulated now — that restrict these emergency-dealing determinations only to those cases that are determined to be medical emergencies. These emergency-dealing provisions could allow untested, unassessed and untried GMOs (genetically modified organisms) to be released to deal with emergencies — any emergencies; not simply those matters related to gene technology.

Greens amendment circulated by Mr BARBER (Northern Metropolitan) pursuant to standing orders.

Mr BARBER — We must remember that the objective of the federal act, which this state act mirrors, is to protect the health and safety of people and protect the environment by identifying risks posed by or caused as a result of gene technology and by managing those risks through regulating certain dealings with GMOs.

The purpose of this bill is to protect people from risk associated with GMOs. Now we are bringing in provisions that see GMOs as the solution and try to

work backwards to the overall responsibility for dealing with a range of unspecified emergencies. In doing that, the provisions actually bypass the regulatory process and approve GMOs for release in cases where the minister is satisfied there is an imminent threat, not from the GMOs themselves but from some other undefined threat that potentially the minister thinks GMOs could assist with. So they fall outside the scope of the commonwealth act, and indeed outside the scope of the general agreements that have been made between state and federal governments through the Gene Technology Ministerial Council and so forth. This will create an inadequate and dangerous national regulatory framework. I think it is unacceptable that the state government has been stampeded into accepting this on the basis of a group of hypothetical scenarios.

The triggers for declaring the emergency provisions are also inadequate. The federal act allows the federal minister to make an emergency-dealing determination in response to a non-GMO-related emergency after receiving advice from the chief medical officer, the chief veterinary officer and the chief plant protection officer or any other person specified in the regulations. It is those individuals who have to determine if there is an actual or imminent threat to people's health and safety or the environment and that the emergency determination would adequately address the threat. The minister has to be satisfied that the determination will address the threat and that the risk posed by the release of GMOs can be managed safely and that they have advice from the regulator to that effect. The states and territories also have to be consulted about the proposed emergency-dealing determination. There are some problems with that process that I think are fairly obvious.

First of all, GMO technology is relatively new. GMOs are often unpredictable, they are experimental and their effect on people and impact on the environment are unknown. Those named commonwealth officials alone are unlikely to offer reliable advice without a full safety assessment, which they cannot do in an emergency. The bill effectively dispenses with the full assessment process of the potential impact of the release of a GMO. It is not merely expedited or sped up, but dispensed with in these circumstances.

We have concerns about the Office of the Gene Technology Regulator to provide comprehensive advice to the federal minister on the impact of those GMOs when they have not undergone proper scientific testing. We also question the regulator's ability to provide full advice to the minister about an imminent threat. While on a good day that regulator could provide advice on the GMO, they certainly cannot provide broader advice on the threat that it will allegedly fix, the seriousness of the threat and what the alternatives are, because that is well outside their scope. Whether these emergencies turn out to be oil spills, plant or animal diseases or whatever, the gene technology regulator does not have that broad a brief.

The powers that will be provided to the minister are sweeping. There is no definition of 'imminent threat' in the bill. Sections of the bill that deal with the permit conditions that might be allowed go on for pages and pages, but there is no definition of 'imminent threat'. 'Imminent' could mean instant, overwhelming or leaving no choice or moment for deliberation. In our view the use of 'imminent threat' should be restricted to a human pandemic; it is not justified for other imminent threats that may not eventuate.

At the very least there needs to be some kind of evidence to prove that the threat really exists, but that is completely left to ministerial discretion. There is no need to prove that the threat is actual; the minister can decide that. The bill does not specify the level of threat. There is no requirement regarding the size or significance of it or whether it has to be of a particular severity or scale. As I said, it is unclear which officer in which particular area has the most prominent role in providing advice to the minister on the assessment of the level of threat.

The Victorian Department of Human Services recently outlined its view on the assessment process in a letter to Gene Ethics. In its letter of 6 September 2007 it said:

> The EDD provisions allow the GMO assessment process to be conducted in a shorter time frame than the standard process. However, the EDD does not permit the regulator to dispense with a full assessment of the GMO.

I am not sure that is right:

> It is intended that intensive resources would be allocated in an emergency to enable an expedited response and the assessment conducted for an EDD would be the same as for any other GMO, not of a lesser scientific standard.

I am sorry, but I do not find that credible at all. If that is the advice the minister has been given — that in an emergency situation with a 48 hour time line that the state minister will receive once the federal minister has decided to take an action — how could we seriously expect these people to do an assessment of a GMO that would not be of a lesser scientific standard than the ones that are occurring more generally? That is very difficult to believe.

I find it very hard to believe the assertion that there is no contradiction between the shorter assessment time

frame and an adequate scientific standard. This does not refer to the existence of established guidelines or standards that maintain a rigorous scientific approach in an expedited situation — there are no special guidelines that say what this assertion would consist of. We of course already find plenty of grounds for contention with the assessment of GMOs that are done now. For that matter, farmers groups find huge grounds for contention with assessments done in cases of the introduction of new plants into Australia and the normal quarantine issues of bringing in unprocessed salmon or apples from New Zealand. Those assessments and the argument over those have gone on for years and have been dragged through various appeals. Yet the letter quite blithely says in effect, 'We will do a fantastic assessment, and we will do it in 48 hours'.

The letter also provides no details of what is meant by the intensive resources which would be allocated in an emergency, and how these would maintain scientific standards of assessment and work out the impact of a GMO, once released. I think today we are signing something of a blank cheque to a federal minister to determine what is an emergency and what is a sufficient scale of emergency. There is no backstop against that to create a set of standards for what would be an emergency assessment and what resources would be associated with it.

The Greens believe that a better balance could be set if these emergency-dealing determinations were restricted to medical emergencies — that is, where the consequences of not implementing the proposed GMO solution would be the known death or injury of individuals, and where the benefits of the last resort release of untested GMOs outweighs the other opinions on the potential costs and dangers — if we assume we even know what these are. Even a GMO released in response to such a medical emergency would still have its risks of course. That has been the case in the past with experimental vaccines that have been released broadly, leading to some dramatic side effects.

In terms of what the emergency might be, it could be argued that it could even be an economic emergency. In fact, the federal Department of Health and Ageing claimed in a Senate standing committee hearing on community affairs that one of the triggers for a declaration might be an economic threat, rather than an emergency around human health. Statements have been made out there that this bill has been welcomed because it might lead to increasing wheat yields during the current drought — that the drought itself could be considered to be an emergency, allowing an emergency declaration and the release of GMOs. In fact it is not hard to imagine that once this legislation is in place lobbying to that effect could occur.

We really need to learn from a bit of history. Of course every generation that has come before thought it was really quite bright and understood the situation existing at the time. It is easy now for us to look back at the guys who released the cane toad and say, 'What a bunch of silly people they were! Obviously that thing was going to cause more problems — and it did not even solve the problem that it was purported to be released for'. But that is really the issue, is it not? That should lead us to pause and ask ourselves: why is it that we assume we are so smart when every other generation assumed that too and got it wrong?

As time has moved on, we have seen other 'cane toads' — things that are worse than the cure. We have also seen uses of all sorts of miracle pesticides and herbicides that have led to all sorts of dramatic human effects, which we only found out about after they were used so widely that in effect we had conducted a giant experiment on ourselves and collected enough data so that we could truly understand the effects of what we had been doing. Even if you argued that we are getting smarter, what you would also have to look at would be the fact that we are getting more powerful. We are not just talking about releasing a whole organism now, as it was with the cane toad; we are talking about releasing a little slice of genetic material — and it is much harder to get that one back into the box.

The Klebsiella planticola case was one of those cases. A GM microbe for producing ethanol on farms was produced by the United States of America Department of Agriculture. It was then inadvertently independently tested prior to its release by Dr Elaine Ingham at Oregon State University and was found to continue producing ethanol in soil, where it would destroy susceptible plants. This release was stopped at the 11th hour.

I refer to Dr Ingham's testimony before the New Zealand Royal Commission on Genetic Modification in February 2001:

> These bacteria would therefore get into the root systems of all terrestrial plants and begin to produce alcohol. The engineered bacterium produces far beyond the required amount of alcohol per gram of soil than required to kill any terrestrial plant. This would result in the death of all terrestrial plants, because the parent bacterium has been found in the root systems of all plants where anyone has looked for its presence.
>
> This could have been the single most devastating impact on human beings since we would likely have lost corn, wheat, barley, vegetable crops, trees, bushes etc …

> It is clear, therefore, that current testing procedures required by US regulatory agencies are completely inadequate in assessing the potential risks involved with genetically engineered organisms. Until such time as adequate testing procedures are instigated and carried out, engineered organisms should not be considered to have acceptable risks.

There are also some flaws in the science or at least in the understanding of genetic engineering (GE) as a discipline. There is new research published in the journal *Nature* that reveals some of these flaws, and it calls into question what is really a vital assumption behind the GE industry — that is, that each DNA sequence can be isolated and has its own function; that you just pull out the little bit that you want that does the thing that you want it to do and that it in itself continues to operate separately from the genome. In fact the research published in *Nature* found that genes seem to operate in a kind of a complex network where they act, interact and overlap in ways that are still far from understood. The GE industry assumes that genes and their functions can be isolated, patented and then spliced into an organism and thereby controlled. But gene networks, it seems, are far too complex and cannot be considered to be isolated units.

Jack Heinemann, a professor of molecular biology at the University of Canterbury in New Zealand, told the *New York Times* in July 2007:

> The real worry for us has always been that the commercial agenda for biotech may be premature, based on what we have long known was an incomplete understanding of genetics.

The article continues:

> 'Because gene patents and the genetic engineering process itself are both defined in terms of genes acting independently', he said, 'regulators may be unaware of the potential impacts arising from these network effects'.

The *New York Times* added:

> Even more important than patent laws are safety issues raised by the consortium's findings.
>
> Evidence of a networked genome shatters the scientific basis for virtually every official risk assessment of today's commercial biotech products, from genetically engineered crops to pharmaceuticals.

Then there was the genetic corn variety MON863. A new study on rats concludes that it cannot be considered a safe product. It has been approved by Food Standards Australia New Zealand, but study results published in March 2007 in the journal *Archives of Environmental Contamination and Toxicology* showed that on the present data submitted by the genetic engineering company Monsanto it cannot be concluded that that corn is a safe product.

Another recent example is the CSIRO's modified peas. In the late 1990s the CSIRO modified peas to contain a bean gene which was intended to produce resistance to pea weevils, substantially changing the protein produced by the peas. The mice that were tested developed a hypersensitive skin response, experienced airway inflammation and mild lung damage. Following discussions with the scientists conducting the study the CSIRO decided not to progress development of those GM field peas. In fact the deputy chief of CSIRO plant industry, Dr Higgins, said:

> This work strongly supports the need for case-by-case examination of plants developed using genetic modification and the importance of decision-making based on good science.

Those are some of the concerns that have been raised with genetically modified organisms more generally. This bill, though, dramatically increases risks because of the mechanism that allows an organism to be released without any of the sorts of safety nets that have been found to be inadequate in the past on criteria that are not defined, with the state minister simply ticking off the federal minister's response, with no guarantee of adequate resourcing for any sort of risk assessment and in relation to any threat that the minister determines to be sufficient. For that reason the Greens will move an amendment, copies of which have now been circulated, which addresses that particular section of the bill.

Debate interrupted.

DISTINGUISHED VISITOR

The PRESIDENT — Order! It is my pleasure to draw to the attention of members that we have a recently retired member of this chamber in the house, Mr Bill Forwood.

Debate resumed.

Mr DRUM (Northern Victoria) — It is with pleasure that I rise to speak on the Gene Technology Amendment Bill. The Nationals are keen to voice their support for the bill. The original act was passed in 2001 with the support of The Nationals. This is an issue The Nationals have been supportive of right throughout the intervening six or seven years. In 2005–06 there was a commonwealth regulatory review of the operations of the act. It was concluded that the gene technology regulatory framework was working well but recommended some changes to enable the ongoing efficient operation of the act.

In October 2006 the Gene Technology Ministerial Council agreed that this issue had to be handled with a

whole-of-government attitude, and that response meant we needed to have similar legislation right across Australia.

This bill effectively introduces provisions to enable the responsible minister to make emergency-dealing determinations for Victoria to mirror those determinations that are made by the federal minister. We are also going to improve the mechanisms by which we will be able to provide advice to the gene technology regulator and the Gene Technology Ministerial Council task force on ethics and community consultation. The gene technology regulator has been given many plaudits for the way in which she has handled her role, although we will have some exciting news in the new year, hopefully.

This legislation will also streamline the process for the initial consideration for licences that will reduce the regulatory red tape surrounding what we might call low-risk dealings. That will be well received if and when we get to the stage of handing out some of these licences. It is also going to clarify the circumstances in which licence variations can be made. It is going to clarify the circumstances under which the regulator can direct a person to comply with the act and also grant the regulator power to issue a licence to persons who find themselves inadvertently dealing with a genetically modified organism for the purposes of disposing of that organism; that also is going to be well received.

In effect the bill makes three major changes to the act that will deal with this emergency-dealing determination. Currently the emergency-dealing determination cannot be made without scientific advice following rigorous scientific risk assessment. This change enables an identified GMO to be used quickly in response to an emergency, and obviously that is going to be at the advice of the scientists and the science fraternity as they act in this whole or across-government panel with the scientists from each of the states working in cooperation with the federal minister.

The second major aspect of it is going to be dividing the GMO releases into two categories. This is something that has been sorely missing. As we talk about how we are going to do it, we need to differentiate between the field trials and the commercial releases. It is impossible for us to move into the thought of commercial releases until we can do some sustainable and serious field trials; hopefully by splitting these two categories, we are going to be able to instigate some field trials in the not-too-distant future, ascertain how they are performing and then look further about where we go in relation to commercial releases.

It is also going to amalgamate the two advisory committees, so under the commonwealth Gene Technology Act, we have the gene technology ethics committee and then we also have the gene technology community consultative committee, so this is now going to be called the gene technology ethics and community consultative committee to advise the Gene Technology Ministerial Council and the gene technology regulator on ethics issues.

That sets out a regulatory framework that is going to hopefully take this industry forward. We know we currently have a moratorium on GM food, and we know that moratorium will expire, I think, in the new year. We have the situation now where the former Premier, Mr Bracks, set up an independent panel to review Victoria's moratorium, and it will be reporting back to the government later this year. On that panel the government has the eminent Victorian scientist Professor Gustav Nossal, who is going to chair that; also, Mrs Merna Curnow from the central Victorian region; and Christine Forster, who is a chairperson of the Victorian Catchment Management Council and a farmer from western Victoria. It will be interesting to see the report when that is handed in later this year to government, but we are certainly hoping that the government continues to move forward in this whole area.

In relation to the GM debate I had an opportunity to look through — and Mr Barber has put forward some arguments as to maybe why we need to tread carefully with this whole industry — the safety assessments of genetically modified food, in a booklet put out by Food Standards Australia. In category 2 and 2.1, it talks about general food safety in the regulation of GM foods. It simply talks about the level of risk that the community is prepared to accept in relation to food that is influenced by its experience and knowledge that comes from the community's consumption of that food over many hundreds of thousands of years. For example, we know that rhubarb leaves, green potatoes and many types of mushrooms are unsafe because of their toxic components.

We also know that certain foods, such as cow's milk, eggs and nuts can cause an allergic reaction in some people. Also, a diet of high levels of saturated fats and salt can lead to health problems in the long term. We also know that a balanced and varied diet of nutritious foods is vital for good health. It is all pretty straightforward, all very easily and very well known.

We also understand that we have to take care when preparing food so as to prevent the growth of harmful bacteria. We have also developed methods to preserve

foods so they are safe to eat over longer periods of time. We have used different techniques, such as pasteurisation and sterilisation. We have pickling techniques, salting, drying, chilling, freezing and canning. Much of this knowledge that we have learnt was gained by our ancestors through trial and error, and they learnt how to manage the risks in their food through the food choices they made and the methods they used to prepare the food. We inherited this valuable knowledge as part of our food culture, and most of the time we do not question whether commonly eaten foods are safe.

Generally we are satisfied that the benefits of these foods outweigh the potential risks. I think it is worthwhile looking back to see that not all of the advancements and changes we have made have resulted in the cane toad epidemic in this country, and that many of the changes we have made have in fact been for the betterment of everybody, right through from the producer to the people who are consuming.

I want to finish up by touching on a report by Andrew Broad, a young man in regional Victoria, who had the opportunity to study the canola growing areas of Canada and to draw some comparisons. That trip was sponsored by the Grains Research and Development Corporation of Australia. His trip was over a number of months, and he was able to have an extensive look into the canola growing regions of Canada. I will quickly go through and mention some of the aspects that Andrew put in his report.

Australia's canola industry is in decline at the moment. There is no improvement in five-year average yields and the total area seeded has reduced by 44 per cent in five years. Canada, on the other hand, has grown genetically modified canola for 10 years; yields have increased by over 15 per cent in those 10 years; and the total area seeded now is over 5 million hectares annually. GM canola and non-GM canola receive the same price on the world market, so there is no concern that if we produce GM canola, it is going to be a lesser product.

In the last 10 years canola has produced tonnage of genetically modified canola equivalent to 50 years of Australian canola production. Canola oil is ideal for biodiesel, which should put long-term stability in product demand. There are yield advantages through hybrid varieties, particularly under moisture distress. It is going to be absolutely critical for Australia going forward that we are able to develop more drought-resistant strains of canola. There is also better fertiliser utilisation that GM varieties are in the developmental stage with as well.

The length of the growing season and moisture are the two most important components in maximising canola yields. Maintaining leaves on the stalk as the canola runs up to flowering is essential in achieving high yields. Test plots in the United Kingdom are now reaching a yield of 7 tonnes per hectare, which compares with an Australian average yield of 1.5 tonnes per hectare. In the future there is going to be a greater differentiation of specialty oil types within canola for specific oil applications. Both the Australian farmer and the public have been poorly informed by well-organised, anti-GM campaigners. The cost of the Roundup Ready technology for the farmer is significant and needs to be reduced in order to be consistent with Australia's low input-low output farming system. I think that is very important.

We also need to be aware that the declining popularity of canola as a profitable cash crop has resulted in Australia's canola average reducing by 44 per cent over the last five years, so we are now getting to an overall average yield, as I have said, of only 1.5 tonnes per hectare. In Canada the canola crop is a quick growing, short season crop with a cycle of only 45 days from seeding to flowering, compared with Australia's non-GM crop cycle of 130 days, and 110 days from seeding to harvest. So gene technology is an enormous benefit to the Canadians and an enormous disadvantage to Australians, who are trying to compete on an equal footing. The crop is ideally seeded in the first week of May and harvested in the middle of September. Canada's canola acreage is currently around 5 million hectares annually. In the last 10 years Canada has produced tonnage of genetically modified canola equivalent to 50 years of Australian production, as I have mentioned, and this makes Canada a credible case study. At present canola yields an average of 1.83 tonnes per hectare in Canada and the country has been successful in placing its product into all of the world markets. Major markets include the United States of America, Japan, the United Arab Emirates and China. There is huge acceptance of GM crops.

The need for increased cereal outputs for the production of biofuel also needs to be reiterated. The ethanol plants proposed for this state in Swan Hill and Charlton will require significant increases in grain to be able to deliver the amount of cereal crops that they will need. Whether those seed crops are corn or canola, there will need to be some significant increases in outputs. It is also worth acknowledging that the long-term viability of Australia's grain and oilseed industry needs to be assured. Despite being a significant player in the global commodity market, we are exposed to the competitive advantage that has been achieved in other parts of the world. The adoption and successful production and

marketing of GM canola has created huge benefits to the Canadian farmer and Canadian economy. Australian farmers have been forced to compete on the global market using inferior genetics without receiving any extra market access or price advantage for maintaining their non-GM stance.

There are clear signals that in the future breeding will assist with salt tolerance and drought tolerance, and Australia needs to encourage continued research specific to our needs. When there is no path to commercialisation, this development is being stifled. The world demand for energy is on the increase, and biodiesel uses up large quantities of vegetable oil. This makes the long-term market views of canola solid. The technology offered through GM should be seen as a tool to assist in grain and oilseed production and not as an answer to unsustainable farming systems.

It is worth noting that the adoption of GM technology within Australia will yield clear environmental benefits. Less toxic chemicals and reduced usage, less nitrogen fertiliser and less tillage and soil erosion should be seen as positive, and should be promoted. There is a need for the agricultural industry to work closer with environmental groups. It is important to be outcome focused and not hold onto preconceived ideas that all GM technology is bad. Most farmers have an affiliation with their land that goes back many generations, and they have been proven to be sound environmental managers.

I want to thank Andrew Broad for that report. He certainly spent his time in Canada well. It is a well balanced report, putting a lot of responsibility on the industry as it moves forward, but also pointing out that this industry needs the ability to operate on an equal footing with the producers it is competing against. In this instance it is the growers of genetically modified canola in Canada.

I reiterate that The Nationals have been supporting gene technology since the act was passed in 2001. We have been working to try and have the moratorium lifted. We are hoping that the independent panel that is looking into this issue, which will report to the government later this year, will in fact hand down that recommendation. We can then move forward to some field trials, and hopefully they will lead to an opportunity for us to enter into commercial releases at a future stage.

Mr ELASMAR (Northern Metropolitan) — I rise to support the Gene Technology Amendment Bill 2007. Nothing makes the general public sit up and take notice more than a perceived threat to their health or longevity. Understandably we all want to live forever, but no-one has found the fountain of youth yet — or if they have, no-one has told me about it. Notwithstanding that, the fact is that human beings today are living much longer than their ancestors. Our nutritional intake is in part responsible for our longevity, but it is also responsible for our chronic diseases. Fast food outlets have proliferated to the extent whereby nearly every suburb has them. What we have are shrinking resources of real food and water to feed the world's population. The Third World still cannot feed itself, and we in the Western world are fighting an epidemic of diabetes mainly due to obesity.

Ironically, horticultural scientists have been experimenting genetically with our fruit and vegetables for many years. During the late 1980s Victoria saw the establishment of a company called Daratech. This company was an offshoot of the then Department of Agriculture. Its purpose was to sell innovative horticultural inventions overseas. Experiments were being conducted on fruit and vegetables, which were being modified genetically by splitting the molecular DNA (deoxyribonucleic acid). Some of these experiments were successful and patents were subsequently sold, in the main to the United States of America.

Longevity or shelf life of the products was the main goal of the scientists. Portability or the ability to transport fruit and vegetables for long distances without their rotting or falling apart was also a major factor in the experimentation. Experiments on pathogens were also conducted, but their success was to a much less extent. Today we have the prospect of severe droughts and devastating bushfires destroying our crops. We must have the capability to produce food that will survive the passage of time and which current naturally grown produce does not. Part of our economy is predicated on the ability of our farmers to produce sustainable food stuffs that can be stored and transported throughout our state with minimal spoilage.

Having said that, the purpose of this bill is to regulate, monitor and identify any risks associated with gene food technology. The public's health and their desire to know what they are eating is paramount, and it is essential to their wellbeing, but essentially this is a housekeeping bill that is meant to streamline processes between the commonwealth government and the Victorian government, to provide certainty and stability to our farmers and produce growers. I commend this bill to the house.

Mrs KRONBERG (Eastern Metropolitan) — This bill sets out to improve the regulatory scheme for gene technology by making nationally agreed amendments

to the legislative framework of the scheme. Back in 2001 intergovernmental support for a national approach was ratified as the gene technology agreement. The act therefore was this government's response to the agreement, and this bill amends the Gene Technology Act 2001.

The main aim of the legislation is to protect both the health and safety of the population and the environment by identifying risks posed by gene technology, and then seeking to manage those risks by regulating certain dealings with genetically modified organisms (GMOs). A statutory review of the commonwealth Gene Technology Act 2000 has been undertaken and at the Gene Technology Ministerial Council in October 2006, there was broad agreement by state, territory and federal government ministers.

The main provisions of this bill include allowing for the use of an identified genetically modified organism to be deployed on a rapid-response basis to an emergency, without the need to go through a lengthy licence application process. Safety provisions of this newly defined type of response to an emergency include: the recognition that there is an emergency; that the identified genetically modified organism can help; and most importantly, that the genetically modified organism can be appropriately managed.

The use of such powers to be enshrined in this state legislation include: where there is a threat of disease; where there is threat from an animal or plant, such as a pest or alien invasive species; and where there is a threat from industrial spillage. It may become necessary to use genetically modified vaccine for both human and veterinary use.

Two relevant committees, the Gene Technology Ethics Committee and the Gene Technology Community Consultative Committee, would then be amalgamated. The result of this newly amalgamated entity will, not surprisingly, be called the Gene Technology Ethics and Community Consultative Committee. This new committee will be empowered to carry out the combined functions of both committees. Advice on risk, communication and community consultation in relation to intentional release license applications will be an additional feature of the amalgamated entity.

Other amendments in this bill include 'assessment of applications: limited and controlled release and consultation on significant risk'. This type of amendment alters the order of events of an initial licence application in that the regulator is no longer required to consider whether an application poses a significant risk to health and safety of people or the environment before developing a risk assessment plan.

There will also be a new category of licence for limited and controlled release applications. Conditions to be imposed on this type of licence include the principal purpose of the licence sought being to enable experiments. The release of the genetically modified organism under the licence would be limited and the controls would be in place to restrict the dissemination of the organism.

Other amendments include: provisions relating to variation, the power of the regulator to direct — this is an aim to reduce ambiguity in the existing act by clarifying that the regulator may direct a licence-holder or a person covered by a licence to comply with the act or regulations.

Inadvertent dealings are dealt with by allowing the regulator to grant a temporary permit to a person who finds himself or herself inadvertently dealing with an unlicensed genetically modified organism.

I support this bill because it is consistent with commonwealth legislation, and this will ensure a nationally consistent regulatory scheme for gene technology.

Mr O'DONOHUE (Eastern Victoria) — Thank you, President, for the opportunity to make a brief contribution on the Gene Technology Amendment Bill 2007. Let me say at the start that although I will support the bill, as will other members of the opposition, we will be opposing the amendments moved by Mr Barber. I would like to make a couple of comments on genetically modified (GM) foods in the context of this bill. The purpose of the bill is to improve the operation of the regulatory scheme for gene technology by making nationally agreed amendments to the legislative framework as set out in the Gene Technology Act 2001, as other speakers have outlined. A national approach to this is most important given that genetically modified food and other organisms do not recognise state boundaries and borders. It is good to see that the different jurisdictions have been able to cooperate in this fashion.

I will speak about genetically modified foods for just a couple of minutes. There is a lot scaremongering going around the community about genetically modified foods concerning what evils they may inflict upon the community and what impact they may have on our health. But if we think about it, what are genetically modified foods? Ever since wheat and other crops were first cultivated by humans many years ago, they have

been adapted and refined over the generations to, firstly, increase the productivity of particular crops, and, secondly, to suit the climatic conditions in which crops are grown. As other speakers have identified, we now have crops such as wheat or canola that can be grown in the cold of Canada or in the heat of Western Australia. That has not happened just because of chance; it has happened because those crops have been genetically modified over time to adapt to climatic conditions.

As science has progressed, our ability to manipulate those crops and change them for the better has increased. What GM food really represents is just the continuum of what has been happening for hundreds of generations. As Mr Drum pointed out, Australia has been left behind when you consider the GM foods that are grown in Canada, the United States of America and elsewhere. The productivity those regions are achieving with their crops means that our farmers are having more and more trouble competing. As the science behind this has been tested more and more the potential health risks have been found to be of less and less concern.

A part of this debate that has not been raised today and does not get mentioned much in the general debate on this is the world's population. We can talk about reducing greenhouse gas emissions and their effect on the environment and other issues, but the world's population does not get mentioned much in that debate. It took until approximately 1830 before the world had a billion people. In the 1950s the world's population hit approximately 3 billion. In the last 50 years or so we have gone to 6 billion. At the current rate of population growth the world's population will reach 9 billion or 10 billion in a very short period of time. We are adding approximately 100 million a year to the world's population. Those people need to be fed. Unless we can continue to gain efficiencies from our crops, unless we can produce more food from the same amount of land, either we will not be able to feed those people or we will have to clear more and more forests for the production of food. That is something that needs to be considered in this debate. We in the Western developed world, where we have the scientific know-how and capability to research the development of more efficient foods, have a responsibility to lead the world on this so that countries with rapidly growing populations — and those countries, by and large, are in the developing world — have the tools and the ability to feed their people going forward. It is a great shame that that component is so often left out of the debate.

Mr Drum touched on the issue of biofuels. Biofuels represent a great potential alternative source of energy for fuelling vehicles as an oil replacement — and that is to be commended. But if we are to get the maximum potential from that, the crops that are used to produce those biofuels need to be able to produce the most energy per hectare or per acre, per piece of land. The best way for that to happen is for us to continue to refine and develop the crops we grow, to continue to find changes in the crops so that they are most efficient, and to continue to develop the crops so they can best grow in the climatic conditions where they are grown. If climate change is happening, we need to be able to adapt to the different climate. If our cropping country does not receive as much rain as it once did, or if it is hotter or colder or other climatic conditions change, we will have the crops that are able to grow in those different climatic conditions. In my view the best way to do that is through genetically modifying the respective crops so that they can grow successfully in those different conditions. With those few words, I commend the bill to the house and note we will oppose the amendment.

Mr VOGELS (Western Victoria) — I would like to make a few comments on the Gene Technology Amendment Bill 2007. As we have heard, the purpose of the bill is to improve the operation of the regulatory scheme for gene technology by making nationally agreed amendments to the legislative framework under the scheme set out in the Gene Technology Act 2001. Under this agreement all states and territories, together with the commonwealth, have committed to maintaining corresponding legislation. For a country like Australia it makes very good sense to go down this track. After all, we are one nation with only lines in the dirt to mark state boundaries. Tasmania could be the exception because Bass Strait would be difficult for many organisms to cross, but that is not so in the rest of Australia.

This bill is very much intended to protect the health and safety of people and the environment by identifying risks posed by gene technology. If risks are identified, we can manage those risks by regulating certain dealings with genetically modified organisms. I would recommend that all those people who have concerns regarding GMOs visit the website of the Office of the Gene Technology Regulator. Biotechnology is a broad term that covers the practical use of biological systems to produce goods and services. It encompasses the transformation of materials by organisms — for example, by fermentation and methods of propagation such as plant cloning and grafting — and it may involve genetic alteration through methods such as selective breeding. There is nothing very new here; these practices have been going on for hundreds of years, especially in the agricultural industry, mainly without any regulation. We now have the genetic modification of crops in relation to resistance to pests

and diseases, herbicide tolerance, slowing the ripening of fruit and altering the timing and duration of flower production — and the list goes on to include medicines, particularly therapeutic goods and products such as insulin.

I want to concentrate for a couple of minutes on the agriculture sector and the debate on GM canola that is raging at moment. Following six years of field trials two companies, Bayer CropScience and Monsanto Australia, applied to the gene technology regulator for the commercial release of GM canola for use in the Australian cropping system. That was in June 2002. The regulator concluded that during the assessment period GM canola was as safe to human health and the environment as non-GM canola. The ministerial council agreed in 2003 to issue a policy principle to recognise the rights of state and territory governments to designate zones for GM or non-GM crops for marketing purposes.

As a result, all states and territories in Australia that grow canola have imposed bans on the commercial production of GM canola. Victoria imposed bans on further trials of GM canola even though trials have continued in other states. This was mainly due to milk manufacturers opposing GM canola being fed to dairy cows and the possibility of dairy products being seen by the consumer as GM tainted.

At its annual general conference a couple of months ago the United Dairyfarmers of Victoria voted overwhelmingly in favour of the commercial production of GM canola in Victoria. Canola is now the third most important winter grain crop grown in Australia, especially because of its beneficial effect on wheat yields as part of a rotation system in cropping belts. However, due to the fact that Victorian canola growers are unable to take advantage of the significant economic and environmental advantages from the introduction of new GM herbicide-tolerant canola varieties, they are increasingly being left behind when competing against other canola producers worldwide.

There are science-related concerns behind GM canola. Pollination is a concern, because there is a potential for canola to cross-pollinate with other plants to create herbicide-tolerant weeds or increase herbicide resistance. Many questions are asked about this. Following extensive monitoring, the Bureau of Rural Sciences has concluded that canola pollen can travel considerable distances, but the amount of gene flow is minimal; in fact it is 100 fold lower than the international standard of 1 per cent.

There is also the matter of herbicide tolerance. The growing of GM canola — and similar varieties of those approved by the Australian gene regulator, Sue Meek — grown commercially in Canada for over 10 years shows improved yields, better returns, easier and better weed control, cost reductions and an easier clean-up of paddocks.

There is also the issue of food and feed. The presence of GM in our food supply chain has stimulated concern about what these foods are, whether they are safe and how modern technology should be used. FSANZ (Food Standards Australia New Zealand) assesses the safety of all foods. In December 2001 Australia adopted new labelling bans for food produced using gene technology, ensuring that all GM crops, animals and micro-organisms are assessed and processed by FSANZ as safe before they can be used for food or for food processing.

Food or ingredients labelled ‘genetically modified’ contain either new genetic material or protein as a result of genetic modification. Oil from canola would not be labelled, as refined oils contain no genetic material or DNA and are therefore the same as oil from non-GM canola crops. Milk produced by dairy cows also contains no genetic material or DNA when fed GM grains.

Food products from 6 GM commodities are already in Australian supermarkets; they are soya beans, canola, corn, potatoes, sugar beet and cotton. Only genetically modified cotton is grown domestically in Australia. It was first planted in Australia in 1996. GM cotton is grown on 90 per cent of cotton farms, and oil derived from cotton seeds makes up approximately one-third of vegetable oil being consumed in Australia. Before genetically modified cotton was grown in Australia, farmers sprayed their crops with chemicals every 14 days. Cotton crops are now sprayed only once prior to harvesting. This means that crop spraying has been reduced by 80 per cent, which greatly reduces threats to the environment and food safety. Victoria is currently trialling the growing of genetically modified wheat in the Mallee region.

The Gene Technology Act 2001, adopted by the Victorian Parliament on October 2001, is the Victorian component of a national system regulating all activities involving genetically modified organisms. State legislation ensures that all dealings with technology are covered in the one national scheme. The national approach is to rigorously and scientifically assess risks associated with the use of gene technology.

Each state jurisdiction has a role to play in the community debate and in investigating and researching the effects of genetically modified crops, but this is not an issue that can be effectively managed unilaterally at a state level. The gene technology regulator needs to conduct an Australia-wide assessment of gene technology but not on the basis of individual state regulation, because grain, cereals and pulses cross state boundaries on a daily basis. I commend the bill to the house.

Motion agreed to.

Read second time.

Committed.

Committee

Clauses 1 to 12 agreed to.

Clause 13

Mr BARBER (Northern Metropolitan) — I move:

Clause 13, page 9, lines 9 to 15, omit all words and expressions on these lines and insert —

"(2) The Minister may make an emergency dealing determination only if —

(a) the Minister is satisfied that there is a medical emergency and that the dealings proposed to be specified in the emergency dealing determination would, or would be likely to, adequately address the medical emergency; and

(b) the Minister administering section 72B of the Commonwealth Act has made, or is proposing to make, a corresponding Commonwealth emergency dealing determination.".

The amendment has been circulated previously. The purpose of the amendment is to limit the grounds on which the relevant ministers, both state and federal, can make emergency-dealing determinations in relation to only those matters that relate to human medical emergencies.

Mr JENNINGS (Minister for Environment and Climate Change) — I understand that Mr Barber and the party that he represents have a concern about the implementation of this bill. His party has expressed that in the federal jurisdiction and Mr Barber has expressed it again in the state jurisdiction. I do know that the subject matter of this amendment was moved unsuccessfully in the federal Parliament and was subject to significant consideration by a Senate committee, which had a look at the legislation and its application. That committee did not accept in its consideration that the amendment would assist in the appropriate implementation of the scope of the federal piece of legislation. This Victorian legislation mirrors the commonwealth legislation, and the Victorian government's intention is not to limit the scope of the application of this bill but to mirror the implementation of the commonwealth legislation. On that basis, the government will be opposing the amendment.

Mr BARBER (Northern Metropolitan) — I have a question for the minister, and it relates to a letter from the Department of Human Services to a constituent, which I mentioned in earlier debate. The letters states:

However, the EDD —

emergency-dealing determination —

does not permit the regulator to dispense with a full assessment of the GMO.

A GMO is a genetically modified organism. Can the minister tell me who the regulator is who is being referred to in that letter? Is it the federal regulator or is it the state regulator?

Mr JENNINGS (Minister for Environment and Climate Change) — My instincts would have told me, but I have also been advised, that it is the federal regulator.

Mr BARBER (Northern Metropolitan) — Does the government then intend to rely on the information provided by the federal regulator only in the case of making an EDD, or is it still the government's intention to do its own assessment?

Mr JENNINGS (Minister for Environment and Climate Change) — As Mr Barber and the committee would appreciate, this is a regime that operates a national scheme, and therefore the decision making and responsibility would fall to the commonwealth regulator. However, as the state does have an interest — which is indicated in a variety of ways, including the introduction of this legislation and also our concern about public health matters in particular and our concern to make sure there is appropriate scrutiny applied within Victoria — we envisage that there would be a collaborative process with consideration being brought to bear by the relevant department. Presumably in most instances it would be the health department that would take the responsibility for coordinating government agencies in Victoria to respond to such issues, but you could imagine that there might be environmental considerations or primary industry considerations and that a variety of other aspects of the public administration of Victoria would

have a view and some scientific discipline and rigour that could be brought to bear. It would be our intention to make sure that, within the protocols of the decision making by the national regulator, Victoria would be an active participant in whatever relevant implications this matter might have within our jurisdiction with whatever expertise we may bring to bear.

Mr BARBER (Northern Metropolitan) — I have one final question. The letter also states:

> It is intended that intensive resources would be allocated in an emergency to enable an expedited response and the assessment conducted for an EDD would be the same as for any other GMO, not of a lesser scientific standard.

If the minister is saying that the state government's resources will be involved in making the assessment, can he describe briefly what those intensive resources are that will be brought to bear and how and under what guidelines it would be ensured that they would be not of a lesser scientific standard if, say, on the passage of this bill this were to be triggered immediately?

Mr JENNINGS (Minister for Environment and Climate Change) — In fact the extraordinary coincidence of Mr Barber's question is that when I briefly came into the chamber about an hour ago, because I thought the committee stage was coming on, this is the very point he was making in his contribution to the second-reading debate. I just reflect on that remarkable coincidence, because I was only in the chamber for a second, so I knew this question was coming. That does not mean that within the ensuing hour I have spent a lot of time on the answer. But beyond what my instincts tell me, I did seek advice from the department yesterday about the way in which the regulator and indeed the state bureaucracy would ensure that there was a mobilisation of effort to provide for the appropriate scrutiny of the emergency situations.

The way this was described to me by officers was that their understanding was that under the normal regime the same effort that is normally concentrated within the approval processes, whether it be the 170 days or 255 days which are embedded within this piece of legislation, the equivalent of that effort would be mobilised across the regulator for an intensive appraisal of the circumstances, the considerations and the application of the GMO's introduction. There would be an organising principle within the regulator that those resources would be mobilised almost exclusively to deal with the matter at hand. In relation to the appropriate regulatory arm of the Victorian government in terms of the people within the Department of Human Services, they too would mobilise their effort, and what would under normal circumstances be devoted to a broad range of activity over a longer time frame would be brought to bear. That is the intention and that is the rigour which underpins the state's complying with the national regulation.

Mr D. DAVIS (Southern Metropolitan) — I want to make just a couple of very brief comments about the proposed amendment Mr Barber has put forward. Whilst I understand the sentiment and the logic of his amendment, on this occasion the Liberal Party cannot support it. There are a number of reasons for that, and I think it is important to put them on the record.

In the first instance I accept some of the minister's comments about the efforts that the department would go to in particular examples, some of which he has outlined. Secondly, I think that this amendment is too narrow and would count out certain issues that may occur with industrial spills and indeed perhaps potentially count out the use of GM (genetically modified) organisms in certain medical situations. Thirdly, I think it is part of a national framework, and I think we need to stay close to that national framework. For that reason on this occasion we will vote against the amendment.

Mr JENNINGS (Minister for Environment and Climate Change) — I thank Mr Davis for his contribution. In fact he did go into an area that I did not refer to, apart from our complying with national considerations, which is that we are of the view that the amendment may limit some of the applications or potential applications — for instance, environmental applications or conditions that may appear within animals and fauna that may be assisted by interventions through these means — and that is why we would not want to limit it to human medical conditions.

Committee divided on amendment:

Ayes, 4

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

Noes, 33

Atkinson, Mr	Madden, Mr
Broad, Ms	Mikakos, Ms
Dalla-Riva, Mr	O'Donohue, Mr
Darveniza, Ms	Pakula, Mr
Davis, Mr D.	Peulich, Mrs
Davis, Mr P.	Pulford, Ms
Drum, Mr	Rich-Phillips, Mr
Eideh, Mr	Scheffer, Mr
Elasmar, Mr	Smith, Mr
Finn, Mr	Somyurek, Mr
Guy, Mr	Tee, Mr
Hall, Mr (*Teller*)	Theophanous, Mr
Jennings, Mr	Thornley, Mr
Koch, Mr	Tierney, Ms (*Teller*)

Kronberg, Mrs	Viney, Mr
Leane, Mr	Vogels, Mr
Lovell, Ms	

Amendment negatived.

Clause agreed to; clauses 14 to 60 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

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

That the bill be now read a third time.

In so doing, I thank those members who contributed to the second-reading debate and debate in the committee stage on the bill.

Motion agreed to.

Read third time.

Sitting suspended 1.04 p.m. until 2.08 p.m.

ABSENCE OF MINISTER

Mr JENNINGS (Minister for Environment and Climate Change) — The Leader of the Government has been called away on urgent family business. He apologises to the house for any discourtesy caused during the course of question time.

QUESTIONS WITHOUT NOTICE

Growth Areas Authority: achievements

Mr GUY (Northern Metropolitan) — My question is to the Minister for Planning. Noting that the Growth Areas Authority has been around for precisely one year, can the minister now inform the house of its top five achievements?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Guy's question, because for a number of weeks he has been notably absent in terms of the questions asked in this chamber by members of the opposition. I am pleased to note that his party has now given him that opportunity, and he has finally been able to ask a question. This is not dissimilar to the question that was asked some months ago in relation to the achievements of the Growth Areas Authority. My answer today is very similar to the answer that I gave some four or five months ago, but I am happy to talk in greater detail about it.

I note that Mr Guy was at the Housing Industry Association outlook breakfast, which is not a government forum but an industry forum. The chief economist of the HIA, or the economist who does the reporting on the outlook, complimented Victoria on its land strategy, particularly for growth areas. He indicated there the great achievement of the Growth Areas Authority — that is, that the value of the land component of a house and land package in Melbourne is significantly lower than that in any of the mainland capital cities, I think other than Adelaide.

The land value of a house and land package stands at roughly 40 per cent of the total value, whereas in Brisbane or Sydney the land component of house and land packages is in the order of 65 per cent. The great achievement of the Growth Areas Authority, in conjunction with local government and the state government, is that it is able to manage the bringing of land onto the market in a way that not only makes sure that it is sufficient in terms of current and future demand but also that the price of the land component of a house and land package is probably better than in any capital city other than Adelaide.

Not only is that an enormous compliment to what the authority does and to the policies of the Brumby government, but it also has to be considered in the light of the fact that in the order of 1000 people a week are coming to Melbourne to live. Not only are they are coming here and being provided with housing and good house and land packages, but one of the reasons they want to come here in those numbers is because we offer that. Not only are we offering it, we are allowing it and making sure it happens, not only now but into the future. I know Mr Guy has all sorts of theories about urban growth boundaries and how they should be deconstructed and removed — —

Mr Guy — On a point of order, President, the minister has now been answering the question for 3½ minutes. I asked a very specific question about the top five achievements of the Growth Areas Authority, and I think the minister is yet to list one.

The PRESIDENT — Order! As Mr Guy well knows, the time constraints on answers to questions has been removed, so we could end up being here a lot longer. Whilst the minister is giving a very expansive answer to Mr Guy's question, he has unlimited time to answer it fully or in any way he sees fit. Mr Guy may not like the answer, but I see that he has a few opportunities to get to his point at some stage today. I

think the minister's answer is in order, and therefore Mr Guy's point of order is rejected.

Hon. J. M. MADDEN — I will make the answer quite plain and simple: the record of the Growth Areas Authority is that in this city we have in a sense the most affordable house and land packages of any capital city across this country. That record stands for itself. I suggest opposition members have a look at those details and take notice of the report on this matter of the Housing Industry Association. If they do that, they will know for sure that that is not only what we are saying but what industry is saying — that when it comes to making Victoria a great place to live, work and raise a family, we are doing it.

Supplementary question

Mr GUY (Northern Metropolitan) — Given that the Growth Areas Authority lists only four items as its latest news, which are, one, being formed, two, being given $20 million by the government, three, getting a new board, and four, getting a new chief executive officer, I ask: if the GAA itself admits to having done nothing and the minister has no idea what it does, why does the government persist with this $20 million waste of taxpayers money?

Hon. J. M. MADDEN (Minister for Planning) — Given that he is a relatively young member in the Parliament, I sometimes get disappointed by the negativity of Mr Guy when it comes to all things planning. I suggest that Mr Guy and the opposition have a great deal to be optimistic about, not necessarily about their own predicament but about this state. As I said in my substantive answer, and I will continue to say it, this state has the most affordable house and land packages in Australia. Can I just reinforce to Mr Guy that some of these most affordable house and land packages are in his electorate. This is not coming from me, this is coming from the *Australian* newspaper.

On Saturday, in prime space, the *Australian* carried an article headed 'Loan capacity the key to affordability'. This article by Terry Ryder in the real estate hotspotting section talks about house and land packages in places like Mill Park, Thomastown, Epping and those sorts of areas. It says — this is not us saying it but the author of the article — that the house and land packages are some of the most affordable in the country and that they are well serviced by infrastructure and the industrial activity that is taking place out there. This is on-the-ground, grassroots stuff in Mr Guy's own electorate. What I say to him is that he should go out to South Morang, Epping and those sorts of areas to see why those house and land packages are better than anywhere else in the country. Why are they better? It is because of the involvement of this government and the Growth Areas Authority. Why are more than a thousand people a week coming to Melbourne? It is because of the work that we are doing and the work that the Growth Areas Authority is doing, which makes Victoria not only affordable but a great place to live, work and raise a family.

Building industry: performance

Mr TEE (Eastern Metropolitan) — My question is also to the Minister for Planning. The United States of America has this week slashed its interest rates by half a per cent to shield its economy from a housing slump. I ask the minister to provide an update on building activity in Victoria and to assure the house that the Victorian economy is not in a housing slump.

Hon. J. M. MADDEN (Minister for Planning) — I think this follows on from my answer to the last question. Obviously housing is developing into a bit of a theme today. No doubt what we are seeing in Australia at the moment, and it is a hot topic, is mounting evidence that families are under what some commentators refer to as housing stress. We have to be careful about using terms like 'housing affordability' and 'housing stress' because they are fairly generic terms. They can mean a lot of things to a lot of different people, and people with different vested interests can use them in different ways. What we do need to be conscious of is that there is an enormous number of people out there currently who are actually suffering mortgage stress. There is growing speculation that this mortgage stress may get worse, particularly with the likelihood of yet another Howard government interest rate rise in the coming months.

The collapse of the sub-prime mortgage market in the USA and the speculation over further interest rate rises in this country have the potential to deliver a great deal of uncertainty in our housing and building sectors. What we need to do is be conscious of those international factors, but we also need to recognise that that mortgage stress is predominantly caused by those rate hikes of the Howard government. Just to show how that stress affects families, the five interest rate rises over recent years have seen $86 000 added to the average median mortgage over the next 25 years.

Hon. T. C. Theophanous — How much?

Hon. J. M. MADDEN — It is in the order of $86 000. That is the sort of mortgage stress that people out there in the community are under. But in Victoria this government has created a robust economy. Two

weeks ago the AAA credit rating was reaffirmed. He is not here today, but I commend the Treasurer on that achievement. These are part of the strong fundamentals that have underpinned the stellar performance of the building industry — I know you would be particularly interested in this, President — and particularly in the housing industry as part of the building industry.

I am delighted to inform the house today that the latest building permit activity statistics, which are for July this year, recorded the highest monthly figure on record, with permit figures pushing the $2 billion mark. At $1.9 billion the total value of building permits in July 2007 is an extraordinary 39.7 per cent increase on the same month last year. Increased building activity within metropolitan Melbourne contributed to this outstanding July record, making up more than 80 per cent of permits. Regional Victoria also performed exceptionally well, with a 14 per cent increase on the same time last year. In fact building projects in regional Victoria came in as having the fourth highest value in this state. This is due particularly to the developments that have occurred in the likes of Ballarat, with the hospital redevelopment valued at $36 million, which have contributed significantly in those locations.

Across the state the domestic building sector has contributed nearly half of the value of those permits. It is testimony to the confidence in this economy and particularly in the housing industry in Victoria. These record figures are great news for Victorians and for the building industry in particular. They are a fantastic start to the financial year. They indicate that housing and construction, not only the work that is taking place but the comparative affordability of housing compared with the rest of the country, as was mentioned previously, makes the Victorian housing industry a great attribute of this state and makes the state a better place to live, work and raise a family.

Water: desalination plant

Mr GUY (Northern Metropolitan) — My question is to the Minister for Planning. Noting the Premier's statement yesterday that the decision on an environment effects statement (EES) for the new desalination plant will be made by the Minister for Planning, I ask the minister: will an EES be required for this project?

Honourable members interjecting.

The PRESIDENT — Order! I am assuming the minister heard that question, because I did not.

Hon. J. M. MADDEN (Minister for Planning) — I think I got the gist of it. I welcome the member's question. I know there is an enormous amount of interest in relation to water issues and, whilst they are not in my domain, the discussion over recent days not only in this chamber but right across the community, and as reported in the media today, has been around water security.

As I have mentioned in this place before, projects come to me when they are referred to me and when people make submissions for those projects. That happens within government too. I become the authority for projects within government from time to time, depending on the scale and magnitude of those projects. I would expect that that project will come to me as the appropriate planning authority. It has not been referred to me yet. When it is referred to me, I will take advice from my department in relation to any additional information that may or may not be required, and if that warrants further investigation into any of those environmental issues, I would expect that to be provided to me.

However, I also suspect that in large-scale projects where there are considerable issues in relation to what may or may not be the environmental effects, a significant amount of that work is provided to me and is provided to the public, to local authorities and to the community in and around or at about the same time as it may be provided to me, so that there can be a transparent discussion on these matters and also so that the public can be well informed.

I note yesterday that the Premier opened the shopfront down in Wonthaggi in relation to that project. This is not new in the sense that often developers, when they are seeking to inform the community and also get a sense of where the interests lie in the community in relation to any of these matters, open a shopfront in relation to a large-scale project. As recently as some months ago, we, as a government, opened a shopfront for the activities taking place in Footscray, to inform the local traders and also provide a point of contact and a customer focus service arrangement in relation to any issues.

I expect that when that project comes to me, when it is referred to me, I will be able to make the appropriate considerations in relation to any additional information that may or may not be required. But I also look forward to the community being well informed by those who will deliver the project — for them to inform the community of the issues that they may want to raise with the project provider.

Supplementary question

Mr GUY (Northern Metropolitan) — I ask: how can Victorians have faith in the integrity and probity of planning processes when the government has to date announced funding, chosen the site, opened an office, launched taxpayer-funded television ads and, most concerningly, admitted that there are environmental concerns with the location, all before it has decided whether or not there will be an environment effects statement?

Hon. J. M. MADDEN (Minister for Planning) — I welcome the member's question again. I understand that the Premier yesterday gave guarantees that any information that is collected in relation to these matters will be provided to the community so that there can be an open discussion. I am very pleased that the Premier has informed the community about his expectations on how information will be provided to the community.

It is interesting to hear Mr Guy's proposition in relation to what environmental surveys may or may not take place and what information may or may not be provided. It will be referred to me, I suspect, because I am the planning minister, and I will make determinations accordingly, but the opposition cannot have it both ways. On a lot of planning matters you cannot endorse a proposal and you cannot object to the proposal in the same sentence; you cannot do both.

What we have here is a position in relation to a project provided by the opposition. It is an untenable position. It cannot have it both ways. The opposition cannot say, 'Build the project and build it as soon as possible', on one hand, and also say, 'Do not build the project at all because it upsets the locals'. It cannot have it both ways. Is the opposition for the project or is it against the project?

I put it to opposition members that I will be informed and I will make my decision accordingly, but they cannot come in here and have it both ways. Are they for a project? Are they against it? Too often, they are both. Too often they want to be all things to all people. That undermines the good faith of the community, because they do not know whether the opposition is Arthur or Martha, and they do not know whether their local community representatives are supportive or not.

What I will guarantee here is that when it comes to me, I will consider it as the relevant authority. I will consider all the information provided to me, and I will make the decisions accordingly. But I am not pre-empting any decisions, as opposed to opposition members, who want it both ways — for and against, either/or, tomaytoes/tomatoes, potatoes/potahtoes. They want us to call the whole thing off. We know that at the end of the day they have to be for it or against it, and they do not know whether they are one or the other.

The PRESIDENT — Order! I do not know about the rest of the chamber, but quite frankly, I have had enough. Overtly criticising the opposition is contrary to standing orders. The minister knows that. I gave the minister a great deal of licence, and I remind him and any other ministers who may be asked questions today of that fact.

Planning: rural zones

Mr SCHEFFER (Eastern Victoria) — My question is also to the Minister for Planning. I ask the minister to advise the house what action the Brumby government has taken to assist councils, such as the South Gippsland Shire Council, that have been recently been part of the rural zone translations?

Hon. J. M. MADDEN (Minister for Planning) — I thank Mr Scheffer very much for his question. I welcome his interest in this matter. I know there are other members of the chamber who are particularly interested in this matter as well, and I understand they have been eager to ask similar questions in recent times. A number of members of this chamber have been interested, particularly members from the region. I want to acknowledge Mr Hall's particular interest and that of Mr Scheffer; they have been particularly interested in many of these matters.

The rural zone translations that have occurred recently have obviously been in the gestation period for a long time. We have seen the implementation of those in a number of councils. In the order of 90 per cent of councils translated those voluntarily. It was initially discussed in, I think, 2001, and there has been an ongoing process since 2001 to see those rural zone translations into farming zones occur so that we can, in a sense, reinforce and enhance not only the right to farm but also to look after and maintain the agricultural land that is much valued and valuable to the broader community, as well as to the land-holders, so it is used accordingly.

I know that some councils have been doing work, some faster than others, in relation to this and, the South Gippsland shire in particular, along with other municipalities, has been working in this area. I know that Mr Hall raised matters in this chamber in relation to the South Gippsland shire and brought issues to our attention, and I would like to thank him and acknowledge that. I have recently met with the South

Gippsland shire. I had discussions with the mayor and the councillors on 28 August and discussed in some detail those rural zone translations. I am hoping those discussions will assist the shire in implementing the new zones.

In order to assist councils that have had to make that translation and need to give clarity around some aspects of that to their local communities, I am delighted to announce today that $500 000 will be provided through a rural land use planning program to assist eligible councils to do this work. That is not only strategic work but also implementation work to give clarity to some of those areas where currently there is perhaps not the clarity that is needed to help landowners or land-holders. Those rural and regional councils are invited to apply for up to $50 000 in funding per project.

The program will provide funding through two categories: firstly, strategic planning and strategy development to inform rural land use planning; and secondly, implementation of planning strategy and policy into planning schemes. Councils that are capable of and are able to demonstrate early and practical implementation will be given preference. I would also encourage councils to work in collaboration with other councils, because many of these councils share similar themes. Some have unique issues, but many have similar themes and the critical mass will also assist them. I would be looking towards those councils to provide some funding of their own for their projects so that they also have ownership of the issue. Those funding applications will open on 25 September and will close on 20 December.

We would like to think this funding will assist councils to free up some of their own resources, reduce delays and the costs to farmers and the development industry in relation to clarifying the land use in these areas. It is particularly important that we maintain confidence in the planning system, that we give clarity in those rural communities and that we make Victoria a great place to live, work and raise a family.

Water: desalination plant

Mr GUY (Northern Metropolitan) — Noting the minister's answer to my previous question, in which he effectively gave the green light to a desalination plant without an environment effects statement, I ask: has the minister sought a guarantee that the site selected for the plant has no outstanding Aboriginal heritage or native vegetation concerns and is consistent with the government's own coastal heritage strategy?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Guy's question. I appreciate too that he acknowledges the policy issues that we have introduced and implemented through the planning system, like the coastal spaces policy and Aboriginal heritage. I am pleased that Mr Guy acknowledges those as major considerations in terms of any planning application or planning process. It is heartening to know that the opposition acknowledge that many of our policies have been successful and need to be noted in relation to any proposal or project.

In my previous answer I mentioned South Gippsland. Recently, I think on 28 August, I was down in South Gippsland and in the Bass Coast area. I met with the Bass Coast shire, I spoke with the councillors, I had a look at the desalination plant site, or the likely vicinity of the site, and I noted and informed myself of the general lie of the land and the environment in which that site may be located, or will be located — we are still waiting for a referral.

Honourable members interjecting.

Hon. J. M. MADDEN — I am waiting for the referral to work out exactly where on the site it will be located. It is not as if there is a sign there to say, 'X marks the spot'. I toured the area and also met with local councillors to hear from them in relation to many of their concerns. Many of the issues that they expressed related to the environmental effects and the way in which those environmental effects would be brought to the community — whether there would be an environment effects statement, the method by which that would be conveyed and discussed, and also the methodology of how the government intends to deal with this through an authority.

It was a very worthwhile discussion, and I was able to get a good sense from members of that community about some of their own water issues: the need from their point of view for a desalination plant, their interest in why a desalination plant would be in that location and what other locations may have been considered by government. That was a very worthwhile conversation for me, particularly around those environmental issues.

As I said, I look forward to the project being referred to me. I look forward to being informed through that process, I look forward to having the department provide advice and I look forward to any measures that may be required in order that the appropriate process is conducted to make sure that everybody can have full confidence in this project, its delivery, its management, its location and the impacts that may or may not be brought about as a result of a project of this nature.

Supplementary question

Mr GUY (Northern Metropolitan) — I just ask the minister in relation to his answer, what is the purpose of an environment effects statement when the government has already decided to proceed with the project on its designated site?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Guy's question, but what Mr Guy fails to understand in relation to the panel process or environmental effects or many of the ways in which information is collated or considered is that it is used to give clarity to how a project should or should not be brought about, how it should or should not be managed or many of those issues.

Mr Guy's seems to be asking whether the environment effects statement (EES) is about whether the project does or does not go ahead. That is a fairly simplistic view of what an environment effects statement does. Basically most panel reports and most environment effects statements actually outline many of the considerations that need to be either balanced, worked through or resolved in relation to any project. Often an EES is a mechanism for informing the community and authorities about what are the major issues, making them transparent so that the public can be informed and have discussion around these matters and the respective authorities can consider them. An environment effects statement does not say yes or no. An environment effects statement explores all the issues and relates to them.

Mr Guy — But it sometimes can! Look at Nowingi. Why have you got a shopfront?

Hon. J. M. MADDEN — I take up the interjection from Mr Guy about Nowingi. Even in relation to Nowingi, Mr Guy has got this wrong. Nowingi went through two processes, and the reason it was not supported was not on its environmental effects. It was supported under the environmental effects, but it was not supported under the planning considerations. There were two aspects, but the EES — —

Mr Guy interjected.

Hon. J. M. MADDEN — I point this out for Mr Guy: the EES for Nowingi said it could go ahead but with some consideration. Then on the planning issues, which were considered also, it was said that on a planning basis this was not the right place. It was not on the environmental basis.

What I say is that Mr Guy's view of an environment effects statement is far too simplistic and does not display an understanding that the substantial nature of any environment effects statement is that it explores and explains all the technical issues before they are provided to the community and the respective authorities. I look forward to a full and thorough investigation of those environmental issues. I look forward to them being provided to me, and I look forward to decisions being made fully informed and also having that information conveyed to the community.

Climate change: business investment

Ms TIERNEY (Western Victoria) — My question is to the Minister for Environment and Climate Change. I refer the minister to the recently released survey of Australian businesses by the Australian Industry Group in conjunction with Sustainability Victoria, and I ask: can the minister inform the house of the study's findings and how Victoria compares to other jurisdictions on engaging with the business community on climate change?

Mr JENNINGS (Minister for Environment and Climate Change) — As I look around the chamber I think I am in the company of people who have been on a very long morning shift waiting for the whistle to blow so that the night shift can come in. I detect a distinct lack of energy and enthusiasm in the chamber, and I am actually hoping that the chamber's spirits will rise, just as Victoria's spirits will rise, in relation to the important report about which I am about to provide some information to the house. It is a very important piece of work undertaken by the Australian Industry Group (AIG), with the support of Sustainability Victoria, which did an extensive survey, a one-off — —

Mr Hall interjected.

Mr JENNINGS — I see Mr Hall is awake. I did not think he had been awake for the last 3 hours prior to question time, but it is good to see that he is up.

Some 800 companies across Australia were part of the AIG survey, and they are very significant companies because they employ 53 600 Australians in their enterprises and are responsible for $41 billion worth of economic activity. The extraordinarily good news that was embedded within the survey result was that 78 per cent of these corporate citizens in Australian, members of AIG, recognised the appropriateness of investing in and developing business practices that are consistent with their greenhouse gas and climate change obligations.

Mrs Peulich — Because it saves them money!

Mr JENNINGS — It is very wise of Mrs Peulich to stay up for this night shift so that we can actually make sure that members of this chamber recognise and support industry, because they realise that they can be very good environmental and corporate citizens and can also be very wise in seeing business opportunities. Indeed 56 per cent of companies in this survey immediately identified climate change as providing their business with an opportunity for new markets, new processes and new activity that would add to the wherewithal of their economic viability, although only 10 per cent of these companies, according to the survey, believe they are sufficiently well armed with information about the dimensions of climate change and what that might mean in terms of the regulatory regime that might apply across the nation.

Of that measure, industry is actually saying, 'Come on, federal government, you need to step up to the plate in relation to a national emissions trading scheme; you need to be able to say what the cost of carbon will be within that scheme and what the caps will be in relation to that scheme'. In fact time and again during the course of this year Australian companies — in fact sometimes those that may be perceived as being the most recalcitrant elements of Australian industry — are coming up and saying to the federal government, 'We need regulation, we need legislation, we need certainty'.

The Australian Industry Greenhouse Network, which is made up of some of our largest corporations — it includes companies that may be seen as some of our largest polluters, ranging from Rio Tinto and BHP to others — has said consistently, not just to me and not just to the federal government but has been reported in business magazines and the *Australian Financial Review* as saying to the federal government, 'We need certainty, we need legislation, we need the parameters of a national emissions trading scheme. So come on — introduce that scheme, introduce those targets and introduce the price of carbon so that we know how to invest'.

What has been the response of the federal government? The federal government's response includes that of Malcolm Turnbull, who recognises that there is some scientific evidence and that there is some need. In effect he supports federal Labor's stand in relation to targets being established to reduce our greenhouse gas emissions. They range from Malcolm Turnbull to Nick Minchin, who must be the King Canute of Australian politics on climate change. He was standing there on some beach in Adelaide saying, 'No, no, no, hold back the tide. There is no such thing as climate change'. He is an absolute sceptic of the highest order. He will probably go for the *Guinness Book of Records* as being the world's no. 1 sceptic in relation to this. The Prime Minister is caught bang in between Nick Minchin and Malcolm Turnbull.

This is not terribly satisfactory. What you need is some vigour. You need some determination. You need a bit of a commitment. I have not heard many members of the opposition in this chamber step up and support greenhouse gas reductions. I did not see them when earlier this week I reported to the chamber about the industry greenhouse program in Victoria which has seen 600 large companies in Victoria reduce their greenhouse emissions by 1.23 million tonnes each and every year. The Liberal Party was asleep during the course of that presentation, and the opposition called for me to stop talking about the matter.

Honourable members interjecting.

Mr JENNINGS — You don't want me to pick that up! Members opposite do not want me to pick up the recalcitrance of the Liberal Party in relation to this, as expressed by their interjections. They do not want me to actually respond to that, and the President certainly does not. The important news is what investors, major companies across Australia, are saying. The survey confirmed it. When I released the survey report Heather Ridout was there and Don Matthews from the Australian Industry Group was there arm in arm with Geoff Mabbett from Sustainability Victoria. Together we sent a message to Australian industry and Victorian industry saying, 'There are business opportunities in greenhouse gas reductions and in terms of climate change opportunities for your business'. In their hundreds Australian companies are recognising the value of that, and that is the good news for all of us.

Planning: entertainment venues

Mrs COOTE (Southern Metropolitan) — My question is for the Minister for Planning. Prahran residents are harassed and intimidated every weekend by rowdy revellers in the local all-night, all-day clubs. The police are frustrated, the Stonnington City Council is frustrated, the residents are afraid, and we have witnessed multiple murders around clubs both in Prahran and in the city. When will the minister take control and introduce stringent laws in regard to nightclubs in Melbourne's suburbs?

Hon. J. M. MADDEN (Minister for Planning) — I welcome the member's question about concerns expressed by the community in relation to some of

these precincts where there are issues around nightclubs, liquor outlets, bars or cafes and what does and does not constitute one of those venues under the planning scheme.

There are many matters in relation to these venues. Whether it is Chapel Street or King Street or wherever these venues may be, there is often a concentration of those venues because young people will move to them and sometimes move between them. That is often where the issues occur. Some people will go to one bar, then they will go to another bar and then they will continue to move on and not leave until the early hours of the morning. It is a very significant issue in those areas where we have seen a build-up of dwellings, such as in the city of Melbourne, the city of Port Phillip and the city of Stonnington. We have seen a concentration of those venues around residential areas or buffers to residential areas.

I know that there is an inner city entertainment precinct task force, known as ICEP, that has worked on these issues. A number of recommendations have been made in relation to what can and cannot be achieved. Predominantly whilst there are some regulatory aspects that can be introduced, what we need to look towards is support for a collaborative effort. Mrs Coote has been actively involved in issues in Stonnington, in her area. There are matters that need collaborative effort, because commercial activity offers employment and entertainment for people. There are also the aspects of concern to local residents who may not want people wandering through or parking in their streets late at night.

These need to be worked through with local government and the police. Often precinct management plans are needed at a local level. I am eager to see support for that through a regulatory mechanism that will clarify those issues without bringing more regulation to the table. I encourage those local communities which look towards addressing these issues to work collaboratively to get a result that will reduce any impact on the amenity of the surrounding local residents.

Supplementary question

Mrs COOTE (Southern Metropolitan) — Does the minister intend to introduce saturation point planning for nightclubs, and, if so, when? Quite frankly, at the moment this is another demonstration of why, under a Brumby government, Melbourne suburbs are not the places to live, work and raise families.

Hon. J. M. MADDEN (Minister for Planning) — If it were as simple as passing a regulation or a law in relation to these matters, no doubt that would have been done a long time ago. You cannot just close a nightclub down and expect the problem to go away. If you have a concentration of nightclubs and a concentration of the many issues, it is likely to be not as simple as that. Sometimes it can be, but it is not likely to be as simple as that.

More often than not it involves issues around public safety, sometimes it involves issues around policing, and sometimes it involves issues around the door security at the venues and how these matters are managed. A number of these issues certainly do not sit within my portfolio responsibility, but I am eager, as is the member opposite, to make sure that we manage the concentration of these nightclubs in a way that still allows for entertainment for young people — —

Mr D. Davis interjected.

Hon. J. M. MADDEN — And older people even, David Davis — who want to attend these venues to make sure that we can manage this in a way that will still provide opportunity for entertainment and employment, still provide for a commercial activity but in a way that will reduce the detriment to the local amenity.

I am happy to work with any local council that seeks to have some regulatory planning mechanisms. I am happy to look at those, but ultimately most of these regulatory controls lie with local government, which is normally the local authority. If councils seek to have any additional aspects incorporated into their local planning schemes, I am happy to work with those councils and give consideration to those matters. I am happy to be approached by those local councils.

Tiger Airways: operations

Mr LEANE (Eastern Metropolitan) — Before I ask my question I would like to wish the three remaining Victorian clubs, especially Collingwood, all the best next week in their pursuit of the Australian Football League premiership. My question is to the Minister for Industry and Trade. Can the minister outline recent events in the aviation industry that will mean better choice, more jobs and more investment for Victorian families?

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I thank the member for his question. The specific answer to his question relates to the fact that I was very pleased to be at Melbourne

Airport on Sunday for the arrival of the first Tiger Airways plane into Melbourne. If we are to continue to have Victoria-only grand finals, it will be very important to have airlines that can bring people into Melbourne very quickly and at a reasonable price so they can enjoy our great game as well.

The first Tiger Airways flight arrived in Melbourne on Sunday, as I said. It is here for tests by the Civil Aviation Safety Authority. It is part of the preparations for commercial flights to begin with Tiger Airways, which will have five planes stationed in Melbourne and which is due to begin services in late November. It is offering very good airfares for Victorians and people living interstate. It is also offering them for a wide range of destinations, including the Gold Coast, Rockhampton, the Sunshine Coast, Perth, Launceston, Alice Springs and Darwin. In doing so it is bringing competition into the market, which has meant that other airlines, Jetstar and Virgin Blue, have also responded and dropped their prices.

But the important thing is that Tiger Airways has put its head office in Melbourne. Tiger will be based in Melbourne, creating, according to its estimates, 1000 jobs in the process. There will be more jobs, cheaper flights for Victorians and more tourism coming into the state. It is a great achievement of the Brumby government to have that airline coming here.

The Brumby government is very supportive of the idea of an open skies policy and of greater competition in the airline industry. We have consistently supported an open skies policy during the time we have been government because we know it will benefit Melbourne and Victoria. Just to give an indication of this: it is the case at the present moment that 15 per cent of all international passenger traffic must enter or leave Melbourne via another Australian airport. People have to fly to Sydney in order to go overseas because of the Howard government's policy, which is the opposite of an open skies policy.

Mr D. Davis interjected.

Hon. T. C. THEOPHANOUS — Mr Davis has gone on the record supporting our open skies policy. He is on the record as having said that — —

Hon. J. M. Madden — It is on his website.

Hon. T. C. THEOPHANOUS — Yes, it is on his website. He has said that neither business passengers nor tourists should suffer a long wait or be given the run-around in Sydney. He is on record as supporting our open skies policy. He has said that Melbourne deserves open skies. But, President, do you know what? The one thing that David Davis has not done, has not had the guts to do and has not had the ticker to do, is to pick up the telephone, ring his colleagues in Canberra and say to them, 'Your policy is wrong'. All he does is criticise important achievements such as getting companies like Tiger Airways into Victoria. I would be very pleased to see Mr Davis at some stage confronting and eyeballing his federal counterparts and saying to them, 'You have got this policy wrong and it is not good for Victoria'.

Portland hospital: funding

Mr KAVANAGH (Western Victoria) — My question without notice is for Mr Jennings, who represents the Minister for Health in this house, and it relates to Portland hospital, which is also known as Portland and District Health.

Portland hospital, like a lot of hospitals outside Melbourne, has trouble attracting medical experts. In spite of great efforts by the staff, it is caught in an unfortunate cycle of decline. Restricted services have led to lower funding and that in turn has reduced the services that the hospital can offer. It is claimed that the Minister for Health pointedly ignored the hospital last week during a tour of the area. In response to complaints from the local member, the minister responded, 'I am happy to ignore Dr Napthine'. The people of Portland and the surrounding areas do not want gratuitous insults; they want an adequately funded and well-functioning hospital.

What does the minister intend to do to break the cycle of decline in the hospital and to restore this very important facility to its proper role as a provider of a wide range of first-class health services for the people of Portland?

Mr JENNINGS (Minister for Environment and Climate Change) — You, President, and members of the chamber would not believe that this question is not a Dorothy Dixer and it is not a set-up. I can report to the house that it is completely coincidental that last week I travelled around in a car for 2 hours with the president of Portland and District Health, Vin Gannon, and his wife, and had a whole series of conversations about the wellbeing of the region and the health service. I instigated that. I think it is quite extraordinary that after our returning to the house, Mr Kavanagh has asked me a question that is totally unrelated to my portfolio — and I can actually say to members of the house that I demonstrated a concern and an interest in the various issues that he has raised.

The reason I know about the wellbeing of the Portland and District Health Service is that as the minister who was formerly responsible for aged care and community services, I was responsible for delivering on the commitment of our government to provide nursing home care and a major redevelopment. In fact the most significant redevelopment that is currently taking place in Portland is something that I was intimately associated with in promoting it through the budget and implementing it. There will be a new nursing home facility and an allied health facility at the health service. I have a residual interest, and perhaps, with a bit of luck, I might be invited back when it is officially opened.

Beyond that I am very keen to ensure that we address — and the government is very keen to address this issue in a variety of ways — the appropriate investment strategy not only in facilities but, as the member has mentioned, the quality of staff — —

Mr Atkinson interjected.

Mr JENNINGS — I actually think our track record of investment in facilities and in bringing people of professional standing to health services across the country is as determined and as successful as any that I have seen across the globe.

Mr Koch — Portland isn't!

Mr JENNINGS — Portland continues to be a difficulty because of its comparative remoteness from Melbourne, because it is perhaps perceived as being somewhat removed from where major social and economic activity is and because there have been some difficulties associated with quality of care issues and governance arrangements in the past. That creates an atmosphere around health services and communities that the community itself acknowledges and wants to do something about, that the board of the health service itself recognises and wants to do something about and that the Brumby government recognises and wants to do something about.

I think that, notwithstanding some of the challenges that confront this community, you will actually see there is a centre of gravity within the Brumby government to ensure that we are alive to and determined to engage in these issues. My personal experience is not an isolated event. We are very concerned with the wellbeing of this community, and we are very determined to support that health service in the years to come.

Supplementary question

Mr KAVANAGH (Western Victoria) — Might I take it from the minister's answer then that he does not agree with the response of the health minister, who said, 'I am happy to ignore the local member if he brings up the issue of the local hospital'?

Mr JENNINGS (Minister for Environment and Climate Change) — I stand by my substantive answer, because that was a substantive answer.

Melbourne fashion festival

Ms DARVENIZA (Northern Victoria) — My question is for the Minister for Industry and Trade, Mr Theophanous. I ask the minister if he can inform the house of any recent announcements by the Brumby government that will assist and support the local fashion industry in Victoria.

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I am sure, President, that you, as the most fashion-conscious President in the history of the upper house, will be interested in the response to this question. I am very pleased to be able to announce that the Brumby government has again negotiated for Australia's peak fashion industry event and has secured for another five years through to 2012 the L'Oreal Melbourne Fashion Festival. We are very pleased to be able to make that announcement.

The L'Oreal Melbourne Fashion Festival continues to be an ideal platform for promoting Victoria's outstanding fashion, retail and design strengths and is of course a major highlight on the Victorian events calendar. The festival in 2007 was the most successful. Attendances of close to 234 000 people made it a huge success, with 150 labels and designers represented. I think it is true to say that Victorians have fallen in love with the L'Oreal Melbourne Fashion Festival and travel far and wide for the event, because it is a great fashion showcase in Australia's fashion capital. The Victorian government has been the major sponsor of the festival since its inception, and its extended funding will enable this hallmark event to continue to grow and develop.

I want to say that it is a great event. I put on the record my thanks to my fashion industry adviser, Philip Dalidakis, whose advice on developing the industry, if not his fashion advice, was absolutely first rate. Tomorrow is in fact his last day, so I wanted to put that on the record.

I also look forward to inviting my new shadow minister, Philip Davis, to these events. Philip Davis is succeeding David Davis in the shadow portfolio of

course. I look forward to Philip taking over from David, and I hope that he actually turns up to the events. If Philip Davis does turn up, I am sure that he will be able to show that he has more fashion sense as well as more political sense than his predecessor. However, I would like to advise Philip Davis that if he is going to come to these fashion events, the best person to get fashion advice from is Mrs Coote, who would be able to give him very appropriate fashion advice — much better advice than I think many of us have been getting in the past.

Seriously, this is a very important event, and it has now been secured for another five years. I look forward to the event making a major contribution each year and being a major event in the calendar of Victorians each year as well.

CONFISCATION AMENDMENT BILL

Second reading

Debate resumed from 23 August; motion of Hon. J. M. MADDEN (Minister for Planning).

Mr RICH-PHILLIPS (South Eastern Metropolitan) — The Confiscation Amendment Bill now before the house amends the Confiscation Act, the current version of which was introduced in 1997 by the previous government as a replacement for the first confiscation of assets regime that was introduced in Victoria in 1986. That piece of legislation, over its first 10 years of operation, highlighted a number of shortcomings with the regime that was put in place by the Cain government. There was a subsequent rewrite and replacement of that legislation in 1997 by the Confiscation Act, which was introduced by the previous Liberal government under the then Attorney-General, Jan Wade.

It is worth reflecting on the history of that act and the debate that took place at the time, because the current Attorney-General, who was then shadow Attorney-General, was strident in his criticism of Mrs Wade to the point of saying she was a fascist for introducing the regime that was put in place in 1997. We have come to expect hypocrisy from the current chief law officer of this state — and we have seen it time and time again — because in 2004 the Attorney-General introduced an asset confiscation regime that went far beyond that which had been introduced by Mrs Wade in 1997. Of course, as I said, we have come to expect that type of hypocrisy from the Attorney-General — that he could criticise what Jan Wade did in 1997 and then bring in a regime that was far more draconian in 2004.

The bill before the house is one that the Liberal Party will not oppose. We have a couple of concerns about how it has been put together, and I will come to those in due course. The reason for this bill arises out of a decision of the Court of Appeal back in February of this year in the case of *DPP v. Phan Thi Le*. The case related to a property that was to be seized under the asset confiscation regime. The defendant in that case, Mr Le, had the order made against him for the seizure of the property, and his wife subsequently obtained an interest in the property as his spouse. The court was required to make an exclusion order that deemed that because Mrs Le was entitled to or had an interest in the property, the whole property was subject to the exclusion order and therefore could not be seized as an asset under the confiscation of assets regime.

Following that Court of Appeal decision, the Attorney-General announced that the government would legislate in this area, and some seven months later we are actually seeing that legislation come to fruition now in the form of the bill before the house. The bill will change the regime so that property excluded from the reach of a confiscation order can only be excluded to the extent of the interest of the applicant seeking to have the property excluded. If an innocent party has a 50 per cent interest in a property that they are seeking to have excluded from the asset confiscation regime, only that 50 per cent interest, rather than the current 100 per cent, will be able to be excluded by virtue of an exclusion order.

The bill will insert a definition of derived property that makes it clear that property tainted by virtue of an offence cannot be excluded merely because a confiscation order relates to a different offence. The bill will allow all property tainted by virtue of criminal offences to be considered under an application relating to a single, particular offence.

The bill will introduce a test of whether a defendant, where the prosecution is seeking confiscation of assets, has effective control of property. No longer will the legislation hang on what assets the defendant actually owns; the test will now be whether the defendant had effective control of an asset at the time relevant charges were laid. In this regard the Liberal Party has a relevant concern as to intent, which, to this point, has not been clarified by the government. If a defendant had effective control of an asset — say, a motor vehicle — at the time they were charged and they then sold that asset to an innocent third party, even though they had disposed of the asset before the court made a

confiscation order under this regime it could still presumably be caught up in that confiscation action because it was under the defendant's effective control when the charges were laid.

The bill will make new provisions with respect to gifting so that a defendant will not be able to give property away. If the defendant disposes of property in order to exclude it from the asset confiscation regime, the disposal needs to be at a value or price that reflects market value.

In terms of machinery changes, the bill provides that appeals can be made against all decisions relating to exclusion orders, such as decisions on matters that have been canvassed previously and that have been picked up in this bill. It clarifies that procedures relating to appeals under the act are the same as those that apply to appeals against sentences. In regard to this, the Court of Appeal in making its judgement earlier this year expressed concern that the criteria for considering these matters under the asset confiscation regime were the same as those when considering sentences on appeal; it was the view of the Court of Appeal in that judgement that in all probability it would be inappropriate to apply the same criteria when considering those two types of appeal.

An area where the Liberal Party is not so much concerned as disappointed is the application of the Charter of Human Rights and Responsibilities, because in the application of the charter to this bill it has been suggested that the bill in no way offends against the Charter of Human Rights and Responsibilities. I place on record again that the Liberal Party thought the introduction of the charter was a joke, and the way in which it has been applied has been a joke. But for the Attorney-General to treat his own charter as a joke is disappointing for this Parliament.

It is apparent from the statement of compatibility that has been tabled with this bill that rather than acknowledge that this bill's provisions impact upon the charter's provisions, the government has simply argued that although this bill relates to criminal offences it really concerns civil matters and therefore the relevant sections of the charter do not apply. This is an argument we have seen on several occasions since the charter legislation came into effect on 1 January. Rather than having accurately and fulsomely addressed the issues raised by the Attorney-General's own charter, the government has sought to avoid those issues on the basis of definitions.

I also want to touch on the debate in the other place. The member for Bentleigh, Mr Hudson, sought to misrepresent — or did misrepresent, whether he sought to or not — the comments made by the shadow Attorney-General in the course of this debate. In his contribution Mr Hudson attempted to suggest, on the basis that Mr Clark raised the concerns I have articulated in this place, that the Liberal Party and the shadow Attorney-General were not committed to the asset confiscation regime and were not committed to seeing assets of serious criminals seized under the regime. That is to completely misrepresent the position put by the shadow Attorney-General, Mr Clark, in the other place. With its 1997 legislation, the Liberal Party introduced the first effective asset confiscation regime in this state, following the Cain government's 1986 regime, which had numerous loopholes and failures. It was that legislation of the Liberal government in 1997 that was the first effective regime, and Mr Hudson's attempts to suggest that Mr Clark and the Liberal Party are not committed to this principle of confiscating the assets of serious criminals were simply wrong.

With those words, the Liberal Party supports the principle that is being achieved with this legislation. We have concerns about the retrospective way in which the effective control provisions could work, and we also express our ongoing disappointment with the way in which the Charter of Human Rights and Responsibilities is being used in practice by this government, coming as it does after all the flowery rhetoric of the Attorney-General in the other place when it was introduced.

Mr HALL (Eastern Victoria) — I indicate to the house that The Nationals are prepared to support this piece of legislation. Before I make a couple of comments about the content of the bill itself, I want to pick up on the last point made by Mr Rich-Phillips in his contribution — that is, the reference to the statement of compatibility attached to the bill's second-reading speech. I think it is time the government looked at and thought about whether statements of compatibility under the Charter of Human Rights and Responsibilities Act are fulfilling their purpose — and, if so, in what way are they doing it — and whether they give any further information to those of us who pick up a bill's second-reading speech.

When I picked up this documentation I saw that the statement of compatibility comprises nine pages, as opposed to the five-page second-reading speech, printed in much larger type. I must admit that unless I have a particular interest, I do not see statements of compatibility as serving any particular purpose. Perhaps the government could think about a different way to meet the provisions of the Charter of Human Rights and Responsibilities Act 2006.

Maybe it is a function for the Scrutiny of Acts and Regulations Committee. Such statements of compatibility could be submitted to the committee for verification, rather than having the statements distributed to Parliament as a whole. Perhaps the committee could report to the Parliament, as part of the reports it does on all pieces of legislation, on whether bills conform to the Charter of Human Rights and Responsibilities Act. If this occurred, there might be less paper distributed around the chamber, and it might make for a more efficient process to deal with the provisions of the Charter of Human Rights and Responsibilities Act. I make that suggestion and report to the government my personal experience that nine pages of statement of compatibility is in this case a bit of a waste of time and resources.

Having said that, let me make a couple of quick comments about the Confiscation Amendment Bill 2007. First of all, I want to reiterate The Nationals' wholehearted support for the principal act, the Confiscation Act 1997. We have long held the view that no criminal should benefit from their activities, so the proceeds of crime should be able to be confiscated in the circumstances set out under that act. Since the implementation of the principal act we have seen some refinements to better implement the intent of the act when it was enacted and agreed to by the Parliament. Today we see further amendments to the act to reflect the original intent of the bill.

As Mr Rich-Phillips has outlined, one of the major issues relates to the case of property being confiscated when people other than the perpetrator of the crime have an interest in the property. As I understand it, now people who have an interest in the property and are not the perpetrators of the crime can apply for an exclusion order to exempt that property from confiscation. In some cases it is not clear whether those exclusion orders can limit the confiscation to the interest that that person holds in the property or whether it has to apply to the property as a whole. As I understand it, one of the provisions in the amendment bill makes it very clear that the exclusion orders can relate to just that part of the property to which the applicant has an interest.

I have read through some of the other amendments to the Confiscation Act. Through the knowledge of the Leader of The Nationals in the other place, Peter Ryan, who has the knowledge to look at them better than I can, we have both come to the conclusion that these are sensible provisions. That is why the recommendation was put to The Nationals that we support this piece of legislation, and we all agreed to do that.

Ms PENNICUIK (Southern Metropolitan) — The Greens will be supporting the Confiscation Amendment Bill, because, as other members have said, we do not want to see people convicted of serious crimes, such as drug trafficking or fraud, benefiting from the proceeds of those crimes. However, I have a few comments and queries to make about the bill.

Firstly, I would like to echo to some degree the comments made by Mr Rich-Phillips and Mr Hall with regard to the statement of compatibility. While I am speaking in the context of the debate on this bill, I refer to some of the other bills I have read, particularly justice bills. Some of those statements are very long, and in some cases they appeared to me to be looking for a justification as to why a provision — and one I could refer to is the coroner's court amendment bill — that appears to have an implication in terms of human rights, does not have that implication, rather than admitting that it might have that implication and explaining why the government has chosen to override it. That applies to a small extent in the case of the Confiscation Amendment Bill, which is something that the Scrutiny of Acts and Regulations Committee could look at. Also, the committee could look at providing its advice in a perhaps more succinct way than it does. I think Mr Hall's point was that nine pages of compatibility statement on this bill indicates that it was not as succinct as it could have been.

Having said that, the issue in the bill that I do query is when a non-defendant applicant is applying for exclusion of a property. Two new provisions are put in the bill that would apply to that non-defendant applicant applying for an exclusion of part of a property. I understand the bill changes that from the whole property to part of the property, which seems fair enough, but under the bill there is a new definition of sufficient interest, which states:

> "sufficient consideration, in relation to property, means consideration that reflects the market value of the property and does not include—
>
> (a) consideration arising from the fact of a family relationship …
>
> (b) if the transferor is the spouse or domestic partner of the transferee …
>
> (c) a promise by the transferee to become the spouse or domestic partner of the transferor;
>
> (d) consideration arising from love and affection;
>
> (e) transfer by way of gift;".

It seems to me that in many of those relationships described in that definition a person may have a

legitimate interest in a property that has not been derived from the market value of that property. It seems to me this bill will in effect make something black and white — that is, that the non-defendant applicant must prove that they have acquired their interest through market value — when in real life it is not black and white. People in domestic relationships in particular can have a legitimate sufficient interest in a property — for example, as exists under section 79 of the Family Law Act, which provides that when the court is making property settlement orders it must take into account indirect financial contributions to property where someone may pay the household expenses while someone else pays the mortgage and makes other non-financial contributions.

So we could have the case where a defendant has committed a crime and a non-defendant applicant, who has no knowledge of that crime but who has not acquired an interest in the property through market value or because they cannot prove that they have acquired that interest by market value, could be dispossessed of their legitimate interest in that property. While supporting the confiscation of the proceeds of crime, I cannot see why dispossessing somebody who is an innocent party and not benefiting from the proceeds of crime is a just outcome. I wonder whether the introduction of this definition and this provision in the bill, while it might have good intentions, might also have unintended, unjust, unfair and inequitable outcomes.

It appears to me that perhaps it could have been left to the discretion of the court to be able to decide whether something was a legitimate interest in a property rather than putting something in a bill which makes it so black and white when life in fact is not that black and white. Somebody who has a legitimate interest in a property could have been deceived by the defendant who has the other interest in the property, and because of the new provisions in this bill they could be dispossessed of their sufficient interests by not being allowed to exercise their right to exclusion of their interest.

It appears that this came about, as Mr Rich-Phillips mentioned, because of the Phan Thi Le case, in which case the court decided that there was good consideration and that it was satisfied that the defendant did acquire the property in circumstances so as not to raise reasonable suspicion. So the court considered the facts in the case and came to the conclusion that there was good consideration. I just raise the issue that there may be unintended consequences from this particular provision and definition in the bill. It is something that I will certainly be looking at as the legislation is implemented.

Mr TEE (Eastern Metropolitan) — The Brumby government is committed to ensuring that crime is attacked in all its manifestations, including the profits of crime. What this bill does is seek to continue with the regime of depriving criminals of illegally acquired wealth and assets. It also seeks to disrupt criminal enterprise by making it impossible to hold onto property and to use the property to build up a criminal empire. The government has introduced these extremely tough asset confiscation laws and is actively pursuing individuals involved in organised crime and making sure that they do not profit from their criminal activities.

The bill protects the integrity of Victoria's asset confiscation scheme following the Court of Appeal judgement in *Director of Public Prosecutions v. Phan Thi Le*. In that case Mr Le was convicted of drug trafficking and was serving four years imprisonment. He owned an apartment in Sunshine which he used to store and prepare heroin for sale. According to the facts set out in the Court of Appeal judgement, after Mr Le had been charged he transferred to his wife a 50 per cent share in the Sunshine property. When the matter went to the Court of Appeal the court accepted that his wife was unaware that the home was being used for criminal activity and she was granted full interest in the property.

The majority decision was that if the court is satisfied that an exclusion order should be made — that is, an order that part of the property be excluded from the asset confiscation process — then the court must exclude the whole of the property rather than just the applicant's interest in the property. Of course this meant that even though Ms Le only owned half of the property the entire property was released from the confiscation process. The dissenting judge in the Court of Appeal noted that this outcome would completely undermine the policy goal of the act, which was to prevent the property of criminals being awarded to others.

This bill is the government's response to that decision. It ensures that those subject to property confiscation cannot undermine the act by transferring a minority interest in the property to another person in order to prevent the whole of the property being forfeited. The bill amends the act to make it clear that an exclusion order can only be made in relation to an applicant's interest in the property rather than the entire property. Of course there are a number of consequential amendments which validate exclusion orders made prior to the Court of Appeal decision. The amendments also apply to applications that have been made subsequent to the Court of Appeal decision but which have not yet been determined.

The community would be outraged if criminals could defeat the confiscation regime — if another person with an interest in a property could obtain an exclusion order and therefore invalidate the asset confiscation regime. For that reason I think the bill and its provisions are fair and appropriate. The act is being given effect to in the way it was always intended to operate.

An issue has arisen about the situation where a property is the subject of different interests. We want to ensure that any innocent third party is not caught up in the crossfire and is dealt with legitimately and fairly by way of sale or other processes. We will protect owners with legitimate interests and ensure that these bystanders do not suffer hardship as a result of criminal activity. As Ms Pennicuik has indicated, a number of tests are in place. Any third party will need to demonstrate that they provided a fair market price for a property that the property was obtained lawfully and has not been tainted by criminal offences.

Of course to do otherwise would be simply to repeat the issue that arose in the Court of Appeal decision, in which a convicted criminal or a criminal who was to be convicted could simply transfer a part interest of the property to a third party. A number of steps need to be put in place to protect the rights of third parties, particularly those who have paid a market value for a property. We are trying to get the balance right between on the one hand protecting those who have paid for their interest and on the other hand making sure there is no escape clause which simply allows criminals to transfer a part of the property to a third party as a way of ensuring that the property is not forfeited.

In 2005–06 assets worth $6.6 million were recovered from the confiscation and sale of property — up from $4.8 million in 2004–05 — and I suspect that the amount will continue to increase as we work to ensure that those who have purchased property with the proceeds of crime do not benefit from those criminal activities. These amendments will make sure that Victoria's asset regime continues to be robust and effective as a way of preventing and deterring crime and making sure that criminals do not enjoy the assets of their criminal activity. For those reasons I commend the bill to the house.

Mr DALLA-RIVA (Eastern Metropolitan) — I also rise in support of the Confiscation Amendment Bill. My understanding is that it principally relates to the effects of the exclusion provisions that are provided in the principal act. In my former role as a detective in the asset recovery squad, as it was then known, it was always interesting to watch the development of the legislation in the chamber in which I now stand as a member of Parliament and its enforcement as defendants tried to use the system to attempt to acquire the assets they had obtained through illegal activity.

The interesting point to note is that the legislation will deal with a particular court case, as has been mentioned by previous speakers. The most interesting thing to note in this is that a few years ago the government came up with the Charter of Human Rights and Responsibilities. Quite clearly this legislation goes against the government's own charter. In particular it makes reference to the derived property issue about the narrowing of exclusion order provisions in that there is a possible impact on the charter of rights. Whilst I understand that, the fact is that when it comes to people who acquire property through various means those rights are abrogated in terms of collecting those properties. I understand the context of this particular amendment in that if certain assets are attributed or attached to tainted property, then that makes it all the more necessary that there should be clarity.

The other interesting thing is that most people assume that tainted property is usually tainted through dealing in drugs. My own experience is that tainted property can be derived from a variety of areas. I remember that some serious armed robbers received a substantial amount of money and then filtered it through their loved ones by various means, such as buying properties and the like. That is fairly easy in terms of tainted property, but to extend the provision to include derived property makes it very clear that criminally acquired property cannot be excluded from confiscation because it is not tainted by a specific offence. I think that is a good step forward in ensuring that we can continue to recover all the assets of offenders that are passed on.

Another point I would like to mention concerns the clarification of the operation of the effective control test in applications for exclusion of an interest in property from a restraining order or forfeiture by non-defendant applicants. I like the fact that that provision has been brought in. I also like the amendment that is designed to address arguments that transfer of a property interest by way of gift or out of natural love and affection constitutes sufficient consideration for the purpose of obtaining an exclusion order. It will also deny criminals the use of such less-than-market-value transfers to shield their criminally acquired assets from forfeiture. Again, I think that is a common-sense amendment. We know that some people receive funds and gift them to various individuals in a mechanism that allows for those properties to be returned later on, albeit in a different format, usually cash or other means.

This is a sensible piece of legislation that has the support of the opposition. I look forward to improvements in the Confiscation Act. This legislation well enable further enforcement of that act. What is probably more important is that I listen to Mr Pakula as he delivers his speech in front of the fan club of the National Union of Workers. I look forward to his contribution.

Mr PAKULA (Western Metropolitan) — I thank Mr Dalla-Riva for his good wishes. I also rise to support the bill. The fundamental question in terms of the consideration of this amendment bill is whether one supports the intent of the original 1997 act and whether members accept the principle of the confiscation of the proceeds of crime. If members accept that principle — despite what Mr Rich-Phillips said about what members' views might have been a decade ago — then they would want to make the act work as effectively as it possibly can.

As Mr Tee pointed out, over the 2004–05 and 2005–06 years something like $11.5 million in assets were confiscated and are now not in the hands of criminals or the people they have passed them on to. As a result, the act plays an important role in the disruption of criminal enterprise because it helps reinforce the message, 'Crime does not pay, or, if indeed it does pay, we are going to take the proceeds from you as soon as we possibly can'.

The act and the confiscation regime is only an effective tool if it cannot be easily circumvented. Mr Rich-Phillips, in his opening remarks, made reference to the case of the *Director of Public Prosecutions v. Phan Thi Le*, which was a Court of Appeal case. The fact is that the decision did undermine the intent of the law. The courts — in this case, the Court of Appeal — are perfectly entitled to interpret laws as they wish. That is their role. If the interpretation by the courts subverts the intent of the law, Parliament has an obligation to amend the law so that there is no misunderstanding.

The fact is that *Director of Public Prosecutions v. Phan Thi Le* does undermine the efficacy of the confiscation regime. It did that by finding that, where an exclusion order ought to be made, that exclusion order has to apply to the whole property rather than simply the applicant's interest.

I want to take issue with one point made by Ms Pennicuik, who made the point that the court considered the evidence and found that good consideration existed. To be blunt, that is not the point. That argument will still be able to be made even after the passage of this amending bill. What applicants will not, however, be able to do is argue that because a 10 per cent or a 40 per cent interest has passed, the whole property is excluded. That is the key difference.

The impact of *Director of Public Prosecutions v. Phan Thi Le* right now is that criminals can circumvent the effect of the confiscation regime by simply transferring a minority interest; and in doing that, they safeguard the whole property. Very simply, the bill makes it clear that the exclusion order, if it is granted by the court, can only apply to the applicant's interests rather than to the whole property.

The applicant, under this amending bill, will also have the onus of proving that the property which is the subject of the application was not used in or acquired by illegal activity. It also effectively ensures, as Mr Dalla-Riva indicated, that a defendant cannot deny effective control of that property simply because the defendant is at that time in custody. Importantly and finally, a non-defendant applicant has to show, in order to obtain an exclusion order, that the interest in the property was obtained at fair market value. If all of those things can be proven, an exclusion order may still apply, but it may not apply to the whole property as is the case now.

The bill ultimately does no more than give effect to the intention of the state's crime confiscation regime. There will always be efforts made to circumvent these types of laws. Occasionally a good lawyer will succeed in the Supreme Court or in some other jurisdiction with a submission or an argument that was not foreseen or contemplated by the drafters of the bill — and not only good lawyers but good crooks will find ways around laws. When those things happen, if the intent of the law is good policy and if it is the Parliament's wish that the intent of the law continues to apply, then an amendment has to be made. That is why this bill has come before the house. It closes off the loopholes that were identified in that case, and it ought to be supported by all members. I commend the bill to the house.

Mr ELASMAR (Northern Metropolitan) — I rise to speak on and support the Confiscation Amendment Bill 2007. We are all aware that organised crime has been with us since the arrival of the First Fleet in Australia. The old adage that honesty is the best policy and that crime does not pay is a hard lesson to teach our children when they can see for themselves, in the daily newspapers, how drug barons alone reap millions of dollars in illegal activities.

Unfortunately some unlawful operations are very profitable indeed. The scourge of drugs and the many

millions of dollars that can be made from the agony and debasement of some people in our community is a worldwide problem of such magnitude that legislation to confiscate ill-gotten gains has had to be introduced.

This bill focuses on applicants who are applying for exclusions from forfeiture of property — people who have, in the eyes of the law and the community, profited handsomely from the proceeds of organised crime.

I totally support this amending legislation because it is one of the most effective tools in the war against organised crime. I would like to believe that if there is no profit to be made from crime, criminals will see no advantage in pursuing a life of illegal activity; but, as we all know, it is not as simple as that. There is an old expression used by our police force, called 'No visible means of support'. That is where a person has no job, no inheritance, no social security payments and no legitimate business enterprise, and yet is openly living the life of Riley. Chances are they are either extremely gifted gamblers or part of an organised crime syndicate.

This bill has been crafted to ensure that only persons who have gained material wealth from the proceeds of crime are not able to slip through a loophole in the law. But having said that, under the proposed amendments every endeavour has been made to ensure that children of a known crime family are not disadvantaged or made homeless because of their relatives' activities. But at the same time we have all read or heard of cases of wholesale transfers of property for little or no monetary consideration. This bill is attempting to thwart those applicants who are applying for exclusions from forfeiture of property.

I, like every other law-abiding citizen, would like to see those criminally gotten funds redirected back into the community for the advancement and betterment of our society. Ideally I would like our community to be crime free. I would like there to be no reason for crime. But until that day comes, we as a Parliament have to ensure that we take all possible steps to give our police and the judiciary the proper tools to protect us and our citizens from criminal elements in our society. I commend the bill to the house.

Ms DARVENIZA (Northern Victoria) — I rise to make a brief contribution on the Confiscation Amendment Bill. This bill shows our government's commitment to ensuring that crime does not pay. We want to deprive those who are involved in criminal activity of their ill-gotten gains, and we want to cause disruption to their criminal endeavours and enterprises. The government has introduced some of the toughest asset confiscation laws in this country.

The Confiscation Act 1997 established a regime for the restraint of assets that may have been used in or derived from criminal activity, and the ability to be able to confiscate those assets and force some criminals to forfeit those assets. This bill contains a number of amendments to that act, and I know previous speakers have referred to the amendments in the bill; others have gone through them at some length, so I will address them briefly.

What this bill does is make clear that exclusion orders can only be made in relation to an applicant's interest in their property rather than their entire property, and as was pointed out by Mr Elasmar, that is about making sure that people's families are protected and that they do not lose everything. It ensures that restraining orders for automatic forfeit or civil forfeiture orders cannot be defended by arguing that the property was not 'tainted' in relation to a specific offence with which a defendant has been charged or which they are reasonably suspected of having committed.

It provides that the 'effective control' test is to be applied at the time that the defendant is charged or his or her property is retained — whichever occurs earlier. This amendment is designed to address the argument that where a defendant is in custody, for example, he or she is no longer effectively in control or in charge of that property. It makes clear that the transfer of interest in property for less than market value is not a sufficient basis on which to have a property interest excluded from restraint or forfeiture. This amending legislation is designed to address the possibility of people simply transferring their funds by way of a gift or out of natural love or affection. That is not going to be enough to be able to satisfy this test.

This is really about ensuring that the schemes that we have in place continue to be effective in combating and deterring serious as well as organised crime. I understand that in 2005–06, some $6.6 million was recovered from the confiscation and sale of criminals' property and through debt collection from convicted offenders. This figure is up from $4.8 million in 2004–05. Obviously this act is working. These laws of forfeiture and confiscation are ensuring that criminals do not profit or benefit from their ill-gotten gains. It is a good bill, and I commend it to the house.

Mr EIDEH (Western Metropolitan) — I rise to support the Confiscation Amendment Bill. One of the aspects of crime that has always bothered me is that criminals who commit all sorts of crimes, even if

caught, charged and convicted, could keep those things which they obtained through acts of evil against decent citizens. It used to always bother me to see criminals living the high life while their victims suffered again and again.

Since Labor came to government in Victoria we have seen a strong move towards increased justice — fighting on behalf of victims, protecting human rights and removing ill-gotten gains from criminals. This item of legislation seeks to strengthen the 1997 act, and so give greater power to law enforcement and the judiciary to ensure that, as the minister stated in his second-reading speech, 'Crime does not pay'. The whole community has had enough of criminals not only committing their foul acts but then using previous laws, or the lack of laws, to ensure that they kept the proceeds of their crimes, either in their own names or in the names of their immediate families.

This government is dedicated to serving the people of Victoria and doing more for victims of crime. However, while the planned changes in the law will allow for greater confiscation, they will not be used to harm innocent family members of criminals. This government will not blame families simply due to their relationship by blood or marriage to criminals, unless they also benefit from their crimes. The law that we are debating today goes further in the fight against crime to specifically target persons who use their properties in the evil drug trade. Drug lords will now risk losing everything. This is a very positive move on the part of the government.

Mr Rich-Phillips — On a point of order, President, Mr Eideh is slavishly reading his speech. He is reading consistently. The only time he is looking up is when he is turning his pages.

The PRESIDENT — Order! I am not establishing the protocol of the house or the practice of the house in terms of members reading slavishly from their set speeches. If that is the standard that the house wants policed, I am more than happy to accommodate it on that — but applying it to all sides. I will be applying it to all sides of the house. I note that Mr Eideh is referring quite regularly to copious notes, I imagine. The point that Mr Rich-Phillips raises is in fact valid, if Mr Eideh is slavishly reading from those notes. I will watch closely but I assume he is just referring to his copious notes. Mr Eideh, to continue.

Mr EIDEH — Thank you, President. Criminals will also no longer be able to simply hand over or sell at significantly lower than market value any property in their name in the vain belief that they can therefore transfer their property to other members of their families. Such practice will now be over, and such properties will be subject to forfeiture. I commend the bill to the house.

Mr SOMYUREK (South Eastern Metropolitan) — I rise to make a contribution in support of the Confiscation Amendment Bill 2007. The objective of the bill is to clarify the scope and operations in relation to exclusion orders under the Confiscation Act 1997 and to make clear what interest in property may be subject to orders under the act.

Crime does not pay, and this bill proves it. Under normal circumstances I do not like sloganeering politics, and certainly this government believes in substance over slogans, which is why Victoria is a better place to live, work and raise a family. But the slogan 'Crime does not pay' succinctly encapsulates what is in this bill, for the bill seeks to ensure that criminals do not reap the profits of their ill-gotten gains, thus disrupting criminal enterprises and deterring criminal activity.

The act also allows a person with an interest in property to apply to have that interest excluded from a restraining order or forfeiture. This legislation is necessary in view of the effect of a recent Court of Appeal decision in *Director of Public Prosecutions v. Phan Thi Le*. Where the court is satisfied an exclusion order should not be made, the court must exclude the whole of the property, rather than just the applicant's interest in the property, from the restraining order or forfeiture. This decision threatens to undermine the efficiency of Victoria's confiscation regime, as criminals will be able to exploit it by transferring a minority interest in property to safeguard the whole of the property from forfeiture. The bill will ensure that the asset confiscation scheme continues to provide an effective tool in combating and deterring serious and organised crime.

The aim is consistent with the government's election commitment to ensure that no profits from the illegal proceeds of crime are used under Labor's tough laws on the confiscation of the proceeds of crime.

Mrs Coote — From the heart!

Mr SOMYUREK — It's all right, this is all from the heart.

The best method of tackling organised crime is to attack it from the front end. Organised crime is like a cancer in our society, slowly eroding the public's faith in our institutions, and it is also in the professions that are employed in those institutions. One of those professions

is the police force, and organised crime sometimes erodes the public's faith in our respected institutions such as the police force. What we, as a government, need to do is tackle crime at the front end. This bill does that. With those words, I commend the bill to the house.

Motion agreed to.

Read second time.

Third reading

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

That the bill be now read a third time.

In so doing I thank members for the very speedy contributions made by those who contributed to the second-reading debate.

Motion agreed to.

Read third time.

RULINGS BY THE CHAIR

Members: notes

The PRESIDENT — Order! On the resumption of Parliament in two weeks time, I will personally be ensuring that I do everything in accordance with standing orders to police members who are reading slavishly from notes. I will apply this standard to all members on every occasion I see such an occurrence.

FISHERIES 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 Mr Jennings.

Statement of compatibility

Mr JENNINGS (Minister for Environment and Climate Change) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

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

In my opinion, the Fisheries 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 purpose of the Fisheries Amendment Bill 2007 is to amend the Fisheries Act 1993 ('the act') to give effect to a key initiative in the government's 2006 recreational fishing and boating policy statement. In particular, the bill will further enhance recreational fishing opportunities and encourage participation in Western Port bay by removing the entitlement from Western Port/Port Phillip Bay fishery access licence-holders to undertake commercial net fishing in Western Port bay and provide for a compensation scheme for affected fishers.

The Fisheries Amendment Bill 2007 also clarifies and improves some matters in the act that have been identified in the preparation of new regulations to replace the Fisheries Regulations 1998, which are due to sunset on 1 April 2008.

Human rights issues

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

The Fisheries Bill 2007 ('the bill') has been assessed against the Charter of Human Rights and Responsibilities ('the charter'). The right that has been identified as being impacted on by the bill is:

Section 20: property rights

Section 20 establishes a right for an individual not to be deprived of his or her property other than in accordance with law. This right ensures that the institution of property is recognised and acknowledges that the state of Victoria is a market economy that depends on the institution of private property.

The bill engages this right because it removes the entitlement for Western Port/Port Phillip Bay access licence-holders to net fish in Western Port bay.

The removal of this entitlement will be in accordance with law as set out in the bill. The bill specifically provides that a holder of a Westernport/Port Phillip Bay fishery access licence is not authorised to use fishing nets in Western Port bay on and from 1 December 2007. The removal of this entitlement is clear and applies equally to each licence-holder.

There is an implied limitation on the power to make laws depriving persons of property that the laws must not do so in an arbitrary manner. 'Arbitrary' in this context may mean 'capriciously', 'unpredictably' or 'inconsistently': in other words, lacking in reason or proper policy justification. In this case, the purpose of prohibiting commercial net fishing in Western Port bay (and thereby removing the entitlement of current licence-holders to net fish) is to enhance recreational fishing opportunities and encourage participation in Western Port bay. The bill specifically provides that a holder of a Westernport/Port Phillip Bay fishery access licence is not authorised to use fishing nets in Western Port bay on and from 1 December 2007. The removal of this entitlement is clear and applies equally to each licence-holder. In this sense, the amendments cannot be said to be arbitrary.

Further, given the potential impact on fishing businesses, compensation may be made available to affected fishers, in accordance with criteria developed for that purpose. The criteria will be made available to affected licence-holders through the peak industry body.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities.

Theo Theophanous, MP
Minister for Industry and Trade

Second reading

Mr JENNINGS (Minister for Environment and Climate Change) — I am informed that the bill has not been amended in the Assembly and does not contain a section 85 statement. I move:

That, pursuant to standing order 14.07, the second-reading speech be incorporated into *Hansard.*

Motion agreed to.

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

That the bill be now read a second time.

Incorporated speech as follows:

The Fisheries Act 1995 is the principal legislation for management, development and conservation of Victorian fisheries.

Recreational fishing is one of Victoria's most popular recreational pursuits. It is estimated that over 500 000 people recreationally fish every year in the wonderful fresh, estuarine and marine waters of Victoria. It is recognised that recreational fishing is a valuable contributor to Victoria's economic and social wellbeing, particularly in rural Victoria.

The government's vision for developing our recreational fisheries resources can be simply described as 'family-friendly fishing' — encouraging increased participation in fishing by women and children as well as traditional male anglers, young and old, and improving the recreational fishing experience through improved skills and better fishing opportunities.

Our marine and estuarine recreational fisheries provide quality experiences. The Port Phillip Bay snapper fishery is currently booming and is recognised as Australia's best snapper fishery. King George whiting are also abundant, as are calamari, garfish and gummy sharks.

I will now turn to the particulars of the Fisheries Amendment Bill 2007.

The proposed bill will give effect to a key initiative in the government's 2006 recreational fishing and boating policy statement. The bill will further enhance recreational fishing opportunities and encourage participation in Western Port bay following the removal of commercial netting in the bay.

In particular, the bill removes the entitlement from Western Port/Port Phillip Bay fishery access licence-holders to undertake commercial net fishing in Western Port bay and provides for a compensation scheme for affected fishers. Consequential amendments to the Fisheries Regulations 1998 will be introduced to remove the entitlement to use commercial fishing nets in Western Port bay.

The Victorian government has allocated $5 million to fund an adjustment package to compensate affected commercial fishers. The bill specifically provides that a holder of a Western Port/ Port Phillip Bay fishery access licence may be entitled to compensation. Compensation will only be paid to a licence-holder who has actively fished in Western Port bay in the last seven years.

The compensation scheme features either financial adjustment assistance or voluntary licence buybacks. Financial adjustment assistance will be offered to all licence-holders who have actively fished in Western Port bay over the last seven years. The compensation paid to licence-holders, by way of financial adjustment assistance, will be in the form of an income support payment and will assist the licence-holder to relocate their fishing activity. The amount of financial adjustment assistance offered will be calculated in accordance with developed criteria.

Licence-holders assessed under the developed criteria as being substantially impacted by the closure of Western Port bay can seek, instead of the financial adjustment assistance, assistance to leave the fishery in the form of a voluntary licence buyback package. The amount of compensation that they will be offered, by way of a voluntary buyback package, will again be calculated in accordance with criteria developed for that purpose. It will include consideration of the value of surrendering the fishery licence, a fishing equipment allowance, an income support payment, and reflect the costs of retraining for the licence-holder.

The proposed legislative changes will allow timely implementation of this policy commitment on 1 December 2007.

Key stakeholders, such as Western Port commercial fishers and the commercial fishing peak body, Seafood Industry Victoria, have been consulted on the adjustment package. Other stakeholders, such as the Victorian Recreational Fishing Peak Body, support the commitment as it will further enhance recreational fishing opportunities in Western Port bay.

Other minor amendments proposed in the Fisheries Amendment Bill 2007 will clarify and improve some matters in the act that have been identified in the conduct of a review of the Fisheries Regulations 1998, which are due to sunset on 1 April 2008. Amendments include clarification of certain offences that relate to commercial aquaculture; clarification of the power to prescribe levies on the basis of areas specified in aquaculture licences; clarification of the power to make regulations authorising the selling of priority species of fish under an access licence; and expanding the kind of activity the secretary may authorise under a general permit. These amendments help to clarify the legislation as a result of the review of the regulations, and have no material impact on the relevant industry.

I commend the bill to the house.

Debate adjourned for Mr VOGELS (Western Victoria) on motion of Mrs Coote.

Debate adjourned until Thursday, 27 September.

FIREARMS 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 Act 2006, I make this statement of compatibility with respect to the Firearms Amendment Bill 2007.

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

Overview of the bill

The bill amends the Firearms Act 1996, the Crimes Act 1958 and the Magistrates' Court Act 1989 to further provide for various matters relating to the regulation of firearms in Victoria.

Human rights issues

The provisions of the bill raise a number of human rights issues.

1. Provision of information

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

The right is based upon article 17 of the International Covenant on Civil and Political Rights. The United Nations Human Rights Committee has referred to the notion of privacy as revolving around protection of 'those aspects of a person's life, or relationships with others, which one chooses to keep from the public eye, or from outside intrusion'.

A number of provisions of the bill require provision of information by persons for the purpose of regulating the use of firearms (see, for example, clauses 5, 6, 18, 20, 22, 24, 26, 31, 33, 34, 35, 39 and 48). In many cases the provision of the information would not interfere with a person's private life. However, to the extent that it may do so it is necessary for the purposes of proper regulation of firearms in the interests of safety of the community. It cannot be regarded as arbitrary and accordingly does not limit the right.

2. Display of firearms

Section 15 of the charter protects freedom of expression.

Clauses 21 and 22 of the bill amend the provisions of the Firearms Act which restrict the circumstances in which firearms and cartridge ammunition can be displayed and impose penalties upon persons who fail to comply with permits to display firearms or cartridge ammunition.

However, the right to free expression may be subject to lawful restrictions reasonably necessary to respect the rights of others, including for the protection of public order.

The restrictions imposed on the display of firearms by the provisions are necessary and reasonable. Accordingly the provisions are compatible with the right to free expression in s. 15 of the charter.

3. Property rights — s. 20

Section 20 of the charter establishes a right not to be deprived of property otherwise than in accordance with law.

The bill amends a number of provisions relating to the surrender, forfeiture and disposal of firearms (see clauses 19, 42 and 43).

Section 20 only prohibits a deprivation of property that is carried out unlawfully. As the surrender, forfeiture and disposal of firearms occur in accordance with the processes set out in the act any deprivation of property that occurs as a result of the amendments would take place under powers conferred by legislation, in accordance with the law. There is an implied limitation on the power to make laws depriving persons of property that the laws must not do so in an arbitrary manner. 'Arbitrary' in this context may mean 'capriciously', 'unpredictably' or 'inconsistently'.

In this case, the amendments are not arbitrary. They improve the existing provisions to enable regulation of firearms, including surrender, forfeiture and disposal, in the interests of safety of the community. Accordingly, the provisions do not limit the property rights in s. 20 of the charter.

4. Search of persons and vehicles

Section 21 of the charter protects the liberty and security of persons. Section 13 of the charter provides that a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

Section 149 of the act enables police to search, without a warrant, persons and vehicles for firearms where the officer has reasonable grounds for suspecting that a person is committing or is about to commit an offence against the act and that person has a firearm in his or her possession. Clause 41 amends s. 149 of the act to include cartridge ammunition, silencers and other prescribed items within the search powers.

The search of a person or their vehicle may interfere with a person's private life. However, it cannot be regarded as arbitrary as it is limited to the search for firearms and related items in circumstances where a police officer has reasonable grounds for suspecting that a person is committing or is about to commit an offence. The police officer is required to inform the person of that suspicion as well as the officer's name, rank, place of duty and identification (unless they are in

uniform). Accordingly, the provision is compatible with s. 13 of the charter.

The search of a person, and sometimes a vehicle, will necessarily involve some restriction upon the liberty and security of the person. However, the limit upon the right is clearly reasonable and justifiable in a free and democratic society for the purposes of s. 7(2) of the charter having regard to the following factors:

the nature of the right being limited;

the right to liberty and security is expressed in broad terms, but can clearly be limited such as where the rights of other persons are at stake;

the importance of the purpose of the limitation;

the purpose of the limitation is to protect the safety of the community and protect the rights to life, liberty and security of others. Those rights are expressly protected by the charter (ss 9 and 21).

The nature and extent of the limitation

The person being searched will be detained for the purpose of the search. Their physical security will also be affected as they will themselves be searched.

The relationship between the limitation and its purpose

The limitation is directly connected to its purpose. The search power can only be invoked where a police officer has reasonable grounds to believe that an offence is being committed or is about to be committed. It is necessary to be able to search persons and vehicles for firearms in such circumstances in order to prevent firearms offences.

Less restrictive means reasonably available to achieve the purpose

There are no less restrictive means reasonably available to achieve the purpose. In circumstances where police believe that a firearms offence is being or is about to be committed, the police must be able to act quickly to detect firearms in the interests of their own safety and that of the community. Accordingly, the provision is compatible with s. 21 of the charter.

5. Strict liability offence in clause 38

Clause 38 of the bill inserts an offence of possessing or carrying a part of a firearm that is capable of being used to alter the category of a firearm in the person's possession, carriage or use so that it becomes a different category of firearm to that which the person is authorised to possess, carry or use under his or her licence. The offence contains exceptions of 'without lawful excuse' and prior consent of the chief commissioner. The offence carries a penalty of 30 penalty units.

Section 130 of the Magistrates' Court Act 1989 would apply on summary prosecution so that a defendant claiming he or she had a lawful excuse or prior consent of the chief commissioner would have to adduce or point to evidence that suggests a reasonable possibility that the exception applies. Only then is the prosecution required to prove beyond reasonable doubt that the exception does not apply.

It is questionable whether this provision actually transfers the burden of proof, because once the defendant has adduced or pointed to some evidence, the burden is on the prosecution to prove beyond reasonable doubt the absence of the exception raised.

In any event, any limitation upon the right is reasonable and justifiable in a free and democratic society having regard to the factors in s. 7(2) of the charter.

The offence is a regulatory offence and does not carry a severe penalty. The onus is on the prosecution to prove that the person is not authorised under his or her licence to carry that category of firearm. A licence is the principal means by which possession of a firearm is lawful. It is reasonable to presume that a person whose licence does not permit the possession of that weapon is doing so unlawfully. It would be a considerable burden, both in terms of use of resources and in terms of costs, if the Crown had to investigate and bring evidence of all other potential matters that could give rise to an exception in order to disprove a negative.

Accordingly, the provision is compatible with s. 25 of the charter.

6. Provision of information to the chief commissioner

A number of provisions of the bill require provision of information to the chief commissioner. It is possible that this information may disclose a criminal offence or later be used in the prosecution of an offence. In particular, clause 31 of the bill enables the chief commissioner to require the holder of a licence to provide information relating to the acquisition, disposal, possession, hiring or loaning of firearms and related items. Failure to comply with the notice attracts a penalty of 60 penalty units or 12 months imprisonment.

Section 25(2)(k) of the charter provides that a person charged with a criminal offence is entitled not to be compelled to testify against himself or to confess guilt. At the time the person is required to provide information to the chief commissioner he/she will not have been charged with an offence. On this basis the right in s. 25(2)(k) of the charter would have no application. However, similar rights in other jurisdictions and the broader right to a fair trial have been interpreted to provide some limited protection at the investigation stage.

Even so, the rights have not been extended so far as to protect persons from providing information necessary for the monitoring and enforcement of compliance in relation to a regulatory regime. In accepting a licence, a person is presumed to know, and to have accepted, the terms and conditions associated with the licence, including the provision of information to the chief commissioner to monitor compliance with those terms and conditions. In the circumstance in which the information is provided there can be no concern about false confessions or ill-treatment of suspects, with the right is designed to protect. Accordingly, the provision is compatible with s. 25 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 do raise human rights issues:

these provisions do not limit human rights; or

to the extent that some provisions may limit human rights, those limitations are reasonable and demonstrably justified in a free and democratic society.

Justin Madden, MLC
Minister for Planning

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

In the aftermath of the Port Arthur incident in April 1996, the Australasian Police Ministers Council (APMC) entered into the national firearms agreement. Under that agreement, broadly uniform regimes for the regulation and licensing of firearms were put in place in all states and territories.

States and territories have entered into two subsequent agreements to enhance community safety, while preserving the privileges of responsible firearms owners.

The first, the national handgun control agreement, arose from the tragic Monash University shootings in 2002 and the community's resultant demand to restrict the availability and use of handguns, particularly concealable handguns, for target shooting purposes to minimise the risk of future tragedies. The second, the firearms trafficking policy agreement, provides a broadly national approach to allow police to better detect and deter the illegal trade in unregistered firearms.

Within the framework of these agreements, this bill makes a range of technical amendments to the Victorian regulatory regime, designed to:

enhance the regulation of firearms to improve their safe possession, carriage and use;

fulfil the government's 'hunting and 4WD opportunities in Victoria' election commitment to secure access through grazing land for hunters to ensure better access to game reserves;

address technical and remedial issues identified by stakeholders including Victoria Police and the Victorian firearms consultative committee; and

contribute to fulfilment of the government's election commitment to reduce the administrative burden of complying with regulation.

I will now turn to the provisions of the bill.

The bill implements an election commitment in the 'government's hunting and 4WD opportunities in Victoria' policy to 'amend existing firearms legislation to allow hunters unrestricted access to cross into … game reserves'. It does this by amending section 131 of the Firearms Act to allow hunters to carry (but not use) a firearm on Crown land over which there is a licence, for the purpose of hunting, without having to obtain consent to do so.

The national firearms agreement provides for graduated access to firearms in accordance with their firepower. Weapons are categorised, and the category of a firearm determines the purpose for which a licensee may hold it. Developments in firearms technology since 1996 mean that firearms can be manufactured to technically fall within categories A, B or C (the categories of firearms for which a licence can be obtained for recreational use) but in terms of their actual capacity, should be classified in the more restrictive categories D or E which are only available for restricted occupational or official purposes. The bill allows the chief commissioner to declare a firearm to be a category D or E weapon, and requires that the declaration is published in the *Government Gazette*. The declaration will last for 12 months, which allows sufficient time for regulations to be made categorising the weapon appropriately.

The bill also amends the act to prohibit a person from increasing the magazine capacity of a firearm, if that would cause the firearm to become a different category of firearm unless, before doing so, the person obtains the consent of the chief commissioner.

Firearms collector licences are graded according to the type of handgun collected. A category 2 collector licence, which is the most stringent, applies to collectors of modern handguns manufactured on or after 1 January 1947. A category 1 collector licence is required to collect long arms of any manufacture date and handguns manufactured between 1 January 1900 and 31 December 1946. An antique handgun collector's licence is required to collect 'antique handguns' as defined in the act.

The bill amends the definition of 'antique handgun' under the act to exclude those handguns for which cartridge ammunition is commercially available. Those handguns will become subject to the more onerous 'collector 1' licence regime. Whilst these handguns are not modern weapons, the availability of cartridge ammunition increases the risk they can be used, and it is therefore appropriate they be subject to the more stringent category 1 licensing, display and storage regime.

The bill also amends the act to provide that a category 2 licence also authorises possession of category 1 and antique firearms, and a category 1 licence authorises possession of antique firearms.

The bill will also allow firearms collectors clubs to obtain collective permits for display or use at commemorative or historical events. Only individuals can obtain such permits now. This amendment will reduce the administrative burden on firearms collectors without reducing the existing controls that apply to the conduct of these events.

The Firearms Act currently requires some licence-holders to install an 'effective alarm system' on premises at which firearms are stored. The bill provides greater certainty to licensees by defining what an 'effective alarm system' system is, by reference to the relevant Australian standard, in accordance with current Victoria Police policy.

The bill requires the executor or administrator of a deceased estate to comply with the storage requirements of the act in relation to a firearm that is part of that estate, or alternatively

allows them to arrange for a licensed firearms dealer or a person who holds a current firearms licence that permits possession of the firearm in question to store the firearm on their behalf. It also clarifies the timing requirements for notification of the chief commissioner of the death of the original licensee.

In accordance with the principle of the national firearms agreement that a person must demonstrate a genuine reason to hold a firearms licence, the bill clarifies the information-sharing arrangements between the chief commissioner and firearms clubs, to require the chief commissioner to notify the licence-holder's club and/or employer when a licence is suspended and any subsequent reinstatement or cancellation of that licence. This requirement applies to clubs or employers that the chief commissioner is aware are related to the licence-holder's genuine reasons for holding a firearms licence (for example, a handgun target-shooting club or a security guard firm).

The bill also requires that firearms owners provide the chief commissioner with more accurate and timely notification of the location at which firearms are ordinarily stored by requiring a firearms owner to notify Victoria Police of any change to the information relating to the firearm, including the address where it is stored, within 14 days.

The act provides that a person may be licensed for possession, use or carriage of a firearm for occupational purposes, including a private security guard. The bill strengthens and clarifies certain features of that regime.

Firstly, the bill clarifies that a person applying for a firearms licence must also be licensed under the Private Security Act 2004 to perform security guard activities for which a firearm would be required — that is, as an armed guard or cash-in-transit security guard.

Secondly, the bill enables private security handgun licence-holders to possess, carry and use non-factory manufactured ammunition (see item (a) of the definition of 'restricted ammunition' in section (3) for training and requalification purposes (but not otherwise in the course of security guard duties). However, it does not allow such licensees to use over-calibre, non-recommended, magnum or full-metal-case projectile ammunition without a specific individual authorisation in exceptional circumstances.

Thirdly, the bill allows private security businesses that are appropriately licensed under the Private Security Act 2004, to possess, carry or use multiple handguns providing that, in the opinion of the chief commissioner, the number is commensurate with the genuine needs of the business. These handguns must be registered to the security business. This amendment will not allow security guard employees of security businesses be permitted to possess, carry or use more than one handgun for private security purposes.

Fourthly, the bill amends the act to require security guard firearms to be stored at the premises of the person who employs the licence-holder as a security guard, and to whom the firearm is registered.

Fifthly, the bill allows for a person who has previously accepted compensation for all of his or her legal handguns and surrendered his or her licence within the previous five years to be issued with a handgun licence for necessary and legitimate occupational purposes.

The bill also makes a number of amendments to the regime applying to handgun target shooters. It clarifies that both target shoots and matches or a combination of both can be counted for assessing compliance with participation requirements.

Under the national firearms agreement the chief commissioner must cancel a firearms licence immediately upon becoming aware that the licence-holder is a 'prohibited person'. Currently a person is deemed prohibited if they are serving a term of imprisonment for an indictable offence, an assault or an offence under the Drugs, Poisons and Controlled Substances Act, or had within a specified time served such a term of imprisonment. The bill expands this list to include persons who are found guilty of offences under the Control of Weapons Act. Offenders who have shown a propensity to illegally possess or use non-firearm weapons in the commissioning of serious offences should not be able to obtain a firearms licence.

Another ground for prohibition is being the subject of an intervention order. The bill provides that where a person becomes prohibited as a result of an intervention order, their licence will be suspended for a period of three months and then cancelled unless they lodge an application to have their prohibited status overturned within that three-month period. If such an application is lodged, the applicant's licence then remains suspended until the application is finally determined by a court. If the court declares that the person is not a prohibited person, their licence may be reinstated if the court deems it appropriate. If the court declines to declare that the section 189 applicant is not a prohibited person, their previously suspended licence is automatically cancelled.

Section 5(3) of the Crimes (Family Violence) Act 1987 provides that an order under section 5(1)(h) takes precedence over any provisions of the Firearms Act. This amendment will not affect that provision.

The bill also makes a number of further technical and clarificatory amendments relating to:

hiring and loaning of firearms by dealers;

the requirements placed upon an instructor of an unlicensed person in handgun target shooting;

service of notices under the act;

interstate licences and permits;

collective display permits;

imitation firearms; and

the powers of the chief commissioner to request information from licensees.

I commend the bill to the house.

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

Debate adjourned until Thursday, 27 September.

WORKING WITH CHILDREN 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 Working with Children Amendment Bill 2007.

In my opinion, the Working with Children 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

Amendments to Working with Children Act 2005

This bill amends the Working with Children Act 2005 ('the act'), which commenced operation on 3 April 2006. The purpose of the act is to assist in protecting children from sexual or physical harm by ensuring that people who work with, or care for, children have had their suitability to do so, checked.

The act established a scheme, mandating a 'working-with-children check' for persons involved in child-related work. Child-related work applies to people who work or volunteer in connection with certain occupational fields and as a result of that work, have regular, direct contact with children which is not supervised.

The working-with-children check assists in preventing those who pose a risk to the physical and sexual safety of children from working with them, either in paid or voluntary work. The working-with-children check considers and assesses relevant criminal records in relation to serious sexual, violent or drug offences and relevant findings from prescribed professional bodies. The act established a minimum state-wide standard for assessing the suitability of those persons who undertake child-related work.

Under the act, in considering an application, the Secretary to the Department of Justice must take into account criminal offences listed as relevant together with relevant prescribed findings. In exercising discretion to not issue an applicant with an assessment notice the secretary must have regard to listed factors which include the nature and gravity of the offence, the period of time since the offence/s occurred, any information given by the applicant and the likelihood of future threat to the physical or sexual safety of children. Prior to a person being refused an assessment notice they are provided an opportunity to explain why they believe they should be issued with a check. Following the submission process, an applicant who has been refused a WWC check may appeal the decision to the Victorian Civil and Administrative Tribunal (VCAT).

The objective of this bill is to promote the wellbeing of children by enhancing the existing protection mechanisms contained within the act. The bill amends the act to enhance existing assessment processes within the scheme and to ensure that persons with serious criminal histories are assessed for their potential risk to the physical and sexual safety of children. This is a direct response to practical issues that have arisen during the first year of operation of the act.

The bill includes new offences which are defined as 'relevant offences', due to the correlation between the offences and the potential for harm to the physical and sexual safety of children (for example, the offence of 'stalking' where the victim is a child).

The bill also provides the secretary with a limited 'exceptional circumstances' discretion to consider persons with offences which, while the offences are not prescribed 'relevant offences', there is nevertheless a significant link between the offending behaviour and potential risk to the physical and sexual safety of children. In such cases, the presumption is that the person will be issued with an assessment notice unless it can be established that an unjustifiable risk to the safety of children exists.

The limited 'exceptional circumstances' discretion will also apply to circumstances where a person has applied and is awaiting an outcome, or where their application has been finalised. The applicant or assessment notice holder (in the case that the application is finalised) must first be informed of the intention to re-assess their application or assessment notice.

Amendment to the Children, Youth and Families Act 2005

The amendment to section 82 of the Children, Youth and Families Act 2005 ('CYFA') will incorporate carers as registered foster carers and out-of-home carers within the meaning of s. 82, where between December 2002 and 23 April 2007 they:

> acted as a volunteer foster carer by having a child placed with them by an out-of-home care service; or
>
> were employed by an out-of-home care service for the purpose of providing care to a child and did provide care to a child for this purpose.

This will allow for independent investigation and potential referral to the suitability panel of carers who have allegations made against them for conduct occurring within three years before the date upon which the CYFA was proclaimed.

One of the key aims of the CYFA is to strengthen the safety and quality of out-of-home care services. Accordingly, the CYFA spells out a new process for responding to allegations of physical and sexual abuse of children living in out-of-home care, by:

> enabling independent investigations of allegations of physical and or sexual abuse of children who are in out-of-home care
>
> establishing the suitability panel to disqualify registered carers who pose an unacceptable risk to children from

volunteering as a foster carer or being employed as a carer by a residential care service.

It was intended that the CYFA allow for reports to be made about allegations of physical or sexual abuse relating to conduct occurring on or after not more than three years before the date on which the CYFA received royal assent. This would allow for reports to be made regarding conduct occurring after 7 December 2002.

However, the CYFA as currently worded, significantly limits the retrospective effect of these provisions. Sections 81 and 82 specify that the allegation must relate to a person who is or was a registered foster carer or residential care employee. The concept of 'registered' carer is created by the CYFA. This limits the application of the provisions to carers who were registered carers on or after the commencement of the CYFA.

This limitation excludes carers who were engaged by an out-of-home care agency to provide care between 7 December 2002 and 23 April 2007, but were not registered as carers when the CYFA commenced. The objective of this amendment is to overcome this unintended consequence.

Human rights issues

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

Section 8: recognition and equality before the law

Section 8(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 5 of the bill promotes recognition and equality before the law for people with an impairment by providing an exception to the existing legislative requirement that a person personally sign their working-with-children check application form.

Clauses 8 and 9 of the bill add new offences as 'relevant offences' under the act. Clause 8 adds the specific offences of 'loitering near schools etc', and 'stalking' where the victim was a child as category 2 offences under the act.

Under category 2, it is presumed that the applicant will be refused an assessment notice unless the secretary is satisfied that doing so would not pose an unjustifiable risk to the safety of children.

Clause 9 adds, 'causing injury recklessly or intentionally' and 'obscene exposure' as category 3 offences under the act. Under category 3, it is presumed that the applicant will receive an assessment notice unless it is appropriate for the secretary to refuse to give one.

The inclusion of these offences enables their consideration for the purposes of assessing the suitability of a person to engage in child-related work, and provides the secretary with the attendant discretion to take into account the particular circumstances relating to the person and the commission of the offence.

Clause 10 of the bill provides the secretary with a limited 'exceptional circumstances' discretion to consider applications with criminal records containing offences which are not currently considered, having regard to specified criteria, and where there is a significant link between the offending behaviour and risk to the physical and sexual safety of children. The presumption is that the person will receive an assessment notice; the onus is on the secretary to demonstrate that exceptional circumstances exist, and there is a significant link between the offending behaviour and the risk to the sexual and physical safety of children.

As a person's suitability to work with children is assessed on the basis of criminal record, these provisions may limit section 8 of the charter by discriminating against persons on the basis of race or impairment, which are attributes protected under the charter. Specifically, there could potentially be an indirect and disproportionate impact on groups who are more likely to have an extensive record for offending. For example, indigenous groups and people with an intellectual disability, who are overrepresented in the criminal justice system, may be disproportionately affected.

Section 13: privacy and reputation

The charter outlines that a person has the right not to have his or her privacy, family, home, or correspondence unlawfully or arbitrarily interfered with. In addition, a person has the right not to have his or her reputation unlawfully attacked.

Amendments to the Working with Children Act 2005

The act allows for the collection and disclosure of personal and sensitive information in relation to offences that are relevant to a working-with-children check. No clause of the bill specifically provides that information is required to be provided by a person. However, the right to privacy is engaged because by expanding the relevant offences under the act and providing for an 'exceptional circumstances' discretion in relation to other offences, the bill will mean that the provisions in the act permitting the collection and disclosure of personal information in relation to relevant offences will now also apply to the new offences incorporated by virtue of this bill.

The act requires that as part of the application for an assessment notice, certain personal information is required to ascertain that person's identity for the purpose of a criminal history check.

Where that person has a relevant criminal history, that information is used in order to make an assessment of the suitability of a person to work with children, taking prescribed matters into account including the gravity of the offence, the time since the offence, the age of the victim and the offender and other relevant issues.

The act provides that the secretary may seek additional information from applicants; as well as take into account a notice given by a prescribed body; and make any other inquiries to, or seek advice or information on the application from, the Director of Public Prosecutions.

The act also provides that copies of assessment notices, interim negative notices or negative notices (all of which contain personal information) are provided to an applicant's employer. This also applies in instances where the secretary has revoked an assessment notice and issued a negative notice following a reassessment. Employers have specific responsibilities under the act, which provides that it is an

offence to engage a person in child-related work if the person does not hold an assessment notice.

Unlawful and arbitrary interference

The bill does not limit the right in section 13 of the charter as the interferences with privacy are not unlawful or arbitrary for the reasons outlined below.

The requirement that an interference with privacy not be unlawful means that the interference must be provided for in the law and that the law must specify in detail the precise circumstances in which interferences with privacy may be permitted.

In this case, the bill introduces new offences which will be relevant for a working-with-children check. Collection and disclosure of information is only permitted under the act where a criminal history check reveals information which may pose a threat to the safety of children. The use of the personal information for this purpose is consistent with the aims and the intention of the act; namely, to protect children from physical or sexual harm.

The act sets out in detail the circumstances in which privacy may be interfered with for the purpose of ensuring that people who work with or care for children have their suitability to do so checked by a government body.

Consistent with current practice, the collection and use of information must comply with the information privacy principles and the confidentiality provisions already existing within the act. Section 40 of the act relates to confidentiality and prohibits (subject to the exceptions contained in section 40(2)) the giving to any person, whether indirectly or directly, any information acquired by the person from, or in the carrying out of, a working-with-children check. Section 40(1) is very broad and prohibits the giving of information that is likely to cause harm to the public interest as well as information that is not likely to do so.

As the circumstances in which personal information may be collected are set out in detail in the act and there are constraints concerning the disclosure of the information, it is considered that the interference with privacy is not unlawful.

The requirement that an interference with privacy not be arbitrary means that any interference with privacy should occur in accordance with the provisions, aims and objectives of the charter and should be reasonable in the circumstances.

The interference with privacy is consistent with one of the important aims of the charter, to provide special protection for children. For example, section 17 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 him or her by reason of being a child.

The use and disclosure of personal information is also reasonable in the circumstances, as the collection and use of the information in relation to the new offences (envisaged under clauses 8, 9 and 10 of the bill) is a proportionate response to the risk that those offences pose to the safety of children.

The new 'relevant offences' and the new limited 'exceptional circumstances' discretion require that there is a nexus between the offending behaviour and the potential risk to the sexual and physical safety of children.

The new offences to be included are:

> the two offences of 'loitering near schools etc.' and 'stalking', where the victim is a child as 'relevant offences' within category 2; and
>
> the two offences of 'causing injury intentionally or recklessly' and 'obscene exposure' as 'relevant offences' within category 3.

For example, the offence of 'loitering near schools etc' is specifically aimed at predatory behaviour in relation to children. An outcome of being convicted of this offence is to be subject to reporting requirements under the Sex Offenders Registration Act 2004. To be charged with the offence, a person must:

> have been charged with a specified sexual offence (all of which are currently included as 'relevant offences' under the act; and
>
> be in or near a place frequented by children, 'without reasonable excuse'.

In relation to the offence of 'obscene exposure', trivial behaviour (such as urinating in a public place) as compared with sexual offending, will not be considered as demonstrating a clear nexus between the behaviour and potential risk to the physical and sexual safety of children. As such, information will not be able to collected and disclosed in relation to these minor offences.

A sufficient nexus between the offender's history and the safety of children is also required in relation to the 'exceptional circumstances' discretion given to the secretary. The bill provides for a new limited discretion which will enable the secretary to refuse to give an assessment notice (or to revoke an assessment notice) if satisfied that 'exceptional circumstances' exist to justify refusal or revocation of the notice. In making this determination, the secretary must have regard to whether the person's offending behaviour indicates that there is an unjustifiable risk to the safety of children, as well as prescribed factors including the period of time between offences. The discretion can only be exercised when a clear nexus exists between the person's offending behaviour and potential risk to the physical and sexual safety of children.

Therefore, the collection of information in relation to offences that may pose a risk to children is considered to be proportionate and not arbitrary. As such, it is considered that expanding the range of offences that will be relevant to a working-with-children check does not limit the right to privacy as the interference with privacy is neither unlawful nor arbitrary.

Amendments to CYFA

The consequential amendment to section 82 of the CYFA also engages the right to privacy and reputation in section 13 of the charter.

The CYFA establishes a legal framework for investigating retrospective allegations made against a carer of children who are in the care of the state. The CYFA clearly defines the period of retrospectivity (December 2002 to the commencement of the act on April 23, 2007). With this amendment, the CYFA also clarifies the class of persons who

may be disqualified from providing out-of-home care as a result of a previous allegation of physical or sexual abuse.

The CYFA amendment engages the right to privacy because of the type of information that will be exchanged between the secretary of DHS and the out-of-home care service in determining the status of a carer. This may include information of a personal nature and information regarding the allegation/s of physical and sexual abuse. The amendment also engages the right to privacy in relation to the subsequent information flow between the secretary of DHS and the suitability panel if proceedings are instituted regarding the allegations of physical and sexual abuse and information of a personal nature. However, privacy is not unlawfully or arbitrarily interfered with.

Unlawful interference

The report of alleged abuse by a carer regarding a child in out-of-home care can be made by any person but is confined to grounds of physical and sexual abuse and is time specified in the legislation. It is the intent of the CYFA to strengthen the safety and quality of out-of-home care services. Accordingly the CYFA spells out a new process for responding to allegations of physical and sexual abuse of children living in out-of-home care. As such, any interference is precise and circumscribed and in accordance with law.

Arbitrary interference

In providing clear parameters around the type of allegations, that is alleged physical and sexual abuse of children, the interference with persons' rights is limited to these matters and the amendment also ensures that any interference with a person's privacy is relevant to the alleged allegations. Any interference with privacy in relation to this amendment is therefore not arbitrary.

In addition, the CYFA spells out strict safeguards to protect the privacy and reputation of carers who are the subject of alleged abuse in care. These protections include:

limitations on the disclosure of information about investigations and hearings by the secretary

confidentiality of information acquired by an authorised investigator

confidentiality of proceedings of the suitability panel, in relation to any allegation or status of an investigation into the allegation (ss. 127, 129 and 130 CYFA)

Allegations of physical or sexual abuse of a child in out-of-home care can be lawfully disputed by the carer. Additionally, the carer has a right of appeal from decisions made by the suitability panel to VCAT.

As such, it is considered that the right to privacy is not limited as the interference is neither unlawful nor arbitrary.

Section 17: protection of families and children

The bill engages this human right by enhancing and promoting the safety and wellbeing of children when children are in the care of persons other than their family.

Section 26: right not to be tried or punished more than once

The charter provides that a person must not be tried or punished more than once for an offence in respect of which he or she has already been finally convicted or acquitted in accordance with law.

Section 26 is designed to protect an accused person against 'double jeopardy'. The rationale for this protection is to ensure fairness to the accused and finality in the system of justice by preventing repeated attempts to gain a conviction of a previously acquitted person.

The bill enables government to place restrictions regarding work on individuals with records for certain types of offences. However, the international jurisprudence suggests that this sort of consequence of conviction for certain offences does not constitute a punishment for the purposes of section 26 of the charter. For example, the New Zealand Court of Appeal has held, in relation to a corresponding right in the Bill of Rights Act 1990 (NZ), that it would be erroneous to treat the word 'punished' in that context as 'embracing punishment outside the ambit of the criminal process and its associated enforcement of the public law'. *Daniels v. Thompson* [1998] 3 NZLR 22.

As such, it is considered that the bill does not engage section 26 of the charter because the 'punishment' referred to in section 26 does not include penalties imposed outside of the criminal law.

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

Recognition and equality before the law

It is considered that the limitation of this right is justifiable under section 7, as set out below.

The nature of the right being limited

The prohibition of discrimination is a fundamental human right and this is reflected in the preamble to the charter. However, the right is not absolute and can be subject to reasonable limitations in section 7 of the charter.

(a) the importance of the purpose of the limitation

A person's suitability to work with children is assessed on the basis of criminal record. This may limit the right in section 8 of the charter because of the potential for groups of people with certain attributes (e.g. impairment, race) to be disproportionately affected as they are overrepresented in the criminal justice system (i.e. indigenous persons, people with an intellectual disability).

Assessment on the basis of criminal record is important because certain types of offending behaviour (i.e. serious sexual, violent or drug offences) are considered relevant when assessing whether a person is suitable to engage in child-related work. It is important for the secretary to consider the specific new offences, and to exercise a limited 'exceptional circumstances' discretion in determining whether a person is suitable to engage in child-related work.

(b) the nature and extent of the limitation

Indigenous groups and people with an intellectual disability, who are overrepresented in the criminal justice system, may

be seen to be disproportionately affected by an assessment based on criminal record.

There are a number of safeguards within the act which limit the potential discrimination as set out below.

> The act currently provides for assessment of a person's suitability to engage in child-related work, on the basis of criminal record and findings from prescribed professional bodies. For the purposes of assessment, only certain serious criminal offences are considered relevant due to their particular nature and potential risk to the sexual and physical safety of children.
>
> The act provides criteria which the secretary must take into account when exercising discretion. The criteria relate to the particular circumstances of each case, including the time since the offence was committed; the gravity of the offence; the age of the victim and offender; and the person's behaviour since the offence.
>
> Finally, in the event that a person is assessed as unsuitable to engage in child-related work, the act provides for a full range of appeal rights to the Victorian Civil and Administrative Tribunal (apart from a person subject to reporting obligations under the Sex Offenders Registration Act 2004; or an extended supervision order under the Serious Sex Offenders Monitoring Act 2005).

These existing safeguards will not be altered by the bill.

In addition, while indigenous groups and people with an intellectual disability may be overrepresented in the criminal justice system, it is considered unlikely that the offending behaviour of individuals within these groups will fall within the range of the serious sexual, violent or drug offences which are considered 'relevant offences' for the purposes of the bill.[1]

The safeguards set out above will continue to allow for a consideration of individual circumstances.

(c) the relationship between the limitation and its purpose

An assessment on the basis of criminal record is rationally connected with the purpose that the bill seeks to achieve. The purpose of the bill is to amend the Working with Children Act 2005 to enhance the efficiency of the act, whose main purpose is to 'assist in protecting children from sexual or physical harm by ensuring that people who work with, or care for, them have their suitability to do so checked by a government body'.

(d) any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means reasonably available which would not compromise the purpose of the act.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because it limits human rights but those limits are reasonable and proportionate.

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 Working with Children Amendment Bill 2007 aims to enhance the existing assessment mechanisms established under the Working with Children Act 2005.

The purpose of the Working with Children Act is to assist in the protection of children from physical or sexual harm by ensuring that people who work with, or care for, children have their suitability to do so checked by a government body.

Victorians have demonstrated their commitment to protecting children with a high number of applications for working-with-children checks. Since the commencement of the scheme, over 100 000 applications have been received. It is notable that a significant number of people have applied well in advance of their required date.

During the scheme's first year of operation, some practical and legal issues have arisen. In assessing applications, the Department of Justice has become aware of categories of offending behaviour that should be considered relevant for the purposes of assessing or reassessing a person's suitability to engage in child-related work. The bill seeks to address these issues.

The bill will enhance the mechanisms within the act to assess the suitability of persons to work with children, which is the main purpose of the legislation. The bill will achieve this in two fundamental ways.

Firstly, the bill provides for the inclusion of four additional offences to be considered relevant in assessing an application.

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[1] The Victorian response to the *Review of Recommendations of the Royal Commission Into Aboriginal Deaths in Custody Report*, section 3, 'Statistical information on indigenous over representation in the criminal justice system 2005', notes that:

- In 2002/03 the highest alleged offences for both Indigenous and non Indigenous persons apprehended by police was 'assault'.
- The next highest offence category for Indigenous persons was 'Justice procedures (includes breaches of court orders) and property damage offences'.
- This data was further analysed and showed that three in five alleged indigenous offenders (62 per cent) who were apprehended for assault were specifically charged for 'intentionally / recklessly cause injury', 'unlawful assault' (21 per cent) and 'assault police' (18 per cent)

The bill inserts the offences of 'loitering near schools etc.' which is an offence under the Crimes Act 1958 under the heading of 'Loitering by a sexual offender', and 'Stalking' where the victim is a child, as offences which are relevant for classification of applicants as category 2.

'Loitering near schools etc.' and 'Stalking' where the victim is a child have been included in category 2 due to their predatory nature and the specific risk these offences may pose to the physical and sexual safety of children. As offences which are relevant for classification of applicants as category 2, the Secretary to the Department of Justice will have discretion to consider the offences. The secretary must refuse to issue an assessment notice unless satisfied that doing so 'would not pose an unjustifiable risk to the safety of children' having regard to the prescribed criteria.

To be charged with the offence of 'loitering near schools etc.', a person must have been both charged with a specified sexual offence and be in or near a place frequented by children, 'without reasonable excuse'. The two thresholds operate to restrict the scope of the offence. It is clear that, for example, parents waiting to collect children, including estranged parents denied contact with their children (who may be breaching an intervention order or Family Court order) would not be committing this offence. In the latter situation, the person may be breaching an order — or committing a different criminal offence — not the offence of 'loitering near schools etc.'.

The bill also inserts the offences of 'causing injury intentionally or recklessly' and 'obscene exposure' as offences which are relevant for classification of applicants as category 3. They will be included in category 3 in recognition that the offences may cover a range of behaviours. As an offence relevant for classification of applicants as category 3, the Secretary to the Department of Justice must issue an assessment notice unless it is inappropriate to do so, having regard to the prescribed criteria. In the context of 'obscene exposure', where, for example, someone has urinated in a public place, it is unlikely that this would be regarded as posing a risk to the physical and sexual safety of children.

The inclusion of the above offences as offences which are relevant for classification of applicants as categories 2 or 3 means that they will be considered in the final determination regarding risk to the sexual and physical safety of children.

Secondly, the bill enhances assessment mechanisms within the act by providing the secretary with a limited 'exceptional circumstances' discretion. In the scheme's first year of operation, it has been the experience of the Department of Justice that persons with certain types of criminal histories which do not otherwise fall into categories 1, 2 or 3, should be assessed in terms of whether they pose an unjustifiable risk to the physical or sexual safety of children. Such criminal histories could include, for example, an extensive and consistent pattern of violent offences.

The amendment will allow the department to assess potential risk to the physical and sexual safety of children and, if warranted, refuse an assessment notice. This will occur in exceptional circumstances and where there is a significant link between the applicant's criminal record and the potential risk to the physical or sexual safety of children.

In these circumstances, there is a presumption that the person will pass the check unless the Secretary to the Department of Justice is satisfied that the giving of an assessment notice would pose an unjustifiable risk to the physical and sexual safety of children. In making a decision about whether a person should pass the check, the Secretary to the Department of Justice must have regard to a number of factors including the time since the offence(s) occurred and the conduct of the applicant since the offending. These are considerations which already exist in other areas within the act.

Anyone who receives a negative notice because of these additional provisions can, of course, appeal the decision to the Victorian Civil and Administrative Tribunal. This bill does not affect this existing right in any way.

The administration of the act is reviewed by the child safety commissioner on an annual basis. The enhancement provisions contained in this bill will of course be part of the review by the commissioner.

The bill will also place two specific 'carnal knowledge' offences within category 2. This will enable the secretary to exercise discretion in determining whether to issue an assessment notice. 'Carnal knowledge' offences are historical, and experience has shown that they often encompass situations where the 'offender' and 'victim' engaged in sexual behaviour as boyfriend and girlfriend. The presumption is that the secretary must refuse to give an assessment notice, however may exercise discretion to do so, provided that doing so does not pose an unjustifiable risk to the safety of children.

The bill also makes provision for the Victorian Civil and Administrative Tribunal to make interim orders pending the final determination of a matter. The purpose of this amendment is to limit any serious implications for applicants and any children in their care, if there is a delay in hearing a matter.

Accordingly, the bill provides a defence to the offences of engaging in child-related work without an assessment notice, and engaging a person without an assessment notice, where the Victorian Civil and Administrative Tribunal has issued a stay order.

Finally, the bill makes a range of minor technical amendments to clarify some terms within the act. These technical amendments will enhance the clarity and efficiency of the act. The bill also makes minor technical amendments to other acts.

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, 27 October.

ADJOURNMENT

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

That the house do now adjourn.

Sandringham: beach renourishment

Mrs COOTE (Southern Metropolitan) — My adjournment matter tonight is for the Minister for Environment and Climate Change, Gavin Jennings. The issue is to do with Royal Avenue beach in Sandringham. What a lot has happened in two years since the groyne at Royal Avenue in Sandringham was proposed. Most notably Victorians have been deserted by the former Premier, Steve Bracks, and the former Deputy Premier and environment minister, John Thwaites, both leaving historically on the same day. Apparently Mr Bracks had family issues to attend to, but Mr Thwaites left just because he had nowhere to go but down. Unfortunately he left with some significant unfinished business. One of those things was the groyne at Royal Avenue in Sandringham.

Last night during the adjournment debate we heard an eloquent explanation from my colleague Sue Pennicuik on this very issue of the beach renourishment at Sandringham and the issues that the local people have concerning the promise made by the then Bracks government, now the Brumby government. She outlined in detail what some of the local groups are dealing with.

I have some other issues that I wish to draw to the attention of this house and to ask the minister about. The groyne at Royal Avenue at Sandringham has been completed and is 80 metres in length. This is part 1 of a two-phase project for the foreshore cliff facelift between Southey Street and Royal Avenue. The second phase was to renourish the beach with 20 000 cubic metres of sand. This has not been done. We have seen part 1 of the project completed, but there does not seem to be anything on the horizon about part 2 with this additional sand.

I remind the chamber about Hampton Beach under the Kennett government. The Kennett government renourished Hampton Beach, and it was a great success. The beach has continued to be used by the community. It is an excellent beach; it is wide and has deep white sand. It is terrific. The Kennett government did what it said it would, on time et cetera.

I ask the minister to arrange to have the 20 000 cubic metres of sand deposited at the Royal Avenue beach site as a matter of great urgency. I, too, have been approached by a number of groups, including the Black Rock and Sandringham Conservation Association. Janet Ablitt wrote a poignant letter explaining that the groyne is undermining the cliff and its slump and saying that it would be catastrophic if it collapsed. I urge the minister to have the 20 000 cubic metres of sand deposited as a matter of great urgency.

Hospitals: emergency departments

Ms HARTLAND (Western Metropolitan) — My adjournment matter today is for the Minister for Police and Emergency Services in the other house, Mr Cameron. It is in regard to the problem of ambulances being forced to queue at hospitals because they are on bypass or are simply unable to deal with people in their emergency rooms. I do this because I have been approached by a number of ambulance officers and by the union. I have been given an example: on Monday, 23 July, at about 3.00 p.m. almost all hospitals in the eastern suburbs were on ambulance bypass at the same time — that is, Royal Melbourne, Austin, Box Hill, Maroondah, Knox Private and the Angliss in Ferntree Gully. Ambulance officers say that this situation happens almost on a daily basis. When ambulances refuse to go on bypass they are expected to line up in the courtyards of the hospitals, often for up to 1 hour at a time, with the patients they are trying to deliver to the hospitals on board.

The situation has become acute, and ambulance officers are very concerned that this summer, when we have a number of heat-related problems with older people, this situation is going to become worse. The action I ask of the minister is to liaise with relevant stakeholders and come up with a plan to free up the capacity in emergency departments at all hospitals that are regularly forced onto bypass. I would also particularly request that the minister speak with the ambulance union and its members, as they have a number of what I think are very valid recommendations to try to ease this situation.

Water: biosolids treatment facility

Ms TIERNEY (Western Victoria) — My adjournment matter is for the Treasurer. The Treasurer announced at the beginning of this month that a partnership has been struck between Barwon Water and the Plenary Environment consortium under the Partnerships Victoria model to build a $76 million biosolids treatment facility. This is another example of successful partnerships between government departments, agencies and the private sector. We do not have a choice about producing biosolids because every thousand litres of sewage that is treated creates 3 kilograms of biosolids. How we use this resource is a very important issue. Not using biosolids increases pollution loads and takes up valuable land and waste resources. Thus I congratulate the Treasurer, Barwon

Water and the Plenary Environment consortium on the announcement that continues the Brumby government's commitment to a greener Victoria.

Of the 52 000 tonnes of biosolids, 44 000 tonnes come from the Black Rock water reclamation plant, which is near the new facility to minimise transportation costs. The facility will transform biosolids into fertiliser, which is an appropriate outcome considering the current drought in regional Victoria. I request that the Treasurer provide me with information about how many jobs the new facility will create and the time line for the completion of that facility.

Marine Safety Victoria: future

Mr HALL (Eastern Victoria) — This afternoon I wish to raise a matter for the attention of the Minister for Roads and Ports in the other place. It concerns the future of Marine Safety Victoria. It has been brought to my attention that the government is proposing significant changes to the organisation. For those members who are unfamiliar with the organisation, it is the body responsible for the regulation of recreational and commercial boating in Victoria. It also has responsibility for the licensing and registration functions associated with boating. It monitors boating and marine infrastructure like jetties and navigation aids et cetera. It also supports search and rescue functions and employs boating safety officers who operate throughout the state.

It has been suggested to me that the functions of Marine Safety Victoria that involve recreational boating will be disbanded. If that is so, one wonders what will happen to all of those important functions that are currently being delivered by the organisation. People are pondering whether those services will cease or will be contracted out to other organisations. It will be of concern if the changes that have been suggested to me by people within recreational boating communities go ahead. The action I seek from the minister is clarification of whether the government is intending to restructure Marine Safety Victoria, and if that is so, that the government engage in a meaningful consultation process with the public and the various interest groups about the future of the functions currently performed by Marine Safety Victoria.

Emergency services: south-western Victoria helicopter

Mr KOCH (Western Victoria) — I raise a matter for the attention of Minister for Health in the other place concerning his ill-advised decision to deny funding for an emergency rescue helicopter in western Victoria. While the government continues to ignore pleas for an emergency helicopter for western Victoria, the lives of those who live, work or visit this vibrant and growing region continue to be put in jeopardy.

In the absence of road trauma facilities at Portland, patients are generally transferred to Melbourne, which takes on average a minimum of 5 hours. Long delays in transporting critically injured patients to metropolitan trauma centres causes unnecessary added distress and frustration for families, emergency personnel and the community. The long-term welfare of patients is also severely compromised. When emergency transportation to a Melbourne trauma centre is delayed, the lives of patients needing immediate and urgent medical intervention are put at risk, jeopardising their recovery.

Five weeks ago a Portland resident, Mrs Carolyn Meerbach, was struck by a car while taking an early morning walk with her husband, Joseph. Mrs Meerbach was rapidly admitted to the Portland hospital suffering serious head injuries. By 9.30 a.m. it became clear that she would need to be transferred to Melbourne for time critical treatment to prevent brain damage or even death. The air ambulance arrived in Portland at 11.45 a.m. to be refuelled. It was not until 2.30 p.m. that a Melbourne-based police helicopter arrived at The Alfred, where Mrs Meerbach was operated on. The surgeon expressed concern that Mrs Meerbach's recovery would have been much enhanced had he been able to operate earlier.

The risk of permanent brain damage to patients who sustain serious head injuries is dramatically increased the longer it takes for them to be operated on. Mrs Meerbach unfortunately has since suffered a massive stroke and subsequent brain damage has resulted in her whole body being paralysed except for her eyes and mouth. The tragedy, which is all too frequently repeated when emergency treatment is delayed, is that the outcome for Mrs Meerbach could have been very different had she not been forced to wait for so long to obtain emergency surgery. If access to an emergency rescue helicopter based in western Victoria had been available sooner to transfer Mrs Meerbach to a trauma centre, she might now be making a full recovery.

I request that the minister note the nearly 7500 signatures on a petition tabled in the other place that draws attention to the lack of an emergency rescue helicopter service in the only region of Victoria that has been denied this life saving resource.

Women: financial literacy

Ms DARVENIZA (Northern Victoria) — I wish to raise a matter for the attention of the Minister for Women's Affairs in the other place, Maxine Morand. I wish to raise concerns about superannuation and the availability of it to women. The minister recently launched a report by the Women's Information Referral Exchange entitled *Women's Financial Literacy Research Report*. The report states that many women lack the confidence to plan and make financial decisions. The report contains some very interesting findings: the majority of women who were surveyed said they were just making ends meet; 1 in 10 women surveyed said that they struggled to make ends meet; 15 per cent rated their financial literacy as very low; more than one-third of the women were anxious about their financial future; 1 in 10 women ranked their ability to read financial literature as high or very high — only a small proportion felt that they had the ability to wade through financial literature; 1 in 4 women said that no-one spoke to them about how to manage money when they were growing up; 13 per cent said that their partners looked after all financial matters, and of that group, 14 per cent said that they were not at all informed about financial matters.

The findings in the report are disturbing, particularly given that the participation of women in the workforce is at a record high. Obviously there is a lack of understanding of superannuation, in particular, and of the need to be preparing for retirement and making sure they are financially secure in their retirement. We need to be looking at what women are doing, making sure we explain things to them and giving them information in a way that is easy for them to understand and which suits their working patterns and responsibilities.

Specifically the action that I am seeking from the minister and her department is that when the $1 million funding that has been announced is allocated by the government for a range of financial literacy training programs to be delivered, what I want is to have these programs made available particularly to women in rural and regional Victoria, and I am particularly interested in women in the Northern Victoria Region which I represent. Many of these women are on the land and are experiencing the consequences of severe drought. Many of these women are involved in businesses.

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

Planning: Moonee Ponds land

Mr FINN (Western Metropolitan) — Before diving headlong into my adjournment matter this evening, I am sure you will join me, President, in offering very warm congratulations to Matthew Richardson on winning the 2007 Jack Dyer Medal last night. What we have known for years is now official — that Richo is indeed a champion!

I wish to raise a matter for the attention of the Minister for Planning. I am very pleased to see that he is taking note of the adjournment matters this evening, because my matter regards a decision by him to declare surplus a parcel of land on the corner of Bent and Johnson streets in Moonee Ponds. This, it may come as a surprise to the minister to find out, has made him not very popular in the Moonee Valley region, in particular with the Moonee Valley council. I know there has been some correspondence between the minister and the council. The council has also written to me and asked me to do what I can to help the minister reverse his decision to sell this land.

I am fully aware that this government is particularly fond of a dollar, but this land that we are talking about is very important to the local community. The council has, as I am sure the minister is aware, offered to take over the running of the land and has offered to do whatever is necessary to bring it up to scratch, because it is in pretty poor shape. The council is very concerned that this land will be lost to the public of the Moonee Valley area, so I ask the minister to reconsider his decision.

Moonee Ponds is an area that needs every bit of open space it can get. To lose this particular block would be a major blow to a number of people in that area, and given that the council is very keen to ensure that this land is used for the benefit of the people of Moonee Ponds and of the Moonee Valley region in particular, I ask the minister to reconsider his decision and to ensure that this block of land on the corner of Bent and Johnson streets in Moonee Ponds is retained as public open space.

Summerhill Residential Park: leases

Mr ELASMAR (Northern Metropolitan) — I raise a matter for the attention of the Minister for Consumer Affairs in the other place concerning the treatment of tenants at Summerhill Residential Park, which is located in my electorate. This park has been the subject of controversy for several years now. The residents of Summerhill have on previous occasions complained about the treatment they have received and the poor

conditions in which they are forced to reside. Some of the issues raised by the residents include the level of rents, sale of units, leasing arrangements, repairs, supply of services such as gas, and even threats of eviction.

I know that the minister is committed to improving the operation of residential tenancy in Victoria; in fact the Residential Tenancies Act is currently under review. I believe that knowledge gained firsthand by the minister would be invaluable. I therefore ask the Minister for Consumer Affairs to visit this site and talk to the people concerned.

Moorabbin Children's Traffic School: future

Mr D. DAVIS (Southern Metropolitan) — My adjournment matter tonight is for the attention of the Minister for Police and Emergency Services in the other house, and potentially also for the Premier. It concerns the Moorabbin Children's Traffic School, something I have talked about in this chamber a number of times. There have been a number of developments, and I will bring the house up to speed before I pose my request for specific action to the minister.

The school that was closed pre-emptorily by the withdrawal of support by the police has been potentially reprieved by local council action and the involvement of the private sector with a good deal of community support. The City of Glen Eira has decided that, as this is public land, it will make access to the site available to a private operator on a community lease-type arrangement for a sufficient period to enable a group called Camelot Driving School to run the children's traffic school, which it has some history in doing.

In the first instance I congratulate the council and welcome the involvement of Camelot in the project. I do not believe this solution is the ideal one, and I am already on record as saying that I believe there should have been police and state government involvement. The fact that the council, the community and a private sector operator have come together to find a solution when the Bracks and Brumby governments were not prepared to find a solution is an indictment of this government.

In that context what I am seeking from the minister is some assistance and a reconsideration within this model of a private operator on council land with community support. The police could still be involved, and I believe the involvement of police would be a strengthening of the children's traffic school model in this case. What it would mean is that young children learning the road rules and related matters at an early age would have that early involvement with the police force and the experience of interacting with police.

I certainly believe that involvement by the police force would strengthen the model and provide that important early opportunity for children to learn the traffic rules and road safety messages. I ask the minister to reconsider the government's refusal to support the children's traffic school and to restore some police involvement, and, if necessary, I ask the Premier to step forward and to reconsider the decision of his predecessor.

The PRESIDENT — Order! By way of clarification for the member's information, members can only ask for action from a single minister; I am assuming in this case it is the Minister for Police and Emergency Services.

Mr D. DAVIS — I accept your point, President, but as a matter of clarification, in this case there had been correspondence from both the previous Premier and the police minister, so to that extent it clearly did involve the Premier.

The PRESIDENT — Order! I reiterate that standing orders refer to a single minister.

Kingston: councillor

Mr GUY (Northern Metropolitan) — I raise an issue tonight for the Minister for Local Government in the other place, and I seek action from him regarding the activities of a councillor from the City of Kingston, Cr Rosemary West. It has come to my attention that Cr West has been campaigning against a development at 20 Levanto Street in Mentone, known as Chicquita Park.

This development was approved by the Kingston City Council some time ago, and it is now in its completion stages. Cr West's opposition to the development has come to my attention via an email she sent to a senior staff member at Deakin University, amongst others, in which she outlines the processes for opposing it that include writing to her colleagues and to her chief executive officer (CEO) and outlining when decisions will be made. I point out that this is actually asking people to write to her. I will read part of this email. It states:

> I've reattached it —

that is, the protest letter —

> with a few suggestions, which you can take or leave, but of course please copy into a different word file without my fingerprints! …
>
> … If you address it 'Mayor and Councillors' and send it to the CEO, it will be circulated to them, but possibly not until Monday. As any real discussion/decisions will probably be made at the agenda review meeting on Monday, it is probably a good idea to send it to the councillors' email addresses today or tomorrow …
>
> I'd suggest also adapt it as a letter to the editor to both papers for this week.

I am not taking sides in this development, in fact far from it, but here we have a legally approved development which is in its initial sale phases — a development that was approved by the Kingston city councillors — and one of the councillors is here sending out emails on how to scuttle it. I would point out that amazingly when the development first came to council — —

Mr Atkinson interjected.

Mr GUY — A very good question, Mr Atkinson. When it first came to council, Cr West voted in favour of it. So while Cr West has been organising protests to undermine this development, the one that did occur was not large, and in fact I understand that a number of the protesters were later seen inside taking pamphlets from some of the agents. But the actions here are concerning.

I am also advised that Cr West sought to direct staff of the council to directly block the development, a situation that concerned the CEO, John Nevins, so much so that he has banned her from going to meetings regarding this development. I seek action tonight from the Minister for Local Government to investigate the actions of this councillor in relation to the Chicquita Park development in Mentone.

Rail: Syndal car park

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I wish to raise a matter for the Minister for Public Transport in the other place, and it relates to the provision of car parking at the Syndal railway station in my electorate.

Like at many of the railway stations throughout the South Eastern Metropolitan Region, car parking at that railway station is at a premium. Because of the small site that railway station is located on, and because of the close proximity of retail development, the situation there is particularly strained. I have been advised that the car park is full every day from 7.30 a.m. on, so it is only available to peak commuters. There is no capacity available for off-peak commuters. That results in an overflow into the surrounding residential streets and the surrounding retail area, which impacts on the parking that is available for people visiting the retail businesses in the adjacent streets. That problem occurs from 7.30 a.m. to 6.00 p.m., when the peak-hour traffic returns.

The lack of parking during the off-peak period is leading to people being reluctant to use public transport accessible via the Syndal railway station. At the 2006 state election the Liberal Party's policy committed us to building a double-storey car park on that site to get around the issue of the site being relatively small. I call on the Minister for Public Transport to commit to that project or a similar project to ensure that adequate parking is provided at Syndal railway station for both peak and off-peak commuters.

Water: irrigators

Ms LOVELL (Northern Victoria) — I wish to raise a matter for the Minister for Water in the other place. It concerns irrigators entitlements in northern Victoria. Irrigators are being required to pay for 100 per cent of their entitlements even though their allocations are only between 0 per cent and 20 per cent. They are also being required to pay a deferred debt from last season that accrued because of the government's election policy.

The drought in northern Victoria has reached crisis point. Currently irrigators on the Campaspe irrigation system and the Bullarook Creek irrigation system have a zero allocation, those on the Loddon system have a 5 per cent allocation, those on the Broken system have a 15 per cent allocation, those on the Goulburn system have a 20 per cent allocation and those on the Murray system have a 10 per cent allocation. Despite these record low allocations the Brumby government will require irrigators to pay for 100 per cent of their entitlements. On top of their bills for this year's irrigation season, some irrigators will also receive a bill for 25 per cent of their deferred debt from last season. The reason is that in the lead-up to the election the government was under pressure to waive fixed fees for irrigators, but rather than do that it announced that it would waive the first $5000 of the bills of irrigators who received less than 50 per cent of their entitlement. In northern Victoria this included irrigators on the Goulburn, Campaspe and Loddon systems and the Bullarook Creek system.

The government's decision to waive the first $5000 of fees meant that the very small water users, such as hobby farmers or those who had only a stock-and-domestic licence, were the beneficiaries of the policy and the real water users, who have larger

entitlements, were saddled with a deferred debt. I know of many irrigators with water bills that have amounted to anything between $10 000 and $70 000. These irrigators are required to commence paying back that debt over four years from this year, a year when they will once again have record low allocations and when they are struggling to survive. My request to the minister is that he waive not only the fixed fees on infrastructure and storage for the undelivered portion of irrigators entitlements this season but that he also waive the deferred debt from last season.

Roads: Gippsland

Mr O'DONOHUE (Eastern Victoria) — My matter this evening is for the Minister for Roads and Ports in the other place. The chamber is well aware of, and we have heard much this year about, the effects of the devastating bushfires last summer and the relatively recent floods in Gippsland and the effect they have had on the infrastructure of the Gippsland region. The funding provided by the state government through its recovery package, whilst welcome, does not go the whole way to addressing the damage to the infrastructure in question. In particular many of the roads throughout the Wellington and East Gippsland shires have significant structural problems, and a lot of money will be required to bring them back to a standard suitable for the carriage of trucks of all descriptions. Many of the roads used by logging contractors have been degraded and need significant investment.

Over the last three years the state government has provided the Wellington shire with a decreasing amount of money with which to address timber-impacted roads. In the 2004–05 financial year the amount was $940 000, in the 2005–06 financial year it was $855 000 and this financial year the amount was reduced again to $719 000. This funding is simply not enough to ensure that roads affected by timber trucks are adequately maintained. I saw an example of this firsthand last week when I was down in South Gippsland on the Yarram-Morwell Road. There is a stretch of road there between Egan Road and Turpins Road that has 12 very dangerous corners. Every day the residents who live along that road face the possibility that they may be confronted by a truck coming the other way and have less than 1 second to avert a collision with that truck. It is a highly dangerous situation and is but one example of work that needs to be done. Unfortunately the Wellington and East Gippsland shires do not have the necessary resources to do the work because the funding provided by the state government is not sufficient.

The action I seek from the minister is to review the timber-impacted road funding program, noting the shortfall in funding, with a view to adequately compensating the shires of East Gippsland and Wellington so they can address the condition of the timber-impacted roads they have in their respective municipalities.

Eastwood Primary School: facilities

Mr ATKINSON (Eastern Metropolitan) — I wish to raise a matter with the Minister for Education in the other place concerning the Eastwood Primary School. Both Mr Leane and I have visited the school to investigate its building facilities, which are clearly in need of a significant upgrade. I am mindful of the government's building program and its commitment at the last election to rebuild schools.

There is a wide range of issues with the school. Obviously there are basic maintenance issues. I understand that after representations by Mr Leane and my own visits to the school, some action has already been taken by the regional director to address problems with the toilets and to give the place a coat of paint. That might be a worthwhile interim course of action, but the reality is it does not address the fundamental issue with the school. The building stock is very outdated and in need of drastic repair — or replacement, which I would prefer. The school also has security problems, because the design is such that anyone can climb onto the roof, and the flues and so forth on the roof are consistently being damaged.

Mr P. Davis interjected.

Mr ATKINSON — Yes, there is a photocopier that has to be moved every time it rains, because it gets wet — water and photocopiers do not mix terribly well. The school has buckets along the corridors. I know this is the case for a number of schools, but it is an issue that concerned both Mr Leane and me. What makes this school's circumstances even more pressing is the fact that it runs a significant hearing-impaired program, with a large number of students involved. I am amazed that they are able to educate those children, because the ambient noise levels in the school — again because of the design of the facilities — is such that it makes teaching almost impossible in my view.

I have a very high regard for the school's teachers and community. I believe the school needs instant funding for a master plan, and that master plan ought to lead to a rebuild of the school. I therefore ask the minister to allocate funds for the development of a master plan for

the school. If she needs further information, she can discuss it with Mr Leane and me.

Timber industry: government strategy

Mr P. DAVIS (Eastern Victoria) — I address a matter for the attention of the Treasurer. It concerns VicForests, which the Treasurer took full responsibility for this week during question time. I am delighted with this, because it means that perhaps we can eventually find a way of resolving the extraordinary difficulties that VicForests is creating for small timber towns in eastern Victoria.

As a consequence of government policy and an ongoing reduction in resources in terms of forest availability, the auction system that has been implemented by VicForests in regard to the sale of sawlogs — which is creating enormous pressure and uncertainty in terms of the market for and access to sawlogs in the long term — the movement of sawlogs interstate and the further tendering of the integrated harvesting arrangements are causing enormous difficulties for the harvest and haulage contractors in the industry.

I seek that the Treasurer initiate a review of the monopoly power of VicForests and the arbitrary, destructive and capricious abuse of that power, which is in effect demolishing the capacity of Victoria's timber industry to provide Victorian forest products to meet the needs of the community. More significantly, the capricious abuse of power in the way that VicForests is operating is progressively suffocating small towns in eastern Victoria.

What I seek from the Treasurer is a process that will deal with the key issues that are causing incredible problems for all sections of the industry. Those issues are supply certainty, the capacity of stakeholders to get access to resources and the capacity of those who are fundamental to harvest and haulage, and therefore to maintaining the flow of wood, to tender in the environment of extraordinary uncertainty that is created by this process. In particular what I am seeking from the Treasurer is for him to take the responsibility, which he has now acknowledged he has — and no other Treasurer before him has been willing to so clearly do so — and deal with the monopoly position that VicForests has in Victoria, notwithstanding the fact that VicForests does not have proper accountability regarding the provision of services to the timber industry, and the capacity of the industry providing services to VicForests to properly respond to the process.

Responses

Hon. J. M. MADDEN (Minister for Planning) — Andrea Coote raised the matter of the Sandringham Beach groyne, and I will refer this to the Minister for Environment and Climate Change.

Colleen Hartland raised the matter of ambulance services, and I will refer this to the Minister for Police and Emergency Services in the other place.

Gayle Tierney raised the matter of biosolids, Barwon Water, and the Plenary Environment consortium. I will refer this matter to the Treasurer.

Peter Hall raised the matter of marine safety, and I will refer this matter to the Minister for Roads and Ports in the other place.

David Koch raised the matter of emergency rescue services in the south-west, and I will refer this to the Minister for Health in the other place.

Kaye Darveniza raised the matter of superannuation, and I will refer that to the Minister for Women's Affairs in the other place.

Mr Finn raised a matter of parkland issues regarding a parcel of land at the end of Bent Street, Moonee Valley. I received a presentation on this from the Moonee Valley City Council some time ago. I clarify for Mr Finn and the City of Moonee Valley: whilst I am the planning minister — and I would determine the zoning of the land — the land itself falls within the lands portfolio, which I think is part of the portfolio of the Minister for Environment and Climate Change.

The other matter that Mr Finn may find worth considering is that land disposal is, I understand, the domain of the Minister for Finance, WorkCover and the Transport Accident Commission in the other place. Any decision I might make that would relate to that land — —

Mr Atkinson — You are responsible for the price monitor.

Hon. J. M. MADDEN — Just let me finish, please. Any such decision would relate to either the zoning of the land or, as Mr Atkinson pointed out, the land monitor, which confirms that due process has taken place. But the actual decision for the release of that land in any shape or form rests with the two ministers. I have referred those matters through informal discussions to those respective ministers.

I also know that the member for Essendon, Judy Maddigan, the very active local member in another place, is a strong advocate of the Moonee Valley council's position on this matter. I would expect, without too much difficulty, a resolution to this matter could be found which would certainly provide an outcome which would be supported by the local community. I also acknowledge that the matter has been raised by the City of Moonee Valley, and recently also in a local publication. In many ways I believe that is unwarranted because the matter is still being considered.

I would also expect that it would be best for it to work through Judy Maddigan to seek to have this matter resolved rather than relaying that through its local community newsletter in that way. I also acknowledge that we will always be happy to work cooperatively with local government, and I would encourage the Moonee Valley council to continue to work cooperatively on this front.

Mr Elasmar referred to the matter of the Summerhill Residential Park. I will refer it to the Minister for Consumer Affairs in the other place.

David Davis raised the matter of the Moorabbin traffic school, which I will refer to the Minister for Police and Emergency Services in the other place.

Mr Guy raised the matter of a specific Kingston councillor and issues relating to that specific councillor, and I will refer this to the Minister for Local Government in the other place.

Mr Rich-Phillips raised the matter of the Syndal train station's car parking issues, and I will refer those to the Minister for Public Transport in the other place.

Wendy Lovell raised the matter of irrigators' water entitlements, and I will refer that issue to the Minister for Water in the other place.

Edward O'Donohue raised the matter of timber and the impact of road funding issues, and I will refer this to the Minister for Roads and Ports in the other place.

Bruce Atkinson raised the matter of the Eastwood Primary School and associated issues, and I will refer this to the Minister for Education in the other place.

Philip Davis raised the matter of VicForests and the impact of decisions in relation to local communities, and I will refer this to the Treasurer.

The PRESIDENT — Order! The house now stands adjourned.

House adjourned 5.00 p.m. until Tuesday, 9 October.