

PARLIAMENT OF VICTORIA

**PARLIAMENTARY DEBATES
(HANSARD)**

LEGISLATIVE COUNCIL

FIFTY-SIXTH PARLIAMENT

FIRST SESSION

Thursday, 21 August 2008

(Extract from book 11)

Internet: www.parliament.vic.gov.au/downloadhansard

By authority of the Victorian Government Printer

The Governor

Professor DAVID de KRETZER, AC

The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

The ministry

Premier, Minister for Veterans' Affairs and Minister for Multicultural Affairs	The Hon. J. M. Brumby, MP
Deputy Premier, Attorney-General, Minister for Industrial Relations and Minister for Racing	The Hon. R. J. Hulls, MP
Treasurer	The Hon. J. Lenders, MLC
Minister for Regional and Rural Development, and Minister for Skills and Workforce Participation	The Hon. J. M. Allan, MP
Minister for Health	The Hon. D. M. Andrews, MP
Minister for Community Development and Minister for Energy and Resources	The Hon. P. Batchelor, MP
Minister for Police and Emergency Services, and Minister for Corrections	The Hon. R. G. Cameron, MP
Minister for Agriculture and Minister for Small Business	The Hon. J. Helper, MP
Minister for Finance, WorkCover and the Transport Accident Commission, Minister for Water and Minister for Tourism and Major Events	The Hon. T. J. Holding, MP
Minister for Environment and Climate Change, and Minister for Innovation	The Hon. G. W. Jennings, MLC
Minister for Public Transport and Minister for the Arts	The Hon. L. J. Kosky, MP
Minister for Planning	The Hon. J. M. Madden, MLC
Minister for Sport, Recreation and Youth Affairs, and Minister Assisting the Premier on Multicultural Affairs	The Hon. J. A. Merlino, MP
Minister for Children and Early Childhood Development, and Minister for Women's Affairs	The Hon. M. V. Morand, MP
Minister for Mental Health, Minister for Community Services and Minister for Senior Victorians	The Hon. L. M. Neville, MP
Minister for Roads and Ports	The Hon. T. H. Pallas, MP
Minister for Education	The Hon. B. J. Pike, MP
Minister for Gaming, Minister for Consumer Affairs and Minister Assisting the Premier on Veterans' Affairs	The Hon. A. G. Robinson, MP
Minister for Industry and Trade, Minister for Information and Communication Technology, and Minister for Major Projects	The Hon. T. C. Theophanous, MLC
Minister for Housing, Minister for Local Government and Minister for Aboriginal Affairs	The Hon. R. W. Wynne, MP
Cabinet Secretary	Mr A. G. Lupton, MP

Legislative Council committees

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

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

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

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

Standing Orders Committee — The President, Mr Dalla-Riva, Mr 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*): Mrs Coote, Mr Leane and Ms Mikakos. (*Assembly*): Ms Beattie, Mr Delahunty, Mrs Maddigan and Mr Morris.

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

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

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

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

Family and Community Development Committee — (*Council*): Mr Finn, Mr Scheffer and Mr Somyurek. (*Assembly*): Mr Noonan, 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 Mr Foley.

Outer Suburban/Interface Services and Development Committee — (*Council*): Mr Elasmarr, 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 Munt, Mr Noonan, Mr Scott, Mr Stensholt, Dr Sykes and Mr Wells.

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

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

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

Heads of parliamentary departments

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

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

Parliamentary Services — Secretary: Dr S. O'Kane

MEMBERS OF THE LEGISLATIVE COUNCIL
FIFTY-SIXTH PARLIAMENT — FIRST SESSION

President: The Hon. R. F. SMITH

Deputy President: Mr BRUCE ATKINSON

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

Leader of the Government:

Mr JOHN LENDERS

Deputy Leader of the Government:

Mr GAVIN JENNINGS

Leader of the Opposition:

Mr PHILIP DAVIS

Deputy Leader of the Opposition:

Mrs ANDREA COOTE

Leader of The Nationals:

Mr PETER HALL

Deputy Leader of The Nationals:

Mr DAMIAN DRUM

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

CONTENTS

THURSDAY, 21 AUGUST 2008

CORRECTIONS AMENDMENT BILL	
<i>Introduction and first reading</i>	3219
<i>Statement of compatibility</i>	3240
<i>Second reading</i>	3242
PETITIONS	
<i>Abortion: legislation</i>	3219
<i>Euthanasia: legislative reform</i>	3219
PAPER.....	3219
MEMBERS STATEMENTS	
<i>St Catherine's School, Toorak: early learning and visual arts centres</i>	3219
<i>Tertiary education and training: teacher salaries</i>	3220
<i>Darebin: skateboard park study</i>	3220
<i>Road safety: Hume</i>	3220
<i>Building industry: plumbing regulations</i>	3220
<i>Rail: government policy</i>	3220
<i>Roxburgh College: performing arts centre</i>	3221
<i>Jewish community: anti-Semitic attacks</i>	3221
<i>Swan Hill Pioneer Village: festival</i>	3221
<i>Film industry: government initiatives</i>	3222
<i>Thompsons Road, Cranbourne: duplication</i>	3222
<i>John Ilhan Memorial Reserve, Westmeadows</i>	3222
<i>Gas: Avoca supply</i>	3222
<i>Raywood: community plan</i>	3223
STATEMENTS ON REPORTS AND PAPERS	
<i>Auditor-General: Maintaining the State's Regional Arterial Road Network</i>	3223
<i>Rural and Regional Committee: rural and regional tourism</i>	3224
<i>Library Board of Victoria: report 2006–07</i>	3224
<i>Western District Health Service: report 2006–07</i>	3225
<i>Auditor-General: Services to Young Offenders</i>	3226
<i>Victorian Law Reform Commission: civil justice review</i>	3227
<i>Parks Victoria: report 2006–07</i>	3227
<i>Auditor-General: Performance Reporting in Local Government</i>	3228
<i>Freedom of Information Act 1982: statement of reasons for seeking leave to appeal</i>	3229
<i>Regional Development Victoria: report 2006–07</i>	3230
LEGISLATION REFORM (REPEALS No. 3) BILL	
<i>Statement of compatibility</i>	3230
<i>Second reading</i>	3231
COUNTY COURT AMENDMENT (KOORI COURT) BILL	
<i>Statement of compatibility</i>	3232
<i>Second reading</i>	3233
LABOUR AND INDUSTRY (REPEAL) BILL	
<i>Statement of compatibility</i>	3236
<i>Second reading</i>	3237
WHISTLEBLOWERS PROTECTION AMENDMENT BILL	
<i>Statement of compatibility</i>	3239
<i>Second reading</i>	3239
PUBLIC HEALTH AND WELLBEING BILL	
<i>Second reading</i>	3244
<i>Third reading</i>	3253
QUESTIONS WITHOUT NOTICE	
<i>Metropolitan Ambulance Service: investments</i>	3253
<i>Employment: south-western Victoria</i>	3256, 3257
<i>Water: north–south pipeline</i>	3256
<i>Hendra virus: fruit bat testing</i>	3258
<i>Port of Portland: woodchip facilities</i>	3258
<i>Toyota Australia: hybrid car</i>	3259
<i>AirAsia X: Melbourne flights</i>	3260
<i>Murray River: health</i>	3261
<i>Innovation: small and medium technology enterprises</i>	3262
<i>Supplementary questions</i>	
<i>Metropolitan Ambulance Service: investments</i>	3255
<i>Water: north–south pipeline</i>	3257
<i>Hendra virus: fruit bat testing</i>	3258
<i>Toyota Australia: hybrid car</i>	3259
<i>Murray River: health</i>	3262
VICTORIA LAW FOUNDATION BILL	
<i>Introduction and first reading</i>	3263
<i>Statement of compatibility</i>	3305
<i>Second reading</i>	3306
BUSINESS OF THE HOUSE	
<i>Adjournment</i>	3263
COURTS LEGISLATION AMENDMENT (JURIES AND OTHER MATTERS) BILL	
<i>Second reading</i>	3263
<i>Third reading</i>	3269
CRIMES (CONTROLLED OPERATIONS) AMENDMENT BILL	
<i>Second reading</i>	3269
<i>Third reading</i>	3274
LAND (REVOCATION OF RESERVATIONS) (CONVENTION CENTRE LAND) BILL	
<i>Second reading</i>	3274
<i>Committee</i>	3279
<i>Third reading</i>	3284
BUILDING AMENDMENT BILL	
<i>Second reading</i>	3284
<i>Third reading</i>	3288
ROAD SAFETY AMENDMENT (FATIGUE MANAGEMENT) BILL	
<i>Introduction and first reading</i>	3288
<i>Statement of compatibility</i>	3288
<i>Second reading</i>	3291
PUBLIC HOLIDAYS AMENDMENT BILL	
<i>Introduction and first reading</i>	3291
<i>Statement of compatibility</i>	3291
<i>Second reading</i>	3293

CONTENTS

FAMILY VIOLENCE PROTECTION BILL

<i>Introduction and first reading</i>	3294
<i>Statement of compatibility</i>	3294
<i>Second reading</i>	3301

ADJOURNMENT

<i>Ambulance services: Stawell</i>	3306
<i>Warrnambool: football and netball facilities</i>	3307
<i>Drought: rate subsidy</i>	3307
<i>Intralot: agency costs</i>	3308
<i>Police: Bayside station</i>	3308
<i>Roads: maintenance</i>	3308
<i>Rail: freight summit</i>	3309
<i>WorkChoices: Roy Morgan Research</i>	3310
<i>World War I: Cobbers memorial statue</i>	3310
<i>Cardinia Primary School: speed zones</i>	3311
<i>Housing: Williamstown</i>	3311
<i>Wind energy: Mount Pollock</i>	3312
<i>Wind energy: Stockyard Hill</i>	3313
<i>Responses</i>	3313

Thursday, 21 August 2008

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

CORRECTIONS AMENDMENT BILL

Introduction and first reading

Received from Assembly.

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

PETITIONS

Following petitions presented to house:

Abortion: legislation

To the Legislative Council of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council proposals within government to remove legal protection for children before birth in Victoria.

Unborn babies are the most vulnerable and defenceless members of our society and, as such, need the full protection of Victorian law. Abortion kills unborn children and often permanently damages their mothers.

The petitioners therefore request that the Legislative Council rejects any move to decriminalise abortion in Victoria.

By Mr FINN (Western Metropolitan) (943 signatures)

Laid on table.

Euthanasia: legislative reform

To the Legislative Council of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council serious concerns about the Medical Treatment (Physician Assisted Dying) Bill 2008 and any regime which allows voluntary, active euthanasia and urges:

1. members of the Legislative Council to not proceed with passing laws which allow the taking of life of another;
2. support for ensuring access to palliative care and pain management to all those Victorians who need it;
3. consideration is given to international research which demonstrates that when pain is removed or alleviated, the desire to live is reinstated among those who suffer chronic pain;

4. acknowledgement of cases where even individuals who sign an agreement to voluntary euthanasia do and have changed their minds when faced with death;
5. draw attention to the tragic and illegal 'euthanasying' of hundreds of people including many elderly patients in public hospitals who have never agreed to voluntary euthanasia in jurisdictions which have a voluntary euthanasia regime, such as Holland.

The petitioners call on the members of the Legislative Council of the Victorian Parliament to vote against this bill which will legalise euthanasia in Victoria.

By Mrs PEULICH (South Eastern Metropolitan) (721 signatures)

Laid on table.

Ordered to be considered next day on motion of Mrs PEULICH (South Eastern Metropolitan).

PAPER

Laid on table by Clerk:

Auditor-General's Office — Report, 2007–08

MEMBERS STATEMENTS

St Catherine's School, Toorak: early learning and visual arts centres

Mrs COOTE (Southern Metropolitan) — I was honoured to officially open the early learning centre and the visual arts centre at St Catherine's School, Toorak, yesterday. St Catherine's is a remarkable school, and for over 100 years it has provided excellent education for girls. The visual arts centre is truly state-of-the-art, and the visual arts program at St Catherine's School is strong and diverse. The visual arts are a vehicle for self-expression as well as a foundation for later options in careers such as architecture, graphic design, art history, curatorship, interior design, filmmaking and web design.

The staff at St Catherine's early learning centre strive to encourage the following values in preschool children: appreciation, commitment, confidence, cooperation, creativity, curiosity, empathy, enthusiasm, tolerance, respect and integrity. I think these quotes from the author Robert Fulghum sum up what is important to early childhood development:

All I really need to know about how to love and what to do and how to be has been learnt in kindergarten.

...

Wisdom was not at the top of the graduate school mountain, but there in the sandbox at nursery school.

I congratulate St Catherine's on its continuing commitment to excellent education for girls.

Tertiary education and training: teacher salaries

Mr DRUM (Northern Victoria) — I was recently reading a communication from Greg Barclay, the president of the Bendigo Regional Institute of TAFE sub-branch of the Australian Education Union. He is quite disturbed about the lack of funding for TAFE colleges and particularly for BRIT in Bendigo, and in that communication he was trying to explain why union members had voted unanimously for a 24-hour strike yesterday. In his letter to the editor published in the *Bendigo Advertiser* of 23 July he said:

TAFE teachers have not taken industrial action like this since 1995. Teachers in Victorian TAFEs are now earning \$21 000 a year less than teachers in NSW TAFEs and \$13 000 a year less than teachers in Victorian schools. We have not had a pay increase since September 2006.

...

For TAFE teachers to get a salary increase, the Brumby government must agree to give the TAFEs the extra money to pass on to the teachers for a salary increase.

He calls on the Minister for Skills and Workforce Participation, Jacinta Allan, and the Premier, John Brumby, to stop refusing to give the extra money to the TAFE directors so that they can increase the salaries for the teachers. He goes on to say:

Ms Allan continues to make noises about the vital role that TAFE teachers will play in helping fix the 'skills shortage' —

but wonders how that is going to happen if there are no teachers left in the system. He also said:

The minister responsible for TAFE lives in this community and asked for community support at the last election.

He says he will remember Jacinta Allan at the next election. I think that Greg Barclay's situation at BRIT could very well be repeated right across the state.

Darebin: skateboard park study

Mr ELASMAR (Northern Metropolitan) — In discussions with Darebin councillors recently I was informed of their intention to run a skateboard park study. A feasibility study is to be conducted in consultation with young people in the municipality who will assist in the actual design of this new recreational facility. The facility will be built in either East Preston

or East Reservoir. The study will also include a review of existing skateboard parks in the northern part of the municipality. Fun and exercise is a good recipe for healthy kids, and I commend Darebin council for its initiative.

Road safety: Hume

Mr ELASMAR — I am very pleased to report that road accidents in Hume, a local government area in my electorate, have fallen to a five-year low which has been attributed to various road safety improvements by VicRoads and the Hume City Council. Casualty crashes have fallen from 500 in the 12 months ending 30 June 2003 to 319 in the 2007 financial year. It is a good news story that deserves to be told.

Building industry: plumbing regulations

Mr DALLA-RIVA (Eastern Metropolitan) — I am pleased to see that the Plumbing Industry Commission has released a regulatory impact statement on the proposed plumbing regulations 2008. What this is designed to do is to replace the existing regulations that sunset in November 2008. It has suggested some changes to plumbing classes to bring Victoria into line with other states, reflecting the requirements of the Council of Australian Governments. The interesting thing, which is typical of this government, is what is in the detail of these proposed regulations.

There are two issues that are buried in the detail. One is to include a small increase in fees across the board and increase the cost of compliance certificates to \$31. It does not sound much, but when you look at last year's annual report, which shows there are in excess of 315 000 compliance certificates lodged, you realise that what this minor change to the plumbing regulations is going to do is bring an extra \$2.5 million into the coffers of the government. Members can read it as they wish, but it is just nothing short of a cash grab by the government, another sneaky method of its gaining money from people who are using plumbing services. Now every time a person gets a plumbing certificate they are going to get slugged even more by this government.

Rail: government policy

Mr BARBER (Northern Metropolitan) — Maybe it is just me; maybe I am getting paranoid! I think I am in danger of becoming a conspiracy theorist, but this government seems to be utterly locked into massive road projects as a solution to all of our transport problems. There is a saying 'When all you have got is a hammer, after a while everything starts to look like a

nail', but the government is incapable of doing anything else.

The West Gate Bridge can bring 10 000 cars into Melbourne during the morning peak. That is all it could ever bring in, and that is all it is ever going to bring in. The guy who did the blueprints for the West Gate Bridge knew this, but the government is putting on an Academy Award-winning performance by pretending to have uncovered this crisis and to now be mobilising the entire efforts of the government to solve it.

The North Melbourne station can shift two-and-a-half times as many people in that same period, yet it is getting some new escalators. Footscray station has 2500 transfers or boardings in the same period, and it cannot get itself a new footbridge. We know that Clifton Hill station is now carrying more people than the nearby Eastern Freeway exit, and all it is getting is some track work first promised in 1967.

Roxburgh College: performing arts centre

Mr EIDEH (Western Metropolitan) — I rise to acknowledge yet another example of the great commitment of the Brumby Labor government to my electorate of Western Metropolitan Region. Thanks to a \$1.43 million grant from the state government, students at Roxburgh College can now learn in a state-of-the-art performing arts centre, which the Premier himself opened. This new facility features a professional dance studio, music rehearsal rooms and a significant 280-seat auditorium. Such things were unheard of when most of us in this house were of school age.

This government is committed to education. It is committed to our youth. This first-class new centre will encourage more students to take an interest in the arts and allow them to develop skills in drama, dance, music and theatrical production that could open many new doors for them, and thus many career opportunities. In addition, the auditorium will be available for community use, where some 79 per cent of the students come from homes where English is the second language. The centre will thus prove to be an invaluable community resource and so extend far beyond the students and the school itself. The Brumby Labor government provided \$620 000 for the centre, with Roxburgh College contributing \$780 000; Hume City Council, \$20 000; and Roxburgh Park Primary School, \$10 000. This is a partnership that benefits everyone and is one where the community will grow together as time progresses.

Jewish community: anti-Semitic attacks

Mrs KRONBERG (Eastern Metropolitan) — Victoria Police are resisting calls by Melbourne Jewish community leaders to set up a hate crimes squad to tackle the growing number of anti-Semitic attacks. Richard Kerbaj in the *Australian* of 11 March reported that Jewish groups, such as the B'nai B'rith Anti-Defamation Commission, have been accused by police, who oppose the concept of a hate crimes squad, of exaggerating the number of anti-Semitic attacks to justify greater taxpayer-funded security measures. Apparently the Victorian Chief Commissioner of Police has been approached by Jewish leaders to set up the unit, which would play a similar role to a successful program in New South Wales.

According to Jeremy Jones of the Executive Council of Australian Jewry, between 1989 and 2005 an annual average number of anti-Semitic attacks was reported in Victoria. Even more troubling is the increase in the incidence rate to 185 in 2006 and 171 in 2007.

In his article Richard Kerbaj wrote:

One quote by senior police sources said the Jewish community received more attention and security for its functions and events than other religious and ethnic groups. If the Muslim community was to know to what extent they would go crazy.

Right now Victoria does not have a unit for hate crimes; instead it has a security intelligence group which has a mandate to investigate race hate crimes. According to Naomi Levin this desk is not intended as a hate crimes unit, but rather as an investigative group that will look into trend patterns only.

How is this attitude going to solve the growing problem of anti-Semitic attacks, and which other group could anyone possibly point to that suffers as our Jewish community does?

Swan Hill Pioneer Village: festival

Ms DARVENIZA (Northern Victoria) — I am pleased to have had the opportunity to participate in the great debate last Friday night in Swan Hill at the Swan Hill Pioneer Village. It was part of the Pioneer Week Festival that was being held at the village. Some 80 people attended the dinner, which was a sell-out and a huge success. I am pleased to say that my former parliamentary colleague Mr Barry Bishop was there with his wife, Brenda, and everybody had a really fun night.

The debate topic was 'Should women have the right to vote?', and it coincided with the centenary of women

having the right to vote in this state. I congratulate those on my team, which was arguing in the negative — Cr Bruce Jones and the editor of the *Guardian*, Felicia Chalmers. I also want to congratulate the winning team, which argued in the affirmative — Nathan Schammer, a year 9 student from MacKillop College, Joanna Paynter, a year 12 student from Swan Hill College, and Mr Barry Bales. It was a really fun night, and everybody got into the spirit of it. There were plenty of dress-ups and lots of black placards, so I congratulate all those who were involved in putting on this great event.

Film industry: government initiatives

Mr ATKINSON (Eastern Metropolitan) — I note that the government has just released a report on Film Victoria which was prepared by the Nous Group. The report canvasses the success of government programs in regard to film and television production. The report has been warmly welcomed by the Minister for Innovation, Mr Jennings, and it certainly has a number of elements to it that are encouraging; however, I think there are also quite a number of things in this report that are of concern.

I note that the minister has called for submissions seeking views on how Film Victoria, and indeed the recommendations of the Nous Group, might be taken forward by the government. I certainly share his hope that some very good submissions will be made in that process, because film production is very important in Victoria and worth a lot of money. We are part of an international program of productions. Indeed one of the merits pointed to by the Nous Group is that we have attracted more international programming. Sadly, with Australian television now pursuing mind-numbing and often demeaning reality TV, the level of film and television production in Victoria is low. Can I suggest to the minister that he pursue scriptwriting programs as part of a program of building our investment?

Thompsons Road, Cranbourne: duplication

Mr SOMYUREK (South Eastern Metropolitan) — I rise to congratulate the Minister for Roads and Ports for last month starting the works to extend the duplication of Thompsons Road between the South Gippsland Highway and Narre Warren-Cranbourne Road. Families living in and around Cranbourne can look forward to reduced congestion and safer driving conditions with the \$22 million upgrade of Thompsons Road.

This project signifies another important milestone along the way towards improving the safety, access and

efficiency of the arterial road network within the city of Casey. Thompsons Road carries around 20 000 vehicles per day through Cranbourne, with growing residential developments in and around the region. Easing congestion and improving the livability of the community are a priority of the government. The road is being widened and reconstructed for 1.6 kilometres, providing three lanes each way from west of the South Gippsland Highway to Rosebank Drive and two lanes each way between Rosebank Drive and Narre Warren-Cranbourne Road.

John Ilhan Memorial Reserve, Westmeadows

Mr SOMYUREK — On another matter, on behalf of the Australian Turkish community I thank the Premier, John Brumby, for his announcement that the Victorian government will contribute \$250 000 to help redevelop a Westmeadows recreation area as the John Ilhan Memorial Reserve. Mustafa Ilhan was a great soccer fan, and I am sure he would have been pleased with this gesture by the Premier.

Gas: Avoca supply

Ms PULFORD (Western Victoria) — Mr John Vogels recently visited Avoca to issue a media release and to promise that natural gas would be delivered to Avoca if the Liberal-Nationals coalition were elected to office in 2010.

Mr Vogels knows that the natural gas extension program is fully committed, with 34 towns having been successful under the competitive tender process in the biggest rollout of natural gas in Victoria since the 1970s. The government ensured that every town nominated had equal opportunity for inclusion in the program and that the greatest number of Victorians benefited.

The Shire of Pyrenees nominated Avoca for consideration, but unfortunately no bid was attracted from the Kennett-McNamara government privatised gas distributors. Gas distributor SP AusNet estimated that connecting Avoca to gas would involve an economic shortfall of \$4.73 million. The Liberal Party promise to connect Avoca to natural gas is not based on any economic rigour and prioritises Avoca ahead of other similar towns.

Is Mr Vogels planning further cynical, media release inspired visits to make more uncoded promises to Victorian communities? His release suggests that the Brumby Labor government is hoarding funds in the Regional Infrastructure Development Fund, but we have provided more than \$400 million through the

RIDF to fund 192 projects worth more than \$1.2 billion across regional and rural Victoria.

The opposition continues to selectively criticise the government for not capturing all of the towns or some parts of some towns in the initial rollout. This is because it has no plans of its own for regional Victoria and will say or do anything to win a few votes in places its former leader referred to as the toenails of Victoria. This is just another example of the Baillieuland splurge-o-meter and ought to be viewed as a cheap political stunt.

Raywood: community plan

Ms BROAD (Northern Victoria) — Last week it was my very great pleasure to launch the Raywood community plan at the town hall in Raywood, near Bendigo, where I was representing the Minister for Community Development, Peter Batchelor. The event was a celebration of the local community's drive to make Raywood the best community it can be. It has produced the plan with the assistance of a \$150 000 community support grant from the Brumby Labor government to the Greater Bendigo City Council to help plan for the future of 12 small communities near Bendigo, including Raywood.

Members of the Raywood community have done a great job, with the assistance of officers from the Bendigo council and the Department of Planning and Community Development, producing a plan that identifies practical projects that will improve the lives of residents.

Many members of the Raywood community attended, and I especially wish to acknowledge the principal of the Raywood Primary School, Mr Trevor Trewartha, parents and students, staff and teachers, for their contributions. I also wish to acknowledge and thank the member for Bendigo East and Minister for Regional and Rural Development, Jacinta Allan, for her support for the Raywood community, including the community plan.

Finally, I wish to thank Mr Trewartha for taking the time, after the event, to show me the new multi-use facility at the school — a very impressive facility. I am aware he is seeking further government funding for it.

STATEMENTS ON REPORTS AND PAPERS

Auditor-General: *Maintaining the State's Regional Arterial Road Network*

Mr O'DONOHUE (Eastern Victoria) — I am pleased to make a contribution to the debate on the Auditor-General's report on maintaining the state's regional arterial road network dated June 2008. I made a statement on this report soon after it was released a couple of sitting weeks ago.

It is worth revisiting this report, because the Auditor-General has found that the condition and performance of the regional road infrastructure has deteriorated in recent years and that, moreover, this is likely to continue into the future because maintenance expenditure has failed to keep pace with inflation and the expansion and ageing of the asset base, higher traffic levels and higher community expectations — which are justified — all mean that the road asset base is deteriorating over time.

This is very concerning in and of itself, but more concerning when put in the context that the road toll in Victoria seems to have plateaued. Many factors contribute to reducing the road toll: education about road safety, driver fatigue campaigns and other educative processes. A very important part of the mix is the condition of the road network. It is most concerning that on the one hand we have the Auditor-General saying that the regional arterial road network is likely to deteriorate in condition going forward while on the other we have the fact that the road toll has plateaued. Coupled with that we also have the report into vehicle safety tabled earlier this week by the Road Safety Committee. In Mr Koch's contribution about the report he said the committee believed Victoria had fallen behind other parts of Australia and other parts of the world regarding vehicle safety. That is most concerning. Traditionally Victoria has been a world leader on this issue. It has been a world leader in advocating for increased vehicle safety. This combination of factors causes me great concern.

On top of that is the recent revelation contained in documents released through an application under freedom of information which show that the government is investigating options to introduce B-triples and expand B-doubles on the Victorian road network. This is a response to the crisis in the rail freight system and inaction from the government since it came to power in dealing with the rail freight network. The consequence is increasing pressure to move goods on larger and larger trucks. There is a strong argument of increased productivity from using

larger trucks — that is something that has been happening for many, many years — but to cope with those larger trucks the road network would need to be significantly improved and this requires significant additional investment.

The government needs to make a decision about what it wants to do and how it proposes to transport goods around Victoria and to other states. If it believes that rail freight is preferred — and there are many arguments for rail freight as the preferred model, including the ability to move large quantities of goods, environmental reasons and the reduction in danger by reducing the number of trucks on the road — it needs to invest in rail freight. If it wants to permit the number of B-triples to go beyond what is further permitted for the Ford Motor Company, it needs to provide roads that will cope with vehicles of that size. It needs to invest in the road network so that it can handle those sorts of vehicles. It is most concerning that larger trucks may be using roads maintained by local government while local government is struggling financially. Larger trucks cause the road pavement to deteriorate which increases the cost pressure on ratepayers. Therefore the government needs to act with regard to this issue.

Rural and Regional Committee: rural and regional tourism

Mr ELASMAR (Northern Metropolitan) — It gives me great pleasure to speak on the report by the Rural and Regional Committee on its inquiry into rural and regional tourism dated July 2008. I have read the report with great interest. I believe tourism is a great tool for kick-starting the economy in regional and rural areas by substantially increasing employment. Most people take holidays in capital cities, so often the countryside is overlooked except for the occasional Sunday drive, a one-day picnic with family and friends or maybe a long weekend away, usually somewhere close to home, when we have a public holiday weekend. The report has identified a strategy plan that will open up new tourism destinations in regional and rural areas — and I must say, not before time.

Capital city holidays are costly, there is no doubt about that, but the tourism infrastructure benefits are there. We have ready-made entertainment facilities, restaurants and varying degrees of luxury hotels. Internet access is a standard facility in most metropolitan hotels and cable television is available for insomniacs. International-standard airports and even made roads are a factor in some touring holidays. Our world-class capital city holiday venues are enjoyed by the international community, and so they should be. However, we need to address the issue of

decentralisation of tourism and employment in the regional and country regions of Victoria.

There are 39 recommendations in this report, and probably the loudest message in it is that we need to invest in our regional and country areas. As we all know, the tourism industry is the first to take a beating when we have an economic downturn. The first cut to a family budget is holidays, so we need to take on board seriously the strategy plans proposed in the report to improve our facilities and promote new tourist destinations.

I do not need to elaborate on our beautiful beaches or glorious rainforests. Look at the Otway Ranges, for example, with magnificent scenery unrivalled anywhere in the world. Let us make the most of what nature has provided to Victoria and add facilities to which we would be happy to take our families. Importantly, we need to open our lakes and rivers and bushwalking tracks to international tourists. Just as important are employment opportunities for our regional and rural Victorians.

I commend the committee for its detailed work and support wholeheartedly the recommendations contained in the report.

Library Board of Victoria: report 2006–07

Mrs COOTE (Southern Metropolitan) — Today I would like to speak on the State Library of Victoria Annual Report 2006–07. In the highlights for the year 2006–07, under the month of May, the report says:

The state government announces in the state budget that \$9 million will be provided to develop Australia's first Centre for Books (Writing) and Ideas at the library as the centrepiece of Melbourne's bid to win UNESCO City of Literature status.

I am a huge advocate of the state library, and I was very pleased to see in the papers this week that the Brumby government has achieved this UNESCO (United Nations Educational, Scientific and Cultural Organisation) rating for Melbourne. That is a very exciting thing for Victoria and for Australia as a whole. It is particularly exciting for Victoria because it puts us again at the centre of literature, writing and all sorts of creative arts, and that is very important. We are the hub and the centre in the country for the arts, and this has been very good recognition by UNESCO.

It is most unlike me but I will read from a press release from the government because I am very excited about this. A media release by the Minister for the Arts says:

Melbourne joins Edinburgh as a City of Literature and now sits alongside other cities in the network including Berlin,

Buenos Aires and Montréal as cities of design and Bologna and Seville as cities of music.

Ms Kosky said the City of Literature designation was a coup for the city that not only recognises Melbourne's literary achievements but will bring far-reaching benefits to the city and across Victoria.

I put on record my praise for the entire library staff and board of the state library, because I think this really is a coup.

We have a very rich and deep collection at the State Library of Victoria. For many generations, regardless of which political party is in power, there has been a recognition of the depth of literature in this state and of how important it is to both Victoria and Australia as a whole.

However, I have some concerns about how this will work and I would like to know the details better. The president of the Library Board of Victoria and former Premier, Mr John Cain, who I think has done a very good job, has been very generous in asking me if at any time I wish to attend a briefing about what the library is doing. I would be very keen to take up this option and see how this UNESCO program will work for us in Victoria, because I am quite committed to being an advocate for it once I have greater details. One of the concerns I have about it relates to how much it will overlap with the existing programs and activities at the library. I am led to believe the centre will be located in a specially designated area, and I would like to have a greater understanding of exactly how that will work.

I again explain to the chamber the history of the library building. Members may recall that apart from housing the library, the building used to house the museum and, many years ago, the gallery. It was Sir Keith Murdoch who decided that the art gallery needed to have a dedicated space, and that was when it was decided to consider putting the National Gallery of Victoria in St Kilda Road. As we all know, it is there today and is a very successful venue. Not until recently, under the Kennett government, was the museum relocated. This left space for the library to take over the entirety of the site. This was extremely successful, but various programs within the library — for example, the La Trobe library section — had to have their own place. I understand the La Trobe library section covers a range of specific areas, and I put on record my praise for Dianne Riley, who has been able to keep the integrity of the La Trobe library within the larger organisation.

My concern about the UNESCO literary cities program relates to how it will overlap with the state library foundation. How will we attract donations for the UNESCO program? How will we differentiate it from

the library foundation? How will funds be allocated to this? Will the establishment of this excellent initiative impact on the funding of other state library programs? How will the raising of funds be distributed between it and the foundation? What relationship will it have with Arts Victoria? How will Victorians going into the library differentiate between the centre and the wider programs of the state library?

Western District Health Service: report 2006–07

Ms TIERNEY (Western Victoria) — I rise to make a statement on the Western District Health Service annual report for 2006–07. This report is co-signed by the service's president, Richard Walter, and its chief executive officer, Jim Fletcher. It touches on many of the highlights of 2007 that the service is particularly proud of. Its major achievements include the re-accreditation of the aged-care residential facilities at Hamilton and Penshurst and the re-accreditation of the postgraduate medical program. It also received top ratings for external cleaning audits, patient satisfaction, waste management and pressure-area care and maintained its accreditation status with the Australian Council on HealthCare Standards.

With regard to human resources, the Western District Health Service received a number of awards — the Victorian public health award, the state nursing excellence award, the south-west coast employee of the year award and the Australian annual reporting gold medal — and a commendation for the Premier's primary health service of the year award.

The quality of the service and the excellent organisational skills of its staff were also recognised with a number of funding grants awarded during the reporting period. There was a state government grant of just over \$1 million over a three-year period to expand the chronic disease management program. This program focuses on two leading causes of illness in the shire: respiratory disease and heart disease. There was also \$186 000 from the state government to support the involvement of and partnership with local GPs in the management of people with chronic disease, and an additional \$614 000 for the Go for Your Life program.

On 5 August at the invitation of the service I visited Coleraine and had an opportunity to look at a range of health and care facilities in the town. I thank Jim Fletcher for the time he spent in taking me through existing facilities and the master plan that is the vision for health care in Coleraine. I was also there to launch the three independent living units, which the state government made a contribution to in the 2005 budget. It was very pleasing to formally open those three units

and go into the home of one of the residents, who was very welcoming. The state government contributed \$250 000 to those three units and \$331 640 was contributed by the M. B. Wishart Foundation. One of the descendants of those who established the Wishart Foundation was in attendance at the launch and met again a number of people in Coleraine that day. She is permanently located in Hamilton and also has a history in health care in the area.

I take this opportunity to thank all those involved in the Western District Health Service. We know that providing good-quality health care is incredibly important for rural Victoria. I want to thank also the staff who showed me through the Coleraine hospital and explained the physical issues they have in terms of their working environment. It impressed on me the need to get the master plan up and running. I further thank the members of the women's auxiliary of the hospital who made me very welcome on the day; being in their company was very enjoyable. I thank the staff and the support staff of the Western District Health Service for the very hard work they do not just in Coleraine but in the surrounding areas, and I commend this report to the house.

Auditor-General: *Services to Young Offenders*

Mrs KRONBERG (Eastern Metropolitan) — The purpose of the audit underlying the Victorian Auditor-General's report of June 2008 entitled *Services to Young Offenders* was to examine the extent to which diversionary and rehabilitation services provided by the Department of Human Services and the Magistrates Court of Victoria maximise diversion of young offenders from the criminal justice system, reduce the risk of reoffending and improve rehabilitation and reintegration into the community.

In August 2000 the government trumpeted its juvenile justice reform strategy. At that time, and I assume this is still the case, its aims were to divert young offenders from entering the youth justice system; better rehabilitate high-risk young offenders; and reduce the likelihood of reoffending among those released from custody, through better pre-release transition and post-release support programs. The intention of this program is to divert young offenders aged 10 to 20 years from custodial sentences to less risky forms of punishment. Under the dual-track system that emanates from this program, young offenders who have been given community-based orders or are placed in custodial supervision are under the jurisdiction of the Department of Human Services and those who enter the adult correctional system are under the Department of Justice's jurisdiction.

The Auditor-General's report points to areas for improvement in the planning of services, which include measures and targets linked to objectives — the government is flying blind — and performance measures and targets linked, again, to key strategic and operational activities and initiatives — that is, doing what you are saying you are going to do.

It also found that a more whole-of-government approach needs to become a priority. Emphasis was placed on the Magistrates Court of Victoria needing to develop planning documents that clearly describe its aims for preventing young offenders from progressing through the justice system — flying blind again!

Central concerns include the shortfall identified in the needs identification procedures for young offenders. There remains a risk of inconsistencies occurring in the identification of people in the criminal justice diversion program. Flying blind again, hyperbole and no measurable outcomes.

The endemic and longstanding problems this government is having with the implementation of its client relationship information system, which is of critical importance for youth justice, is highlighted. Right now there is a lack of sufficient analytical data for anyone to develop an understanding of the effectiveness of interventions and services in the rehabilitation of young offenders and reducing rates of reoffending. The ability to respond has been totally thwarted — again flying blind — and this is a signature of this government, of its launching something, instituting something, not being able to properly specify a system and perhaps not being able to fund the ongoing development and modification of a system which is just a dinosaur out there and is not providing the deliverables that were set in the original specifications.

The Auditor-General also recommends that a whole-of-government approach be instigated that finally gives decision-makers a heads-up on the identification of needs and for the planning and coordination of youth justice services in this state. What is going on?

Even though the reduction of youth reoffending and effective rehabilitation are central to the objectives of the Department of Human Services, this department could not demonstrate that these goals were being achieved. Critically, gaps in performance and outcomes measurements are impairing the ability of Parliament and the community to monitor the youth justice system as a whole. There needs to be a greater focus on the implementation of data-collection systems and

performance management per se. Because the Department of Human Services has not conducted periodic research to assess changes in the rate of youth reoffending over time, the Auditor-General is therefore unable to report as to whether the juvenile justice reform strategy launched in August 2000 has effectively reduced the likelihood of reoffending. This is a disgrace. This government is to be condemned.

Victorian Law Reform Commission: civil justice review

Mr EIDEH (Western Metropolitan) — The Victorian Law Reform Commission's latest report, no. 14, on its civil justice review is the most comprehensive and amazing document that I have yet seen as a member of Parliament. This amazing document is the product of a great deal of hard work and dedication by the members of the commission, and I wish to particularly commend them for their professionalism and exhaustive work. Covering well over 700 pages, it deals with a wealth of areas within the civil justice system that operates within Victoria, from class action to expert witnesses, conduct of persons to financial issues, reducing unnecessary costs to ongoing review, pre-trial issues to non-judicial resolution and more.

Unlike some members of this house I am not a lawyer, but to look into this report is to know all that one needs to know about civil law and how it operates in Victoria. If I were a law student, then this would be a compulsory textbook, although I dare not even ask how much it would cost if it were sold externally.

The commission examined the goals our community has for the civil justice system and how well they are achieved. This role is absolutely necessary if this aspect of justice is to be up to date, relevant and fair to every member of our society without favour or discrimination. Year 12 Victorian certificate of education students who learn legal studies would quickly advise that both the criminal and civil justice systems have flaws. The commission sought to identify those flaws and to suggest solutions. I believe it succeeded.

I must applaud the commission for the reforms it has suggested. Its aim is to make the system far more efficient, far more cost effective, to prevent unwanted and unfounded litigation and to create an even better system than that which operates at present. In chapter 4, for example, it examined alternate dispute resolution, an area in which both sides of the house take an interest, as it can often better serve the community than a drawn-out and expensive trial. It found a number of

areas where improvements could be made, including industry dispute resolution schemes, educating judges, lawyers and their staff on these schemes, extending the new area of collaborative law, court-conducted mediation, certain compulsory referrals to other legal experts, conferencing and others. Not being a lawyer I must welcome anything that makes the law more simple for the community to access and which makes it a less costly feature of living in a complex society such as ours.

I am also impressed with chapter 11 and with similar remarks made by the Attorney-General regarding reducing the cost of litigation. If members of the community cannot access justice because it is beyond their reach financially, then it is justice denied and a failure by us in our role as members of Parliament to best represent their needs. When the courts are way too costly and lawyers charge far too much, a great many within my largely socially disadvantaged electorate will find that they simply cannot afford justice. This is not civil, nor is it moral, and the Attorney-General's announcement on lawyers' fees and charges shows that the Brumby Labor government is deeply concerned that civil justice should be far more attainable for all within our state. I cannot do anything else but commend such a responsible approach by a government that continually leads the rest of Australia by its continuing amazing example.

There is much in this report to praise, and I am certain that when the time comes we will all be intently and sincerely involved in the debates over the various bills that will be introduced to enact its many recommendations. I commend the report to the house.

Parks Victoria: report 2006–07

Mr P. DAVIS (Eastern Victoria) — I am delighted to have the opportunity to make some comments on the Parks Victoria annual report for 2006–07, a matter which I am sure will be of keen interest to the Minister for Environment and Climate Change. It is always a delight to have the minister responsible for a particular area of government administration in the house at the time when one makes an observation or two about that area. It is about Parks Victoria that I wish to make lots of observations today.

Parks Victoria, as the minister knows, has been the subject of my keen scrutiny over the course of this year. In fact I have engaged in a project that results from a longstanding interest in nature, in the bush and in particular in bushwalking. That motivated me earlier in the year to undertake an investigation of our national parks and related visitor facilities. I wanted to analyse

and assess how we might take greater advantage of Victoria's world-class natural heritage. My focus has been on walking tracks and information services and facilities which are available for walkers, whether they be casual ramblers on a weekend outing or committed bushwalkers.

I have found major problems on which I will not go into detail at the moment, but the minister knows I have found problems with poorly defined and poorly maintained tracks and inadequate signposting, and I have noted that, although there is a lot of printed and online information available, much of it is unreliable. It is important that information provided to people using our national parks be accurate, reliable and up to date.

Importantly I want to contrast the position in Victoria with that of other states. As the minister knows, I have done that by looking at New South Wales, in particular the Snowy Mountains national park and the Blue Mountains National Park. More recently I have had a look at Western Australia, and I found that compared to the west Victoria is sadly lacking. Parks Victoria could well emulate the efforts of the Western Australian authorities, which have engaged over the long haul in the development of the capacity of parks and associated walking tracks to attract visitors and therefore economic benefit for local regional communities — for example, I instance the Bibbulmun Track, which is a nearly 1000-kilometre track from Perth to Albany and which takes in a vast area of the south-west of Western Australia. It is extremely well supported by the government agencies in the west, including the Department of Environment and Conservation. The track development has been undertaken by a friends group but has been significantly promoted by government. It has not just been left to local tourism operators; in fact the government funds the production of walking guide books and comprehensive contour maps which provide detailed information for the full length of that track.

In addition there is the Cape to Cape Track, which is part of the Leeuwin-Naturaliste National Park 250 kilometres south of Perth. From Cape Naturaliste at the north it is a 135-kilometre walk to Cape Leeuwin in the south. This is an iconic walking track which compares markedly with the poor state of the Australian Alps Walking Track from Walhalla to Canberra, a 650-kilometre walk. There is a need for the minister to ensure that Parks Victoria understands the potential for environmental tourism, in particular for those people who wish to enjoy our great outdoors by walking. The result will be significant economic benefits derived by local regional communities.

Auditor-General: Performance Reporting in Local Government

Mr THORNLEY (Southern Metropolitan) — I rise to speak on the Auditor-General's report on local government performance reporting. It is an interesting report. The Auditor-General has taken time to assess the performance management and performance reporting activities of local governments and suggest how they can be improved. It is a useful and important document. We used to have a saying at McKinsey that in any organisation, what gets measured gets done. If you are not measuring the right things, then the right things do not get focused on. What any organisation chooses to focus on for its performance measurement is very important in determining its operational focus. Of course that assumes that the organisation has significant levels of performance measurement and shares them with constituents.

The record of local government is pretty mixed in that respect, and that is clearly the Auditor-General's finding. These findings are primarily focused on non-financial metrics. There is a standard set of accounting measures by which all local governments report their financial results, but service delivery performance, customer satisfaction and a range of important metrics are the focus of this report.

The Auditor-General's report makes a number of recommendations flowing from that which are set out on page 3 of the report. Firstly, it recommends that all local governments should ensure their annual reports contain these types of performance metrics in ways that are relevant and appropriate and presented in easily comprehensible form to ratepayers and other stakeholders. Secondly, it recommends that regulations be issued establishing minimum standards for performance measurements to ensure there is some base level that all local governments need to comply with. Thirdly, it recommends that all councils document and approve their performance reporting policies. Finally, it recommends that councillors and staff are trained in those matters. All of those recommendations make good sense.

As some folks in my office and I perused the performance reporting of a number of the local government areas that fall within Southern Metropolitan Region, which I represent, I could see that the Auditor-General's recommendations provide the opportunity to achieve greater fruition. I have looked at some of these documents, and in a number of cases they compare fairly poorly with the sort of performance reporting I have seen in other environments.

As a board member of the Brotherhood of St Laurence, for example, the internal performance reporting dashboard that the management team there has developed is much more comprehensive and effective than most of the documents I saw from these councils, despite their being considerably larger organisations. Certainly I know, from some work I have been doing looking at the Victorian government as a whole and now the Growing Victoria Together metrics over the years, that the depth of work that has gone into those is really quite significant and that there is a fair bit of scope for improvement with councils.

For example, Bayside City Council does some of the things that the Auditor-General recommends. It has about 25 pages devoted to performance in its annual report, which is a good thing. It includes some targets and results giving a year-by-year comparison. There is a very strong emphasis on customer satisfaction, which is good to see, and measuring that effectively, and a wide range of other things are analysed. There is not so much on outcome efficiency or output indicators, however, along the lines that the Auditor-General suggests. I might say that with every council we looked at we found that there is no common benchmarking across local government at all. That is an obvious opportunity. I remember implementing that across student organisations 25 years ago to get people to have some sort of common benchmarks and performance, so therein lies an opportunity for everybody.

The example of Bayside City Council was a reasonable one. The performance review by the City of Port Phillip is pretty comprehensive. It was probably one of the best we saw — about 30 pages of work. It had a very easy-to-understand format and layout. There was a very frank discussion of where it had been successful and where it had not, including areas of customer satisfaction. There were some real output efficiency indicators. It was a pretty good example.

I contrast that with the City of Boroondara, which, to my surprise as a resident, had a pretty poor performance on just about all of the items the Auditor-General suggested. As an example, on the few metrics that were presented call centre efficiency was 39 per cent versus a target of 80 per cent. This sort of reporting is important, and the Auditor-General's recommendations should be taken up by all local governments.

Freedom of Information Act 1982: statement of reasons for seeking leave to appeal

Mr DALLA-RIVA (Eastern Metropolitan) — I am pleased to make a contribution to statements on reports

and papers in respect of the statement of reasons for seeking leave to appeal pursuant to a section of the Freedom of Information Act 1982.

Dealing with this government on FOI is an ongoing saga. The record of freedom of information under the Bracks and Brumby Labor governments has been a record of secrecy and continuing abuse of the system. This statement sets out the reasons for seeking leave to appeal in the matter of *Western Suburbs Legal Service v. Department of Justice*. The government is always quick on its feet in taking matters to the Supreme Court seeking leave to appeal decisions of the Victorian Civil and Administrative Tribunal when the decision does not fall in favour of the government.

I for one have been through that process where the government has sought leave to appeal to the Full Court of the Supreme Court on the release of certain documents that were granted to me after a two-day hearing at VCAT. The government went to great lengths to ensure that those documents remained a secret, and they do to this day. The people of Victoria still have no idea of what the real deal was between EastLink and the government. I guess it will be forever unknown to motorists whether they will be travelling on a tollway for 30 years or for 15 years or whether there will at some stage be a lower price than what is currently being charged.

The government frequently spouts its mantra on FOI. We have only recently had the example where I sought information about certain matters from DIIRD (Department of Innovation, Industry and Regional Development), the very department that is referred to in this statement. We asked for certain documents. I requested the information on 22 April. DIIRD acknowledged the request on 8 May. It acknowledged the payment of the \$22 and said it received the notice on 30 April. On 18 June, under section 19 of the act, DIIRD requested \$60 for information sought from the financial management system.

Thus far it has taken DIIRD 50 days from its acknowledgement of the request to provide this response. On 15 July DIIRD acknowledged payment of the \$60, which was received on 30 June, and my cheque was deposited by DIIRD on 11 July 2008. It took my money and agreed to release documents, but then on 25 July there was another letter from DIIRD saying that, based on section 25A(1)(a), it now refused access to the documents. We now have a situation where I will end up going back to VCAT on this issue because clearly the information I sought, which the department initially agreed to provide, has opened up a can of worms.

What occurs with this government is that, once it suspects that you might be on to it, it shuts down the system. It appears that this is what has occurred with this statement of reasons for seeking leave to appeal. We do not know the particulars of why. The government will go to great lengths. While the matter is under appeal the documents cannot be released, and we will end up going through the same process.

For the life of me I cannot understand why departments initially say they will release information and then say they cannot. That was after taking my \$22 and then later my \$60 — and not only that, banking it. It says a lot about the way the department operates and in particular the way FOI is being treated in this state. FOI under the Bracks and Brumby governments is nothing short of a joke.

Regional Development Victoria: report 2006–07

Ms BROAD (Northern Victoria) — Today I wish to make some remarks about the Regional Development Victoria annual report 2006–07. I know a number of my colleagues have also made remarks about this report, and I wish to add my comments to theirs.

Regional Development Victoria was established by the Labor government in 2003, and its focus is on building stronger communities, economies and infrastructure to create a prosperous and growing provincial Victoria. The 2006–07 annual report, amongst many other developments, indicates that all the initiatives and programs announced in the government's \$502 million action plan for growth in provincial Victoria, Moving Forward, had commenced which is a considerable undertaking by RDV. That Moving Forward plan, just to remind members, was launched in November 2005 by the Labor government, and it included \$100 million for the Provincial Victoria Growth Fund and \$200 million for the renewed Regional Infrastructure Development Fund otherwise known as RIDF.

RIDF is another initiative of the state Labor government. Members of the Liberal and National parties might recall it, because the legislation for that fund was opposed by them when it was brought into the Parliament in the first term of the state Labor government. Fortunately they finally saw sense and that legislation eventually passed through the Parliament and the fund was established, which is a very good thing when you look at what has now been achieved through RIDF. I will come back to some of the achievements through the fund which are outlined in the annual report.

But more recently, in June of this year, the Premier, John Brumby, unveiled *Moving Forward — Update — The Next Two Years 2008 to 2010*, which sets out a series of further initiatives in regional and rural Victoria. The centrepiece of that Moving Forward update was a \$15.9 million initiative to boost the planning capacity of Victoria's 48 regional and rural councils and to accelerate the development of statutory plans for major regional growth centres. Anyone who has spent some time in rural and regional Victoria will know that there are many regional cities which are struggling to keep up with the pressures of population growth and development and job growth — which are very good problems to have. I am very pleased that they are being supported through this initiative, which will result in 15 additional planners working to support councils to accelerate statutory planning for key growth areas.

This work is going to be overseen by a newly established regional and rural growth ministerial task force which is being chaired by the Minister for Regional and Rural Development, Jacinta Allan. In addition to those measures there are a range of other initiatives in the update to support growth and change in regional and rural Victoria. They include \$8.1 million for industry development, \$7.38 million for a skills development statement, \$35.2 million for infrastructure development and a further \$10.88 million to tackle drought and climate change.

Importantly the Moving Forward update also allocates more than \$50 million from the Regional Infrastructure Development Fund and the Provincial Victoria Growth Fund and sets out new funding of \$12.4 million. RIDF continues on through this update, and I expect it will continue to achieve projects as diverse as the existing Mildura freight gate project through to the Wangaratta performing arts centre, which have been terrific initiatives in the past.

LEGISLATION REFORM (REPEALS No. 3) BILL

Statement of compatibility

Mr LENDERS (Treasurer) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Legislation Reform (Repeals No. 3) Bill 2008.

In my opinion, the Legislation Reform (Repeals No. 3) Bill 2008, as introduced to the Legislative Council, is compatible

with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The purpose of the bill is to repeal a number of redundant acts of Parliament (listed in schedule 1), as well as making some consequential amendments to ongoing legislation (as described in schedule 2).

As part of the process for selecting the acts included in the bill for repeal, the department of each minister who is responsible for those acts has conducted a careful review of that legislation, in consultation with parliamentary counsel. Those departments have advised the Department of Premier and Cabinet that the repeals will not engage any human rights protected by the charter.

In addition, section 14(2)(e) of the Interpretation of Legislation Act 1984 provides that the repeal of an act or a provision of an act, by itself, does not 'affect any right, privilege, obligation or liability acquired, accrued or incurred under that act or provision', unless the repealing act expressly provides for a contrary result. The bill does not expressly seek to affect any person's existing rights, privileges, obligations or liabilities, but simply to repeal the acts specified. As a result, this section should operate to prevent any unintended impairment of the rights or obligations of any persons that might result from the repeals.

Human rights issues

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

The bill does not engage any of the rights under the charter.

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

As the bill does not engage any of the rights under the charter, it is not necessary to consider the application of section 7(2) of the charter.

Conclusion

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

HON. JOHN LENDERS, MLC
Treasurer

Second reading

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

Mr LENDERS (Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

This government is committed to modernising government, and to further increasing its accessibility and accountability. Consolidating and modernising Victoria's legislation plays a key role in delivering on this promise.

The Brumby government has set an ambitious target for cutting red tape. In our statement of government intentions, we signalled our commitment and dedication to the Reducing the Regulatory Burden initiative, which will boost the competitiveness of the Australian economy.

While regulation is an essential tool in any government, this government is leading the country in its efforts to reduce regulatory burden through its legislation reform program. Parliament has a responsibility to review the legislation in the Victorian statute book on a regular basis and to repeal acts that no longer serve any useful purpose.

The bill before the house, namely, the Legislation Reform (Repeals No. 3) Bill 2008, demonstrates progress that we have already made. Once passed, this bill will repeal a number of spent and redundant acts within a number of different portfolios that are identified as suitable for repeal.

The acts to be repealed are listed in schedule 1 to the bill. Schedule 2 to the bill makes two amendments to the Road Safety Act 1986 to preserve the effects of one of the repealed acts, namely, the Road Safety (Further Amendment) Act 1991. Schedule 2 will ensure that certain changes to the Road Safety Act 1986 that were made by the repealed amending act will continue to operate only from the time when the amending act came into effect.

The government has given this review process increased priority and visibility in an effort to decrease the total number of acts by at least 20 per cent, based on the number of acts in operation in 1999. In reducing the regulatory burden, we will maintain Victoria's position as the recognised leader in this area, as well as increase the accessibility of Victoria's legislation. Clearing the statute book of redundant acts will help to make the task of consulting our legislation less confusing.

Accordingly, the government has instituted a review of all acts across every portfolio to identify legislation for repeal. This bill is the third bill to be presented to Parliament as part of this ongoing program.

The first two acts in this series, namely, the Legislation Reform (Repeals No. 1) Act 2008 and the Legislation Reform (Repeals No. 2) Act 2008, repealed a total of 70 acts between them. This bill will carry the repeals program forward.

The legislation that was repealed by those acts, and that will be repealed by this bill, was introduced by a number of different governments over a lengthy span of time. It is commendable that this Parliament is taking responsibility for removing that legislation now that it is no longer required.

The government will continue its review of Victorian legislation, and intends to present further legislation reform bills to Parliament in future.

I commend the bill to the house.

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

Debate adjourned until Thursday, 28 August.

COUNTY COURT AMENDMENT (KOORI COURT) BILL

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the County Court Amendment (Koori Court) Bill 2008.

In my opinion, the County Court Amendment (Koori Court) Bill 2008, 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 aims to increase the participation of the indigenous community within the administration of the criminal justice system and to allow for indigenous community involvement in the sentencing process. The bill will establish the Koori Court division in the County Court of Victoria to hear criminal proceedings. The bill builds upon the Koori Court model, already in operation at the Magistrates Court and Children's Court. The Koori Court division of the County Court will consider criminal matters, with the exception of sexual offences.

The Koori Court process is that once a defendant has been arraigned and consented to the jurisdiction of the Koori Court, a plea discussion takes place around the bar table, involving all court participants. The plea discussion allows an Aboriginal elder or respected person to bring their insight from the local indigenous community, to provide assistance with any cultural considerations that may arise during proceedings and to ensure the defendant understands the seriousness with which the indigenous community views their actions. In so doing, the plea discussion aims to increase the indigenous community's ownership of the justice process and strengthen linkages between the court and the indigenous community.

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 the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.

The amendment to establish the Koori Court division in the County Court engages section 8(3), as the jurisdiction of the Koori Court is limited to offences committed by indigenous people, thereby differentiating between indigenous and non-indigenous people.

Section 8(4) of the charter provides that any measures taken for the purpose of assisting or advancing persons or groups of

persons disadvantaged because of discrimination does not constitute discrimination.

Clause 6 of the bill provides for the establishment of the Koori Court division within the County Court. The purpose of establishing the Koori Court is to assist indigenous persons, who are disadvantaged and overrepresented in the criminal justice system. The Koori Court aims to redress the overrepresentation of indigenous people in the Victorian criminal justice system by reducing recidivism. The lower recidivism rates of indigenous defendants who have participated in the Magistrates Koori Court demonstrates that the Koori Court model is achieving this aim. Therefore, this proposed amendment falls within section 8(4) of the charter and is accordingly compatible with the charter.

Section 19(1) — cultural rights and section 19(2) — distinct cultural rights of Aboriginal persons

Section 19(1) of the charter provides that all persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy his or her culture, to declare and practice his or her religion and to use his or her language. Section 19(2) further recognises that Aboriginal persons hold distinct cultural rights and must not be denied the right, with other members of their community to, inter alia, enjoy their identity and culture; maintain and use their language; and maintain their kinship ties.

The establishment of the Koori Court division in the County Court promotes the cultural rights of indigenous persons. It takes steps towards fostering positive relationships with the indigenous community in Victoria by enabling the County Court to develop an understanding and knowledge of the practices, cultural traditions and observances of cultural, religious, racial and language groups. The Koori Court division of the County Court will promote indigenous culture by commencing each session of the court with a welcome to country in recognition of the traditional custodians of the land. Furthermore, the Koori Court integrates indigenous support services with orders issued by the County Court thereby ensuring that defendants receive appropriate support in recognition of their cultural rights as indigenous people.

The Aboriginal elder or respected person plays an important role in reminding the defendant that their offending has consequences for the indigenous community and the wider community. The incorporation of Aboriginal elders or respected persons in the Koori Court division not only emphasises to defendants their importance in the indigenous community but also in the wider Victorian community. In particular, clause 6 of the bill (new section 4G(2)) provides that the Koori Court division may consider any oral statement made to it by an Aboriginal elder or respected person. This encourages the indigenous defendant and their family to participate in a plea discussion thereby emphasising the importance of maintaining kinship ties within the criminal justice system.

Section 24 — fair hearing

Section 24 of the charter provides that a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Clause 6 of the bill (new section 4G) promotes the right to a fair hearing, as it provides that in sentencing, the court may consider any oral statement made to it by an Aboriginal elder or respected person. It may inform itself in any way it thinks fit, including by considering a report prepared by, or a statement or submission prepared or made to it by, or evidence given to it by a range of people including family members of the defendant and Koori Court officers.

Consideration of a range of submissions at sentencing differs from the way in which pleas are otherwise heard in the County Court. By hearing from a range of interested parties the court is provided with a broader understanding of the individual's sentencing needs which will result in more culturally appropriate sentencing orders. Such orders may include linking the defendant/appellant with support services from indigenous service providers including housing and drug and alcohol services.

Section 25(1) — the right to be presumed innocent

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

Clause 6 of the bill inserts new section 4E(c) in the County Court Act 1958. Section 4E(c) requires that the defendant must plead guilty to the offence in order to have their proceeding dealt with in the Koori Court division of the County Court. If a defendant wishes to appeal to the Koori Court division of the County Court against a sentencing order made against him or her by the Magistrates Court, he or she must have pleaded guilty either as a requirement of eligibility for the Magistrates Koori Court or before the Magistrates Court sitting other than as the Koori Court division.

A guilty plea is a fundamental aspect of the County Koori Court model, based on the Magistrates Koori Court model already in operation. For the Aboriginal elder or respected person to have a significant participatory role in the plea discussion in the Koori Court division, the defendant must be willing to acknowledge their guilty plea and address the ways of resolving their offending behaviour.

It should be noted that nothing in the bill limits the right of an indigenous defendant to be presumed innocent in the County Court, nor to plead not guilty and have their proceeding heard at first instance or on appeal in the County Court, sitting other than as the Koori Court division. Therefore, the right to be presumed innocent is not limited.

Section 25(4) — right to review of conviction

Section 25(4) of the charter provides that any person convicted of a criminal offence has the right to have the conviction and any sentence imposed in respect of it reviewed by a higher court in accordance with law.

While the bill does not limit the right to appeal against a sentence order, the ability to change one's plea on appeal to the Koori Court division is not available under new section 4D(2) and (3). As stated above, the Koori Court division may only deal with proceedings where the defendant has pleaded guilty to the offence.

If a defendant wishes to appeal to the Koori Court division of the County Court against a sentencing order made against him or her by the Magistrates Court, he or she must have pleaded guilty either as a requirement of eligibility for the

Magistrates Koori Court or before the Magistrates Court sitting other than as the Koori Court division. The appellant will be bound by their guilty plea and will only have a rehearing on the sentencing order.

However, nothing in the bill limits the right of an indigenous person to have both their sentencing order and plea reviewed in the County Court, sitting other than as the Koori Court division. Therefore, the right to review of conviction is not limited by the proposal.

Conclusion

I consider that this bill is compatible with the charter because this bill does not limit any human right protected by the charter.

JUSTIN MADDEN, MLC
Minister for Planning

Second reading

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

Mr LENDERS (Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The County Court Amendment (Koori Court) Bill 2008 (the bill) establishes a Koori Court division in the County Court of Victoria. In so doing, it creates for the first time in Australia an indigenous sentencing court in a higher jurisdiction. It builds on the success of the current Koori Court division in the Victorian Magistrates Court.

The Magistrates Koori Court program was an initiative of the Victorian Aboriginal justice agreement. This historic agreement, entered into in 2000, embodied a partnership between various Victorian government departments and a number of key Victorian Koori organisations. It was a response to the issues and recommendations raised by the Royal Commission into Aboriginal Deaths in Custody to tackle disadvantage and inequity, reduce Koori contact with the criminal justice system, and improve justice outcomes for indigenous Victorians.

The Victorian Aboriginal justice agreement was reviewed in 2004 and recommended that both the government and the indigenous community renew their commitment to the agreement. This resulted in the development and release of a second phase of the agreement, which was launched in June 2006. The new agreement highlighted the need to enhance and expand the Koori Court network. The bill implements this objective and demonstrates the government's continuing commitment to implement the work of these partnership agreements.

It also demonstrates the willingness of the government, the Victorian indigenous community and the broader community to experiment with inclusive, innovative, culturally appropriate and modern approaches to reduce indigenous overrepresentation within the criminal justice system.

The bill is consistent with my 2004 justice statement with its commitment to establishing problem-solving courts to address the underlying causes of crime and A Fairer Victoria which strives to improve the lives of disadvantaged Victorians, improve access to justice and build new partnerships with indigenous Victorians. The bill also promotes the values of the Victorian Charter of Human Rights and Responsibilities including its recognition of the distinct cultural rights of indigenous people.

The establishment of the first adult Koori Court division in the Magistrates Court by this government in October 2002 sought to provide a culturally appropriate legal framework to break the cycle of overrepresentation of indigenous defendants in the criminal justice system. The Koori Court model represents a fundamental shift in the way in which we, as a community, deal with indigenous defendants. It operates in an informal atmosphere allowing for greater participation by the indigenous community in the sentencing process.

An independent evaluation of the Koori Court division of the Magistrates Court found that Koori courts had successfully reduced levels of recidivism including breaches of community corrections orders. It also overturned the presumption that Koori courts would be a 'soft option'. It is now well recognised how confronting and difficult it is for an indigenous defendant to face senior members in his or her community and the community itself.

A further measure of the success of the Koori Court model is reflected in its expansion across Victoria, from its inception in 2002. Victoria currently has seven Koori courts which are located in Shepparton, Broadmeadows, Warrnambool, Mildura, Latrobe Valley and Bairnsdale, with a Koori Court launched recently in Swan Hill in June 2008. There are also two Children's Koori courts located at the Melbourne Children's Court and in Mildura.

Why have a County Koori Court?

The need for a specialised Koori Court division of the County Court, which builds on the successful Magistrates Court model, is essentially twofold. Firstly, indigenous defendants often come from the most disadvantaged of backgrounds of all Australians and continue to face inequities on a daily basis.

Secondly, there continues to be a significant overrepresentation of indigenous people in the Victorian justice system. While much of this is caused by indigenous social and economic disadvantage, there are other contributing factors, including the relatively poor outcomes indigenous people experience in the criminal justice system.

This overrepresentation is illustrated by Victorian statistics, which indicate that:

currently indigenous adults are 11 times more likely than non-indigenous adults to be sentenced to prison rather than sentenced to serve a community-based disposition; and

currently indigenous adults are 15 times more likely than non-indigenous adults to be placed on remand.

Establishing a Koori Court division in the County Court acknowledges the importance of incorporating indigenous communities' cultural beliefs and practices in our justice system. It is intended that this will produce fair and equitable treatment for indigenous people and address the underlying

cause of criminal activity. These aims are best achieved through a partnership between the indigenous community and government which fosters trust, understanding and a commitment through the direct involvement and participation of the indigenous community in the development of justice solutions.

What is a Koori Court?

The Koori Court division of the County Court is based on the Magistrates Koori Court model. In essence, this model allows for the sentencing process to be more culturally accessible, grounded in indigenous communities' efforts to promote rehabilitation and promote sanctions which are comprehensible to the indigenous community.

The key emphasis is on creating an informal and accessible atmosphere. The model allows greater participation in the court and sentencing process by the indigenous community through the Aboriginal elder or respected person, Koori Court officer, indigenous defendant and their extended families or connected kin and if desired, victims. Additionally, a corrections officer or juvenile justice officer, the defendant's legal representative and prosecutor will be involved in the plea discussion to explore the offenders' sentencing needs. The model is designed to break down the disengagement that many indigenous people have experienced with the criminal justice system.

How will the Koori Court division of the County Court work?

The Koori Court division is a new way of approaching and dealing with indigenous defendants in the County Court. The bill establishes the Koori Court as a division of the County Court, rather than it being a new 'court'.

The Koori Court division will have the same jurisdiction as the criminal jurisdiction of the County Court to hear all offences, with the exception of sexual offences.

The Koori Court division will hear a proceeding where the defendant meets the definition of an Aborigine, as set out in the bill, and pleads guilty or is found guilty of an offence. The defendant must also consent to the proceeding being heard in the Koori Court division and the Koori Court division must consider that it is appropriate that it deal with the proceeding.

As in the general division of the County Court, the defendant will initially be arraigned with the judge sitting at the bench and the defendant sitting in the dock or at the bar table. This will be followed by the plea discussion. The manner in which the plea discussion is conducted represents a significant departure from the general operation of the County Court.

The plea discussion will operate as a conversation around the bar table with the judge seated on one side of the table accompanied by an Aboriginal elder or respected person on either side. The defendant and their family, the Koori Court officer, corrections officer, the defendant's legal representative and prosecutor, who are also seated at the table, will all have the opportunity to participate in plea submissions.

The Aboriginal elder or respected person will assist the court by providing information on the background of the defendant and possible reasons for the offending behaviour. They may also explain relevant kinship connections, how a particular crime has affected the indigenous community as well as provide advice on cultural practices, protocols and perspectives relevant

to sentencing. The judge may confer with the Aboriginal elder or respected person and discuss the most appropriate sentence including the conditions placed on a sentence.

It is clear from the experience of the Koori Magistrates Court that one of the keys to its success is the participation of the Aboriginal elder or respected person who symbolises that the offence is not condoned by either the indigenous or the non-indigenous community and that any sentence imposed is only carried out after information is provided to the magistrate by the Aboriginal elder or respected person. In this way, the sentencing process as well as the sentence itself is community owned so that when a crime is committed against the wider community it is also seen as being against indigenous community standards.

Following the conclusion of the plea discussion, the judge may ask the Koori Court officer about the availability of appropriate local services and programs. This is consistent with the case management approach which will be adopted by the division to address the individual sentencing needs of the indigenous defendant. The corrections officer can also provide advice about indigenous programs offered by the Office of Corrections, either in the local community or in custody. This partnership approach aims to maximise the rehabilitation prospects of the defendant and incorporate locally based support services to meet the needs of an individual defendant. The sentencing stage in the Koori Court division will follow the same procedure as the general County Court. The court has the same sentencing dispositions available to it and the judge will sit alone at the bench to deliver the sentencing order. This reinforces to observers that the judge is the ultimate decision-maker.

The County Court criminal division hears more serious criminal offences than those heard in the Magistrates Court, with a greater likelihood of a custodial sentence being imposed. Aboriginal elders or respected persons will therefore be trained accordingly to address the needs of higher criminal jurisdiction. Training and orientation will include information on the types of offences likely to come before the court and familiarisation with criminal evidence and case materials, including depositions.

How will appeals work in the Koori Court division of the County Court?

The County Koori Court division will hear appeals from the Magistrates Court. This is an aspect which is unique given the appellate jurisdiction of the County Court. The creation of a Koori Court division in the County Court provides an indigenous appellant or respondent, or the Director of Public Prosecutions, with the opportunity to appeal a sentencing order from a decision of the Magistrates Koori Court or the Magistrates Court.

The eligibility criteria is the same for appeals as for cases heard at first instance in the Koori Court division. However, appeals heard in the Koori Court division depart from the general County Court procedure in that the appellant or respondent is bound by their guilty plea and the division conducts a re-hearing of the sentencing order only and not the plea. This focus on the sentencing order reinforces the Koori Court model, which relies on the appellant or respondent's acceptance of their guilt and a willingness to address the reasons for their offending behaviour. If an indigenous appellant or respondent wishes to have their plea and sentencing order appealed they can do so in the general County Court.

Appeals heard in the Koori Court division provide indigenous appellants or respondents for the first time with an opportunity to have a re-hearing of their sentencing order conducted in a culturally appropriate venue.

Conclusion

The Koori Court division of the County Court will produce meaningful and effective outcomes by focusing on the underlying causes of an individual defendant's offending behaviour and employing a case management approach to address their sentencing needs. This framework will utilise a collaborative framework featuring the Aboriginal elder or respected person, the Koori Court officer, the defendant and their family and community service providers and criminal justice agencies, all overseen by a judge.

The first Koori Court division of the County Court will be piloted over four years, commencing at the Morwell law courts in the Latrobe Valley. The decision to select Latrobe as the pilot site was made in partnership with the Victorian indigenous community and representatives of the justice system, including the County Court.

The Koori Court division will be supported by a range of significant local support services which will complement sentencing orders. These include a Koori drug and alcohol worker based at the Latrobe Valley Magistrates Court, a mentoring program and a learning place, located in nearby Yarram, which is a culturally appropriate residential learning place for up to 20 men undertaking community-based orders.

The government anticipates that the Koori Court division of the County Court will commence operation in the Latrobe Valley towards the end of the year. It has the strong support of the County Court, the local indigenous community and current Koori Court elders.

The County Koori Court project has been overseen by a reference group, including the County Court; the children's Koori Court; the Broadmeadows Koori Court; the Office of Public Prosecutions; Victorian Aboriginal Legal Service; Victoria Legal Aid; Corrections Victoria; and representatives from the Regional Aboriginal Justice Advisory Committee. I would like to thank them for the work they have already done and for their continuing efforts in ensuring the success of this important initiative.

I would also like to acknowledge the commitment of the County Court to this important reform and I particularly wish to acknowledge the Chief Judge Michael Rozenes for his leadership.

The County Koori Court pilot will be independently evaluated to determine whether it has been effective in reducing indigenous contact with the criminal justice system and recidivism. If the evaluation is successful, the Koori Court division of the County Court could be extended to further locations throughout Victoria.

I commend the bill to the house.

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

Debate adjourned until Thursday, 28 August.

LABOUR AND INDUSTRY (REPEAL) BILL*Statement of compatibility***For Hon. T. C. THEOPHANOUS (Minister for Industry and Trade), Mr Lenders tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:**

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Labour and Industry (Repeal) Bill 2008.

In my opinion, the Labour and Industry (Repeal) Bill 2008 (the bill), 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.

1.1 Overview of the bill

The bill has two objectives:

1. to repeal the Labour and Industry Act 1958 (the LI act), which has been identified as redundant legislation; and
2. to make consequential amendments to other acts, to ensure their continued effective operation.

1.2 Human rights issues

Part 3 of the bill amends the ANZAC Day Act 1958 to include provisions relating to the closure of factories and warehouses on Anzac Day which are currently in the LI act, which the bill proposes to repeal.

Clause 5C(1) requires an occupier of a factory or warehouse to ensure that the factory or warehouse remains closed on Anzac Day.

Clause 5C(5) provides that where a body corporate is guilty of an offence, any person who is concerned or takes part in the management of the body corporate is also guilty of the offence. A defence is provided for in clause 5C(6) if the person charged proves that the offence was committed by the body corporate without that person's consent or knowledge and the person exercised due diligence to prevent the commission of the offence. The defence would be required to be proved by a defendant on the balance of probabilities.

By placing a burden of proof on the defendant, clause 5C(6) limits the right to be presumed innocent in section 25(1) of the charter.

However, I consider that the limit upon the right is reasonable and justifiable in a free and democratic society for the purposes of section 7(2) of the charter having regard to the following factors:

- (a) The nature of the right being limited

The right to be presumed innocent is an important right that has long been recognised well before the enactment of the charter. However, the courts have held that it may be subject to limits particularly where, as here:

the offence is of a regulatory nature; and,

a defence is enacted for the benefit of an accused to escape liability where they have taken reasonable steps to ensure compliance, in respect of what could otherwise be an absolute or strict liability offence.

- (b) The importance of the purpose of the limitation

The closure of factories and warehouses is an extension of the public interest and commemorative purpose of the Anzac Day Act 1958. By extending liability to those concerned with the management of a body corporate, the bill recognises that it is those persons who have the responsibility and power to take steps to prevent breaches of laws by bodies corporate.

The purpose of the imposition of a burden of proof on an accused person concerned with the management of the body corporate, is to provide such a person with an opportunity to escape liability in circumstances where the offence was committed without his or her knowledge or consent and where the defendant took appropriate measures to ensure compliance with clause 5C(1), without undermining the ability to enforce the provision.

- (c) The nature and extent of the limitation

The burden of proof is only on the defendant where he or she seeks to raise the defence and requires the defendant to prove, on the balance of probabilities, that he or she did not know or consent to opening the factory or warehouse on Anzac Day, and that he or she took reasonable steps to prevent this from happening.

- (d) The relationship between the limitation and its purpose

The imposition of a burden of proof on the defendant is directly related to its purpose.

Before the defence could apply, the prosecution would have to establish that the body corporate is guilty of the offence and the accused is concerned or takes part in the management of that body corporate. It is reasonable to impose an obligation and corresponding liability on those who have the responsibility and power to take steps to prevent breaches of laws by bodies corporate.

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

Removing the defence altogether would not infringe the right to be presumed innocent. However this would not achieve the purpose of enabling the defendant to escape liability in appropriate circumstances.

Although an evidential onus would be less restrictive upon the right to be presumed innocent, it would not be as effective in achieving the purpose of the provision.

The defence relates to matters that are principally within the knowledge and/or control of the accused. Even with a notice provision, it would be difficult and onerous for the state to investigate and prove absence of knowledge and due diligence on the part of those involved in the management of a body corporate.

The inclusion of a defence with a burden on the defendant to prove the matters on the balance of probabilities achieves an appropriate balance of all interests.

(f) Other relevant factors

Whilst the prescribed penalty can involve fines of up to 100 penalty units (\$10 000), it does not involve imprisonment.

Accordingly, the provision is compatible with section 25(1) of the charter.

1.3 Conclusion

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

Theo Theophanous
Minister for Industry and Trade

Second reading

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

Mr LENDERS (Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Labour and Industry (Repeal) Bill 2008 is a straightforward piece of legislation that will repeal the Labour and Industry Act 1958, and make some minor consequential amendments to three other acts.

As members are aware, the Brumby government is committed to reducing the regulatory burden on business. In 2006 we launched our Reducing the Regulatory Burden initiative, which included a commitment to review the state's laws. We promised that any act or regulation identified as redundant, or which overlapped other legislative requirements, would be repealed as soon as practicable.

Old and redundant legislation has the potential to impose unnecessary costs on business and the community at large. Even where an old act is no longer enforced, there is a recognised cost to business of having to be familiar with the provisions of the act, and any obligations that may be imposed.

In 2007 the Victorian Competition and Efficiency Commission was directed to review the Labour and Industry Act. VCEC consulted widely and heard submissions from industry and community groups.

It is fair to say that the Labour and Industry Act was once one of the best known acts on the Victorian statute book. The act originally served as the primary source of workplace regulation, containing broad provisions concerning registration of shops and factories, general workplace conditions, safety requirements and the control of certain trades.

Over the years numerous other acts have replaced operative elements of this legislation. In 1979, for example, the Industrial Relations Act, which has in turn been superseded, became the primary instrument for regulating workplace relations in this state. In 1981 the Industrial Safety, Health

and Welfare Act was enacted and in 1985 the Occupational Health and Safety Act separately regulated workplace health and safety. Long service leave, once regulated by the Labour and Industry Act, now has its own act, as do public holidays and shop trading hours.

Now only 35 of the original 207 sections from the 1958 act remain. Of those sections, only 14 actually relate to rights and responsibilities or have some material impact on business. There are no regulations. The remaining provisions cover a minimal number of matters, such as the provision of toilets, restrictions on the delivery of bread, and the appointment of inspectors, of whom none have been appointed since 1992.

There are other anachronistic provisions remaining in the Labour and Industry Act. For example, the act at section 56 requires a factory to have a prescribed amount of space and ventilation. Section 57 requires the provision of firefighting arrangements, including full water buckets. Both these sections have been superseded by the Building Code of Australia as well as regulations made under the Building Act 1993.

Bread industry

The act originally regulated seven distinct trades, including billposting and stamping furniture. All provisions relating to trades have long since been repealed, except one relating to the bread industry.

The act makes it an offence to deliver bread at certain times on a Saturday or Sunday. There are also restrictions on the sale of bread beyond 48.3 kilometres from where it was baked. Victoria is the only state or territory imposing such restrictions.

The structure of the bread industry has also changed significantly over time, making such a provision less relevant. Evidence presented to the VCEC review suggested that the section was originally intended to protect local bakers in rural areas from competition from larger, more capital-intensive bakers. As VCEC noted in its report, there has been a growth in the proportion of bread supplied by manufacturing chains or franchises which bake locally but enjoy the economies of being part of a large organisation.

The provisions in the act relating to the bread industry are, of course, no longer enforced, but if they were to be enforced, these provisions are more likely to harm innovative specialist local bakers who would be prevented from reaching a wider market. The bread industry provisions as they stand are also inconsistent with the Victorian government's COAG commitments to implement broader competition policies.

The house will also be aware that the Bread Industry Act 1959 itself will soon be repealed. This act is included along with a number of other redundant bills, in the Legislation Reform (Repeals No. 3) Bill 2008.

Benefits of repeal

The VCEC review considered the question of whether repealing the Labour and Industry Act would place an undue burden on any section of the community or prevent the achievement of the Victorian government's policy objectives.

VCEC found that all substantive provisions of the act are redundant. The provisions are either no longer enforced and/or are replicated by other legislation. As such, the act

imposes little, if any, compliance or administrative costs on business or the community. If the provisions of the act were to be enforced, then there would be substantial costs on business.

Even in the absence of any enforcement regime, there is still a cost involved in being aware of the act's existence and purpose. For example, to obtain registration by the Builders Practitioners Board to be an erector or supervisor of temporary structures (such as tents or stadium seating), the applicant must demonstrate knowledge of the Labour and Industry Act.

The benefits to business of repealing the act must be weighed against the cost to the community at large. Whilst there are not huge savings to be made through the repeal of the act, there are no identifiable benefits to be had through its retention. On balance, repeal is warranted.

Amendments to other acts

VCEC was also asked to consider alternative means of dealing with any non-redundant provisions of the act. This led to the conclusion that should the act be repealed, consequential amendments would be required for three other acts. The bill before the house therefore amends the ANZAC Day Act 1958, the Education Training Reform Act 2006 and the Pipelines Act 2005.

The Labour and Industry Act contains a provision regulating the closure of factories on Anzac Day. The government has decided to maintain arrangements for regulating factories on Anzac Day, and to facilitate this through an amendment to the ANZAC Day Act. The bill will amend the ANZAC Day Act to generally provide that factories and warehouses, with certain exemptions, are to remain closed on Anzac Day. We believe, given the significance of Anzac Day, and the expectation that normal activities be curtailed on such an important day, that the current arrangements should be maintained. Members will probably be aware that the current ANZAC Day Act already imposes restrictions on entertainment and sporting events, and it is appropriate that the act also regulate the operation of factories.

In transferring the relevant provisions of the LI act to the ANZAC Day Act, it has not been possible to replicate the provisions in their original form due to drafting differences between the two acts. The proposed amendments have, however, been drafted to best reflect the actual provisions of the LI act and to ensure consistency with the ANZAC Day Act. In particular, the existing provisions in the LI act do not explicitly provide that an offence is committed or impose a penalty should a factory or warehouse be open on Anzac Day. The penalty associated with non-compliance of the factory closure provision under the general offence provisions of the Labour and Industry Act is \$300. Further, in relation to the penalties, new section 5C in the ANZAC Day Act specifies that factories and warehouses (as defined in section 5B) must remain closed on Anzac Day. Responsibility for this will lie with the occupier. The LI act at section 139 did not specify who had to comply with this provision. The provision to be included in the ANZAC Day Act makes it clear that the responsibility lies with the occupier. This is preferable to the onus being on the factory owner, as the owner may have limited or no control over the factory's operations.

It is proposed to increase the penalty for non-compliance to 100 penalty units, which is consistent with existing penalties

under the ANZAC Day Act and the 2002 recommendation of the Scrutiny of Acts and Regulations Committee. The higher penalty now creates a significant deterrent in comparison to the previous penalty. It should also be noted that the existing penalty in the Labour and Industry Act has not increased for many years. The original penalty, dating from the 1953 Labour and Industry Act, was £20. Twenty pounds, roughly \$40, certainly went a lot further back then.

Factories that are currently required to be closed on Anzac Day under the LI act will still be required to be closed following amendments to the ANZAC Day Act. Similarly, exemptions that currently apply will still stand.

The government will continue to monitor Victoria's legislative framework to ensure Anzac Day commemorative events are adequately protected.

The Education Training Reform Act requires amendment as it seeks to rely on the definition of factory in the Labour and Industry Act. It is proposed to amend the Education Training Reform Act, so that the definition of factory will be the same definition as in the ANZAC Day Act.

The Pipelines Act also relies on the definition of factory in the Labour and Industry Act. Due to the construction and application of this act, it has been determined that the current reference to the definition of factory in the Labour and Industry Act should be repealed, rather than amended.

There are two other minor drafting changes I wish to bring to the house's attention. The definition of laundry currently in the Labour and Industry Act, which will be replicated in the ANZAC Day Act, refers to inmates of a 'juvenile school'. I have been advised that inmates of youth justice centres and youth centres, the modern equivalent of a juvenile school, do not undertake any laundry work. It is therefore proposed to remove the term 'juvenile school' from the legislation.

Secondly, it is proposed to include a provision in the same terms as section 5(4) of the ANZAC Day Act in the section dealing with factories and warehouses to be closed on Anzac Day (clause 5C of the bill). This provides generally that if a body corporate is guilty of an offence, any person concerned with management of that body corporate is also guilty of the offence. Defences to the charges brought pursuant to subsections (1) and (2) of section 5C will also be included to mirror the equivalent defence currently available in the ANZAC Day Act.

Conclusion

In conclusion, there is no argument that, with the exception of the provisions relating to Anzac Day, the Labour and Industry Act fails all necessary tests of relevancy. Despite its lack of relevancy, its continued existence imposes at the very least an inconvenience on business. Repeal of the act will have no detrimental affect on business, employees, or the general community. In repealing the act, we have ensured that arrangements for factory closures on Anzac Day, including any exemptions, have not changed.

I commend the bill to the house.

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

Debate adjourned until Thursday, 28 August.

WHISTLEBLOWERS PROTECTION AMENDMENT BILL

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Whistleblowers Protection Amendment Bill 2008.

In my opinion, the Whistleblowers Protection Amendment Bill 2008, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of the bill

The bill permits the Ombudsman to table a report under section 103 of the Whistleblowers Protection Act 2001 (the act) that is likely to identify a person against whom a protected disclosure is made when the Ombudsman is of the opinion that disclosure of the identifying information is in the public interest.

Human rights issues

The proposed bill engages the rights contained in section 13 of the charter. Section 13 provides that a person has the right:

not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and

not to have his or her reputation unlawfully attacked.

The right to privacy concerns a person's 'private sphere', which should be free from government intervention or excessive unsolicited intervention by other individuals. An interference with privacy will not be unlawful provided it is permitted by law, is certain, and is appropriately circumscribed. An interference will not be arbitrary provided that the restrictions on privacy are reasonable in the particular circumstances.

The interference with privacy and reputation is neither arbitrary or unlawful as the Ombudsman's power to table a report is circumscribed and certain, and is reasonable given the important public interest in the Ombudsman reporting to Parliament on an investigation into a protected disclosure. In particular, the bill sets out a non-exhaustive list of criteria to guide the Ombudsman in determining whether or not it is in the public interest to disclose the identity of a person against whom a protected disclosure is made including:

the nature of the particulars to be disclosed;

the public interest to be served by the disclosure;

the reasons why confidentiality is not appropriate; and

whether or not the public interest could be met in a manner that is unlikely to lead to the identification of the person.

The bill also provides that the Ombudsman is required in the report to detail the reasons why it is considered that the public interest requires that the report should identify the person subject to investigation.

Section 61(1) of the act provides that the Ombudsman must not, in any report under part 5 or part 8 of the act, make a comment adverse to any person unless that person has been given an opportunity of being heard in the matter and their defence is fairly set out in the report. The requirements set out in section 61(1) do not currently apply to a report tabled under section 103 which is in part 9 of the act.

The right to privacy involves procedural aspects requiring some involvement of the person to be identified in decision making which will interfere with his or her privacy. Consequently, the bill extends the safeguards in section 61(1) of the act to a report tabled under section 103. In addition, the bill provides that the Ombudsman must provide to the person who is subject to adverse comment:

details of the adverse comment; and

either:

a copy of the parts of the report that relate to the adverse comment; or

information about the adverse comment

that would adequately enable the person to put forward any defence they may want to be set out in the report.

Therefore, any interference with the right to privacy or reputation is neither arbitrary or unlawful, and there is no limitation on the rights in section 13 of the charter.

Consideration of reasonable limitations — section 7(2)

The bill does not limit any human rights and therefore it is not necessary to consider section 7(2) of the charter.

Conclusion

The Whistleblowers Protection Amendment Bill 2008 engages section 13 of the Charter of Human Rights and Responsibilities. The fact that the proposed amendments apply to investigations that have already commenced or been conducted does not, of itself, make the legislation arbitrary. In addition, the transitional arrangements also provide that the amendments do not apply where the Ombudsman has made a previous report under section 63 of the Act or tabled a report under section 103 of the Act prior to the commencement of the amending Act. Sufficient safeguards have been included in the bill to ensure the amendments do not result in an unlawful or arbitrary interference with privacy or reputation.

JUSTIN MADDEN, MLC
Minister for Planning

Second reading

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

Mr LENDERS (Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Whistleblowers Protection Act 2001 (the act) was introduced to implement a key commitment of the Labor government to legislate to protect people who disclose information about serious misconduct in the Victorian public sector. The legislation was part of a raft of reforms introduced by this government to ensure government is open, honest and accountable.

The Ombudsman is due to finalise an investigation initiated under the act. The matter has been the subject of considerable comment in the media and the Ombudsman believes that it is in the public interest to report to Parliament on the outcomes of the investigation.

Section 103 of the act allows the Ombudsman to, at any time, report to Parliament on any matter arising in relation to a public interest disclosure under the act. However, section 22(3) provides that the Ombudsman must not, in such a report, disclose particulars likely to lead to the identification of a person against whom a disclosure is made.

The Ombudsman is concerned that, given the high-profile nature of the matter, he will not be able to make a report to Parliament without including details that would identify the individual or individuals being investigated. The Ombudsman has therefore requested that section 22(3) be amended to allow him to make the report.

In summary, the bill removes the impediment that currently prevents the Ombudsman from tabling a report in Parliament under section 103 of the act that contains particulars identifying a person against whom a protected disclosure is made. The amendments also include certain safeguards to ensure that identifying a person against whom a protected disclosure is made is not an unlawful or arbitrary interference with that person's right to privacy or reputation.

It is intended that the amendments contained in the bill apply to any report tabled by the Ombudsman pursuant to section 103 regardless of when a disclosure under the act is, or was, made or an investigation under the act is, or was, commenced. That is, upon commencement of the amendments, the Ombudsman will be able to table a report identifying a person against whom a protected disclosure has been made, where that disclosure was made and the investigation begun before the commencement of the act. However, the transitional arrangements also provide that the amendments do not apply where the Ombudsman has already made a report under section 63 of the act or tabled a report under section 103 of the act prior to the commencement of the amending act.

I commend the bill to the house.

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

Debate adjourned until Thursday, 28 August.

CORRECTIONS AMENDMENT BILL

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Corrections Amendment Bill 2008.

In my opinion, the Corrections Amendment Bill 2008, 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 bill

The bill will amend the Corrections Act 1986 to provide for the creation of prisoner compensation quarantine funds for the purpose of paying into them certain damages awarded to prisoners and to provide for the payment out of those funds of certain amounts recoverable by victims and others from prisoners.

Human rights issues

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

1. Right to equality — s 8

Section 8(2) of the charter provides that every person has the right to enjoy his or her human rights without discrimination. Section 8(3) of the charter provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination, and has the right to equal and effective protection against discrimination.

Discrimination is defined in s 4 of the charter as having the same meaning of discrimination as s 6 of the Equal Opportunity Act 1995, namely discrimination on the basis of an attribute including: age, breastfeeding, gender identity, impairment, industrial activity, lawful sexual activity, marital status, parental status or status as a carer, physical features, political belief or activity, pregnancy, race, religious belief or activity, sex, sexual orientation or personal association with someone who has any of the above attributes.

As the status of being a prisoner is not a prohibited ground of discrimination under the terms of s 4 of the charter and s 6 of the Equal Opportunity Act 1995, the bill does not engage the right to equality under ss 8(2) and (3) of the charter.

2. Right to privacy — s 13

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. An interference with privacy will not be unlawful provided it is permitted by law, is certain, and is appropriately circumscribed. An interference will not be arbitrary provided that the restrictions on privacy are reasonable in the particular circumstances.

This right is relevant in situations involving the disclosure of private information. The right only proscribes interference where that interference is unlawful or arbitrary.

The clauses of the bill which engage the right to privacy under s 13 of the charter are:

Clause 104X of the bill provides that a victim may apply to the secretary to be notified of an award of damages to a prisoner. Clause 104Y provides that the secretary must publish a notice advising of an award of damages to a prisoner as soon as practicable after the award is made, and the notice will include the name of the prisoner and the money in the award that has been paid to the Prisoner Compensation Quarantine Fund. The notice will be published in the *Government Gazette*, in a daily newspaper circulating generally around Victoria and in a daily newspaper circulating generally around Australia. The secretary may also publish the notice on the internet. Clause 104Z provides that the secretary may forward a copy of the notice under clause 104Y to any victim who has applied to the secretary under clause 104X. Clause 104ZA provides that victims may apply to the secretary for information about a victim's claims fund within the initial quarantine period in respect of that fund.

Clause 104ZB provides that the provision of information by the secretary under these sections is authorised despite any agreement to which the secretary or state is party that would otherwise prohibit or restrict the disclosure of information concerning an award of damages, and does not constitute a contravention of such an agreement. Clause 104ZC provides that a person to whom information is provided under these sections must treat the information in an appropriate manner that respects the confidentiality of that information.

Where the information disclosed under the above clauses is already in the public domain (such as a court order made in open court) it is unlikely that any issue would arise in relation to the disclosure of information. However, even where the above provisions may engage the s 13 right, in that they relate to the disclosure of personal information and amount to an interference with a prisoner's privacy, they do not limit the right to privacy in s 13 of the charter, as s 13 only applies where the right is unlawfully or arbitrarily interfered with.

The interferences in the bill with privacy are not unlawful as they will occur pursuant to powers conferred by legislation and will be reasonable in the circumstances. Further, the interferences are not arbitrary, as any interference will occur only in precise and circumscribed circumstances, and the bill provides safeguards regarding the use of the information, apart from where the information is in the public domain.

Clause 104ZD creates offences where a person to whom information is disclosed under the above clauses discloses the information to any other person except for the purposes, or in connection with, the taking and determination of legal proceedings by the person against the prisoner concerned; and where a person who becomes aware of information disclosed to a person under the above sections uses that information or discloses it to any person. The creation of these offences protects information disclosed in accordance with the bill from being used inappropriately, and thus prevent a prisoner's privacy being interfered with arbitrarily.

Therefore, while the above provisions engage the right to privacy in s 13 of the charter, the provisions do not constitute a limit on the right to privacy.

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.

Clause 104V provides that the amount of any award of damages to a prisoner must be paid to the secretary immediately after the damages are awarded, to be held in trust for the prisoner by the secretary. The money held in trust constitutes a prisoner compensation quarantine fund for victims of the prisoner and others. Any award of damages for a civil wrong (defined as an act or omission of the state that gives rise to a claim by a prisoner against the state, that occurred while the claimant was a prisoner detained in custody in a prison and that arose out of or in connection with his or her detention in custody in a prison) must specify the amounts, if any, awarded or agreed to in respect of existing and future medical costs and legal costs (clause 104T). Further, a court must not make an award or approve an agreement between the state and a prisoner for damages unless the court is satisfied that clause 104T has been complied with. It does not apply if the award of damages to a prisoner does not exceed \$10 000. Clause 104O provides that 'award of damages' means damages awarded pursuant to a judgement of a court or paid or payable in accordance with an agreement between the parties to the agreement. An 'award of damages' does not include any amount specified in the award of damage made or approved by the court as attributable to existing and future medical costs, false imprisonment or legal costs.

Clause 104ZG provides that the secretary must not pay out any money in a prisoner compensation quarantine fund to a prisoner until the end of the quarantine period for the fund (defined in clause 104O as the period of 12 months following the publication in the *Government Gazette* of the notice in respect of the fund under clause 104W). The secretary must within 45 days after the end of the quarantine period pay out of the prisoner compensation quarantine fund to the person entitled to payment any amounts required to satisfy any debt of or award against the prisoner that was notified to the secretary by a victim under clause 104ZE(2) or by a creditor under clause 104ZF. If any amount remains in the prisoner compensation quarantine fund after all amounts are paid out, the secretary must pay the remaining amount to or at the direction of the prisoner within, or as soon as practicable after the end of, the period of 45 days after the end of the quarantine period.

Clause 104ZH applies where the secretary has received notice from a creditor of the prisoner, but has not received any notification from a victim. As with clause 104ZG, the secretary must not pay any money out of the prisoner compensation quarantine fund to any person until the end of the initial quarantine period. The secretary must within 45 days after the end of the initial quarantine period pay out of the prisoner compensation quarantine fund to the persons entitled to payment any amounts required to satisfy any debt of a prisoner that was notified to the secretary under clause 104ZF and that the secretary is satisfied is a valid claim. Again, if any amount remains in the prisoner compensation quarantine fund after all amounts are paid out, the secretary must pay the remaining amount to or at the direction of the prisoner within, or as soon as practicable after

the end of, the period of 45 days after the end of the quarantine period.

Money payable to a prisoner as damages would constitute property within the meaning of s 20 of the charter. However, the European Court of Human Rights has made clear that, in relation to the deprivation limb of the property right in article 1 of the First Protocol to the European Convention on Human Rights, temporary seizures of property do not constitute deprivations of property. As the bill does not permanently deprive a prisoner of his or her property (given that damages are temporarily held in trust rather than permanently acquired from a prisoner), the bill does not limit prisoners' property rights. While a prisoner may be deprived of the damages he or she received from the state permanently if a court awards damages to a victim of the prisoner, or if a creditor has a valid claim against a prisoner, the deprivation occurs by virtue of an order of the court rather than by operation of the bill.

Accordingly, the above clauses do not limit the property right in s 20 of the charter, as no deprivation of property occurs.

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 Mr LENDERS (Treasurer).

Mr LENDERS (Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

This bill amends the Corrections Act 1986 to further strengthen the recognition that this government has given to the needs of, and harmful effect of crime on, victims.

The government is committed to empowering victims to exercise all of their available rights and remedies to seek compensation for the effects that they have suffered due to crimes perpetrated against them. The effects of these crimes can be severe and long lasting and can also have a significant impact on families as well. The bill provides an opportunity for victims to consider their existing rights under the civil law through notifying them of moneys received by prisoners in respect of claims brought against the state and quarantining those moneys for a period of at least 12 months to allow victims to bring civil proceedings against the prisoner.

The government intends to address the situation where an offender receives an award of damages from the state and

therefore has a much improved financial situation. Victims can then choose to take advantage of that improved financial situation by taking their own legal action in the knowledge that there are assets that may satisfy a successful judgement.

The government is aware of the perceived inequity when offenders are seen to use the law for their own purposes through pursuing compensation arising from their circumstances in custody. This bill represents a step in addressing that inequity.

In developing the bill the government has taken note of similar developments in the New Zealand Prisoners' and Victims' Claim Act 2005 and in the New South Wales Civil Liability Act 2002. In addition, similar reforms are currently before the Queensland Parliament. Whilst these jurisdictions are similar in many ways they do differ from Victoria, in the legislative and administrative context. Despite the differences, all of the schemes attempt to alter the balance between an offender and their victims after an offender receives an award of damages from the state that places them in a much improved financial position.

All victims of crime are able to bring a civil suit against perpetrators where they can satisfy the requirements of a relevant cause of action. However, the decision to bring a civil claim is dependent on the victim's financial resources to fund the claim, the likelihood of recovering damages if the claim is successful and the victim's willingness to pursue their perpetrator in the civil courts. In many instances, victims simply do not pursue civil remedies either because they lack the funds to bring the action or their perpetrator is impecunious or they do not want to face their perpetrator in a civil court. As often is the case, many convicted offenders have very few assets and no income for a victim to successfully enforce a civil judgement.

Under the Corrections Act 1986, victims can register and be told information about a prisoner's sentence, parole and release date.

At present, compensation paid to prisoners by the state can be disbursed or squandered by the prisoner prior to claims being made by victims or judgements being enforced against them by those who have a judgement in their favour or others, such as the child support agency. The scheme does not change the law as it currently stands as to who can claim the funds. However, it will allow victims and others to know where the funds are, in order to decide whether to make a claim or have an existing judgement enforced.

Under the bill, damages awarded to offenders will immediately be paid to the Secretary of the Department of Justice to be quarantined in a trust fund. A public notification process will then commence. Victims will have 12 months in which to consider and commence legal proceedings against the offender. They can do this with the knowledge that the quarantined funds may be available to satisfy a successful claim.

This is not a scheme to redress all wrongs done by offenders to their victims. It is a scheme that provides another opportunity for victims in Victoria to seek civil redress in the light of an offender's changed financial situation.

I move now to the substantive operation of the scheme. The bill amends the Corrections Act 1986 to:

quarantine damages and awards payments to prisoners received as a result of a successful claim against the state of Victoria or a private prison operator;

provide for the public notification of successful claims by prisoners to enable victims of crime and others to consider civil action to recover funds;

provide for the registration of victims to allow the disclosure of relevant information;

provide for the payment out of the fund to victims and creditors.

The bill does not affect the legal right of a current or former prisoner to bring a claim that may result in the payment of compensation or other award by the state of Victoria or a private prison operator.

It does not matter for the purposes of the scheme whether a prisoner brings their claim when in custody or after they have been released or whether a claim made whilst in custody is not resolved before their release. Provided the claim results in a payment by the state of Victoria or a private prison operator in relation to the conditions and circumstances in detention, it will potentially be quarantined. The bill applies to prisoners serving a sentence in custody and excludes prisoners on remand.

The aim is simply to provide victims the opportunity to bring a claim once they have been made aware of the existence of an asset that might be available to enforce a successful civil suit. The scheme only applies to damages or awards that relate to the circumstances of a prisoner's incarceration. The scheme does not guarantee that a victim will be able to recover damages, irrespective of whether they can bring a claim within the limitation period or following an extension of that period granted by a court. Where a prisoner receives a damages payment, the bill requires the money to immediately be paid to the secretary to be placed in the fund.

For the scheme to operate effectively, a broad definition of victim has been included in the bill to provide maximum opportunity for potential victim claimants to seek redress in the civil courts. The definition of victim captures:

a person who has had a criminal act committed against them by a prisoner;

a person who is the next of kin or a family member of a person who has died as a direct result of a criminal act committed against them by a prisoner (this may or may not include a deceased estate); and

a person who is the primary caregiver or a family member of a person who has had a criminal act committed against them by a prisoner.

The definition of victim is intended only to facilitate notifications and the disclosure of information. It is important to note that unlike other options open to victims this scheme does not require a victim to establish any threshold level of injury or harm. As a victim under this scheme they will simply have certain information disclosed to them; any issues concerning their level of injury or harm are issues that will be resolved during the civil process if they decide to take action.

The bill provides for a public notification of the fact that a prisoner has received a payment following a successful claim.

Victims can then register and receive more detailed information to enable them to consider their situation.

In relation to other persons who might have a claim, such as creditors, the public notification aspects of the scheme are sufficient to alert them to the existence of funds against which a debt may be satisfied.

The scheme captures any payment of damages or an award following a successful claim made by a prisoner at common law or under statute. The types of claims that may be made by prisoners or former prisoners include allegations of negligence, breach of contract, breach of statutory duty and claims based on a statute such as antidiscrimination matters and breaches of privacy.

The scheme applies to payments made pursuant to a court order on the completion of a hearing and payments made pursuant to a settlement agreement agreed between the parties. In all cases, it will only apply to claims made in relation to circumstances during the prisoner's time in custody. It will not apply to claims made by a prisoner against another prisoner.

The scheme does not quarantine an award after a successful claim for false imprisonment given the basis of such a claim.

Following a successful claim or settlement the award or damages may compensate a prisoner in relation to a number of different components, including:

medical costs;

loss of earning capacity;

pain and suffering;

loss of bodily function;

amounts referable to a breach of rights and/or entitlements (e.g., discrimination claims and breach of privacy claims et cetera);

loss of reputation in the case of defamation;

punitive damages to punish the defendant; and

the replacement value of damaged or lost property.

It is not appropriate under the bill to quarantine all types of payments. Accordingly, the bill will not affect damages payable in relation to medical costs and the cost of future care. In addition, the scheme does not capture the payment of legal costs awarded against the state of Victoria or a private prison operator.

The bill ensures that a judgement or settlement agreement in favour of a prisoner specifies an amount available for the purposes of the scheme that will be placed in the fund. Where the parties cannot agree on that amount, the court is given the power to specify that amount. The scheme requires that a court cannot ratify a settlement agreement unless it is satisfied that the apportioned amount is appropriate in the circumstances.

The scheme sets a threshold quarantine amount of payments of or in excess of \$10 000 as it is inefficient to include small amounts of money in the fund. This, in effect, will be a threshold amount determining when the scheme operates.

The money in the fund will be quarantined for a minimum of 12 months and, in the case where a victim brings proceedings during that initial period, the quarantine will last until the conclusion of those proceedings. At the end of the quarantine period, the secretary is authorised to pay moneys out of the fund to victims and/or creditors. In doing so, the bill requires the payments to be made pro rata and in accordance with the priority of payment required under the law.

This bill further strengthens the recognition that this government gives to the harmful effects of crime and the needs of victims of crime.

I commend this bill to the house.

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

Debate adjourned until Thursday, 28 August.

PUBLIC HEALTH AND WELLBEING BILL

Second reading

Debate resumed from 19 August; motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mrs PEULICH (South Eastern Metropolitan) — The bill is a rewrite of the principal act, the Health Act 1958, and it makes consequential amendments to other acts. According to the government, it replaces and updates the Health Act, particularly in relation to public health and safety matters. The government purports that the bill will provide a modern and flexible legal framework to strengthen Victoria's ability to respond quickly and decisively to emerging risks to public health whilst safeguarding the rights of individuals who may be affected by measures taken to protect public health.

That is all very well and good, and I will not traverse the concerns that have been raised by the opposition through the previous speaker, Mr David Davis, but I would like to express concern that this process was started some 10 years ago, with the initial discussion paper reviewing the act being released in 1998. So it has taken a full 10 years for this government to rewrite the act. You would not want to be holding your breath to see the implementation of the key objectives if it has taken nearly 10 years for the government to rewrite the act.

The introduction of this bill was initiated by the need to review legislation under the national competition policy principles. The government released a discussion paper in 2004 and went on to draft a policy paper, which was released in 2005. There were a subsequent policy paper in 2006, and all of this concluded in 2008.

It is always a good thing to review legislation, and the legislative framework, because there ought not to be any obstacles — such as an outdated framework — to the government delivering this very important service. But we cannot just hope by merely having an updated framework and updated legislation that the government will ensure that it is implemented and that the key objectives of the legislation are improved or met.

There is pervasive, overwhelming evidence to show that the government has failed to deliver on its major undertaking when it won office in 1999 to 'fix the health system'. We continue to hear the government's spin about how health is its no. 1 priority, and it certainly registers in all of the polling and surveying of the community, which is skewed to an older demographic. Health is a very important priority for the community. When people genuinely need procedures there ought to be no excuse for those procedures not being able to access them, notwithstanding the need to address the most serious cases as the highest priority.

I will just have a quick scan through the literature of some of the local Labor members of Parliament — there are no Liberals in the Assembly covered by South Eastern Metropolitan Region — and what they say about health. It is just spin. It is disappointing that the very serious issues in the health system, particularly in the south-east, have not been addressed over the life of this government — its nine years of government. It shows clearly that these members, as well intentioned as they may be, have failed to knock loudly on the doors of former Premier Bracks and now Premier Brumby and certainly the ministers for health to make sure that they get the outcomes that their communities need and consistently rate as their highest priority.

I note also that for the very first time since I have been re-elected the face of Mr Bob Smith, the President, appears on the back of this newsletter too. I am not sure how many times he has visited the area since he has been President, but it is nice at least to see his face. In a recent budget update entitled *Budget 08 — Victorian State Budget* the face of the member for Carrum, the Speaker in the Assembly, appears. The update states:

The Brumby Labor government is taking action to deliver quality health services for local families.

It then goes on to cite a couple of initiatives. Coincidentally, in view of the bill that has been first and second read in the Assembly, the Speaker mentions \$4.8 million being provided as a boost for the pregnancy assessment unit at the Monash Medical Centre. I wonder whether the Monash Medical Centre may have had a bit of forewarning as to the direction that the government was going to take on this very

important legislation that was introduced into the Assembly.

The member for Frankston in the other place, Dr Alistair Harkness, obviously spends a lot of time updating his website and communicating with his constituency online. Let me tell you that his constituents say that they would rather see him in person, out there fixing up the problems that need to be fixed, including those being experienced in the Frankston Hospital emergency department and especially in the delivery of better mental health services in the electorate. He should get offline and out into the community. I note that in his most recent letter to the community, which was issued in August — and I suspect was a response to the canvassing of issues that I have been undertaking in Frankston as one of the local upper house MPs — he said:

I need your help to work out our future priorities — to best serve you, your family and our community.

If after nine years he does not know what those priorities are, dare I say he probably does not deserve to continue serving that very important Frankston community as its local member of Parliament.

Mr Lenders — He hasn't been a member for nine years.

Mrs PEULICH — The government has been in office for nine years. In his letter Dr Harkness goes on to say:

Through those opinion surveys, residents told me that health is their top priority ...

What a shame that the Bracks and now the Brumby Labor governments have failed to deliver on the expectations of the community in Frankston. He goes on to say:

Now, I want to check with you again —

nine years later —

to identify what's most important to you and what I can do to help in the future.

Hello! It will require more than just a rewrite of the Health Act.

I turn to a newsletter of the member for Mordialloc in another place, who happens to represent the seat in which I now reside. Dare I say that Mordialloc is missing the former member, Geoff Leigh, very seriously.

An honourable member — No, it is not!

Mrs PEULICH — Geoff Leigh is sorely missed. Wherever I go, people say to me, 'At least Geoff Leigh was out there batting for the community; at least we had things done'. Of course now there are so many serious problems in the electorate of Mordialloc that they would gladly roll out the red carpet to have Geoff Leigh back! What does the member for Mordialloc say about health? It is the standard line and spin of the PR (public relations) department, with very little customisation. The contents of these newsletters are all the same. On the subject of health, her newsletter says —

Ms Darveniza — Hold it up again! What is on the front cover?

Mrs PEULICH — It has not been doctored. Can I suggest that it probably required a bit of doctored. Under the heading 'Quality health services for local families', the member for Mordialloc's newsletter states:

Janice Munt and the Brumby Labor government are taking action to deliver quality health services for local families.

What a lot of baloney, considering that she is referring to the Clayton campus of the Monash Medical Centre which, together with another hospital in the area, is registered as one of the hospitals that people and patients are least satisfied with across the state of Victoria. In her newsletter she cites, yet again, the pregnancy assessment unit, which is being funded to the tune of \$4.8 million. What did they know that we did not? She also mentions \$45 million for the second stage of the redevelopment of the Kingston Centre. The Kingston Centre in Cheltenham is on a very nice and very expensive piece of land. However, much of the centre is unfortunately to be relocated to Doveton. Here we have a perfect example of how the member for Mordialloc looks after the health needs of the people of Mordialloc.

What do we have in the newsletters of the member for Cranbourne in another place? On a personal level all these members are very nice people. We exchange courtesies and civilities out there in the community, but in the Parliament we have an obligation to our communities, and that obligation is to work as part of a party or as Independents and to make sure that whatever undertakings we give we indeed deliver on. It is my job to make sure that undertakings that have been given by the government are delivered upon. What does Mr Perera say? Under the heading 'Budget delivers strong investment in health' an article in his newsletter states:

The Brumby government is taking action to ensure families have the best health system by investing in hospitals servicing our community.

It goes on to talk about the Frankston Hospital. Of course we know that despite the best efforts of the medical staff Frankston Hospital has been having serious difficulties in its emergency department which have been exacerbated by the closure of crisis assessment team services outside normal office hours so that psychiatric patients have to present at the emergency department to access mental health services. Is that not just absolutely appalling public policy, especially given that that department has had such significant problems?

I will not go on to cite many of the other newsletters that I have collected — I have probably given them too much airplay as it is — but let us contrast what is said with what is delivered. Victoria now has the nation's longest queues for hospital beds and the most crowded hospital waiting rooms. The number of patients languishing in Victorian hospital waiting rooms has jumped 141 per cent in three years. That is the worst rate of any state in the nation, according to the recent annual snapshot of the Australian College for Emergency Medicine reported in the *Sunday Herald Sun* of 12 August 2007. The Victorian Labor government provides the lowest level of per capita funding for our public hospitals and has the fewest beds per capita compared to all the other states and territories.

A *Your Hospitals* report shows that as of October 2007 some 38 109 people were on the elective surgery waiting list, an increase of 1655 people on the figure for the same time last year. In the past six months some 34 337 people waited for more than 8 hours on trolleys in emergency departments. Do members remember all the chasing of people who overstayed on hospital trolleys by the then opposition shadow health minister, Mr John Thwaites? Do members recall that and the collaboration in most instances with the health unions and the ambulance chasing? The figures are worse, but where are the stories? Unfortunately often in our political system it is the capacity to get those stories out into the media that creates the public perception, and this is why this government is so hell-bent on controlling that PR and spin, but of course the facts tell a different story.

In the last six months some 68 172 people waited more than 4 hours in an emergency department waiting room before being treated and discharged. Yes, we do understand that they are triaged according to need, but nonetheless that is a horrific statistic. In the last six months some 8426 people categorised as emergency

cases waited longer than 10 minutes for treatment in an emergency department. That is an increase of 116 per cent since June 2000.

In the last six months 42 780 people whose cases were categorised as urgent waited more than 30 minutes before being treated, which was an increase of 68 per cent since June 2000. The urgent surgery list has increased by 87 per cent in six months — more than ever before. But despite all these figures and the projected budget surplus of \$842 million at its disposal, the Brumby government waited until the very last minute to inject just \$15 million as bandaid relief to deal with less than 20 per cent of the existing waiting list, which many, of course, described as a media stunt — and we know that it was.

On funding for hospitals, as I mentioned earlier, according to the Australian Medical Association's public hospital report card for 2007 Victoria has poor results for the number of beds per 1000 of weighted population — 2.3 compared to 2.6 nationally — and unfortunately runs the system dangerously close to 100 per cent of capacity. Victoria comes in last for recurrent expenditure per person, with spending at \$588 compared to \$665 nationally, and of course we all know that it is not just the amount of money you spend that matters, but how you spend it, and this government has historically not had a great record on getting the best bang for its buck. Despite the best efforts of hospital staff, emergency departments are failing to keep up with growing demand, with the lack of beds and hospital capacity problems being a major contributing factor.

Category 2 patients — those with severe pain, severe breathing difficulties or major fractures — according to performance standards should be seen within 10 minutes. Category 3 patients — moderately severe blood loss, severe breathing difficulties or major fractures — should be seen within 30 minutes. The number of Victorians who have failed to be treated within the clinically appropriate time in each of these two categories has doubled in the last four years, with an average of more than 10 000 a month failing to be treated within the clinically appropriate time between July and December 2007.

Previously unreleased documents obtained under FOI from the Metropolitan Ambulance Service, or MAS, found that from 1 January to 31 July 2007 more than 5600 patients endured waits of 30 minutes or longer in ambulances outside hospitals — in ambulances that could not even get through the door!

In a Victorian patient satisfaction monitor report survey undertaken between March 2006 and February 2007 the Dandenong Hospital, in my region, and the Monash Medical Centre featured in the top 10 of Victoria's least favourite hospitals. Of the 15 800 patients surveyed, many said that they did not think their hospital stay helped their health. Isn't that a sad indictment of the health system! The AMA said hospitals lack the resources to cope with demand and that they need a commitment from the government to understand the fact that we do not have enough capacity in the system.

Southern Health, which is the major provider in the South Eastern Metropolitan Region, recorded a \$6.6 million operating deficit in 2006–07, compared with a \$2.4 million operating surplus in 2005–06, and it has incurred four operating deficits totalling \$54 546 over the past five financial years. Capital purpose funding from the Department of Human Services was \$7 million, or 18 per cent, less than in 2005–06. Capital grants from the government were slashed from \$36 444 million in 2005–06 to just \$21 251 million in 2006–07 — a 42 per cent reduction in capital grant funding. Ambulance bypasses increased from 94 in 2005–06 to 149 in 2006–07 — a 37 per cent increase. The number of coronary care beds has decreased by 10 per cent since 2003–04. Freedom of information documents for the period from July to December 2006 reveal that 6613 Casey community health service patients were waiting for general dental treatment and 521 patients were waiting for denture care.

Is this a vibrant, effective health system, meeting the health needs of the Victorian community, meeting the health needs of the South Eastern Metropolitan Region? Is it any wonder that patients are being turned away at hospital doors, which is frequently reported in our local papers across the south-east?

At the start of 2008, 38 109 Victorian patients were on the published waiting lists, and tens of thousands of patients were on Labor's secret waiting lists, which this government is determined to keep secret and fails to disclose to the public. In October 2007 we saw the leaking of a document which showed a secret Royal Melbourne Hospital waiting list revealing the extraordinary extent of the crisis the Labor government has created in our public hospitals. We can only assume that this is replicated across all the other major hospitals across the state.

The leaked document was a catalogue of shocking neglect which showed that many Victorians, obviously many of them from the South Eastern Metropolitan Region, were waiting years for crucial operations including coronary bypasses, bowel resections, hip and

knee replacements, removal of cancerous growths, spinal operations, removal of lumps in the breast and brain surgery. Using the term 'elective surgery' in talking about hip and knee replacements, particularly for the elderly, is inappropriate. One arm of the government's health policy encourages these patients to age in place at home, and HACC and all sorts of other services are made available to them, but then they are left hobbling around for years because they are not able to get a new hip or have a knee reconstruction. That is appalling. Whilst those procedures may be seen as being less critical in terms of life, they are certainly not in most instances elective surgery. Despite that, the system continues to classify them as such.

The fact remains that many thousands of Victorians are waiting for years on Labor's secret waiting lists, and there is absolutely no public reporting of this system. At the Monash Medical Centre, which services the Legislative Assembly electorates of Mount Waverley, Mordialloc and Carrum, 1486 patients were listed on the unreported outpatient lists as having appointments and 1268 patients were waiting to get appointments. These are the appalling statistics of a neglected system, underrepresented by Labor members of Parliament who are just happy to go along for the ride.

At Monash the average waiting time for obtaining a GP referral to see an outpatient specialist was 90 days. Of the 2754 patients on the hidden waiting list at the Monash Medical Centre, six patients have been waiting 320 days for an appointment. In Parliament we constantly have the Minister for Health, who is the member for Mulgrave — also in the South Eastern Metropolitan Region — refusing to answer any question being asked by the coalition on the current outpatient waiting lists at Victorian hospitals. He is not prepared to say why the Brumby government cannot support the outpatient waiting lists, given that some outpatients have been waiting up to a thousand days just to see a doctor.

I am sure that all members would agree personally that hidden waiting lists are a disgrace. They are unacceptable, they need to be exposed, they need to be incorporated into one list and Victorians need to know where they are on that list, and they need to have the support of the government in this public claim that it is fixing the health system, which is clearly not the case.

All Victorians, including residents of the city of Casey, Greater Dandenong, Kingston, Monash and Frankston, deserve to have access to that information. They deserve to know how their key services are performing and how long patients need to wait to access those important services. Clearly this government is more

interested in manipulating the numbers and in keeping the numbers concealed than in meeting the health needs of the Victorian community. It shows the local members to be spinning a big lie in their newsletters.

Worse still, towards the end of each financial year several hospitals cut elective surgery because they have exceeded their targets. Many patients have had their surgery cancelled on a number of occasions due to the capacity problems in our public hospitals. There is no doubt that cancelling surgery repeatedly is unacceptable, is distressing to doctors and, more importantly, is distressing to the patients and their families.

The hospital statistics for the south-east show that in the Casey Hospital the elective surgery waiting list has swollen by more than 20 per cent to a total of 1211 patients and that 734 patients waited on emergency department trolleys for more than 8 hours over the last six months. The Brumby government promised better health services, but these statistics show a different story. At Frankston Hospital 4742 patients waited on trolleys in the emergency department for more than 8 hours. In Frankston Hospital emergency department waiting room 4780 patients waited more than 4 hours before being discharged. Throughout the south-east there have been more high-profile problems and cancellations that are real proof that the Bracks and now the Brumby governments cannot manage Victoria's health system.

Between January and July 2007 more than 1100 ambulances were left waiting between 30 minutes and 1 hour at Casey Hospital's emergency department, essentially putting them out of service due to the lack of available beds, which I mentioned before. Guidelines published by the Department of Human Services state that patients should be transferred from an ambulance to an emergency department within 15 minutes.

Worse still, Victorian doctors in training and specialists are the lowest paid when compared with their counterparts in other states. Local GPs are in great demand. In the more established areas where we have an older demographic, people generally access GP services, but with the influx of new families and new people in the growth corridors and in areas of high-density housing, people are struggling to get onto the books of a new doctor, especially if there is a retirement. The government has done nothing to make sure it retains and attracts more doctors to this state. This only increases the pressure on the resources of emergency departments, which saw 54 471 patients walk out of emergency departments statewide before being treated or even assessed. That information came

from a document showing the hospital walkout figures from April 2006 to February 2007 that was released under a freedom of information application.

In closing, a rewritten Health Act and PR and spin from Labor members do not mean a better health system. The government has had nine years to deliver on the undertakings it has given repeatedly to the community. They continue to spin the big lie. It is appalling that this lie continues to be significantly unexposed, and it is appalling that the government has wasted so much money and so many opportunities to deliver on a crucial service that is highly valued by the community. A new act will not erase the appalling track record of this government and its attempt to conceal or cover up this big political lie. As a result the health system has suffered and members of the community have suffered. In the area of health the government has not made Victoria a better place to live, work and raise a family.

Ms HARTLAND (Western Metropolitan) — The Public Health and Wellbeing Bill has been a huge undertaking. The intentions of the government, as outlined, are worthy. The Greens have some concerns, but we generally support the bill and hope the issues we are concerned about can be resolved by regulation following an extensive period of consultation, which the second-reading speech said will be undertaken.

I would like to know who the brave person was who said, 'Let's repeal the Health Act. It will take years, it will be expensive and it will raise a number of problematic human rights issues that we won't be able to resolve entirely'. I will talk about those human rights issues later.

Many of the provisions of the bill update and clarify the current provisions of the Health Act. Other items that were previously handled by regulations are brought into the act. We believe the changes are generally helpful. I will give some examples. The role of municipal councils is incredibly important in preventing outbreaks of disease and infection. Councils prevent the spread of infection and disease by monitoring premises where germs may be transmitted and by providing immunisation. Having been a member of the Maribyrnong City Council, I have seen that work at close quarters.

The bill introduces the requirement for local councils that do not already have one to prepare a municipal health and wellbeing plan. A plan must include gathering local data about health status and health determinants and the council must create some goals and strategies for achieving maximum health and wellbeing. It provides that local government must work

together with other levels of government to achieve the plan. The bill requires community participation and that the plan be included in the council plan or the strategic plan. Where a council already has a municipal public health and wellbeing plan it can apply for an exemption so that it does not have to do it twice.

The bill provides also that local councils must appoint an environmental health officer who is also an authorised officer, so he or she must have certain qualifications. This means they will be able to do the compliance work, such as inspections for legionnaire's disease or dealing with food contamination issues. The present act allows environmental health officers to be authorised officers, but clause 29 of the bill makes this much clearer.

Councils also supply immunisation services. One of the problems that I know councils have with immunisation is the cost, and this is something the government needs to look at. When I was at Maribyrnong City Council we won a federal award for accessing hard-to-reach communities, such as newly arrived refugees. We were being paid \$6 per immunisation — this was three or four years ago so I do not know whether the rates have changed — whereas a GP would receive \$32, so there was a great deal of cost shifting for local councils. That is something that needs to be addressed but is probably outside the scope of this bill.

I have some other concerns about provisions in the bill. They mainly relate to fears that the bill will be misused to discriminate against homosexual men. Whilst saying that, I want to make it absolutely clear that I do not believe the current minister or the department in any way treat homosexual men in a homophobic way, but I have concerns about what would happen if the politics of the department changed. Issues such as those that have been raised with me by organisations such as the Victorian AIDS Council cannot be ignored. In the last year there have obviously been some very sensationalised accounts of gay men spreading AIDS, but we have to remember that there have been two, possibly three, incidents. That is not a great number when you put it into proportion and consider the numbers of heterosexual men who have unsafe casual sex and spread sexually transmitted diseases, including diseases that may lead to infertility and other serious and fatal consequences. So when the AIDS council sent me a list of concerns about this bill I was inclined to take the matter seriously.

The AIDS council aims to preserve the independence, dignity and health of people with HIV/AIDS and to reduce the transmission of HIV. It raised concerns about a number of clauses in the bill — clauses 55 to

57 and 227. These clauses relate to information-sharing agencies. The council is concerned that information may be gathered by the secretary and departmental staff without advising the person involved that this information might be given to the police. The purpose of clause 55 is also to provide for situations such as food-borne outbreaks so that, for example, restaurants can hand over a list of contact details of patrons to the authorities without fear of prosecution. The Victorian AIDS Council recommended to us an amendment to provide that where information is disclosed that would identify an individual, that individual must be advised in writing that the disclosure has been made, the nature of the material disclosed, and to whom that material has been disclosed.

While I completely understand the AIDS council's concern about this issue I am not convinced that its suggestion is the right way to go. Having had the opportunity to raise this and a number of other issues in one of the best briefings I have had in my time in Parliament, a number of my fears were allayed. While I still have concerns, I tend to think that there is no way this amendment could be made without including in it the requirement to identify the person who passed on the information, and this may discourage, for example, doctors and health workers from reporting risky behaviour.

Clause 117 relates to public health orders. Concerns have been raised about public health orders and how they might be misused, especially in relation to people being compelled to limit their movements or behaviour by officers acting on misinformation and discrimination. While I share those concerns, on the other hand the bill also attempts to limit the scope of those powers. Clause 117 provides that before serious action is taken a reasonable attempt must be made to give the person information relating to the effect of the infectious disease on the person's health and the risk posed to public health. Clause 112 also provides that where alternative measures are available which are equally effective in minimising the risk that a person poses to public health, the measure which is the least restrictive of the rights of the person should be chosen.

For these reasons, while we do have concerns, the Greens will not oppose these provisions. We have actually been asked to weigh up the benefit of public health measures against the potential restrictions to individuals, and from what we can see, these will be used in very limited circumstances. For example, there are provisions in clause 134 to compel someone to be tested for an infectious disease, including giving blood. This clause even provides for the police to take the person to a testing place by force and to restrain them

while the test is being taken. When you first look at this clause it seems extremely harsh, but these provisions relate to situations where a caregiver or a custodian has been put at risk of infection while carrying out their duties. It is one of those very difficult situations where you have to weigh up the rights of the possibly infected person and the rights of the person who needs to be tested because they may have been involved in a needlestick injury. I would like to ask the government speaker who responds to the debate how often this has actually happened.

In conclusion, the act will not commence operation until 2010. This lengthy time period is to enable new regulations to be made. These regulations will provide the detail for how these new laws will be enacted in our community. I urge the government to take this opportunity to consult with a number of organisations, especially the Victorian AIDS Council for which I have very high regard and which has raised serious concerns with me.

Ms DARVENIZA (Northern Victoria) — I am very pleased to rise and make a brief contribution to the Public Health and Wellbeing Bill. This is a bill I am particularly interested in, having been a health professional in a former life while working as a nurse. I have been very supportive of the stance our government has taken in making health a priority. One of the ways we have done this has been by injecting money into our general hospitals, building new state-of-the-art hospitals and spending money on the upgrading and modernisation of equipment to keep abreast of new technology and new ways of using specialised equipment for diagnosis and treatment. Another aspect is the work that has been done in the community health sector, which is very important to the wellbeing of all Victorians. I am pleased to be part of a government that has really promoted and put money behind preventive health. It is about ensuring that we stay as healthy as we can and hopefully preventing the onset of disease and illness within our community.

This bill builds on the combination of health promotion and disease prevention that the government's programs have been very much targeted at. I will speak briefly about some of the programs and some of the money that has been spent, so that we can see how the bill augments those programs and the government's emphasis on the promotion of health in the community.

We are all well and truly aware of the challenges that face our community. There is the increased rate of obesity not just among adults but also among children and young people, and there are chronic diseases such as diabetes. Type 2 diabetes is one of those growing

health problems our community now faces, and it is a real challenge for us. Cancer is another disease we have all encountered in some way — people we work with, friends or members of our families have been diagnosed with it, suffered from it and been treated for it.

We are already implementing a range of important initiatives in preventive health, such as the \$110 million 10-year action plan to cut obesity and type 2 diabetes — and we know that the two are very much connected. We are encouraging Victorians of all ages to get out there and get moving — to exercise for 30 minutes a day. We are also educating them and encouraging them to eat more fruit and vegetables. We talk about foods that should be everyday foods and those that should be special occasion foods. We are not saying people should be completely abstemious and never have a piece of cake, a biscuit or an ice cream. That is not the way to stay healthy.

Mr Vogels — You love a bit of cake.

Ms DARVENIZA — You are right, Mr Vogels; I do like a bit of cake. The way to stay healthy is to have a balanced diet and to indulge in treats only from time to time.

As I said earlier, we are also aware of the effects on our community of chronic diseases such as diabetes. The government is targeting children through the Free Fruit Friday initiative, which is also educating families. That initiative has been much welcomed in my electorate of Northern Victoria Region. One of the biggest fruit-growing areas in our state is the Goulburn Valley. I think the initiative was actually instigated by fruit growers in the Goulburn Valley, and it has been funded by the government so it can expand.

There is also the fantastic Go for Your Life initiative, which addresses the risk factors of obesity and chronic disease. Something like \$150 million has been committed to that program. We all know that physical activity has major benefits. We should all get up and move around a lot more. We should be staying as active as possible, because this has major benefits not only for the way we feel but also for our health outcomes. We know it reduces the risk of a range of diseases and conditions such as cardiovascular disease, diabetes, some cancers and obesity. We also know that it assists in preventing falls amongst the elderly: it is great to be able to keep your sense of balance, and the way you do that is by keeping moving.

The government recently announced a \$600 million fund for the WorkHealth initiative. I have been very

supportive of this initiative, and it was great to see it announced. It is an initiative focused on prevention, screening, education and early intervention, and it will be rolled out to 2.6 million workers statewide over the next five years. There is also the \$18.35 million Life! — Taking Action on Diabetes program, which is about changing the behaviour of people who have a high risk of getting type 2 diabetes.

A lot has been done by this government to promote preventive health. We put our money where our mouth is by putting it behind these important initiatives aimed at young people, old people and everybody in between. It is about moving, it is about getting educated about healthy lifestyles and it is about how it can be fun to be healthy and fit. This bill adds to the work the government has already been doing.

I will speak briefly about the bill. It is a historic development in health for Victoria. Our 50-year-old Health Act very much focuses on the treatment of illness, which is a last-century focus. The focus of the bill is very much on protection and prevention and the wellbeing of people before they get ill. It is about dealing with people in our community and situations to prevent illness.

The bill enshrines the objectives of the state in its role of promoting and protecting public health and wellbeing while continuing to curtail the spread of infectious diseases. The bill contains a number of new powers designed to promote health and wellbeing. It requires the preparation of a state public health and wellbeing plan every four years — with the first plan to be produced by 1 September 2011.

The bill will enable the Secretary of the Department of Human Services to conduct a public inquiry into any serious public health matter, and it will enable the Minister for Health to direct that an assessment of the impact of important non-health proposals on public health and wellbeing be carried out. The bill enshrines the government's ongoing commitment to promoting a healthy lifestyle, containing infectious diseases, promoting food safety, maintaining the highest standards of water quality, cutting smoking rates and supporting a healthy environment.

It is a very good bill. I will briefly mention a couple of its key features in relation to improving Victoria's public health. The position of chief health officer is recognised, for the first time, as a statutory position in its own right. The chief health officer will be able to exercise a range of powers to protect public health, including things such as making public health orders requiring a person to be examined or tested for an

infectious disease or to undertake certain behaviours to prevent the spread of disease, as well as specific powers in relation to reducing risks to the health of the public in an emergency situation. Infectious diseases can be promptly added to a list of notifiable diseases, ensuring that there will be a rapid response if any new threat to public health is recognised or comes up.

The bill builds on the work the government is already doing. It puts the focus firmly on the prevention of illness rather than the treatment of illness once it arises. It includes safeguards and powers that enable the state and key officers within the state to take action both to prevent the spread of disease and to deal with the problem when the threat of a disease is recognised. I commend the bill to the house. It is a good bill, and it deserves a speedy passage.

Mr DALLA-RIVA (Eastern Metropolitan) — I rise to make a contribution to the debate on the Public Health and Wellbeing Bill 2008. I have heard many of the contributions from both sides. There is a lot of detail in this bill. It is a significant bill of more than 255 pages. I do not propose to go through it line by line, clause by clause — I do not think the clerks wish me to do that. I will start with clause 1, which is about the purpose of the bill, and it states:

The purpose of this Act is to enact a new legislative scheme which promotes and protects public health and wellbeing in Victoria.

As I said, the bill is quite extensive. It goes into a lot of detail, but really it replaces and updates the Health Act 1958. It purports to provide a modern and more flexible legal framework for Victoria in terms of being able to quickly and decisively establish emerging risks in public health and a range of other matters.

We have heard members of the Greens raise some concerns about the rights of individuals. I make reference to the Charter of Human Rights and Responsibilities that this government talks big about but fails to deliver on when it comes to legislation. The government continually crushes individuals and the rights of individuals while at the same time standing with hand on heart saying it has a charter of human rights which it stands by.

That aside, another point I note in respect of the bill is that while it will replace the Health Act and is called the Public Health and Wellbeing Bill, it is very difficult to see much in the way of wellbeing in the legislation before the chamber. What we have here is a typical state Labor government approach to legislation. It has essentially modernised the Health Act, put a few extra fancy words in it, fixed it up, maybe put in some of the

more contemporary issues and made the language plainer, and then the spin doctors — of whom there are literally thousands in this government — thought ‘public health bill’ did not sound that good, so they threw in something that sounds good politically.

What are the current issues? We heard Kaye Darveniza on the Labor side talking about some of the growing concerns about obesity, diabetes, heart disease and the like. The spin doctors got in there and put the word ‘wellbeing’ into the title because it sounds politically correct, it sounds good, it keeps them employed in that job for another couple of weeks and it justifies their position as spin doctors employed by the Brumby Labor government.

Where is wellbeing in the bill? There is not much there when it comes to talking about wellbeing. The preamble talks about promoting and protecting public health and wellbeing, but when you get to the detail it is more of a nuts-and-bolts approach to the legislation in respect of public health. That is one of the main features I noticed in the bill.

I guess I draw from my current role alongside Hugh Delahunty and Kirstie Marshall, the members for Lowan and Forest Hill in the other place, on the board of the Victorian Health Promotion Foundation. VicHealth, which recently celebrated its 20th year, provides true health and wellbeing for the community. It was instigated by David White from the Labor side and Mark Birrell from this side. It has been maintained and continues to provide good outcomes.

Many members will recall VicHealth’s campaign against smoking in a range of areas but mainly in football and other sporting arenas. I think there are great opportunities for VicHealth because fundamentally its role is to make health a central part of our daily lives by promoting good health and preventing ill health. It has a true focus on wellbeing that extends into the broader issues of health and wellness in how it funds its programs across a wide range of areas. Todd Harper, the chief executive officer, and Jane Fenton, the current president, have a clear agenda for how they see VicHealth moving forward. As a board member I am only one voice among many, but there are some great opportunities. I hope we see VicHealth maintain its great vigour in terms of providing communities with opportunities to support their health and wellbeing — unlike the bill before the chamber, which talks a lot about health and wellbeing but does not deliver anything on the wellbeing side of the ledger.

Other concerns about the bill have been discussed. One of the things that concerns me is the continual shirking of responsibility by this government and its ministers. This is a government that will be renowned not only for spin, rhetoric and lack of substance but also for the fact that ministers are continually bringing in legislation which puts them in the position of being hands-off.

There has never been a better example than in this bill, where we see that the government has conferred the responsibility for public health emergencies on unelected public health officials, particularly the chief health officer. That might sound all very well, but we know that under the New South Wales Public Health Act those extraordinary powers to deal with public health emergencies are conferred on the minister, not officials. We could potentially have a situation where, if a decision-maker gets it wrong, the bill in effect would absolve them of any consequence of their bad judgement. Ministers would not be accountable for decisions, the lack of decisions or bad judgements made by the unelected chief health officer. It is important to understand that this government has a long list of establishing bodies, organisations and appointing individuals where the minister has no responsibility for anything. This bill is yet another example of where the legislation provides for no-one to have responsibility for that particular matter.

With those few words, I would suggest that the bill proceed. The state opposition is not opposing it, except for those few concerns. As I indicated, VicHealth is probably a more appropriate body when it comes to the issue of wellbeing, and not the spin doctoring contained in this bill.

Mr THORNLEY (Southern Metropolitan) — I also rise to speak in favour of the Public Health and Wellbeing Bill. The introduction of this bill is, as other speakers have mentioned, a culmination of a decade of work. Periodically these major framework bills need to be renewed. This bill is the culmination of that work and some 240 recommendations that came out of the 2004 review and other subsequent matters that have come up. In that sense it is a credit to the three health ministers who have participated in the germination of what we now have before us — former minister and Deputy Premier, John Thwaites, Minister Pike and now Minister Andrews — as well as the hard work of the department.

The bill does a number of things, but its primary orientation is to recognise in the legislative framework that it sets out the fundamental changes in the public health challenges that we now face compared to the challenges we faced decades ago. We are moving away

from a world where the control of infectious disease was the primary health challenge, to a world where the challenge is the control of chronic disease, particularly chronic disease that flows from lifestyle decisions and lifestyle outcomes and is therefore at least to a certain extent controllable and preventable. That having been said, the bill also deals with some of our more recent infectious disease challenges, specifically some of those that have arisen with respect to HIV/AIDS and the preparation for other possible infectious disease challenges, such as an avian flu pandemic.

I was recently at a Davos connection conference at which the chief medical officer of the country and Peter Cosgrove, together with a number of other people, went through Australia's plans to deal with an avian flu pandemic. That, in addition to what I have now read relating to this bill and the plans of our government, gives me a much greater degree of confidence than what I might otherwise have had in that we really know what we are doing on this as a result of thinking through a whole range of things that the layperson would never think of — for example, if such an outbreak were to occur, the importance of protecting power station workers so that they could keep the lights on for everybody else.

I have a few more things I need to say, but it may be that I need to wind my contribution up now.

An honourable member — Keep going.

Mr THORNLEY — I do not want to keep the chamber any longer than we have to on this and add things that others have already added, so I will simply say that the bill fulfils a commitment that the government made some time ago. Whilst other speakers have taken the opportunity to not discuss the bill but to discuss a whole range of other grievances that they apparently have with the government and its health policy, I think a more useful use of our time would be to focus on the bill itself and the changing nature of the public health challenges that we are facing.

The bill will ensure we are able to face up to and handle issues such as how to deal with HIV-active patients and people who, for whatever reasons, wish to either negligently or recklessly expose others to disease. These are difficult issues where the balance of civil liberties and public health need to be considered carefully. I think that has been done in this case. The bill correctly errs on the side — I do not know if 'err' is the right word — of protecting public health. That is the right balance, that should always be the right balance, and any one person's civil liberties are confined to the

frame in which those liberties do not negatively affect others.

I commend the minister and the department for the way they have put together a framework to deal with such sensitive and difficult issues, and also a broader framework within the bill for dealing with critical issues like pandemics and other infectious diseases. The bill cements this government's commitment to preventive health. On that basis I commend the bill to the house.

Motion agreed to.

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

Third reading

The PRESIDENT — Order! I am of the opinion that the third reading of this bill requires to be passed by an absolute majority of the members of the house. I ask the Clerk to ring the bells.

Bells rung.

Members having assembled in chamber:

The PRESIDENT — Order! In order that I may determine whether the required majority has been attained, I ask those members who are in favour of the question to stand in their places.

Required number of members having risen:

Motion agreed to by absolute majority.

Read third time.

Business interrupted pursuant to sessional orders.

QUESTIONS WITHOUT NOTICE

Metropolitan Ambulance Service: investments

Mr D. DAVIS (Southern Metropolitan) — My question is to the Treasurer. I refer to losses by government agencies because of the subprime crisis, including the \$7.5 million held by the Metropolitan Ambulance Service in collateralised debt obligations. When did the Treasurer first become aware that the Metropolitan Ambulance Service could take a \$7.5 million torpedo below the waterline, and will he now publicly release last year's Department of Human Services review of hospital investments initiated by DHS in an email to hospital chief executive officers in

November 2007, and any related reports sent to his department?

Mr Viney — On a point of order, President, standing order 8.02(1) on rules relating to questions says that questions should not contain:

- (b) statements of facts or names of persons unless they are strictly necessary to explain the question and can be authenticated.

Mr Davis made allegations in relation to subprime loans which the minister on previous occasions has indicated is not the case. I ask that you, President, require Mr Davis to authenticate that statement of fact under standing order 8.02?

Mr D. Davis — On the point of order, President, the government has in the newspaper today admitted there are subprime losses at the Metropolitan Ambulance Service.

The PRESIDENT — Order! Mr Viney's point of order is not made.

Mr LENDERS (Treasurer) — I thank Mr David Davis for his question because it is a matter of courtesy to say I thank him. I will make a couple of observations. Firstly, the *Age* story where this started last Saturday opened up by saying that hundreds of charities, churches and local councils around Australia have been burnt by the subprime crisis by up to \$2 billion. If we go to where the *Age* story went today, it narrows it down, if I am correct, to say about one-fortieth of that was actually an exposure.

I will reiterate to the house today what I have said earlier. Let us also look to what Mr Davis is describing as subprime exposure. By the definition Mr Davis is using of a CDO (collateralised debt obligation), if I am correct — I am happy to stand corrected by those who might know — and understand Mr Davis's assumption, he is saying that any investor who invested in BHP Billiton, which made a profit earlier this week equal to half of the Victorian budget, would be being reckless.

I will answer the question about the Metropolitan Ambulance Service in general terms because in the end the MAS is a part of the ambulance service. To assist Mr David Davis, who aspires to be a senior minister in the government of the state of Victoria, I suggest there is a fairly basic precept of the Westminster system he ought get familiar with called ministerial accountability. If he wants to know about ministerial accountability he should check this tiny little public document called 'Administrative arrangements' which specifies which acts of Parliament a minister is responsible for. Before

he yabbers about responsibility, he should give the house the courtesy of checking that document. He rants about reports of departments; if he checks the administrative arrangements he will know specifically that ministers are responsible for acts of Parliament and subcomponents of acts of Parliament. So every single law of the state of Victoria is allocated to a minister. I will take full responsibility —

Mr D. Davis interjected.

Mr LENDERS — for anything allocated to me in the administrative arrangements, and I will answer in general terms for any item that affects my portfolio —

Mr D. Davis interjected.

The PRESIDENT — Order! Mr Davis!

Mr LENDERS — or the responsibilities of the Leader of the Government in this house. But what I say to Mr Davis is that it is preposterous that he should come into this place and assume sanctimoniously what people are responsible for, because in an equal breath I could hold him accountable for what the Nar Nar Goon South branch of the Liberal Party did. I will stand accountable in this house for anything within my portfolio.

Mrs Peulich — On a point of order, President, the President's chamber guide says quite specifically that answers should not criticise the opposition:

In answering a question without notice, ministers' comments should not 'overtly' criticise the opposition and should remain within the bounds of their portfolio responsibilities.

This is in a President's ruling on 24 February 2005, which appears at page 4.

The PRESIDENT — Order! I am assuming that Mrs Peulich is suggesting that the Treasurer has in fact breached those guidelines. I do not happen to agree with Mrs Peulich at this time, but the house is fully aware of the standards we require, including constant interjections.

Mr LENDERS — The Metropolitan Ambulance Service is an issue that is the responsibility of my colleague the Minister for Health, but I will answer in general terms on prudential guidelines. As I said to the house earlier this week, direct subprime exposure to my knowledge is limited to the First Mildura Irrigation Trust. Direct financial exposure to subprimes to my knowledge — —

Mr D. Davis interjected.

Mr LENDERS — As I have been advised, it is linked to the First Mildura Irrigation Trust, and as we know — —

The PRESIDENT — Order! I have already now twice talked to Mr David Davis about his constant interjections et cetera. Given that people on this side of the house are very keen to have the standards and consistency applied, which I try to administer, I am warning Mr Davis for the last time. His constant interjections are unacceptable.

Mr LENDERS — I reiterate my earlier comment that, as I am advised, direct exposure to subprimes in the Victorian government is limited to the First Mildura Irrigation Trust, and the Minister for Water has given directions to that trust. We know that the Leader of the Opposition in the Assembly has actually questioned that. He thought we were acting too harshly.

The second issue is that there is a definitional issue of what exposure of CDOs is to subprime. As I said, Mr David Davis, who owns shares in a bank, will know every financial institution on this planet has some exposure to subprimes. So there is no-one involved in a financial system on this planet who has not had some form of indirect exposure to subprimes, because the United States economy happens to be the largest economy on the planet and we do have an international banking system. What we see is — and it goes to Mr David Davis's question about MAS — that even the *Age* has retreated from its earlier assertions of \$2 billion to today publishing a qualification of perhaps one-fortieth of that. If we go to MAS and if we go down from the \$30 million being talked about on Saturday to the \$7.5 million being talked about today, and wind back from that and look to what those CDOs are, CDOs include paper in companies like BHP Billiton. By Mr David Davis's definition it would be reckless to have a CDO based on paper in BHP Billiton, which had a profit this week of half the Victorian budget.

What I say is that it is my understanding, as I am advised, that the CDOs the Metropolitan Ambulance Service has — and which Mr David Davis is talking about — has been rated highly by Standard and Poor's. There are a couple of things here, and I will conclude on this. To my knowledge the CDOs that MAS has are not exposed directly to subprime. MAS is receiving income and there have been no losses reported. In addition, and I reiterate answers that I have given earlier in the week, what we have here is a situation where Victoria invests. Victorian bodies invest. We have the Borrowing and Investment Powers Act, which I have responsibility for. There are prudential

guidelines that go out, and we also have different other organisations responsible under their own acts of Parliament.

By prudent financial management we would see that in the Victorian Funds Management Corporation alone, if we adopted Mr David Davis's approach and put it in the bank or under a pillow, which I am assuming he is suggesting, this state would be \$6 billion worse off than through the investments made by the VFMC at the moment. What I say to Mr David Davis is: please do not scaremonger; please do not talk down the state of Victoria. There are many people out there in this state — the mum and dad investors, the people in the Catholic Church, the Uniting Church, the Anglican Church, the various not-for-profit bodies — who are being frightened by unnecessary fearmongering about CDOs. If Mr David Davis has concerns that people taking paper in BHP Billiton is irresponsible, I suggest he is not fit for public office.

Supplementary question

Mr D. DAVIS (Southern Metropolitan) — President, we had round and round the mulberry bush there. Given the extent of the crisis and the fact the government is going to need to account for this loss of almost \$7.5 million by the ambulance service, will the Treasurer therefore provide the house with a full list of all public sector bodies that have direct exposure to CDOs?

Mr LENDERS (Treasurer) — I can start listing many bodies if Mr David Davis wishes that have some form of exposure to CDOs. I can mention the Commonwealth Bank as an example, the largest bank in this country which has some exposure to CDOs, some of them subprime — —

Mr D. Davis interjected.

Mr LENDERS — Mr David Davis is being very finicky because of course he owns shares in the Commonwealth Bank. Is anybody saying he is irresponsible to own shares in the Commonwealth Bank? On the contrary. Does the fact that his share portfolio has dropped in value by 27.3 per cent in the last year mean he is fit to ask the question? No, it does not. It highlights the fact that every financial institution on this planet, I would dare to say, has some exposure, direct or indirect, to the United States subprime.

As I have informed the house and Mr David Davis, his fearmongering on the Metropolitan Ambulance Service is unfortunate. I have reported to this house and my colleague has reported to the Assembly; it is on the public record. Now what we are getting to is the

desperate situation where, because he has been proved wrong in saying that collateralised debt obligations are directly exposed to subprimes, he is raising questions about the very basis of the financial system. My answer to Mr David Davis is: if he thinks it is irresponsible to invest in BHP Billiton, he should say so.

Mr Atkinson — On a point of order, President, on three occasions now the Leader of the Government in the course of answering questions has referred to information detailed in the members register of pecuniary interests. I can accept that on one occasion that might have been a valid debating tactic or a tactic in answering the question, but I ask you, President, if you might reflect on whether it is appropriate for that sort of information to be used in the way it has been used in the house in answering questions when it is clearly not relevant to the substance of the questions that have been posed.

The PRESIDENT — Order! I am not quite sure that there is any point of order, but the issue the member raised is reasonably valid. The fact is that the pecuniary interests of members are a matter of public record. In my view, as long as a member does not impugn another member or their reputation in connection with those assets et cetera, there is no problem. I would like some confirmation on that.

Standing order 12.20, under the heading ‘Imputations and personal reflections’, states:

All imputations of improper motives and all personal reflections on members will be considered highly disorderly.

I do not think stating a matter that is on the public record breaches that standing order.

Employment: south-western Victoria

Ms PULFORD (Western Victoria) — My question is to the Treasurer. I ask: what results have flowed from initiatives taken by the Brumby Labor government to encourage investment and job creation in south-western Victoria?

Mr LENDERS (Treasurer) — I thank Ms Pulford for her question about investment in south-western Victoria. I am delighted to say today that Santos has announced the first stage of work that it is doing on building a new gas-fired power station within 20 kilometres of Port Fairy. What Santos is doing is suggesting a gas-fired power station. It is suggesting one that in the first stage could provide 500 megawatts of supply and by the end of the process could be at 1500 megawatts of supply. What we are seeing here is a company coming forward to look at developing

gas-fired power, which is clearly clean energy. It would provide good job creation — the potential for 700 jobs in the south-west of Victoria. It would also be one that consumed less water. If it got to the 1500 units, it could supply electricity to 2 million consumers.

What we are seeing is confidence in the state of Victoria. It is a company that is prepared to come forward to create jobs in western Victoria and to provide cleaner energy than we have. It will be reliable base-load energy. If we are talking of a capacity in the order of 7000 units over a period of time and having 500 megawatts or 1500 megawatts supplied by a company doing this, we are talking about a great degree of confidence in the state of Victoria, which is a good place to invest in cleaner energy, including in the west of Victoria.

It is very topical. There will be a number of members of this house around Geelong over the weekend talking about the future of the state. This government acts. This government facilitates investment so we can get new generation base load, cleaner energy and good water use and create 700-plus jobs in western Victoria. It just goes to show that under the Brumby Labor government Victoria continues to be a great place to live, work, invest and raise a family.

Water: north–south pipeline

Ms LOVELL (Northern Victoria) — My question without notice is for the Minister for Planning. I refer the minister to his recent approval of the corridor for the north–south pipeline and the release of the advisory committee’s project impact assessment report, including a list of conditions for the pipeline construction, and I ask: will the minister give a guarantee to the house today that all works on the north–south pipeline will be implemented in accordance with an environmental management plan?

Hon. J. M. MADDEN (Minister for Planning) — I welcome the member’s question, because this pipeline project has been undertaken with the most rigorous process and analysis of any pipeline project in the history of the state. It is critical that people in this chamber are aware that no other pipeline project has seen such rigour put into it in terms of its environmental assessment. No other pipeline project of significance has been done in this way.

It is worth appreciating the qualifications I placed on that. I gave permission for the corridor but said a critical component of that was the environmental management plan, which had to be delivered for the overall project. I said the critical components of the

pipeline project would be given approval as the pipeline itself complied with the environmental management plan, and that could be done in various tranches. I look forward to receiving the environmental management plan. I also look forward to receiving the applications for the various tranches to make sure that the project complies in every way with the prerequisites I placed on it. This is in line with my report, my announcements and the authorisation for the pipeline corridor based on the assessment provided to me.

Supplementary question

Ms LOVELL (Northern Victoria) — The conditions the minister imposed on the construction of the north–south pipeline state that works must be implemented ‘generally’ in accordance with an environmental management plan. Can the minister explain what would constitute a breach if works were implemented generally in accordance with the plan, or will the minister just be making it up as he goes along?

Hon. J. M. MADDEN (Minister for Planning) — I know Ms Lovell is a great sceptic when it comes to this project. It is horrendous to think that this level of investment in the regions, this level of investment in renewing the irrigation infrastructure in Victoria, is approached with the scepticism and bitterness we see from Ms Lovell on the other side of the chamber.

In relation to my response to the report, I recommended that all parties work together, and as part of that process of working together I have recommended that protocols be established by the proponent to make sure that there is sufficient notification to the land-holders and that it works proactively through a communications process to alleviate the anxieties that may have been aroused by the bitterness on the other side of the chamber. I am very mindful that the way this project should be delivered is by the parties working together, and as part of working together the ‘generally in accordance’ relates to where landowners might have sheds or other assets that they are keen to maintain and not have impacted upon — fencing and many of those sorts of things.

Ms Lovell interjected.

Hon. J. M. MADDEN — The term ‘environment’ does not relate just to trees and native vegetation, Ms Lovell, it also relates to land-holders and their assets — their sheds, their pastures and their fences — and all those other elements must be borne in mind by the proponent when it is dealing with this project.

One of the critical components is that if a landowner might seek to maybe slightly adjust part of the proposal

in order to alleviate their concerns or to maintain some of their own assets in accordance with what they might expect or seek, then I would consider that as part of the proponent’s application in relation to each stage of this project. We will bear that in mind. Of course I will receive the relevant advice from my department in accordance with all the legal requirements that I need to comply with in relation to seeing this project delivered.

Employment: south-western Victoria

Ms TIERNEY (Western Victoria) — My question is to the Treasurer. Can the Treasurer please update the house on any recent Australian Bureau of Statistics data that confirms that the Brumby Labor government is making the south-western region of Victoria a great place to live, work and raise a family?

Mr LENDERS (Treasurer) — I thank Ms Tierney for her question and for her interest in all matters regarding the Barwon south-western region. She specifically requested any recent data. I can happily report to the house that the ABS (Australian Bureau of Statistics) is showing that unemployment in the Barwon south-western region has dropped from 7.5 per cent in 1999, when we were elected to government, to 3.4 per cent now. The data Ms Tierney asked for is impressive, but what is more is that in human terms it means that there are 49 400 extra jobs in the Barwon south-western region of the state of Victoria. Those 49 400 extra jobs come with an 8.2 per cent growth in population during that period, and also with more than a doubling of building approvals over that period.

The data helps us paint a picture of where that region of the state, that great Barwon south-western region, is going. Again there is evidence of that. If a person did not have a meeting to go to and were to go to Geelong on the weekend, for example, and look around, they could see things like the Geelong ring-road, which is \$380 million of investment. They could go through the port of Geelong and see the extraordinary investments in that port under this government. If they wanted to go even further, because their meeting in Geelong was boring, they could go down to the port of Portland and see the work there. That port handled \$1.3 billion in trade in 2006. They could see rebuilt country hospitals in Geelong or other areas of that region. They could see the schools that have been rebuilt, rather than being closed down, in any part of that region. They could even go to see the \$12 million three new science and maths specialist centres in Geelong. I could go on!

Ms Tierney asked for statistics. There are a number of them, but I will close by highlighting just one of them. This government values creating jobs right across the

state. We need jobs for more than toenail cutters; we actually need jobs for people across the state of Victoria. Jeff Kennett thought that regional Victoria was the toenails of the state, but we know it is the heart of Victoria. We see that in just the Transport Accident Commission moving to Geelong, which was a government decision.

Mr D. Davis interjected.

Mr LENDERS — Mr David Davis rants, but what I say to him is: consider the 49 400 new jobs created in the Barwon south-western region alone and see what they have done to improve lifestyles, to increase population and to improve amenity. This government listens and acts; it is an action government. I can assure Ms Tierney that 49 400 jobs help make the south-west of Victoria an even better place to live, work and raise a family.

Hendra virus: fruit bat testing

Mr VOGELS (Western Victoria) — I have a question for the Minister for Environment and Climate Change, Gavin Jennings. I refer to the outbreak of Hendra virus disease, which has infected humans and horses in Queensland, and to the fact that fruit bats are carriers of this disease. Has the government undertaken any tests on fruit bat populations in Victoria to determine if they are carrying this deadly human and horse disease?

Mr JENNINGS (Minister for Environment and Climate Change) — I thank Mr Vogels for his question and for his encouragement for us to undertake important research to deal with impending threats of any form of biosecurity risk. Whilst I would like to immediately assume responsibility for all these matters, this is a responsibility that is more likely to fall within the portfolio of my ministerial colleague the Minister for Agriculture.

I am very happy to work in collaboration with my department, the Department of Primary Industries, to undertake important parts of biological research on behalf of the community. In terms of whether existing research is available through DPI that the Minister for Agriculture may be intimately aware of, at this point in time I am not aware of it, but I am very happy to work with him and his officers and any relevant part of my responsibility to address the matter that Mr Vogels has raised.

Supplementary question

Mr VOGELS (Western Victoria) — I thank the minister for his answer. I noticed that the minister said

he will work in collaboration, but this virus kills human beings, and I ask the minister: will he arrange to have the local fruit bats tested to make sure that they are not carrying this virus?

Mr JENNINGS (Minister for Environment and Climate Change) — I think Mr Vogels is inviting me to rope the health minister into consideration of this matter, in terms of his supplementary question. If that is the purpose of his supplementary question, I am very happy to talk to both my colleagues about the importance of this work.

Port of Portland: woodchip facilities

Mr PAKULA (Western Metropolitan) — My question is to the Minister for Planning. The port of Portland makes a significant contribution to the Victorian economy and the local region. Could the minister please inform the house of any planning decisions that will help the port of Portland continue to grow and provide economic prosperity for the region?

Hon. J. M. MADDEN (Minister for Planning) — We know how important the port of Portland is, not only to the south-western region but to greater Victoria. It is particularly important because currently it handles in the order of 40 million tonnes of cargo a year. It is also particularly important because it is a deepwater port and it specialises in the storage and handling of bulk commodities. The established export trade includes grain; woodchips; logs; aluminium ingots, I understand; and livestock.

Mr Jennings — Aluminium ingots, or separate?

Hon. J. M. MADDEN — Ingots, I understand, Mr Jennings. What is particularly important is that it complements the agricultural activities in the region. Not only does the port provide a great service strategically for Victoria but it is strategic in terms of the greater south-western region and complements the other existing industries. Mr Vogels should be particularly interested in this. I can tell he is excited, because he always looks excited when he talks about the south-west.

I am delighted to advise the house today that Portland is set to reap even greater benefits by an expanded woodchip facility that I have recently approved at the port of Portland. It is covered under amendment C39 to the Glenelg planning scheme, and it allows for the expansion of the woodchip handling and storage facilities. As a result of the approval — and here comes the exciting bit for Mr Vogels, if he does not look excited already — this \$45 million project will see

Portland's woodchip capacity increase fourfold from 1.2 million tonnes to around 5 million tonnes per year. Not only that, but it will mean that the port will be ready to deal with the up-and-coming harvest of blue gum timber plantations.

Mr Jennings interjected.

Hon. J. M. MADDEN — I could see the twitchiness on the other side of the chamber when I mentioned that, but they are plantations in the south-western region and even in south-eastern South Australia. I can see that they are quite relieved now on the other side of the chamber. That means the project will support the creation of something of the order of 1100 jobs — I can see that Mr Vogels is really excited now — and, even more, \$250 million will be added to the region's economy.

As part of the authorisation there will be an environmental management plan which forms part of my approval. As well as that, there will be consultation with the local council, the Environment Protection Authority and VicRoads. I understand the port operators have already properly consulted with nearby residents and landowners. I have approved the master plan, and the environmental management plan I have approved will provide for ongoing monitoring and evaluation of noise and stormwater and also the quality of dust and traffic impacts on the site.

At the end of the day, this is a major project and its environmental management is very significant. Again we are complementing the investment down in south-western Victoria and we are facilitating ongoing development. This is exciting news for the south-western region. We will see more economic activity and growth in the region and right across the state, and we are making Victoria an even better place to live, work and raise a family.

Toyota Australia: hybrid car

Mrs COOTE (Southern Metropolitan) — My question is to the Minister for Environment and Climate Change. The Brumby government recently announced that 20 000 hybrid Toyota cars will be built in Victoria. According to Toyota these will contain nickel-metal hydride batteries. According to the Sustainability Victoria website, Australia currently does not have the technology and services to recycle nickel-metal hydride batteries. Can the minister explain to the house why Victoria does not have the technology and services required to recycle these batteries, given that it is directly subsidising the hybrid car?

Mr JENNINGS (Minister for Environment and Climate Change) — I thank Mrs Coote for her excellent question in terms of providing us with encouragement to deal with a whole-of-life issue concerning products that may ultimately end up in the waste stream. In terms of my determination to try to close the loop in the recycling and reuse capability of this state, it is one of the key performance indicators that I have set for myself, and I have demonstrated that to the chamber and to the community on a number of occasions. I am very happy to have a look at how we can increasingly add to our armoury to deal with product stewardship right across the board, on both a state and a national basis.

In many of these instances, in terms of developing the effective markets and capacity to deal with this issue, it depends upon the volume in question and the technical requirements to deal with them. Those things come together in creating a market-based approach to the collection and management of waste leading to resource recovery. In terms of the product line that she refers to, obviously at this point in time volume in the Australian marketplace is very low. In circumstances such as this I am happy to look at locally based regulation and market mechanisms as well as harmonisation with other jurisdictions across the nation to try to make sure that we have the appropriate investment and regulatory environments, whether that be most appropriate in state or national jurisdictions.

I will give the example of recycling mercury or dealing with compact fluorescent tubes, which is something I have talked about previously. Up until now there has not been a national capacity or a national regulatory regime to deal with these issues, but we are on the cusp of establishing. We now have a recycling capability in Campbellfield, which was opened earlier in the year, and we are looking at ways in which we can establish a national collection and distribution network to feed into that facility. Exactly the same dynamic will apply to dealing with these batteries, which would require similar capability. I am happy that the member has been astute enough to pick up what might be a current hole in the resource efficiency capability of not only Victoria but also the nation, as we speak, but we are looking for ways in which we can deal with that requirement in years to come. I will be very happy to add that to the range of matters that I will be trying to pursue both here in Victoria and nationally in relation to product stewardship.

Supplementary question

Mrs COOTE (Southern Metropolitan) — Far be it from me to disagree with the minister about the

numbers of cars, but in the minister's answer then he said that in fact it is not an urgent problem. I would remind him that at the time of the hybrid car announcement the Minister for Industry and Trade said:

We are helping position Toyota in a way that will allow it to bid for a new hybrid Toyota model, which will not be about 20 000 cars but will be about hundreds of thousands of cars going forward.

So the minister is actually incorrect in what he just said. Given the minister's answer, how will these hundreds of thousands of nickel-metal hydride batteries from these cars be disposed of in Victoria, as a matter of urgency?

Mr JENNINGS (Minister for Environment and Climate Change) — President, you know and I know that I will rely on *Hansard* to actually demonstrate that I was not incorrect in my substantive answer. There is a difference between what the current volume is and what the prospective volume may be under the scenario that the member has outlined in her supplementary question.

In relation to that matter, my answer is absolutely exactly the same. If the member were to ask me a question about our nation's capacity to recycle tyres — and there are a hell of a lot of them — that has been a conundrum that has bedevilled our nation for many decades, and we continue to do a lot of work about that. So if we are talking about existing volume in the car production and waste stream that exists through current car manufacture and utility in this nation, that is where we would start — we would start on the volume.

But the good news in the member's question for all of us is that it is showing that there is some degree of bipartisanship in the recognition of the importance of product stewardship and resource recovery, and I take great heart from that, even though we might disagree on the way in which questions are asked and answered.

AirAsia X: Melbourne flights

Mr EIDEH (Western Metropolitan) — My question is to the Minister for Industry and Trade. Can the minister outline to the house how Invest Victoria has helped attract the arrival of a new Malaysian airline, AirAsia X, and how it will benefit the Victorian economy?

Hon. T. C. THEOPHANOUS (Minister for Industry and Trade) — I thank the member for his question, and particularly his reference to Invest Victoria and the role it played in ensuring that we got another great airline to come to Victoria. Some time ago I flew to Malaysia and to Korea, and on the way

back from Korea I flew on the first direct flight to Melbourne by Korean Airlines. Whilst I was in Malaysia I had discussions with AirAsia and authorities there about when and how we would be able to have AirAsia X operate direct flights to Melbourne.

Those discussions were put together by a very important arm of the Department of Innovation, Industry and Regional Development, Invest Victoria, which does a fantastic job in bringing new investment in. I want to say a bit more about Invest Victoria in a minute, but in relation to this initiative of AirAsia X, it will bring significant benefits to our economy with a new connection into Malaysia. And if people have read the *Age* today they would have seen advertisements from AirAsia X for a \$199 fare to Malaysia. Of course that will stimulate the increasing amount of tourism that we are already getting from Malaysia.

Already one-third of Malaysian tourists to Australia come to Melbourne. We have 8000 Malaysian students in Victoria, which constitutes about 40 per cent of all the students from Malaysia who come here. Trade with Malaysia is increasing — it has gone up by 14 per cent since 2003–04 in goods and 37 per cent in services — so this is an important initiative, not just because Australians will have access to more competition, lower fares and better connectivity but also because it brings us more business and stimulates the economy.

In that context this is just one of the great wins that Invest Victoria has been able to get for the state. But just yesterday Invest Victoria was being attacked by the opposition, and specifically by Mr Dalla-Riva, on the basis of completely false information. He was too lazy to check the information, too lazy to go to the Web and check whether any of his information was correct. His statements were based on information which had been printed in the *Age* and which was completely false. Invest Victoria is so upset about this that the acting chief executive officer is in the process of writing to the *Age* about it. This *Age* journalist — and I hope the one remaining good journalist in the *Age* takes account of this — found a document from which the paper printed a lot of things about exposure by the Victorian government. They came across a line which said there was exposure by Central Victorian Investments. The journalist decided that must mean Invest Victoria.

The proposed correspondence to the *Age* from the acting chief executive officer will say that it was particularly poor journalism on the part of the *Age* and that it appears bereft of any research at all to jump to a conclusion that the name Central Victorian Investments refers to Invest Victoria. It is lazy at best and incompetent at worst. These are not my words; these

are the words proposed by Invest Victoria because it is so upset.

In phone calls to the *Age* it asked for a proper retraction, but did not get it today. It got something in the *Age* which comes nowhere near a retraction. The fact is this is false information. The *Age* should have — —

The PRESIDENT — Order! I know this is making it difficult for the minister, but it is not appropriate to be both referring to the press and communicating directly with them visually. I ask him to address his comments through the Chair.

Hon. T. C. THEOPHANOUS — President, I am absolutely happy to do that. I think I probably communicate too much with the press. The point I am trying to make is that I am responsible for Invest Victoria, which is a very important body for investment attraction into this state. I have indicated in the house before how it has been responsible for billions of dollars of investment. This kind of thing damages its reputation and by extension it damages our capacity to go out internationally and seek further investment like the AirAsia X investment for the state.

I expect the opposition to come into this place without doing any research, without having checked its facts, and just doing some lazy work. I expect that from the opposition; but I would have expected the *Age* to have slightly higher standards than the opposition.

The PRESIDENT — Order! I remind ministers in particular about overt criticism. The minister brilliantly avoided that call again.

Murray River: health

Mr KAVANAGH (Western Victoria) — My question is to the Minister for Environment and Climate Change, Gavin Jennings, and relates to the Murray–Darling. In recent weeks it has been definitively pronounced that unless urgent action is taken, the death of the Lower Murray is inevitable. The commonwealth is claiming that nothing can be done but some experts throughout the nation are publicly claiming otherwise. The death of the Lower Murray would be an immediate and irreversible disaster for South Australia. It would also be catastrophic for Victoria in the longer term as the acidification spreads upstream. The death of the Murray would also be a profound shame on every Australian, particularly those in a leadership role, which includes every one here. The Murray must be saved, whatever it takes. It is claimed by some, including *Age* journalist Kenneth Davidson, that there are things the Victorian government can do

now to save the Murray. I ask the minister what the Victorian government is going to do to save this national treasure which is precious beyond measure and on which Australia's and Victoria's future environmental health depends.

The PRESIDENT — Order! I am a tad concerned about this question, particularly about how it can be the responsibility of the Victorian minister. The lower reaches of the Murray are in South Australia. However, I will take a punt and allow the question. I will have a look at it at a later date to see if it is one that I should have allowed.

Mr JENNINGS (Minister for Environment and Climate Change) — Thank you, President, for allowing me the opportunity to answer the question. It is an important and valid question, even though the responsibilities for it do not necessarily fall within my domain. I think Mr Kavanagh, in asking the question, probably appreciates that. He probably believes that I am a fellow traveller when it comes to his concerns not just about the lower reaches of the Murray and the lower lakes in South Australia but the consequences that flow right through the Murray–Darling catchment, which includes that part of the catchment within the Victorian jurisdiction.

Members of the Australian community are probably reasonably well versed in the whole nature of climate change scenarios and the drought conditions that have permeated across this nation for more than a decade and have led to environmental stresses throughout the catchment from Queensland to South Australia — and they continue to do so.

Most members of the Australian community are acutely aware that notwithstanding the important role and contribution of the Murray–Darling Basin Commission for more than a decade in trying to address the competing needs of water users, irrigators and the environment throughout the catchment, notwithstanding the high degree of knowledge and understanding of these pressures, the significant investments and undertakings that have been made in relation to environmental flows, identifying the appropriate watering regime to protect the river over a very long period, none of the issues which the member has raised as currently bedevilling this nation are new in terms of trying to find ways to deal with these matters.

The great problem, as Mr Kavanagh would be aware, is that all the tables that have underpinned water entitlement allocations that have been well established for decades, and this includes environmental flows and those that are for consumptive or productive use, are

not contemporary in the context of inflows to the catchment from Queensland through to South Australia.

Honourable members interjecting.

Mr JENNINGS — As Mr Kavanagh knows, these are very contentious and vexing issues — leading to quite unruly behaviour in the house as I am trying to answer his question. This is because members are very passionate about this issue. People have wide-ranging expectations about the best ways to make investments and the best ways to provide for water allocations to be able to meet various needs.

Honourable members interjecting.

Mr JENNINGS — Debate is raging in this chamber as I speak. I understand that and use it as an example to demonstrate that this issue is something we are doing our best to actually work through.

There are inbuilt assumptions made by many people who are reasonably well versed in environmental needs and reasonably well versed in the importance of protecting the lower reaches of the Murray but are not so well versed in what might in technical and engineering terms be able to deliver water allocations to those lakes. There is certainly a lack of national appreciation of the way in which water entitlements can be modified to achieve those outcomes.

Notwithstanding the very important commitments that have been entered into by the commonwealth on water right purchases to try to liberate water to improve environmental flows — a laudable objective — there have been limits on the amount of tangible water rights and water supplies that have been able to be delivered. That continues to be the issue at the heart of the problem posed in Mr Kavanagh's question.

Not so long ago people were making assumptions about water allocations that may be in lakes higher up in the water catchments — for instance, what might be in Lake Menindee. They were making estimations about how much water might be available in that storage facility that could be released down the Murray and ultimately end up in the lower lakes. People were making estimations of what they perceived to be the amount of water available in Lake Menindee. My understanding of the amount of water that was available to be released from Lake Menindee is that by the time evaporation and losses through the system were taken into account virtually no water would end up in the lower lakes. This issue featured and was debated quite prominently in the media.

Ms Pennicuik is shaking her head, so she does not know the nature of this matter. I assure her that this issue has been tested assiduously. Despite the inbuilt assumption that you can transfer water at a certain volume and achieve a certain outcome, as desirable as that outcome may seem, it is far more complicated than people would appreciate.

I have tried to give the framework of the difficulties that surround this issue. I work in very close collaboration with my colleagues the Minister for Water and the Premier in relation to our responsibility at Murray–Darling Basin meetings and the various discussions that take place between jurisdictions. We are particularly mindful of trying to achieve maximum integrity of the catchment and the ongoing viability of the river system, but at this point in time our ability to get water into those lakes and across this nation is severely restricted. It is important to understand that we will need to have viable scenarios about the amount of water that is available to those lake systems and their ongoing viability. I realise that I have been talking for a long period of time, so I think that is about as well as I am going to do.

Supplementary question

Mr KAVANAGH (Western Victoria) — I thank the minister for his answer and for explaining some of the difficulties involved, but this is a national calamity in the making which will be irreparable if action is not taken very quickly. Is the government actively pursuing new ideas and information about how it can remedy this problem, including considering the ideas that Mr Davidson has been writing about in the *Age*, for example?

Mr JENNINGS (Minister for Environment and Climate Change) — I am going to leave it to my other colleagues to talk about the *Age*. What I can tell Mr Kavanagh is that the government is absolutely determined to achieve the balance of the outcomes I described in my substantive answer and will leave no stone unturned in relation to that.

Innovation: small and medium technology enterprises

Mr SOMYUREK (South Eastern Metropolitan) — My question is for the Minister for Innovation. Can the minister outline to the house how the recent launch of the Brumby Labor government's innovation statement will lead to new opportunities and jobs in Victoria's small and medium technology enterprises?

Mr JENNINGS (Minister for Innovation) — We have almost got to the threshold of our endurance during question time, and I understand that, so I will answer Mr Somyurek's question very quickly.

An important part of the innovation strategy released last week by the Premier and myself is a \$300 million commitment, adding to a \$700 million investment in the innovation space in Victoria. That is the important commitment we make to small and medium enterprises (SMEs), particularly those that are technology based and those that are at the cutting edge of research and development in terms of products, services and processes. We are trying to make sure we can support the technical development of their research and development activities and, importantly, create the momentum to generate markets for them both in Australia and in the world. We have provided \$40 million in a program to boost highly innovative SMEs through supporting technology research and development.

In relation to the marriage between public policy outcomes, such as the outcome that Mr Kavanagh asked me about, we want to see innovative solutions coming through SMEs — whether they relate to sustainability, health or productivity generally. We want to ensure we create a momentum through government purchasing policy and through the government seeking better public policy outcomes where our SME sector may be able to provide the solutions to our problems. We want to both commission the work of SMEs towards public policy outcomes that we want and subsequently support the commercialisation of their innovative approaches. This approach is based on the very successful small business research innovation fund that has operated in the USA for some time. We are very determined to add to the productive research and competitive capacity of the SME sector in Victoria through the innovation statement.

Sitting suspended 1.02 p.m. until 2.07 p.m.

VICTORIA LAW FOUNDATION BILL

Introduction and first reading

Received from Assembly.

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

BUSINESS OF THE HOUSE

Adjournment

Mr LENDERS (Treasurer) — I move:

That the Council, at its rising, adjourn until Tuesday, 9 September 2008.

Motion agreed to.

COURTS LEGISLATION AMENDMENT (JURIES AND OTHER MATTERS) BILL

Second reading

Debate resumed from 26 June; motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I am pleased to rise this afternoon to contribute to the debate on the Courts Legislation Amendment (Juries and Other Matters) Bill, which the Liberal Party will not oppose. The bill contains a number of provisions with respect to juries and makes a change to the pension entitlements of judges of the County Court. The bill seeks to preserve the pension entitlements that accrue to judges of the County Court after a 10-year period of service and when they have reached the age of 60. It ensures that those entitlements are preserved should a judge of the County Court be appointed to the Supreme Court. This has always been the intention of the legislation governing judges' entitlements. However, this particular provision in the bill clarifies that the entitlements of a County Court judge are preserved in the manner that I have outlined. That is a provision of the bill that the Liberal Party supports.

The remainder of the bill deals with some changes to the way in which the Juries Act operates and the way the court deals with juries. The first of those provisions makes it clear that the juries commissioner has the capacity to exclude a person from a jury pool if the commissioner is satisfied that the person is unavailable to sit on a trial due to the likely length of the trial. If a potential juror indicates to the jury commissioner that due to the length of the trial they will not be able to sit on the jury, the jury commissioner is able to exclude that person.

This particular amendment arose from earlier amendments to the Juries Act in the Justice Legislation (Further Amendment) Act. Justice Coldrey criticised the way the act was implemented because there was

considerable doubt over the capacity of the juries commissioner to exclude a person from the juries pool rather than having to have them in the juries pool before a decision could be made as to whether they could be excluded on the grounds they were not available for a long trial.

It was a concern that had been raised previously by the opposition when the legislation passed through the Parliament in 2006. That concern was subsequently borne out by the criticisms made by Justice Coldrey. That was in early 2007, and there has been an 18-month delay between that issue being raised in the court and this legislation coming to this house. It is unfortunate that it has taken the Attorney-General 18 months to address this issue which was flagged with him in the course of debate on the amending legislation in 2006.

The bill also changes the mechanism by which allowances for jurors are set. Currently they are set by regulation. This bill will change that mechanism and allow the Attorney-General to set allowances for jurors by way of notice in the *Government Gazette*. The capacity of the Parliament to have any oversight over the review of allowances paid to jurors is being removed. This matter will now be entirely in the hands of the Attorney-General by way of notice in the *Government Gazette*. The concern on this side of the house is there will not be a mechanism in place to allow for indexation or to indicate escalation of those allowances other than as and when the Attorney-General sees fit to make changes to the amounts and notifies that through the *Government Gazette*. It is not entirely clear that removing it from regulation and putting it in the *Government Gazette* at the whim of the Attorney-General is an improvement to the current mechanism.

The other key provisions in the bill relate to the conduct of jurors. One of the provisions will allow a juror who is sitting on a trial or a juror who has previously sat on a trial to raise an issue or lodge a complaint with the juries commissioner as to conduct during the course of the trial in which they are sitting or on which they sat. In respect of a complaint lodged with the juries commissioner about a trial that is under way, the juries commissioner is obliged to raise that matter with the judge presiding over the trial so the matter can be dealt with. If the issue relates to a trial that has concluded — that is, the issue is raised by a former juror — the juries commissioner will then raise the matter with Victoria Police. It is appropriate that there should be a mechanism by which issues can be raised and dealt with. The crossover whereby Victoria Police is involved in matters where a trial has concluded rather than the judge who was in charge of the trial at the time

raises questions about exactly what role Victoria Police plays and how that crosses over with the judge who was responsible for the particular trial. This issue will need to be clarified with respect to that provision.

The other key provision of this bill relates to jurors making inquiries about a trial. The bill inserts a prohibition on jurors making inquiries about the trial on which they are sitting except in the proper exercise of their functions as jurors. It is clear the community expects jurors to make their deliberations based on the evidence they hear in a trial, and it is not desirable for jurors who are sitting on trials to undertake independent research and search for facts about the cases on which they are sitting.

Obviously many of the significant criminal cases that come before juries — particularly the more notable organised crime and gangland cases — are reported in the media. There is a lot of information available in the public domain and published on the internet which may or may not be accurate and may or may not reflect the facts that will come before the jurors in a trial, so it is not desirable that jurors seek to access that type of information which may affect their judgement and their views of the defendant — particularly in criminal matters. That sort of information should not be relied upon by jurors.

The provision in the bill is a substantial step away from saying it is not appropriate for jurors to seek to have access to the type of information that has not come to them through the trial. Read literally, the provision makes it an offence for jurors to discuss with their family or make incidental references in any way to trials with which they are involved. That type of harmless discussion of matters would seem to be an offence under these provisions.

We as a Parliament need to be careful about the way in which we bring forth these type of requirements — noting again the significance of ensuring that jurors act only on the information that comes to them through the trial while also ensuring that we are not so heavy-handed in this type of provision that it makes the duties of a juror more onerous. We want people in the community who are chosen to sit on juries to be receptive to doing their duty as jurors. We do not want them to be deterred from doing their duty as jurors and we do not want them to regard their duty as jurors to be onerous, so when putting in place provisions such as this we need to be careful they do not place an unreasonable burden on jurors in the conduct of their ordinary lives.

We are concerned that this provision that applies for a juror who makes an inquiry about a trial on which they are sitting outside the confines of that trial is very severe. It will have to be used with discretion because, as a matter of human nature, when people are sitting on trials it is possible that they will mention or discuss it with their immediate families, and I do not think anyone would suggest that does not occur now. That does not necessarily mean their view of the trial is going to be tainted; it is perfectly common human nature that that discussion would occur.

Allied to the provision that creates the offence of making an inquiry is the capacity for a judge to examine a juror under oath to determine whether they have breached that prohibition. As part of that provision the defence of self-incrimination is not able to be used by a juror to decline to answer questions from a judge when they are being examined to determine whether the provision has been breached. The bill provides that any evidence gained in that examination by a judge is not admissible in proceedings in relation to the breach of that provision. It is unclear as to why the bill creates the capacity for a judge to examine a juror on whether or not they have breached the provision and why it removes the defence of self-incrimination for a juror to refuse to answer questions, while at the same time providing that any evidence gathered through the examination by the judge is not admissible in relation to a prosecution under this provision. The government may seek to clarify that matter of why the capacity is given to gather that information by a judge, yet it cannot be used to prosecute under this particular provision.

The bill also makes a change with respect to Magistrates Court rules. It allows rules made by the Magistrates Court to be used in relation to the prescribed persons who may witness statements that are tendered by informants at committal proceedings. Rather than the current provisions, which are listed in the act, the Magistrates Court will be able to determine through its rules who is an appropriate party to witness statements used at committal proceedings. It is a sensible progression to put that matter in the hands of the Magistrates Court so that it can determine its own rules on what it regards as acceptable parties to witness those type of statements, rather than that being enshrined in legislation. The coalition does not have any problems with that particular provision of the bill.

I turn to the broader question of the prohibition on jurors making an inquiry. While we accept that it is not appropriate for jurors to be seeking outside information, when such a provision is brought forward it is also relevant for the legal profession to ask if this has been a

problem. Clearly the fact that this legislation is coming forward suggests it must be the view of the courts and the Attorney-General that there has been a problem of jurors seeking outside information. In that case the legal profession should ask, 'Why do jurors believe it is necessary to seek information outside trials? What do jurors believe is inadequate about the information they are receiving through a trial process that leads them to seek information outside the trial process?'

Frankly it will be difficult, even with this provision, to prevent the curiosity of jurors leading them to seek outside information. If this is a genuine problem, as the government presumably believes it is, it may be appropriate to look at what information is given to jurors through the course of a trial that they obviously do not regard as being completely adequate, such that it leads them to seek outside information.

The coalition does not oppose this legislation. While we have certain reservations about some of the aspects of the bill relating to jurors, clearly the provisions relating to the Magistrates Court rules and to preserving the pension entitlements of County Court judges are sensible and deserve our support.

Ms PENNICUIK (Southern Metropolitan) — The Greens are generally supportive of the Courts Legislation Amendment (Juries and Other Matters) Bill, which amends the Constitution Act 1975, the Juries Act 2000 and the Magistrates' Court Act 1989 with some basically working amendments to improve matters predominantly with regard to the conduct of members of juries. Mr Rich-Phillips has gone through the provisions of the bill, about which I shall make some comments.

Firstly, the single amendment is being made to the Constitution Act to address an anomaly which exists. Currently former judges of the County Court of Victoria who are appointed to the Supreme Court do not have their entitlements retained due to that matter having been overlooked after the commencement of section 18 of the Judicial Remuneration Tribunal Act. The amendment corrects that anomaly to ensure those judges retain their entitlements.

Clauses 4, 5, 6 and 7 make amendments to the Juries Act 2000. The first makes it clear that the juries commissioner has the ability to exclude jurors who are not available for jury service due to the length of a trial or time allocated to it or for other reasons. This was not clear, as Mr Rich-Phillips pointed out, and Mr Justice Coldrey recommended that the act be clarified to make it clear that the juries commissioner has that power.

Clause 5 provides that there is no longer a need for a regulatory impact statement and regulations to be prepared when adjustments are made to the rates of juror remuneration and allowances. That will now be done simply by notice in the *Government Gazette*. This is a sensible amendment to the setting of juror remuneration and allowances.

I know that Mr Rich-Phillips and others have raised the fact that it would be useful if the Attorney-General would indicate how the remuneration and allowances will be indexed, and perhaps government speakers might refer to that in their contributions. At the moment a juror's employer is required to reimburse the juror the difference between the fee and the amount that the employee could reasonably expect to have been paid. That matter is addressed by sections 51 and 52 of the Juries Act.

I know the Law Institute of Victoria has raised concerns about the effect of the amount of remuneration for jurors falling over time and the burden that that can place on jurors and their employers. In a series called 'Trends and issues in crime and criminal justice', the Australian Institute of Criminology produced paper no. 354, entitled 'Factors affecting juror satisfaction and confidence in New South Wales, Victoria and South Australia'. Among quite a lot of findings reported in that paper is one that a substantial majority of participants regarded juror remuneration as inadequate. A consistent finding was that jurors were least satisfied with the economic inconvenience of jury service. Only 28.8 per cent of non-empanelled jurors surveyed in Victoria were satisfied with their experience of jury service, and 19.8 per cent, nearly one in five, of empanelled jurors felt that way as well.

The survey found that Victorian jurors reported higher satisfaction with their overall jury experience than did jurors in New South Wales and South Australia — only marginally, but it was just under about 70 per cent. The survey found that jurors in Victoria were more confident in the criminal justice system than jurors in New South Wales. There is a positive correlation between the overall satisfaction and experience of jury service and confidence in the criminal justice system. It is important that jurors feel that their jury experience is valued and that it is a good experience, and that corresponds to their confidence in the justice system generally.

The remuneration for jurors in Victoria is quite a bit lower than it is in New South Wales. It is \$72 a day in Victoria and \$83 a day in New South Wales, and if it is for more than 11 days it is \$113 day, which is a fair difference. Given that there will be a provision now that

will make it easier to adjust the remuneration, I would hope to see that come more in line with the other states. It is important to do that. The Attorney-General said in his second-reading speech that:

Jury service is the cornerstone of our legal system ...

When adjusting the remuneration for jurors it might be useful for the Attorney-General to take note of my remarks about what jurors have said about their experience as jurors.

As Mr Rich-Phillips pointed out, clause 6 enables the juries commissioner to receive complaints from jurors, past or present, about the deliberations of a jury and the disclosure of deliberations or concerns they have about the process that was followed. This seems like a good provision if it operates properly. It needs to be monitored, and one of my questions is: who is monitoring these amendments and how are they working?

Mr Tee — Trust us.

Ms PENNICUIK — I am sure Mr Tee will be able to answer that question. 'Trust us', he said. It seems like a good provision, but it needs to be monitored. I presume that will happen, because if there are problems they need to come to light. If people are dissatisfied with the way a trial has been run, or about deliberations, then they should have some means of raising those.

Clause 7 is the clause that prohibits jurors from making inquiries outside of the trial process on matters or parties in the trial. In his second-reading speech the Attorney-General said this is necessary given the ever-increasing opportunities that advances in technology present for jurors to acquire outside information. I think we would have to agree with that — it is much easier to find information about people and events through the internet, for example. I note clause 7(5) talks about researching using the internet and five other ways of making inquiries about a trial process.

About 20 years ago a member of my family was involved in a murder trial. That family member took the view — but was probably also instructed — that it was not appropriate to discuss that trial with anybody in the family or with anybody else. Referring to Mr Rich-Phillips's remarks about whether this is going to capture family members who make inquiries, that is outside the trial process. I would assume it would be inappropriate if somebody asked a family member to go and find some information about a party in a trial. This is a good provision and carries a hefty penalty of 120 penalty units.

Mr Rich-Phillips was asking why people would do this. I do not think it goes to the inadequacy of the information provided during the trial process, because jurors should confine themselves to what they hear and see in evidence in the court. It is just about general curiosity. People want to know more about the person or persons in the trial or about the matters before them, and so they make outside inquiries. That is inappropriate, and this provision seems justifiable because of the importance of ensuring that trials are not prejudiced.

We have read in the press about jurors who have done this, where they have gone to visit a website or they have made inquiries and the whole trial has been abandoned. The consequences of those actions by jurors are quite severe, and while the penalty is hefty, it is sending a message to jurors that they have a responsibility which they ought to take seriously, and that making investigations outside the trial process would have grave implications for the trial process and for justice generally. I am supportive of this provision. Again, it needs to be monitored, which Mr Tee assures me will be happening.

New section 78B will enable a judge to examine on oath a person who is on a panel for a trial to determine whether they have engaged in this conduct. That seems to be a provision that would need to follow the original provision that makes it an offence to do so. But it seems strange to me — I agree with Mr Rich-Phillips on this — that if the trial judge discovers there has been such an offence and the juror has engaged in that conduct and under the previous provision would be exposed to the 120 penalty units, where then does that go? Where does the information that the judge has found out go? What is the point of it? Is the only point that the trial needs to be aborted? Perhaps Mr Tee could answer that, because it seems strange that once you find that out, you cannot use it in terms of the offence under the previous provision.

I was going to go to the issue of monitoring the amendments to see how they are working, but I feel they will be good amendments.

The bill also makes minor amendments to the Magistrates' Court Act. It is a pretty straightforward bill. I hope Mr Tee or another government member will be able to clarify the issues that I have raised.

Mr TEE (Eastern Metropolitan) — The jury system has been the cornerstone of our judicial system for hundreds of years. It prides itself on openness and fairness, and central to the jury system is the notion that an accused is entitled to know what evidence is going

to be brought against him or her. They have the right to respond to that evidence, and they have the right to be tried by their peers. This bill directly strengthens the role of the jury system in a number of important respects. Significantly, as has been mentioned, it stops jury members from doing their own research. There have been a number of cases in which jury members, often with the best of intentions, have taken it upon themselves to visit crime scenes or do their own detective work on the internet. As we all know, information on the internet can be highly inflammatory, prejudicial and inaccurate and may or may not have any probative value. Such information may then be used or internalised by the jury member without giving the accused an opportunity to respond, a concern which goes to the very heart of our jury system.

This bill sends a very strong message to jurors. It is an important message, and that message is backed up with a penalty of some \$13 000. As I said, the message is that, to be fair, an accused must know the evidence that is directed against them. If the evidence is obtained elsewhere, the accused may not be given that opportunity to respond. The material may be absolutely false, but the accused simply has no idea that the material has been accessed, so the penalty is hefty. The message must be strong, otherwise there is a risk that we will need to abort trials or worse. For our system to be fair and transparent we must ensure that the accused knows the case against them, otherwise the innocent will be punished and the guilty may well go free.

Mr Rich-Phillips raised the extent of the discussions that jury members may have with their family members, and indeed the bill does prohibit consultations. There is nothing new in this. Probably for hundreds of years judges have warned juries that they are not to consult or discuss matters outside of the courtroom; their role is to judge the evidence that has been presented and to make an assessment on the material before them and not on some extraneous material.

There are a number of other important aspects of the bill. The first one I wish to draw to the attention of the house deals with the enhanced role of the juries commissioner. The Office of the Juries Commissioner is an independent statutory body, the role of which is to ensure that our jury system works effectively. In response to concerns raised by Ms Pennicuik, the juries commissioner has a broad role to monitor and ensure not just that the act works but that the jury system is working effectively.

The bill enhances that role by providing that the juries commissioner will receive and investigate complaints

from members of both past and existing juries. If a member of a jury has a complaint, they have a right to take that complaint to the juries commissioner. If the commissioner is satisfied that a legitimate allegation exists, the commissioner will refer the allegation to the Victoria Police and ultimately, where appropriate, to the Director of Public Prosecutions. The bill also streamlines the current process where complaints are referred directly to the DPP, who then asks the Victoria Police to investigate. This bill will ensure that those complaints go to the juries commissioner initially. It is the juries commissioner who is in the best place initially to investigate the validity of complaints and to ensure that the resources of the DPP are not wasted on spurious complaints. It is also helpful for the commissioner to be aware of the range of issues that are being considered by members of juries.

There are a number of other changes. The process for increasing allowances to juries has been simplified. This is an issue that Ms Pennicuik referred to, and I think she suggested — dare I say inaccurately — that members of juries in Victoria receive less remuneration than members of juries in New South Wales. I can assure Ms Pennicuik that that is not the case. The way in which the legislation works in Victoria is that it guarantees that jurors are not financially disadvantaged because of their jury service, and it is the only state to do so. A member of a jury in Victoria — and only in Victoria — can be assured that if they take time off work to attend jury service they will not be financially disadvantaged. That is because under Victorian law employers must make up the difference between the jury allowance and the person's regular wage.

The bill also ensures that the juries commissioner has the power to investigate the availability of jurors during lengthy trials. This issue has been raised by other speakers, but the reality is that trials are becoming longer and more complex and it is important that the juries commissioner have the power to ensure that jury members can go the distance and stay for the duration of long trials. The provision in the bill clarifies the act in that regard.

The bill also ensures that the prior service of County Court judges who are appointed to the Supreme Court is recognised, which puts County Court judges in the same position as judges in other jurisdictions.

This bill goes a long way towards strengthening our juries system. It is about providing a fair and transparent system of justice and enhancing the cornerstone of our justice system. It is a pity that opposition members are unable to support the bill despite these significant benefits, but I certainly

appreciate the fact that they will not oppose it. I commend the bill to the house.

Mr ELASMAR (Northern Metropolitan) — I also rise to speak in favour of the Courts Legislation Amendment (Juries and Other Matters) Bill. A few sets of amendments are contained in the legislation before this house. There is an amendment to the Constitution Act regarding pension entitlements for judicial officers who are former judges of the County Court who subsequently serve on the Supreme Court bench. This will rectify anomalies that exist due to the retirement age of judges changing from 60 to 65 years. A 2003 amendment to the Constitution Act 1975 disadvantaged judges who are appointed to the Supreme Court of Victoria from the County Court of Victoria by not recognising previously existing pension entitlements. This is clearly an injustice, and this amendment will effectively address the matter.

Another provision involves the streamlining of the jury system to provide maximum efficiency to ensure the rules of the court are followed. The jury system is a time-honoured legal tradition. It is the linchpin of our justice system. Ordinary citizens are called upon to hear evidence and then decide on the guilt or otherwise of an offender. The introduction of a juries commissioner in 2006 provided for a commissioner to direct and manage and be a point of contact for jurors who have concerns about irregularities.

Also of particular concern is that with today's technology juries are able to access the internet and read material directly, whether it is related or not related to the issue. They may form opinions not based on facts submitted to the court. This has the capacity to severely prejudice the outcome of the trial. The bill prohibits juries from undertaking outside or external investigations to ensure that a jury's decision is based solely on the evidence heard and seen in the court. However, jury service is still a highly valued service, willingly performed by our citizens, but I am sorry to say it is the most underpaid. It has been many years since juror pay has reflected employee pay rates. In fact while many industrial awards had clauses which provided for jury services to be paid for by the employers to enable their employees to do their civic duty, with the federal WorkChoices legislation many jurors were left out in the cold. They were literally in financial difficulty; in fact they could not afford to do their jury service.

The amendment to section 51 of the Juries Act will provide the flexibility required to enable the minister responsible to pass on increases in allowances in a timely and cost-effective manner. This amendment

seeks to ensure that the rules of court are used exclusively as the method for authorising persons to witness statements tended at committal proceedings. Amending the rules of court is a much more efficient mechanism than ad hoc legislative amendments. Our Victorian legal system is complex and time consuming. We as legislators need to constantly refine our existing framework to allow for maximum efficiency and timely justice. I commend the bill to the house.

Motion agreed to.

Read second time.

Third reading

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

That the bill be now read a third time.

In doing so I wish to thank members for their contributions.

The DEPUTY PRESIDENT — Order! The question is that the bill be now read a third time. I am of the opinion that the third reading of this bill requires to be passed by an absolute majority. I therefore ask the Clerk to ring the bells so that I can ascertain that an absolute majority is present.

Bells rung.

Members having assembled in chamber:

The PRESIDENT — Order! In order that I may determine whether the required majority has been obtained I ask those members who are supporting the motion to stand in their places.

Required number of members having risen:

Motion agreed to by absolute majority.

Read third time.

CRIMES (CONTROLLED OPERATIONS) AMENDMENT BILL

Second reading

Debate resumed from 26 June; motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr RICH-PHILLIPS (South Eastern Metropolitan) — The Liberal Party will not be opposing the Crimes (Controlled Operations)

Amendment Bill. The purpose of the bill is to remove from the Crimes (Controlled Operations) Act 2004 provisions relating to the Australian Crime Commission, and to make consequential amendments to the Major Crime Legislation (Office of Police Integrity) Act 2004.

The principal act that is being amended — the Crimes (Controlled Operations) Act — was passed by the Parliament in 2004. It was one of a number of pieces of legislation that this Parliament has dealt with involving the relationship between commonwealth and state crime law enforcement agencies — the Australian Federal Police, the Australian Crime Commission, Victoria Police — and primarily it was to address issues of interstate interjurisdictional criminal activity, particularly significant organised crime, drug crime and terrorism activities, and it was delivered in the context of a number of other pieces of legislation the Parliament passed in that period that addressed, in particular, terrorism-related matters.

At the time the bill was passed it was the government's position that this was an important piece of legislation that put in place arrangements between the Australian Crime Commission and Victorian law enforcement agencies to deal with interjurisdictional matters, and that was one of the key purposes for which that act was adopted in 2004. Therefore it is quite extraordinary that we now have before the house this bill, which removes from that piece of legislation reference to the Australian Crime Commission, which was one of the key reasons why the principal act was enacted in the first place.

The reason given for this by the Attorney-General in his second-reading speech is unclear, because in that speech there are two versions of why this piece of legislation is being brought before the house to remove the reference to the Australian Crime Commission from the principal legislation. In the words of the Attorney-General, the first relates to commonwealth concerns about the constitutional validity of the state's monitoring and reporting arrangements under the model bill, which is the bill adopted by state jurisdictions, the Victorian version of which is the Crimes (Controlled Operations) Act 2004. The other reason given by the Attorney-General is concerns over the use of the Australian Crime Commission to investigate Victorian offences where they do not have a federal aspect across state borders.

We have two different versions from the Attorney-General in his second-reading speech as to why it is now necessary for this legislation to be introduced to remove the Australian Crime Commission from the controlled operations act. As I

said earlier, the principal act was brought to this Parliament on the understanding that it contained critical provisions that were needed particularly in respect of organised crime and to terrorism and that we needed the capacity for the Australian Crime Commission to work with Victorian law enforcement and the Australian Federal Police to deal with these matters. We now see, for reasons that are unclear from the Attorney-General's second-reading speech, those capacities being removed from the controlled operations act and consequential amendments being made to the Major Crime Legislation (Office of Police Integrity) Act.

One of the issues raised by the Attorney-General is the concern that Victorian legislation which gives functions to the Australian Crime Commission cannot operate without a federal provision giving similar directions to the Australian Crime Commission. The case cited in the Attorney-General's second-reading speech was a High Court decision, *R v. Hughes* (2000), in which it was the view of the High Court that a state Parliament conferring powers on a commonwealth agency has no effect unless the commonwealth consents to the exercise of those powers by that commonwealth agency. This was a case that went before the High Court in 2000. The matter was brought to the attention of the government in 2004 during the course of the debate on the Crimes (Controlled Operations) Act 2004. The then shadow Attorney-General, Andrew McIntosh, the member for Kew in the other place, made the point to the government at that time that there was doubt over the capacity of Victorian legislation to confer a role on the Australian Crime Commission without there being a similar commonwealth provision. Some four years later we now see the Victorian government finally acting on this issue.

The other side of this issue is the role of the commonwealth government. This issue could be addressed by the commonwealth, which would remove the need for this piece of legislation to come before this state Parliament. The previous federal government had prepared legislation to that effect and had introduced to the commonwealth Parliament legislation that would address the issue of the commonwealth jurisdiction granting the necessary consents to the Australian Crime Commission. That bill was introduced to the commonwealth Parliament in 2006 and lapsed as a consequence of the 2007 election. However, the work had already been done by the federal Attorney-General's office. The bill had been drafted and was in Parliament, and the most expedient way to deal with this issue would be for the Rudd government to reintroduce that piece of legislation in the commonwealth Parliament and have it pass the bill.

That would address this concern in Victoria and in other state jurisdictions. We have not seen that happen at a commonwealth level.

As I said, that bill was in the commonwealth Parliament and had been considered by the Senate Standing Committee on Legal and Constitutional Affairs. It disappeared with the dissolution of the previous commonwealth Parliament and has not been brought back by the federal Attorney-General. That has necessitated the introduction of this legislation into the Victorian Parliament to remove many of the key provisions of the Crimes (Controlled Operations) Act that were introduced in 2004 in order that the commonwealth and state law enforcement agencies could work cooperatively on the important issues of terrorism and interjurisdictional crimes such as drug-related activities.

The real fix to the issue this bill is addressing would be for the commonwealth government to reintroduce a commonwealth act and fix the problem for all state jurisdictions. Instead we have this bill, which addresses the issue but does so in a way that removes one of the key intentions of the principal act. This is far from an ideal fix for the situation. The best solution would be for the commonwealth government to act rather than for the Victorian Attorney-General to cover for the commonwealth with this type of legislation.

The Liberal Party does not oppose the bill, because, as it did in 2004, it recognises the issue that exists between the two jurisdictions as a consequence of the High Court decision. As I said, it is a matter that was raised by the shadow Attorney-General in 2004. We are cognisant of the issue, but this is not the ideal fix. The ideal fix sits with the commonwealth government, and that is where the action should take place.

Mr TEE (Eastern Metropolitan) — This bill amends the Crimes (Controlled Operations) Act 2004, which was the product of an agreement between state, commonwealth and territory attorneys-general. The act implements model laws that were developed for controlled or undercover operations by police, and it covers issues such as the use of surveillance devices, the requirement for police to assume identities and witness protection.

As we know, undercover police work is difficult and dangerous. It requires police to associate with people suspected of being involved in organising or financing crimes, and in exceptional cases where it is difficult to get evidence by other means the work can involve police themselves committing offences such as drug trafficking.

In order to combat crime effectively we need modern, up-to-date laws that are not constrained by artificial jurisdictional barriers. That is why the states and the commonwealth proceeded with this model legislation. The Crimes (Controlled Operations) Act 2004 ensures that police have the tools they need to effectively fight crime. The act largely replaced an existing patchwork of legislative provisions. It provided for the independent monitoring of the conduct of police, it provided guidance on what are acceptable activities when undertaking undercover operations, it provided protection for covert police officers so they could not be prosecuted when undertaking authorised illegal activities and it reduced the risk that the evidence might be excluded by the courts. This legislation is important; it is critical to the effective operation of our police system.

The act also provided for cooperation between state and federal jurisdictions by including the Australian Crime Commission as a law enforcement agency under the legislation. This meant that the Australian Crime Commission could use Victorian powers when investigating relevant state offences. Unfortunately after the bill was enacted the commonwealth raised concerns about having a state monitoring regime apply to the Australian Crime Commission, which is a commonwealth body. As has been indicated, this concern followed a determination by the Australian High Court, and in November 2006 in response to that High Court decision the commonwealth introduced amending legislation which gave the commonwealth ombudsman oversight of the Australian Crime Commission's use of state legislation. Unfortunately, as has been indicated, with the calling of the federal election in 2007 that federal legislation lapsed, so today we have a bill before the house that proposes an interim solution by removing references to the Australian Crime Commission in the act. This will allow the Victorian act to be proclaimed and to commence operation in relation to Victorian law enforcement agencies only — in advance of the commonwealth passing amending legislation.

The bill in essence allows for Victorian law enforcement agencies to proceed with investigations, particularly cross-border investigations. It will, however, disable the capacity of the Australian Crime Commission to investigate Victorian offences unless there is a federal aspect to the investigation.

If the commonwealth enacts amendments to address the constitutional issue, the Victorian government intends to introduce further amendments so that the Australian Crime Commission can use the Victorian regime. But the reality is that the Victorian government is not

waiting, and should not wait, for the Australian government to act. These issues are too important. Crime and criminals do not wait. It is important that we get our best regime in place to fight crime. If that means we have to proceed now as well as responding after the commonwealth has introduced its legislation, then we should do so. The community expects us to do what we can to ensure that the police have the powers they need to effectively fight crime, and that is what this amending bill does.

The bill is really a common-sense approach which provides state law enforcement agencies with the power they need. The government may well amend the act to provide for commonwealth participation if there is appropriate complementary commonwealth legislation in the future, but there is no need for the Victorian government to wait for that commonwealth legislation in view of the importance of the subject matter of this bill. I commend the bill to the house.

Ms PENNICUIK (Southern Metropolitan) — The purpose of the Crimes (Controlled Operations) Amendment Bill, as previous speakers have outlined, is to remove a constitutional impediment to the Crimes (Controlled Operations) Act 2004.

That act came into being following a 1995 High Court decision known as the Ridgeway decision. The court acknowledged that sometimes law enforcement officers have to engage in illegal activities to uncover organised crime and recommended that this be addressed in legislation. In Victoria and other states this need has been addressed administratively or by what has been described as a 'hodgepodge of regulations'. In 2002 there was a leaders summit, and a joint working group was established by police ministers and attorneys-general. Out of that came the model legislation on which the Victorian act was based. The purpose was to introduce comprehensive controlled operations legislation that would encompass the administrative and other regulatory provisions that previously dealt with controlled operations. The commonwealth was also meant to pass legislation to this effect. That legislation was prepared and was meant to pass in 2007, but it lapsed after the calling of the federal election.

The Crimes (Controlled Operations) Act was never proclaimed in Victoria, basically because the commonwealth pointed out that there is a constitutional problem with the act in that it refers to the Australian Crime Commission and the commonwealth ombudsman, but it cannot operate without the permission bestowed by the commonwealth act, which has not been passed. So here we are in this predicament

where the Victorian act cannot operate because it is constitutionally invalid for those reasons.

The question is: should the Victorian government be using its good offices to prod the commonwealth to get on with passing its legislation or should we remove the provisions that cause these constitutional impediments and come back later to reinstate them? As Mr Tee has foreshadowed, the government will amend this legislation once the commonwealth act is in place. I suppose it is six of one, half a dozen of the other. If the Victorian government wants the act to come into operation, we have to make these amendments so that it is not constitutionally invalid. I point out that it is probably the case that a lot of acts on the books are constitutionally invalid, but leaving them there might be different from purposely bringing in a piece of legislation that is constitutionally invalid.

I will make some comments about controlled operations. Other speakers have talked about controlled operations, and the phrase rolls off the tongue pretty easily. Controlled operations are basically undercover operations in which police, and often civilians, conduct or get involved in illegal activities. It is fair to say, from my consultations with people about controlled operations, that they are fraught with difficulties and often bungled. They are a serious matter. This bill and the commonwealth model laws are designed to respond to the obvious fact that crime occurs across jurisdictions, so we need a regime that allows controlled operations to occur across jurisdictions. In that respect it is good to have the commonwealth parent act and the state legislation that models it, but we should not lose sight of the fact that controlled operations are fraught with difficulties — they are serious matters for the police, and sometimes civilians acting with the police, to get involved in.

My Greens colleagues in the federal Senate who spoke in the debate on the Crimes Legislation Amendment (National Investigative Powers and Witness Protection) Bill had some criticisms of the bill. Among other things, they said it creates warrants that enable police to search people's homes without them knowing about it; extends the use of controlled operations in which undercover police and informants are able to break the law to potentially cover all commonwealth offences; fails to provide independent and external approval processes for controlled operations; removes the role of Administrative Appeals Tribunal members in approving the continuation of controlled operations beyond three months; removes the maximum time limit on controlled operations; extends the protection from criminal and civil liabilities to civil informants who participate in controlled operations; reduces reporting

requirements for controlled operations; extends powers for police confiscation of electronic equipment such as mobile phones, thereby avoiding the requirement to obtain a telecommunications interception warrant; and extends the coercive powers of the Australian Crime Commission. This is yet another lot of increased powers given to police and other bodies that infringe on civil liberties. I make these comments because we are talking about controlled operations and increased powers, and these issues need to be carefully watched by the community and by the Parliament.

I was not in the Victorian Parliament in 2004 when the Crimes (Controlled Operations) Act was passed, but I have had a look at it. I think the provisions are fairly good in terms of oversight, approval and the requirement for reports to the ombudsmen to be made every six months. However, I take the opportunity to point out that over the last 10 years we have seen an increase in coercive and surveillance powers. They infringe our civil liberties, and we need to be careful of them.

The Greens will not oppose the bill for the reasons I talked about before, which are largely administrative reasons, but I take the opportunity to point out that controlled operations are a serious business, and we need to concern ourselves with making sure they are done properly.

Mr DALLA-RIVA (Eastern Metropolitan) — I am pleased also to make a brief contribution to the debate on the Crimes (Controlled Operations) Amendment Bill in the Council. This obviously follows on from contributions I made in the last Parliament when a range of bills giving police increased powers came through the chamber. Given the concern about police corruption, terrorism and a raft of other concerns, we now find ourselves debating another bill.

I understand in principle why the issues have arisen. What is not made clear in the second-reading speech or the explanatory memorandum to the bill is why there has been no push by the Attorney-General to encourage the new federal government to move forward with amendments that were allowed to lapse following the federal election in late 2007. I know the federal government has indicated that it will be moving forward at some point but, as the Attorney-General said in his second-reading speech, which was repeated in the speech incorporated in *Hansard* in this chamber:

In other words, the government proposes to legislate to enable the second potential use of the principal act I have mentioned to be achieved in a constitutionally valid way, as soon as it is in a position to do so.

I thought there would have been better clarity on when that may occur.

As was rightly pointed out, these are essentially undercover-type operations. It is important that controlled operations are allowed to continue and are not constrained. The NCA (National Crime Authority) is now the ACC (Australian Crime Commission), but as a former NCA investigator, having been seconded there, it worries me that with this amendment we seem to be removing the capacity for cross-jurisdictional investigations. There are constitutional restrictions on commonwealth bodies exercising functions conferred by state legislation unless those functions are authorised by commonwealth legislation. Removing references to the Australian Crime Commission and the commonwealth ombudsman from the principal act under part 2 of this bill and making consequential amendments to the Major Crime Legislation (Office of Police Integrity) Act 2004 in part 3 may have a consequential outcome that may not have been anticipated. I do not think this has been fully explained either by the previous government speaker or in the Attorney-General's brief statement on the second-reading speech.

The only thing I pick up from Ms Pennicuik's contribution is that she inferred that controlled operations or undercover operations are — not her words — always stuffing up, or they are not —

Ms Pennicuik — They can be.

Mr DALLA-RIVA — They can be? That is better.

Mr Thornley — Bungled.

Mr DALLA-RIVA — I got the impression that she was saying that they are constantly bungled. It is hard to be perfect even in the world the Greens live in and occasionally even the police might have a bungled operation. I would like Ms Pennicuik to understand that these bungles do not happen every day. If they happened every day, we would be screaming about giving the police these types of powers. I pick the member up on that statement. Having worked in that type of environment, I know it is difficult. As I said, the world is not perfect and it is certainly not when you are dealing with that type of environment.

I was sidetracked by Ms Pennicuik. She also rightly pointed out the impact this legislation will have on human rights. Surprisingly, in its statement of compatibility the government says that it is okay. As Ms Pennicuik correctly pointed out, the legislation will allow for a person's home to be searched without warrant or advice and to be broken into and have a

listening device implanted in it without a person's knowledge, but that supposedly does not breach the Victorian government's Charter of Human Rights and Responsibilities. Where legislation is important, and certainly I support this legislation, it will cross into people's rights. The government says in the statement of compatibility signed by the Minister for Planning, the Honourable Justin Madden, the minister responsible for the bill in this chamber:

Human rights issues

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

The provisions of the bill do not affect any human rights protected by the charter.

If you looked at the bill in its entirety, you would see that it will clearly cross the boundaries of human rights as set out by the Labor government. Time and again this government enacts legislation because it sounds politically correct to do so but, when it comes to the nuts and bolts of applying that legislation in the real world where it needs to be applied, the government forgets about it and sweeps it under the carpet — some would say the *Underbelly* carpet, as Mr Vogels rightly pointed out earlier.

That having been said, this is an important bill. As I said, I am worried about some of the consequential issues that may arise as a result of removing the references to the ACC and the commonwealth ombudsman, but only time will tell with those matters.

Mr THORNLEY (Southern Metropolitan) — I rise to speak in favour of the Crimes (Controlled Operations) Amendment Bill 2008. As people would be aware from the speakers who have preceded me, there are two ways of looking at this bill. One is to consider what are the policy imperatives that the government is trying to accommodate by this bill, and the second is to consider what are the somewhat more technical legal constraints in the constitutional environment that have led us to this particular sequence of legislation and subsequent sequences of legislation that may follow from further commonwealth legislation. It has been a while since I studied constitutional law and I have complete faith in the department and drafting folk that they have the technical legal aspects of this nailed. So I think it might be more helpful for me as an elected legislator to talk about the policy imperatives that we are trying to achieve with this piece of legislation and the surrounding legislation that will be part of this regime around controlled operations.

There has been a bit of commentary on this from a range of perspectives. I think the contributions of

Ms Pennicuik and Mr Dalla-Riva eloquently bookended this whole discussion. I would have thought that the fairly obvious point about all this is that we all try to live in a society where people have their human rights respected and where those people who flagrantly are not respecting the human rights of others and are committing criminal offences can be caught. In fact this legislation does pass the test of the human rights charter. I am not quite sure what Mr Dalla-Riva was trying to suggest there. He was saying either that other citizens should not have their human rights protected, and I hope he is not trying to suggest that, or that we should afford greater protection to the criminals than is afforded under this bill. I do not think he is arguing for that, either. I suspect that the truth of the matter is that we have got the balance about right. Mr Dalla-Riva is desperately trying to find a way of criticising the bill but he cannot decide which way he wants to jump. Ms Pennicuik was clearer. She was more concerned about the human rights elements. I guess I am more concerned about the crime control.

However, I think this bill gets that balance about right. It is, of course, covering a very difficult area. One of the problems with bad guys is that they do not play by the rules. That is why there is a need for controlled operations in the first place. That is why there is a need for what we would normally in lay terms call undercover operations. Obviously if those things are going to occur, they need to be handled competently and within a legal framework that has some fairly wide boundaries to enable the law enforcement officials to deal with the types of people and operations that they unfortunately have to deal with.

It is most important that there is legal certainty in that environment. It is absolutely critical that when we are putting law enforcement officials in harm's way, both in physical harm's way as well as potentially in legal jeopardy, that they are surrounded and supported by a very clear legal infrastructure. They should not find themselves in the position that while trying to enforce the law they have crossed the line in a way that they are potentially breaking the law. But by the same token they should be able to do what needs to be done under the appropriate judicial and legal supervision that you might not otherwise wish to see done if it were not for the wider pursuit of law enforcement. That is what controlled operations are all about. Without getting into the specific constitutional technicalities that have led to this bill and the subsequent bills that will follow in commonwealth legislation, the policy purpose of the bill is to ensure that those controlled operations can happen in an environment of legal certainty with appropriate oversight, with appropriate respect for

human rights, but with a mind to getting the job done. On that basis I support the bill.

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

LAND (REVOCAION OF RESERVATIONS) (CONVENTION CENTRE LAND) BILL

Second reading

Debate resumed from 31 July; motion of Hon. J. M. MADDEN (Minister for Planning).

Mr D. DAVIS (Southern Metropolitan) — It is my pleasure to rise and support the Land (Revocation of Reservations) (Convention Centre Land) Bill. The Liberal Party will support the bill. This is, in general, a non-controversial bill that changes the status of a couple of small portions of land in the Yarra River Wharf and *Polly Woodside* areas next to the new convention centre that is now being built. Currently those areas are permanently reserved under the Crown Land (Reserves) Act. The bill removes the permanent reservations under the act so that leases can be executed to allow new public facilities to become operational which will form part of the wider public realm of the Melbourne Convention Centre precinct.

I want to put on record the Liberal Party's strong support for the convention centre project. We believe this is a very important step for the associated hotel, the public facilities of the convention hall and the shopping facilities. I will put on record not only our support for the convention centre process, but also point to some concerns we have with the way the government has gone about its activities.

The first thing that comes to mind is the strangeness of the process — that we are even considering this now rather than at an earlier point in the process — and I will explain to the house the way that the convention centre has worked. There was an expression of interest process, in effect a tender, that awarded to one group, the Plenary Group, the right to build the convention centre. As part of that project it was given the right to build a hotel and what in effect is a large amount of commercial space, including a DFO (direct factory

outlet) complex on the edge of it. For those members who do not know, it is nestled between the West Gate Freeway, the Yarra River and Montague Street, close to *Polly Woodside* on one side and what we know as Jeff's Shed on the corner. It is an important project. The hall at the new convention centre will have a significant capacity which will put Victoria in the position to hold some of the largest conventions and make us competitive in the international marketplace for large conventions. The consequent tourism and financial results will be important particularly for Melbourne's growth but also pushing out from Melbourne into the regions of the state as well.

The convention centre will become a hub, a generator of tourist activity, and that is something the opposition very strongly supports. The member for Brighton in the other place, Louise Asher, as a member of the former Kennett government, was a good tourism minister who at the time kicked off with Tourism Victoria the strategy of attracting conventions and tourist features that would not only bring people to Melbourne but also fill the calendar, as it were, with visitors to Melbourne who would move out to the regions, spend money, fill restaurants, buy goods and inject enormous resources into the Victorian economy. That strategy has been successful over the last 15 years. It has put Victoria in a very strong position. There are a number of parts to that. The Victorian Major Events Company has played a critical role, and that has been a great initiative. I notice Sydney is now starting to copy the approach and understanding that for large cities these are important parts of their capacity to draw people to them.

We support the essence of the convention centre. However, there are a couple of issues that the opposition would raise. In the first instance there is the area around the *Polly Woodside*, which is an icon for Victoria, and the need to preserve the National Trust's interest in that and the shed next to it. I believe it will have access to only one shed in the future under the current plan. I place a slight question mark as to whether that is as adequate as it should be.

Equally I point to the reasoning behind the introduction of the bill at this point. You would have thought that before completing the tender process they would have sorted out the land and the land structures around the tender at a minimum. Bizarrely, the Minister for Major Projects felt the need to deal with the wharf sheds. Why the wharf sheds were not dealt with in the first place is a very strange question. This massive, new and wonderful development — we hope — is being built and a series of older, run-down wharf sheds in varying states of — —

An honourable member — Disarray.

Mr D. DAVIS — I do not want to say 'disarray' because they are heritage wharf sheds and I want to see them — —

An honourable member interjected.

Mr D. DAVIS — The maintenance has varied on them. It is important that the community understands that this is policy on the run by the government. It had to turf out and pay off a number of tenants to get control of the wharf sheds, and then it threw the sheds in with the rest of the arrangements around the convention centre. I do not know why this was not done in the first place as part of an integrated project. It is certainly a strange way of conducting major projects.

The work on the sheds will produce a good result. I am hopeful that the sheds will be resurrected and opened out so that they look out on one side to the sea and on the other side towards the convention centre. That will add to the ambience of the project and its capacity to draw tourists and locals to the area. But I do place that question mark on how on earth the government thought it could build this multimillion-dollar convention centre and not make the dirty old wharf sheds, which blocked the view and the access to the water, part of the project. It is a strange way of conducting a major project.

A whole heap of work has to be done to get things right with the convention centre. One of those things is to work out the bridge that crosses the Yarra and lands on the north side in a spot that currently goes nowhere. There is no access or walking from there: you go over the bridge and come into a little hub on the north side. The government has more detail to work out as it goes forward.

I understand Melbourne City Council is contributing to the cost of the bridge, and a series of issues flow from the contribution of Melbourne City Council which will be required in some measure to manage the public spaces that will be part of this new convention centre. There are some legal issues still to be worked through on those aspects.

There is also the issue of the hotel. I have no reservations or concern about the Hilton hotel being part of the bidding process and being part of the winning tender group, the Plenary Group. But I do have some issues about the fact that after the tender had closed, there was a variation on the tender which will allow for an extra five storeys. That is a massive windfall for the developers.

Mr Barber — How many car parks were there?

Mr D. DAVIS — I cannot tell you the number of car parks, but I can tell you it is an enormous number of hotel rooms as the project went from 10 to 15 storeys. That is a massive increase or windfall. That deal was done in a non-transparent way by this government, which is a government that is committed to secrecy and a government that will not release the tender documents covering many of these issues. I draw the house's attention to the fact that the full tender is still not up on the website. There are still massive omissions from the tender document on the website, and I do not believe that is good enough given the size, scale and importance of this project for the Victorian economy and the Melbourne economy. I believe that those tender documents should be more accessible.

Mr Guy — Transparent.

Mr D. DAVIS — 'Transparent', Mr Guy says, and I have no doubt that he, as planning minister in the future, will be determined to work with the major projects minister to ensure that a better process is in place. I cannot imagine Mr Guy doing a multibillion-dollar project and then leaving wharf sheds blocking the view to the water, old wharf sheds that were not part of the project until a fill-in job was done by Mr Theophanous. I welcome the decision on the wharf sheds but register the bizarreness and the belated nature of the decision.

There is a whole series of issues that are not clear about what is going to happen at the convention centre. We are told that parts of the project will meet environmental standards, which is what many of us would want to see, but I am far from convinced about the actuality of those achievements, particularly for the DFO part of the development. I am concerned that these developments will not meet the environmental standards we would want to see on water and energy use — for example, over recent times we have seen the Environment Protection Authority working with major water and energy consumers to lower their water and energy consumption.

This government's record in those areas is a mixed record. If you look at the performance of the state and you start to look at the decisions about the convention centre, you will not see the proactive, forward-looking standards we would expect to have been applied in all these cases. Even during this week in this chamber, beginning with questions without notice yesterday, we have seen the announcement of the environment effects statement (EES) and the planning panels looking at the desalination plant that is going to be put down the coast at Williamsons Beach. That will be a major hit on

energy and on carbon dioxide emissions for the Victorian economy.

I have received in very recent times an Environment Victoria discussion paper entitled 'Powering a desalination plant: clean energy or more coal?'. It looks at the massive impact of that project. I am making the point here that, where there are major construction or energy-rich projects, we need as a community to be ensuring that there are appropriate standards. The discussion paper points to some of the issues around offsetting emissions. In the case of the desalination plant the government plans to offset some of its emissions, but it is not quite good enough and adds to the cost in a way that is much greater than would be the case if the project were designed so as to minimise emissions in the first place. The government should have been looking at ways in which something like the desalination plant could minimise emissions from the start or it should have looked at other methods.

We must become a bit cleverer, a bit smoother, a bit smarter in finding ways that we can achieve our goals so that large projects can be done in a way that minimises energy use and water use. A lot of this, as Mr Guy will understand, is about design and about incorporating these things from the start rather than coming at them as a backfill operation later on. I register my concerns about the failure of the new convention centre to reach some of these standards, and particularly my concerns about the massive long-term concession that has been given by the people of Victoria to the successful tenderers for the associated structures that are part of that project.

I want also to draw the attention of the house to the need to focus on the tourism effort over the next period. We need to be focused on not only the convention centre we are talking about today but its planned neighbour, which is the expansion of exhibition space. The government has been slow to do this. Victoria is losing its lead, its head start, on exhibition space. When I was the shadow minister for major projects and industry it was very clear to me that we needed that additional exhibition space. We need about a 50 per cent expansion of the so-called Jeff's Shed — our major exhibition space — because it is already at capacity. A number of exhibitions are now larger than the available space.

We are in a competitive environment. Sydney and other cities compete with us for these major exhibitions. Not having sufficient space means we can lose out on a number of these events, such as the furniture exhibition, Furnitex, in particular, and most spectacularly the motor show. Certainly a number of people in the

automotive industry have conveyed to me the risk that Melbourne could lose the motor show if there is not a swift move on to ensure that additional space is provided. The motor show is already at capacity at Jeff's Shed every year, and other locations are able to be more competitive in terms of size. There is a risk that Melbourne might lose the annual motor show and end up with an alternating arrangement with Sydney or some other unsatisfactory arrangement.

These major exhibitions are not just tourist drawcards, they are also spruiking exercises for major industries. They are flagship demonstrations, in the case of the motor show for the automotive industry, which in Australia is based primarily in Victoria and South Australia. It is appropriate that this country's motor show should be here. I would be very concerned if we were to lose that advantage. I would be very concerned if there were continued inaction by this government, and there is every sign that that is the case because it is yet to make a final commitment to an expansion.

When you look at the plans of the convention centre you can see the great tongue of land that will be the car park at the moment, but it will tick-tack in the right way with the Melbourne Convention and Exhibition Centre so that the expansion of that centre can occur at the appropriate time. My point is that the appropriate time is already almost past. These decisions should have been made before now because the risk that we will lose major exhibitions is very real indeed. I put the government on notice that the community will be angry if we lose major exhibitions because of its failure to act and to put Victoria in a competitive position. Those industry groups, for which those big exhibitions are flagships, will be very angry indeed. The motor industry being, as I say, the stand-out example, it is under a lot of pressure. What it does not need is a state government that is not backing it and giving it the support it needs at this time. It needs that motor show, and it needs it in a way that projects consumers and to others the industry's importance to Victoria.

I do not want to say a lot more about this legislation. As I said, the opposition supports the bill. We are bemused, to put it mildly, by the belated decision to deal with the area around the *Polly Woodside* and the wharf sheds. It is a bit bizarre to be cleaning up these issues after the contract has been awarded and after the thing is half built. We welcome the clarification, belated as it is.

Mr BARBER (Northern Metropolitan) — The Greens have some concerns about this bill in relation to the mechanics of the future governance of the site — never mind what we think about the project, which has been dealt with pretty adequately in other forums. We

realise the coalition has already indicated it will support the bill, so that appears to be a bit of a done deal. We are interested in going into committee on this bill to ask some questions of the minister to get some clarification on certain issues of public access and perhaps a few assurances on the record.

Ms PULFORD (Western Victoria) — I am pleased to rise and speak in support of this bill. The bill relates to land at the Yarra River Wharf and also the location of the *Polly Woodside*. This bill is essential because it is required to remove the permanent land reservations that apply to these two areas and under the Crown Land (Reserves) Act in most circumstances that must be done by legislation. The removal of these reservations will enable the state government to meet its contractual commitments to execute leases over the land as an important part of the Melbourne Convention Centre Development Project.

The Yarra River Wharf land and the proposed developments for the south wharf sheds and surrounding areas will revitalise in a quite wonderful way previously underutilised land. There will be maintenance works to the wharves and docks and improved public amenities in an area that currently has its potential unrealised.

The other land that this bill deals with is the Polly Woodside area. It is important to note that the *Polly Woodside* will not be relocated but that the maritime precinct will undergo some significant improvements, which I am sure all members will welcome. The National Trust is the current committee of management for this land and it supports the proposed improvements to this area.

The reason that this needs to happen is that a fantastic major project is being developed in the area. The new 5000-seat Melbourne Convention Centre is due to open next year. It sounds like it is going to be a pretty spectacular location for people to come to, to enjoy and use for business and recreational purposes and the like. It will be 6-star energy rated and have a grand foyer that will be able accommodate up to 11 000 guests. The seating system in the plenary hall will enable flexible seating arrangements so that it can meet a variety of needs. There will be 32 meeting rooms, a grand ballroom, a 5-star hotel, and an office and residential tower.

The area will be greatly enhanced by a riverfront promenade. All Victorians know how much enjoyment has been brought by previous riverfront improvements and developments in Melbourne at Docklands and before that at Southbank. In this part of Melbourne,

along with the revitalised Maritime Museum, we will have another wonderful facility available for people.

The new convention centre is expected to create 22 500 room nights a year for Melbourne and to provide an economic benefit of \$30 million a year. Mr David Davis helpfully put the government on notice about the need for and the benefits and opportunities that he expects the convention centre will provide to Melbourne. If he were here I would be pleased to let him know that already 25 conventions have been booked in this yet-to-be-opened facility. The conventions booked already will bring \$371 million of business and 58 000 international business travellers to Victoria. It is important to note that business travellers spend a great deal more than non-business travellers. So it is a very important part of our visitor market that we are able to attract the high-spending business visitors and retain them for long stays.

The Melbourne City Council has been involved in the project from the outset and has provided \$43 million in financial support for the project. I am confident that all Victorians, along with the many organisations that will use this enormous, cutting-edge facility, will benefit from the significant economic impact that the convention centre will have.

I would like to respond to some of Mr Davis's concerns. The reason that this legislation has been introduced now rather than at some earlier stage in the planning process is that at the request-for-proposal stage, when the process first went to tender, the government did not know what the successful developer would specifically want to do with the south wharf sheds. We simply did not know who the successful developer would be because the tender process had not started. It is important to integrate with the design preferences of the preferred tenderer. This is information we have now but we did not have then. During the many months of planning, consideration has also been given to the needs of the current tenants of those sheds — for example, the concerns that they would have around access, particularly during the construction stage. This legislation has been introduced now because it was completely impractical to introduce it earlier. I hope that satisfies the concerns of opposition members.

Whilst there will be short-term restriction to public access for obvious reasons of occupational health and safety during the construction stage, the benefits that will be brought to this area in a significant revitalisation will be much enjoyed by Victorians and visitors alike. I commend the bill to the house.

Mr DALLA-RIVA (Eastern Metropolitan) — As the shadow Minister for Major Projects I am also pleased to rise and make a contribution to the debate on the Land (Revocation of Reservations) (Convention Centre Land) Bill. Whilst the act that relates to the change is the responsibility of the Minister for Environment and Climate Change, essentially the bill is about the major construction project of the new Melbourne Convention Centre, hence the words 'convention centre land' appear in the name of the bill. I support this project, as does the opposition. The project is a PPP (public-private partnership) which was established back in 2004 and is proposed to be completed by 2009.

The new convention centre will bring great opportunities to Victoria, and I know that such people as the Deputy Leader of the Opposition in the other place, Louise Asher, will be very pleased to see this development, because she has always been keen for a new convention centre of some sort to be established.

This project is a good opportunity through which Victoria can showcase its continuing status as a major events capital and follows on from events that occur in Melbourne and around country Victoria year in, year out, including the grand prix and the Melbourne Cup. This significant building will be part of the continuation of that program into the future.

Obviously the revocation of the permanent reservation of certain lands in the Yarra River Wharf and Polly Woodside areas is necessary for the project. The legislation before the house will ensure that this development can continue. The land affected is an area where some sheds were located and where the Melbourne Maritime Museum is located. The legislative changes affect those two portions of land — essentially the Yarra River Wharf, where the sheds were located, and the Polly Woodside area.

During the redevelopment of the convention centre I went down to see the *Polly Woodside*. I have some concerns about how the redevelopment is going to pan out. I understand there is a proposal to move the maritime precinct elsewhere, and that proposal is known amongst those who have a particular interest in that area. Initial considerations were given to locating the maritime centre next to the *Polly Woodside*. To be fair, given the size and the amount of material that is available, the area that remains next to the Melbourne Convention Centre and the Melbourne Exhibition Centre would make it almost impossible for an adequate presentation of some of the historical maritime displays.

The passing of the bill will give more clarity to the developers. It is important that the developers continue on their time line. I understand there is an expectation that the project will be completed in 2009. The project is being managed by Major Projects Victoria, so I hope it is completed on schedule and is not like the Hepburn Springs Bathhouse. I hope that a similar situation to that which has occurred in Hepburn Springs does not occur with the convention centre project. Businesses in Hepburn Springs have been waiting for the bathhouse development to be completed. On a website I looked at earlier I saw that there are already some significant bookings for the convention centre, which is fantastic. It would be a great loss to the reputation of Melbourne if the project were not completed according to the time lines that have been established.

As I said, the convention centre project is a great project that has our support. The bill has our support, and we look forward to the convention centre's development so that Melbourne can continue to be one of the premier cities in Australia, if not the world.

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1

The DEPUTY PRESIDENT — Order! The committee has been asked to consider the Land (Revocation of Reservations) (Convention Centre Land) Bill 2008. I understand there are no amendments proposed, but at least one member wishes to pursue some questions and to seek some detail from the minister.

Mr BARBER (Northern Metropolitan) — This may be the appropriate clause to ask some questions of the minister about the general intent from hereon in and the steps beyond the mechanics of this bill that the government intends to take to get this project running. The second-reading speech refers to the signing of some leases and then a subsequent piece of legislation for temporary reservations. Is the minister able to outline in a bit of plain language exactly what further legal and administrative steps are needed before this project could be said to be completed from the government's point of view?

Mr JENNINGS (Minister for Environment and Climate Change) — Given the specific way in which

the member has asked the question, I want to talk to my colleagues in the advisers box for a second.

I am pleased to say that it is a relatively elegant and simple mechanism. Subsequent to these changes to the permanent reservation that come through with this bill, once the work has been completed a temporary reservation for the same purpose will be put back on the land, and that will be administratively delivered through a Governor in Council order.

Mr BARBER (Northern Metropolitan) — Somewhere in the middle of that I presume some leases will be signed between the government and the proponent who will soon be the operator. Is that correct?

Mr JENNINGS (Minister for Environment and Climate Change) — That is correct, but in terms of the land revocation, for which I am responsible and which fall out of this bill, the land matter is the one for which I am responsible and which I report back to the committee.

Mr BARBER (Northern Metropolitan) — I guess it is the content and operation of those leases that I am now concerned about. Given that those later temporary reservations will have to be consistent with the conditions of the lease and vice versa, are those leases currently available, or have any draft versions been exposed to members?

Mr JENNINGS (Minister for Environment and Climate Change) — The good news is that, not for the first time this week — and this is a bit of a recurring theme — the draft leases apparently are available on the Victorian public tender website as they relate to the agreement that is being struck in relation to these matters. The reason they are in the form I described relates to the transfer of the permanent reservation to the temporary reservation and its removal, so the leases cannot be enacted until this bill is passed by the Parliament. The leases are then applied, and temporary reservation for the same public purposes are actually put back on the land in accordance with the latest provisions that are available.

Mr BARBER (Northern Metropolitan) — I thank the minister for that information. The section of the tenders website that I have examined is under contract no. 3676, and there I see a number of documents titled 'Deed of variation', 'Deed of variation — annexure A', 'Deed of variation annexure A part 2' and so forth down through 'CDA — Hotel' to 'Project agreement — part 2'. Can the minister confirm that these are the documents that he is referring to when he

says they are the drafts of the lease, because I was not aware of their status simply from looking at them?

Mr JENNINGS (Minister for Environment and Climate Change) — I will take advice, given that I have not seen those documents and all those numbers. I will take the documents from the member and seek advice on them. I can say this is one of the more complicated questions that I have ever been asked in committee, and I have been asked a few.

My friends in the box are actually reluctant, without going down into the documents themselves, to confirm that, given the specificity of the question. They are reluctant on my behalf to volunteer the absolute confirmation of that, although it would appear, in accordance with how I am advised, that those documents would contain the material that I refer to. But we cannot, without drilling down and having a look at them, absolutely attest to that at this point in time.

Mr BARBER (Northern Metropolitan) — That is fair enough, I suppose. What I gave the minister is the printout from tenders.vic.gov.au as of an hour ago. What I am driving at — and it goes to my concern with this bill — is that as part of this project there will be a number of areas which will continue to be public access areas. There is a bike path, a bridge, some open space around the *Polly Woodside*, and at the moment this is free public land — people walk their dogs there, they carry on whatever public activities they want to do in an area where there are many residents living on Southbank without a lot in the way of public parkland around them. This would be one of the bigger expanses.

However, it is my understanding that that land will be under the control of this new convention centre, and that the controlling documents, if you like, are the conditions that are in the lease. If the minister is saying that those documents are what forms the basis of the lease agreement, or whatever it is that will be signed post this bill being passed, then my question is: how do the intended conditions guarantee public access to this land? When I say ‘public access’, I do not simply mean that it will be open and it is part of a pedestrian entry or passage through the area. Highpoint shopping centre has public access areas within it. It has car parks, an area for people to sit, it has footpaths going in and out, but it remains private land. So while I may think I am in the public domain when I visit Highpoint shopping centre, in fact I am there at the whim of the owner, or in this case I am there in an open shopping mall-cum-convention centre. It may be that they decide they do not like my hair cut or do not want me to skateboard or I am displaying a protest banner against the visit of an American president and they can move

me along. What is it that guarantees my access to these public areas in the documentation that the government is intending to sign prior to handing over control of this site?

Mr JENNINGS (Minister for Environment and Climate Change) — It may have been easier if we had actually started from this point rather than perhaps in the detailed way Mr Barber raised the matter. If Mr Barber is seeking on the public record a commitment from the government of Victoria that there will be public access to the public spaces along this reservation into the future, I am happy to give that undertaking, and that is the intent and effect of the bill. It will change the reservations from permanent to temporary and the leasing arrangements will be consistent with maintaining public access. If that is at the heart of his concern, then I commit on behalf of the government that that will be the outcome that the government will seek through those leasing and reservation mechanisms.

Mr BARBER (Northern Metropolitan) — That is the concern that I have, and apart from the minister’s assurance, what I am looking for is where it will appear in black and white. The minister seems to confirm that this will be a site which currently is a Crown land site reserved for certain purposes, that it will in fact be a Crown land site leased by somebody, and that that person will be responsible for all the activities that occur on that site. I am presuming council by-laws will not apply on the site; it will be a piece of private land to the extent that it is private leasehold land. I presume if I trip over and break my neck in front of the sheds, I would not be suing Melbourne Water, Parks Victoria or whoever it is who owns that section of riverbank. I am assuming that I would for all intents and purposes be on private leasehold land.

Mr JENNINGS (Minister for Environment and Climate Change) — The public policy considerations or good perceptions that Mr Barber brought to his question have probably been answered because the various roles and responsibilities of who is responsible for what are pretty much as he outlined them in his question.

In terms of public access and the amenity and the ability of our citizens to get access to the land in question, they will be provided for through the combination of the lease arrangements and the reservation — that is absolutely true — but in relation to public liability questions he is quite right to assume that that falls upon the responsibility of the lease-holder.

Mr BARBER (Northern Metropolitan) — I am looking at a document which was one of those that I obtained from the *tenders.vic* website. It is headed ‘Lease’ and below that ‘Exhibition centre expansion site’. It appears to be an agreement between the secretary of the former Department of Infrastructure for and on behalf of the Crown and Austexx Plenary Melbourne Pty Ltd. In clause 34 paragraph (c) states:

Nothing in clause 34.4 ... limits:

- (i) the state’s rights in respect of the state security; or
- (ii) the exclusion of any person in accordance with the policy and procedures manual.

In reading all these documents — I and my staff have gone through all of the documents on *tenders.vic* and have only found two references that engage with the issue of public access. One is a diagram that says, ‘These will be public access areas’ — the riverbank and *Polly Woodside* — and this other strange mention of the exclusion of persons. I am not sure whether that is in relation to construction or during the operating phase. The point is that I have seen nothing in any of these documents that I have downloaded — and they go on for many, many pages, beyond the reference that says, ‘This will be the public access area’ — as to, firstly, how public access will be assured, and secondly, how it will be operated day to day.

I give a simple example. Will there be a security guard who can come out of the Melbourne Convention Centre and say, ‘Hey you, no flying kites next to our building’ or ‘Mr Barber, you are sitting there drinking a stubby of VB in the wharf sheds with your feet dangling in the water. Hop to it, we do not want any public drinking around here!’. I am still yet to hear where this will be set out and guaranteed.

Mr JENNINGS (Minister for Environment and Climate Change) — Mr Barber has constructed a complicated set of questions of which he automatically knows the answer by the way he has constructed the question, but he also knows that some of the most profound, persuasive and freedom rights and opportunities are simply expressed. In the question he has outlined the public access areas have been defined and it is a matter of whether they need to be redefined time and time again in relation to the provisions or whether a simple, singular expression of them is enough. I am advised it is enough. There are about 1 million hypothetical scenarios with which we can entertain one another to give life to what is really a kite-flying exercise, and we could postulate them at great length. I suggest that in any public or private space in Victoria the relevant issues that the member is

alluding to could be a source of conjecture or conflict at any time, any place and in 1 million different circumstances. While I can understand why Mr Barber may be concerned about those things, it is easier to reduce this to a singular proposition in terms of public access areas and the intention of the government to provide for public access through both the leasing arrangements and the reservation.

Mr BARBER (Northern Metropolitan) — That is where I disagree. I do not think it is a case of any time or any place. In the city of Melbourne if you are in the public domain, council by-laws apply. There are by-laws about drinking, by-laws about handing out leaflets and so on. On private land it is at the whim or the pleasure of the private land operator. I think what the minister is saying is that it is in the lease: whatever guarantees we have about the use of this public land, the guarantees are provided in the lease. I will take that as read for the moment, but what the minister has not been able to confirm from the documents that I have seen via the website is what will be the foundation of the lease. That is fine; we will not get any further by asking the question again.

Mr DALLA-RIVA (Eastern Metropolitan) — This issue arose from the briefing by Major Projects Victoria, and I have thanked officers for the briefing. The purpose clause says that the main purpose of the act is to revoke the permanent reservations of certain lands in the Yarra River Wharf and Polly Woodside areas. What was the purpose of the bill in the revocation of those two parcels of land? Was there an intention to expand that area?

Mr JENNINGS (Minister for Environment and Climate Change) — It is a fair enough question but it goes to the nature of the interaction between Mr Barber and me in relation to the leasing arrangements that may be available —

Mr Dalla-Riva — I am not interested in the leasing arrangements but the reasons for the revocation of those two parcels of land.

Mr JENNINGS — The explanation is in terms of what is available under land that is permanently reserved for certain public purposes and the nature of the leasing arrangements that may be available under that form of land tenure. There needs to be a transition from that land tenure to a leasing arrangement and then a subsequent temporary reservation to enable that lease to apply. Basically we see through the transition process in the course of this bill the facilitation of the development predicated upon the types of lease that need to be entered into and the types of land

management issues that are required which involve changing the land status to enable it to occur.

Mr DALLA-RIVA (Eastern Metropolitan) — I understand what the minister is saying and while my question may sound similar I am not proceeding down the path Mr Barber was heading. I refer to the maritime precinct and the sheds around there. I understand through the National Trust and the friends of *Polly Woodside* and the like that there is more than enough maritime paraphernalia to fill a significant number of sheds. Is part of that process moving forward to relocate the maritime precinct to another location? Is that part of the longer-term plan of the revocation of this section of land?

Mr JENNINGS (Minister for Environment and Climate Change) — I am very happy to say that the answer to that question is no. With respect to the ongoing status of the maritime precinct, what we are talking about is the relocation of the *Polly Woodside* itself — the boat — to enable the precinct to be reconfigured to have more modern amenities. The boat would be restored to the same location so that the maritime precinct in its enhanced form would be maintained in that area.

The DEPUTY PRESIDENT — Order! With all this talk about the *Polly Woodside*, we are sailing through this!

Clause agreed to; clause 2 agreed to.

Clause 3

Mr BARBER (Northern Metropolitan) — In clause 3 we have a series of definitions that describe various project agreements. At (a) we have the ‘Project Agreement in relation to the Melbourne Convention Centre Development’; at (b) we have the ‘Construction Direct Agreement’; at (c) we have the ‘Services Provider Direct Agreement’; at (d) we have the ‘PCS Services Provider Direct Agreement’; and at (e) we have the agreement entitled ‘State Security in relation to the Melbourne Convention Centre Development’. Can the minister advise whether these agreements are public documents in the sense that they are accessible to the public or generally available?

Mr JENNINGS (Minister for Environment and Climate Change) — I am about to provide Mr Barber with an answer that he will not find satisfactory. Those agreements are not publicly available, they relate to commercial-in-confidence material. I know Mr Barber will now weave this back to the basket of issues we have previously been discussing; I know that is what is going to happen, but ultimately public interest

provisions in terms of public disclosure will be in accordance with the material we talked about in clause 1.

Mr Dalla-Riva interjected.

Mr BARBER (Northern Metropolitan) — Don’t leave now, Mr Dalla-Riva, it is just getting interesting.

Mr Dalla-Riva — You are not going to get anything without an FOI.

Mr BARBER — That was, in fact, my question. Is it merely the preference of the department that this material remain confidential, or is there something in section 14 of the Project Development and Construction Management Act that overrides the Freedom of Information Act?

Mr JENNINGS (Minister for Environment and Climate Change) — The various agreements that Mr Barber is referring to are not agreements that I have entered into. They are entered into in accordance with other administrative arrangements and other responsibilities that do not come within my jurisdiction.

I can understand why Mr Barber would ask me that question, given that I am the minister at the table dealing with a land revocation matter. The limits of what this bill does and its provisions in terms of the public interest and the land in question are something I can directly take responsibility for, but in terms of these various levels of project management agreements, I do not have responsibility.

The DEPUTY PRESIDENT — Order! Would it be true to say, Minister, that these agreements have not been struck under this legislation anyway? They are pre-existing agreements that are simply brought into account in terms of the purposes of this bill.

Mr JENNINGS (Minister for Environment and Climate Change) — The Deputy President has probably answered that question far more eloquently than I did.

Mr BARBER (Northern Metropolitan) — But one of the purposes of this bill under later clauses 8 and 9 is to both preserve and validate the status of those project agreements and to ensure that nothing we are legislating here interferes with those agreements. I still want to know what those agreements are.

Here we have one called ‘Commercial Development Agreement — NW Precinct’ I gather there is a whole set of commercial development agreements, including for the sheds on the wharf. The sheds are the interface

with the bike path — there is going to be a bike path there — yet I do not know if it is going to be 1 metre wide, 1.5 metres wide or 2 metres wide, whether it is going to allow for dog walking or whether it is going to allow for pedestrians and cyclists to mix. I do not know how long it is going to be until the people running the sheds decide they want more tables to go out the front or whether they are going to apply for licences and have people spilling out onto the bike path or onto the wharf. If it was a public bike path being operated by Parks Victoria, those would all be matters for council by-laws and government agreements. It seems as though we are wiping out all existing mechanisms that deal with public space and replacing them with a set of commercial development agreements that I have not seen.

Mr JENNINGS (Minister for Environment and Climate Change) — I have to alert the committee that we have an intractable problem. I am not going to be able to satisfy Mr Barber beyond the scope of what I have already said in my answer, and I was ably assisted by the Chair in clarifying the point I made. I think this will be an issue of contention between me and Mr Barber. I will not be able to satisfy him in the committee stage.

Mr BARBER (Northern Metropolitan) — That is a bit of a bummer! Given the fact that with the land under lease the government will still be the effective owner, I ask the minister whether under the new arrangements, when the temporary reservations and so forth are all completed, his department will be the referral authority for the purposes of any planning permits that the developer will need to obtain?

Mr JENNINGS (Minister for Environment and Climate Change) — I did not want to go on instinct, so I got some advice on that. The assumption in Mr Barber's question is correct. There is nothing that would change the statutory relationships or requirements in relation to planning approvals.

Mr BARBER (Northern Metropolitan) — So the department will be the referring authority but not the responsible authority. I am looking at the Melbourne planning scheme, which was amended some time back; in fact Mr Hulls, the Attorney-General, was the planning minister at the time. In relation to this specific site it created a detailed incorporated document. Section 28 says, under the heading 'Pedestrian and bicycle paths':

The lessee of the subject land must make provision for off-road bicycle and pedestrian paths to create key linkages in the regional network and connect:

The east to west link along the south river front traversing the site from the Capital City trail to the Docklands–Yarra's Edge precinct,

The north to south link from Wurundjeri Way via the new Yarra Bridge to Normanby Road to link the Station Pier–Bay trail.

A bicycle and pedestrian link shall also be made at the west end of the site adjacent to Charles Grimes Bridge.

The bicycle and pedestrian paths must be constructed in accordance with plans and specifications first approved by the responsible authority —

which I believe will be the Minister for Planning in this case —

in consultation with the City of Melbourne's group manager — engineering services. The off-road paths must be completed at the time of the completion of the development or as may otherwise be agreed with the responsible authority.

I note the minister is conferring with his advisers.

Mr Jennings — I am listening.

Mr BARBER — That is good. Left brain, right brain?

Mr Jennings — Yes, I can do it.

Mr BARBER — That section may provide some comfort in that there will have to be a bicycle and pedestrian path. Given that the minister has confirmed he will be a referral authority with an ongoing interest in the land, I seek some sort of commitment from him not only that the bicycle and pedestrian paths in the area will be adequate but also that there will be no diminution in access from what we have now.

The DEPUTY PRESIDENT — Order! I will clarify for the minister. The final question was whether there would be no diminution of the current access rights or use under these agreements.

Mr BARBER — In respect of the issuing of planning permits, Chair.

Mr JENNINGS (Minister for Environment and Climate Change) — Yes, but it is also a matter of what might be a proposed infrastructure development to achieve the public policy outcome that Mr Barber has described. So it is a combination of policy intent, planning instruments and desirable outcomes, including public amenity outcomes. In terms of the mix of those things, I cannot give a gilt-edged guarantee of a certain quality of bike path today, but I will use my best endeavours to achieve the best alignment of those policy intentions and instruments. I am very happy to play my role and support that appropriate alignment.

Mr BARBER (Northern Metropolitan) — I can indicate that I do not need to speak on any further clauses of the bill, so I will finish up by making my overall point: the only guarantees of continued public access to those areas of the site that have traditionally been publicly accessible that I know about right now are the provisions in the planning scheme, and even those only indicate that there will be a general access way, not that it could not be diminished by commercial developments and a range of other activities. Given that we are leasing off a piece of land via a lease we have not seen, and that the minister has confirmed that it is only that lease that would govern not only the access but also the types of activities that could be conducted in these parcels of land, the Greens will not be supporting the bill at the third-reading stage.

Clause agreed to; clauses 4 to 9 agreed to; schedules 1 to 3 agreed to.

Reported to house without amendment.

Third reading

The PRESIDENT — Order! The question is:

That the bill be now read a third time and that the bill do pass.

House divided on question:

Ayes, 37

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

Noes, 3

Barber, Mr (<i>Teller</i>)	Pennicuik, Ms
Hartland, Ms (<i>Teller</i>)	

Question agreed to.

Read third time.

BUILDING AMENDMENT BILL

Second reading

Debate resumed from 31 July; motion of Hon. J. M. MADDEN (Minister for Planning).

Mr GUY (Northern Metropolitan) — I rise to speak on the Building Amendment Bill, which is a piece of legislation that has been introduced to this chamber by the government as a result of some negotiations and reviews and work the government has done to ascertain how it can clean the legislation up and provide clarity in a number of areas.

Mr Finn interjected.

Mr GUY — If it cleaned up Brimbank council, it would not be a 12-page bill, it would be a 1200-page bill.

Mr Finn — It would be a book!

Mr GUY — We would only just start, and the word 'Seitz' would feature liberally through it.

Mr Finn — A Sylvan Empire.

Mr GUY — Unfortunately for the building bill the Sylvan Empire is not mentioned, nor is the developing Seitz empire. What is mentioned in the bill is its five main purposes. The first is to increase the accountability of registered builders so they are directly responsible for the work and conduct of their companies. Secondly, the bill will create two classes of building surveyors, which will have flow-on effects that I will talk about in terms of increasing the number of building surveyors in the industry across Victoria. Thirdly, it will clarify the powers of municipal building surveyors, which I will make a couple of brief comments on a bit later. The fourth purpose is to enhance the consumer protection mechanisms surrounding owner-builders while increasing the disciplinary powers of the Building Practitioners Board. I think it is important to mention that all parties — particularly the Liberals and The Nationals — support mechanisms that enhance consumer protection. It is very important that mechanisms enhancing consumer protection in the building industry are put forward and put in place.

Ms Broad — You're following instructions.

Mr GUY — I am. Lastly the bill will clarify and enhance the role of the Plumbing Industry Commission's disciplinary powers. I will make a few brief comments on those further on.

It is important to note from the very start the Liberal Party and The Nationals do not oppose this legislation. We have some concerns with aspects of the bill, which I will make some brief comments on, but we do not oppose the legislation and we will not be moving any amendments.

As I said at the outset of my contribution, the bill comes as a result of ongoing feedback from the state government from various sources, such as the Building Commission, the Building Practitioners Board and the Plumbing Industry Commission. Other aspects result from the Council of Australian Governments agreements in relation to building accreditation and the adoption of a national framework, which I am informed came about in around 2004.

Clause 10 of the bill talks about increasing builder accountability. It is important that we do not go too far one way. In saying 'too far one way', what I mean is having so many consumer protection mechanisms in place that they stifle the ability of the builder to get on with the job and to do a proper job. We do not believe we have reached that point, but we are conscious of this bill and others that put further restrictions and mechanisms in place which can be a hindrance or another piece of regulation which builders need to comply with.

Having said that, a large amount of building work is being carried out by building companies, and the bill requires one director of the company to be a registered builder. Thus a director of or a partner in the company will be responsible for the conduct of the company and the work undertaken. I am informed at present it is difficult to seek legal redress from a registered builder who is not a director or a partner — that is, if a company fails, it is difficult to obtain some kind of legal redress for the person involved who has built the house. The bill seeks to clear up some of those anomalies.

Clause 7 deals with the creation of the two classes of building surveyors. In Victoria there is a shortage of building surveyors across the state, and we are looking for ways to add to their numbers. By creating the two classes — that is, limited and unlimited — the government has informed us that this will allow those in the unlimited category to focus on larger work, which is work above three storeys or a 2000-square-metre floor plan. Limited surveyors can focus on work below this. The two-tiered system is welcomed by us. It will free up the ability for more people to be involved in the system, and it will free up more numbers of building surveyors to do more work and bring more people on stream. It is an issue that we are acutely aware of.

Clause 13 relates to municipal building surveyors. There is uncertainty as to whether a municipal building surveyor can operate outside the municipal district with the powers of a surveyor. The bill clarifies this so that municipal surveyors will have the same powers as a private surveyor. As I was saying before about the limited surveyor and the unlimited surveyor, this municipal surveyor clause will provide just a little more clarity and certainty. The two-tiered system will allow less-experienced surveyors to undertake less-complicated activities, and that is something we support, as we support clause 13, which relates to municipal surveyors.

Clauses 3, 5, 8 and 9 look at consumer protection. The bill allows the Building Practitioners Board to have greater disciplinary activities, such as looking at a builder's past good character, which may include solvency, and at any past convictions or offences against the person. The practitioners board will be able to suspend and hold inquiries into a builder's registration — as contained in clause 8 — on the grounds of concern for public safety, which can now extend from a physical to a monetary risk.

In relation to owner-builders, currently owner-builders have to have insurance before they sell a property, but if the builder dies and the estate does not have insurance, the property can still be sold. The bill ensures that anyone onselling a property must also have insurance with a proscribed construction period.

Clause 21 deals with the Plumbing Industry Commission's disciplinary powers. The bill gives the PIC greater powers to act on plumbers who have been disciplined but who have failed to comply with elements of the disciplinary action.

I quickly want to turn to a number of concerns we have with the bill, and there are four I want to mention in particular. If the builder is suspended, obviously their work will cease. There are no provisions in the bill to ascertain what will happen if there are a number of jobs in progress, and that is something that we have concerns with. The last thing we want across Melbourne are situations where builders have either for insurance or other reasons packed up and left vacant sites sitting in the suburbs. The consumer protection aspect is good — we acknowledge that and we support that — but we have to make sure that we have in place the proper mechanisms to provide some protections for builders as well.

Penalties are placed upon the builder if they do not give notice of a suspension to their clients in a timely manner, which the bill talks about on a number of

occasions. The bill does not define a timely manner or what as soon as possible is. That may seem pedantic, but from our point of view if it is not policed and we have these vague statements running through bills, and we have had them on a number of bills that we have talked about in this chamber today and during the last sitting week, it leaves it open to abuse. Clarity is needed on that time frame, although it is a term which is open to subjectivity. A time frame should have been proscribed in the bill rather than just the term 'as soon as possible'.

Mr Barber interjected.

Mr GUY — I say to Mr Barber that the bill also does not have any definition of the term 'good character', and of course knowing the member I am sure he is a man of good character.

Mr Barber interjected.

Mr GUY — Indeed! Again this wording leaves the term open to subjectivity. What is good character? Is not having good character a builder who has too many parking fines? Is it someone who has had charges laid against them 20-odd years ago? The problem I have with this part of the bill is some builders warranty insurance disputes that exist in this state at this point in time give the practitioners board large powers to suspend the operation of builders who are engaged in warranty insurance disputes on the basis of good character. I have some concerns if that precedent is set or that ability is established in this legislation.

I want it flagged that we are concerned there may be situations where certain builders who have builders warranty insurance disputes but are seeking to rectify those or are in the process of doing so may not necessarily be persecuted by this bill, but they may be hampered by it. Along with most of my colleagues, I will be watching very closely to see that those builders are not in any way harassed or hindered by the passage of this bill. We think a very close eye needs to be kept on that.

The bill also expands the Building Practitioners Board's (BPB) armoury of disciplinary actions with some more mid-range actions, such as training courses. That is not something you would expect us to be concerned with, but again, as with other parts of the bill, there is no real definition of what kinds of courses these would be. The last thing we on this side of the house would want is for the practitioners board or others to recommend a Construction, Forestry, Mining and Energy Union training course rather than a TAFE course or a course operated by the department to be used as a disciplinary

procedure meted out to builders. The BPB's armoury of actions is expanded, but what it can be expanded towards is not necessarily spelt out.

In some areas the bill is fairly grey, but we have come to expect that of this government. We believe there could be some adverse impacts on some builders as a result of parts of this bill, and we will be monitoring those parts we have concerns about to make sure they do not have adverse effects. If they do, we will raise those issues with the government in this chamber and in the other place.

Having said that, we note there are definitional issues dealt with by this bill that make the operation of the industry easier, and, as I said before, expand the ability for disciplinary action to be meted out by the Building Practitioners Board. That and the consumer protection issues are two areas worthy of support and two areas where the Liberal Party and The Nationals do not believe the concerns we have about the bill warrant our opposing it. Having said that, the Liberal Party and The Nationals will not oppose the bill. We do have some concerns; we will monitor those concerns, but we will not be voting against this piece of legislation.

Mr BARBER (Northern Metropolitan) — The Greens will also support this bill.

Ms MIKAKOS (Northern Metropolitan) — I also rise to make a succinct contribution to this debate. I want to state at the outset that the government is highly appreciative of the fact that both the opposition and the Greens are supporting this piece of legislation, because it is an important piece of legislation.

As we have had many debates about this in this Parliament, I am sure all members acknowledge the very important contribution the building sector makes to the Victorian economy. We all acknowledge and understand that the Victorian building industry employs thousands of Victorians and contributes billions of dollars to our economy each year. For all of us who are consumers and who have managed to purchase a home or indeed to rent and live in a home in this state, we also understand that we need to have a building sector that is properly regulated and ensures that the homes that are constructed are safe, healthy, habitable and energy-efficient.

This bill seeks to enhance consumer protections, improve the various provisions of the Building Act 1993 and clarify some existing provisions that relate to the building sector. As other members have acknowledged in previous contributions, we all understand that the biggest outlay of expenditure any of

us will make as Victorians or Australians is the purchase of our own home. We know and understand the considerable challenge that getting the money together to put a deposit on a home presents to many of us in the community. I fully acknowledge that that is an important issue for many of my constituents, who find it difficult to get the money together to purchase a home. Of course they want to ensure that when they are buying or constructing a home they have the ability to engage a good, reputable builder who will do a good job of constructing their family home.

This legislation seeks to improve consumer protections through a number of mechanisms by adding to the range of options that the Building Practitioners Board and the Plumbing Industry Commission have at their disposal when they determine that a registered building practitioner or plumber has committed a breach. It adds to consumer protection provisions by seeking to ensure that registered building practitioners are of good character and continue to be of good character. It also provides more clarification around owner-builder laws by ensuring that the purchaser of an owner-built home receives domestic building insurance even when the owner-builder is deceased or bankrupt.

In relation to these particular aspects, I note that in a very important report prepared by the Victorian Competition and Efficiency Commission (VCEC) and handed to the Treasurer on 17 April 2006, entitled *Housing Regulation in Victoria — Building Better Outcomes*, the commission stated that practitioner registration and licensing are intended to help achieve good building outcomes and to strengthen consumer confidence in the industry. The VCEC further stated that the building permit and registration system must be enforced to be effective.

The bill seeks to strengthen the range of disciplinary and other provisions available at the disposal of the Building Practitioners Board to allow it to play its critical role in ensuring that issues related to the conduct of registered practitioners are able to be enforced and to give that body the capacity to exercise its powers effectively and appropriately.

The bill provides the Building Practitioners Board with additional powers enabling a more flexible and effective disciplinary response after an inquiry, such as the power to require a person to undertake a course or training and the power to disqualify a person from being registered for up to three years. The maximum financial penalty is increased to 100 penalty units. A new ground is provided for the Building Practitioners Board to inquire into practitioner conduct for breach of the Domestic Building Contracts Act 1995, the

consumer legislation that would relate to the vast majority of residential housing construction in this state.

The bill further extends the scope for the Building Practitioners Board to immediately suspend a practitioner pending inquiry where they pose a significant risk to the public or it is demonstrated that they are not of what is termed 'good character'. The bill also strengthens the link between the conduct of a company or partnership and its registered director or partner.

On the issue of good character, the provisions provide a mechanism for the Building Practitioners Board to monitor the good character of registered building practitioners on an ongoing basis and, depending on the nature of the information supplied by the practitioners, the Building Practitioners Board may determine to hold an inquiry into whether they are a fit and proper person to practise as a building practitioner.

These are all important changes. They might appear to some builders to be onerous requirements, but it is important that we impose an effective and tight disciplinary system on building practitioners in this state to ensure that consumers have confidence when signing a contract to build their family home and, as I said, in constructing that family home to make the biggest financial outlay that they and their family will be making in their lives.

Very briefly, the bill seeks to make some changes in relation to municipal building surveyors. As members would be aware, for a number of years now we have had in place in Victoria a system that enables private building surveyors to issue building permits. Municipal building surveyors are also able to act in effect as private building surveyors in this state. The bill seeks to clarify that municipal building surveyors acting outside their municipality have the powers of private building surveyors when they issue a building permit.

Another provision enables the introduction of a two-tiered system for building surveyors in Victoria. It is a result of discussions at the national level through the COAG (Council of Australian Governments) process.

The bill also makes some changes in relation to the plumbing industry, particularly amendments to the meaning of 'completed'. It improves the position of consumers in relation to the issue of compliance certificates. Changes to some of the definitions and provisions relating to plumbing work seek to introduce

greater clarification into the legislation and to make clearer the regulation-making powers.

In conclusion, this is an important piece of legislation that will strengthen consumer confidence in the very important sector, the building sector, in our state. I reiterate the government's gratitude to the other parties for supporting this bill and expediting the debate. I commend the bill to the house.

Mr LEANE (Eastern Metropolitan) — I hope you, Acting President, are not too strict in the way you consider relevance when I speak on this bill —

Mr Jennings — This is a succession of one-liners!

The ACTING PRESIDENT (Mrs Peulich) — Order! I am sure the debate will be sparked up.

Mr LEANE — Due to the in-confidence conversation we had just before you took the Chair. I am very pleased to speak on the Building Amendment Bill 2008. This bill will improve consumer protection and enhance the standard of building and plumbing practitioners. It will also improve the operation of regulatory schemes established under the Building Act 1993.

As Ms Mikakos mentioned, it is a very important bill. It might be a small bill but it is an important bill. There is a need for these things to be improved and there is an onus on these particular practitioners to prove they are of good character. One simple way this can be done is to show that they are not trading while insolvent or if they have a record of insolvency. Ms Mikakos is right when she says that the biggest financial outlay that most people make on one particular item is the purchase of their family home. This bill will put in place further protections to ensure delivery of what is proposed in the contract and plans for their family home.

This bill also changes the definition of when certain plumbing work undertaken by a plumbing practitioner is deemed to be completed. Plumbing work has to be completed by a licensed practitioner, and completion of that work has to be in line with the delivery of a certificate of compliance. The work must comply with all plumbing regulations and standards. I carry a trade licence for electrical work, and a very important part of holding that licence is adhering to all regulations. It is important that plumbing practitioners keep abreast of all changes in laws and regulations in fulfilling their particular work.

I have spoken to stakeholders in the plumbing industry about compliance with all regulations. I think they will

be more than comfortable with the requirements of this bill. As I said, I have close relationships with people in the plumbing industry. I can tell Mr Viney that I find myself getting closer to the plumbing industry all the time. I thank you for your patience, Acting President, and I will conclude on that note.

Motion agreed to.

Read second time.

Third reading

Motion agreed to.

Read third time.

ROAD SAFETY AMENDMENT (FATIGUE MANAGEMENT) 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

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Road Safety Amendment (Fatigue Management) Bill 2008.

In my opinion, the Road Safety Amendment (Fatigue Management) Bill 2008, as introduced to the Legislative Assembly, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Part 1 — Overview of bill

The bill amends various provisions inserted into the Road Safety Act 1986 ('the act') by the Road Legislation Further Amendment Act 2007 ('the amending act') to introduce heavy vehicle driver fatigue management reforms developed by the National Transport Commission and approved by the Australian Transport Council.

The fatigue management provisions inserted into the act were based on model legislation but, since the implementation of the amending act, a number of nationally approved amendments to the fatigue management reforms have been developed. These amendments need to be incorporated into the regime as introduced by the amending act. The bill achieves this purpose.

The bill also includes some minor technical and drafting amendments to the act.

Part 2 — Human rights protected by the charter that are engaged by the bill

Section 25(1) — the right to be presumed innocent until proved guilty

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.

Several offence provisions in the bill, which require the defendant to prove a defence in order to escape liability, will engage this right.

Clause 4(7) of the bill amends section 191A of the act to expand the definition of ‘unloader’ to include a person who supervises, manages or controls the loading or unloading. This will slightly broaden the scope of the definition of ‘party in the chain of responsibility’, a term which is defined so as to include the ‘unloader of goods from the vehicle’.

This has the effect of slightly expanding the scope of sections 191E, 191L, 191M, 191N, 191O, 191P and 191Q of the act, which impose various duties on parties in the chain of responsibility to take reasonable steps to ensure that the driver of a fatigue regulated heavy vehicle does not contravene a maximum work requirement, a minimum rest requirement or a work diary requirement. Parties in the chain of responsibility who fail to do so may be liable for offences which are offences of absolute liability, subject in most cases to defences.

A party in the chain of responsibility (other than an operator) who was in a position to influence the conduct of the driver is able to invoke the reasonable steps defence set out in section 191ZZP of the act, which provides that such a person has a defence if the person establishes that the person did not know and could not reasonably be expected to have known of the contravention, and either the person took all reasonable steps to prevent the contravention or there were no steps the person could reasonably have taken.

Thus, under the provisions of the act, a number of parties in the chain of responsibility may be deemed to have committed an offence unless they can prove the existence of the reasonable steps defence.

The amendment to section 191A expands the class of persons who are parties in the chain of responsibility so as to include persons who supervise, manage or control loading or unloading.

Two further amendments made by the bill potentially engage the presumption of innocence because they add new offences which require the defendant to prove the existence of a defence.

Clause 15 of the bill amends section 191V of the act. Section 191V of the act makes it an offence to fail to report a filled up, destroyed, lost or stolen written work diary or a malfunctioning electronic work diary or to apply for a replacement work diary, subject to various defences. The proposed amendment, to subsection 191V(7), specifies that a person charged with an offence under the section does not have the benefit of the ‘mistake of fact’, rendering the offence one of absolute liability. A person charged with an offence

still has a defence if they can prove certain things (including that the work diary was filled up, lost or stolen, and the driver complied with certain other requirements), but the effect of the amendment is to increase the driver’s reliance on a reverse onus provision in order to avoid liability.

Clause 28 of the bill inserts new section 191ZXA into the act. This new section requires a driver using an electronic work diary to use it in accordance with the manufacturer’s specifications and any conditions imposed by VicRoads. The record keeper must ensure that it is so used. It is a defence (and the onus is on the defendant) to prove that, in a failure to comply with a specification, the specification was not integral to effective operation, or the failure to comply was in accordance with industry practice.

These amendments also involve reversal of the onus of proof and, accordingly, also engage the right to be presumed innocent until proven guilty under section 25(1) of the charter.

The question of whether this limitation is reasonable, in that it can be demonstrably justified for the purpose of section 7(2) of the charter, is examined in part 3.

Section 13 — privacy and reputation

Section 13 of the charter provides that a person has the right —

- ‘(a) not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and
- (b) not to have his or her reputation unlawfully attacked.’

New sections 191ZN(3) and 191ZX(3) of the act, inserted by clauses 21 and 27 (respectively) of the bill impose a requirement on an operator, operating under one of the two fatigue management accreditation schemes established by the act, to provide to VicRoads, in a form and within a time specified by VicRoads, a copy of the list of drivers required to be maintained by the operator and details of any changes to that list. The collection of personal information engages the right to privacy.

The reason for these amendments is to ensure that VicRoads is able to properly monitor operators’ compliance with scheme requirements by enabling it to identify particular drivers engaged by an accredited operator at particular times. By being able to ascertain the identity of drivers, VicRoads is able to determine whether drivers are engaged by more than one operator, and to investigate whether other scheme requirements are being complied with.

While these provisions engage the right to privacy they do not limit that right. Collection of this information will be in accordance with law. VicRoads is subject to the collection requirements under the Information Privacy Act 2000 (in particular, to collect information by lawful and fair means and to ensure that the individual is made aware that the information is being collected). The amendments made by the bill would not authorise non-compliance with those obligations. Nor do the provisions create an arbitrary interference with privacy. The information that VicRoads can obtain under the power is limited to the identity of the driver and the fact that he or she is engaged with a particular accredited operator. No other personal information is required to be provided.

Part 3 — Consideration of reasonable limitations under section 7(2) of the charter

Section 25(1) — presumption of innocence

The limitations presented by the bill on the right to be presumed innocent, as identified in part 2 above, can be demonstrably justified as reasonable, having regard to the following considerations.

(a) The nature of the right being limited

The right to the presumption of innocence is aimed to ensure that the burden is generally on the prosecution to prove, beyond reasonable doubt, that a defendant committed the relevant elements of the offence. The presumption of innocence is not an absolute right, which means that it may be limited to a certain degree if justified by the circumstances. Ultimately, what the courts are concerned about is the risk that a person may be convicted of an offence even where there is a reasonable doubt that they are innocent of the conduct at which the offence is aimed.

(b) The importance of the purpose of the limitation

These amendments, and the offence provisions they affect, are intended to improve road safety, including by decreasing road fatalities, by better regulating fatigue in the drivers of heavy vehicles. This is a significant and important objective.

There is a well-established correlation between driver fatigue and road safety. From consultations conducted by the National Transport Commission it appears that there is a widely held view that a range of persons involved in road transport other than drivers can and do influence driver behaviour, in particular by encouraging or providing incentives for drivers to contravene regulatory requirements designed to combat driver fatigue, or by failing to prevent or discourage such conduct when they are in a position to do so.

The persons considered able to influence driver behaviour in this respect include people who supervise and control loading and unloading. It is accordingly considered appropriate to extend liability to such persons. The purpose of the chain of responsibility approach to compliance is to ensure that those who are in a position to influence or prevent conduct by the driver (such as a person who manages the loading or unloading of a heavy vehicle) are held responsible where that conduct could give rise to a breach. This encourages an overall culture of compliance within which it is more conducive for the driver to act responsibly.

(c) The nature and extent of the limitation

A person who is seeking to establish a defence to the general duties has the burden of proving, on the balance of probabilities, either that they were not in a position to influence the driver or that they took reasonable steps to prevent the contravention. If they seek to prove that they took reasonable steps, they will in most cases have to lead evidence to address at least some of the matters specified in section 191ZZP of the act.

(d) The relationship between the limitation and its purpose

It is considered that these amendments constitute an appropriate and proportionate means of addressing the purpose sought to be achieved by the fatigue management provisions. Imposing the onus on the defendant in these

circumstances serves the legitimate purpose of providing a proper balance between:

the objectives of the chain of responsibility approach to compliance (that is, to ensure that persons who are in a position to influence or prevent conduct of the driver are held responsible where that conduct gives rise to a breach); and

the need to ensure that influencing persons are not found liable where they could not be said to bear any real culpability for the conduct of the driver.

Overseas courts have generally accepted that reverse onus provisions in the context of regulatory offences are more likely to be justifiable. The rationale for this justification includes the lesser degree of moral culpability attaching to such offences, the need for regulatory offences to be simple to prosecute, and that those who choose to participate in a heavily regulated or licensed regime, such as driving, have knowingly accepted the higher standards of behaviour required of them.

While the offences carry potentially high maximum fines, they are not punishable by imprisonment. In addition, the amount of fine that may be imposed is a matter of judicial discretion which will take into account the degree of culpability.

It should also be noted that it is expected that proper exercise of prosecutorial discretion will ensure that persons who fall within the definition of persons in the chain of responsibility, but who in no sense could have influenced or prevented the offence, are not prosecuted.

(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 amendment.

Many of the matters that might need to be put to the court by the defendant are matters for which evidence would not readily be available to the prosecution, meaning that a mens rea offence is not appropriate. For example, in the absence of detailed admissions from the influencing person, the prosecution would not ordinarily be able to establish that an influencing person did not know of the contravention, nor that it took all reasonable steps to prevent the contravention. Moreover, the prosecution would not readily be able to prove that a person in the chain of responsibility was in a position to influence the conduct of a driver, or to produce evidence as to the measures taken by the influencing person to supervise others or to prevent or eliminate a contravention. Other matters that might need to be put to the court by the defendant are matters for which evidence would be no less readily available to the defendant than to the prosecution.

It is considered necessary to impose a legal as opposed to an evidential burden on the defendant in respect of these matters because placing an evidential burden on the defendant would require the prosecution to disprove matters raised by the defendant which the prosecution would not reasonably be able to disprove (for example, in the case of the section 191V offence that the driver's diary had not been filled up or lost and that the driver had not been completing supplementary records, and in the case of the 191ZXA offence, that the driver's failure to maintain the electronic diary in accordance

with the manufacturer's specifications was in accordance with industry practice).

Part 4 — Concluding statement

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

The bill engages the rights protected by sections 13 and 25(1) of the charter. However, it does not limit the right protected by section 13 (the right to privacy), and any limitations imposed on the right protected by section 25 (the presumption of innocence) are reasonable and demonstrably justifiable having regard to the matters set out in section 7(2) of the charter.

Theo Theophanous, MLC
Minister for Major Projects

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

This bill makes some amendments to the heavy vehicle driver fatigue management reforms which were implemented by the Road Legislation Further Amendment Act 2007.

The National Transport Commission has undertaken a comprehensive review of the regulatory approach to managing fatigue in drivers of heavy vehicles. This review culminated in the development of national model legislation which was approved by the Australian Transport Council in February 2007. The national model legislation was implemented in Victoria through the Road Legislation Further Amendment Act 2007.

Key elements of these fatigue management reforms are:

- new work hours limits and rest time requirements;
- flexible driving hours, using a three-tiered approach;
- a risk-based categorisation of offences;
- a general duty to avoid driver fatigue;
- enhanced enforcement powers;
- a chain of responsibility, in which a duty is imposed on persons who share, with drivers, the responsibility for fatigue management;
- strengthened record-keeping requirements, with a work diary replacing the driver's log book.

The reforms provide for a more flexible, performance-based approach to driving hours that includes standard hours, basic fatigue management and advanced fatigue management options. The latter two options require accreditation with

VicRoads, which will be subject to conditions relating to compliance with the relevant fatigue management standards and business rules.

Since passage of the Road Legislation Further Amendment Act 2007, the National Transport Commission has developed three packages of amendments to the fatigue management reforms. These amendment packages have been approved by the Australian Transport Council. The bill before the house implements the three agreed amendment packages.

The packages contain a number of minor technical and drafting amendments. They also strengthen the fatigue management reforms by:

- enhancing work diary and record-keeping requirements;
- enhancing accreditation requirements;
- clarifying the definition of short rest breaks so that the rest may be taken in the vehicle;
- reforming the role of the fatigue authorities panel, to assign responsibility for appropriate functions to that panel.

I commend the bill to the house.

Debate adjourned on motion of Mr KOCH (Western Victoria).

Debate adjourned until Thursday, 28 August.

PUBLIC HOLIDAYS 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

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Public Holidays Amendment Bill 2008 ('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.

Overview of bill

The bill amends the Public Holidays Act 1993 ('the 1993 act') to provide greater certainty as to the arrangements for public holidays in Victoria, repeal provisions relating to the

appointment of public holidays by non-metropolitan councils and to provide for a public holiday on Melbourne Cup Day or a substituted day to be observed in all parts of Victoria.

Public holiday entitlements in Victoria are substantially affected by the Workplace Relations Act 1996 (cth). The majority of Victorian workers are employed under commonwealth instruments, with the conditions established in these instruments taking precedence over those established in the act. The direct application of the act is therefore extremely limited. However, the act does play a significant role in informing these instruments, as many incorporate public holidays declared by a state law.

Human rights issues

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

The bill may be said to engage the following human rights protected by the charter:

Section 14: freedom of thought, conscience, religion and belief

Section 14 of the charter provides that everyone has the right to freedom of religion, including the freedom to have or adopt a religion or belief of that person's choice. Section 14 also provides that a person must not be coerced or restrained in a way that limits her or his freedom to have or adopt a religion in worship, observance, practice or teaching.

Clause 5, new section 6(e), (f), (g), (k), (l) and (m) may be said to engage the right to freedom of religion because it, in appointing certain Christian holidays as public holidays, may be perceived to promote a particular religion thereby engaging the right to freedom of religion. It is arguable that the appointment of these days as public holidays has the effect of placing subtle pressure on adherents of non-Christian faiths to observe the holidays of a religion that they do not practice (see *R v. Edwards Books and Art* [1986] 2 SCR 713).

Section 8: recognition and equality before the law

Section 8 of the charter prohibits discrimination on the basis of the prohibited attributes set out in the Equal Opportunity Act 1995, including religious belief or activity (s. 6(j)). While it could be argued that the appointment of these days as public holidays treats Christians and adherents to non-Christian religions differently, I do not consider that any benefit is conferred on or detriment suffered by either group. All persons are entitled to the same number of days of holiday leave. The bill does not limit employers' obligations, under the Equal Opportunity Act 1995, to make reasonable allowance for employees' religious beliefs, including in relation to terms of requests for leave to enable employees to observe their religious holidays.

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

To the extent that the bill results in a limitation of the right to freedom of religion, I consider that the limitation is reasonable, in accordance with section 7(2) of the charter. I provide the following reasons for this view.

(a) the nature of the right being limited

The right to freedom of religion protects the right to hold certain religious beliefs and to demonstrate those beliefs through acts such as worship and observance of religious holidays.

(b) the importance of the purpose of the limitation

The purpose of proclaiming the days referred to in proposed section 6(e), (f), (g), (k), (l) and (m) is to prescribe common days of rest and holidays for employees employed under Victorian law. In preserving these days as public holidays, the bill maintains consistency with public holidays in other states and territories. While originally appointed as public holidays in order to observe days of significance for Christians, the purpose of appointing these days as public holidays can now be said to have a secular basis. The second-reading speech for the 1993 act describes the act's purpose as ensuring consistency and certainty for the observance of public holidays.

There are certain social-capital gains from the observance of public holidays. Public holidays have been found to facilitate the coordination of leisure time and as a result increase the benefit derived from holidays by allowing people to maintain social and family contacts more easily. This benefit is said to include some additional direct benefit from the common enjoyment of that time, as well as building social cohesion and social capital. Studies have demonstrated that the benefits that flow from improved social cohesion and social capital include faster economic growth, better health and lower social costs. I therefore consider that the common observance of public holidays is a significant and important objective. In *R v. Edwards Books and Art*, the Canadian Supreme Court upheld a law which banned Sunday trading on the basis that the limit of the right to freedom of religion was justified because the secular purpose of providing a common day of rest for workers was sufficiently important to justify limiting the right.

(c) the nature and extent of the limitation

The extent to which this provision limits the right is minimal. In appointing certain days as public holidays, these provisions do not restrain persons from having or adopting religious beliefs nor prevent religious practice, worship or observance of holidays. As noted above, the bill does not limit employers' obligations under the Equal Opportunity Act.

(d) the relationship between the limitation and its purpose

The relationship between the limitation and its purpose is rational and proportionate. It is rational for Parliament to design a legislative regime providing for public holidays that maintains consistency with other states and territories. While the purpose of proclaiming these days to be public holidays is now considered to be secular, it is reasonable for Parliament to select public holiday dates that are historically based on Christian holidays. The 2006 Australian census states that 63.9 per cent of Australians identify as being of Christian religion. In declaring certain days based on Christian holidays as public holidays, the law goes no further than is required to achieve the objective of common, certain public holidays for all persons employed under Victorian law.

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

It would not achieve the purpose of certainty and consistency in public holiday legislation to prescribe the same number of public holidays per year but permit employees to select the days on which they would observe their holidays.

Accordingly, there are no less restrictive means reasonably available to achieve the purpose of the limitation. As noted above, the vast majority of employees in Victoria are subject to the federal regime.

Conclusion

I consider that the bill is compatible with the charter because, although it could be said to limit freedom of religion, the limitations are reasonable under section 7(2) of the charter.

HON. THEO THEOPHANOUS, MLC
Minister for Industry and Trade Development
Minister for Information and Communication Technology
Minister for Major Projects

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

This bill meets the government's commitment to provide employers and employees with greater certainty about Victorian public holidays, and is in accordance with the ALP's policy platform.

Most importantly, this bill provides the same number of public holidays to all Victorians.

The government foreshadowed its intention to change the public holidays legislation in August 2007 when the government wrote to non-metropolitan mayors to encourage the adoption of Melbourne Cup Day or a local equivalent day as a public holiday in regional Victoria. This bill is in keeping with the government's letter to mayors.

Public holidays, as distinct from annual leave, are an important means by which the community is able to enjoy shared leisure time, or an occasion with common symbolic meaning.

At present, existing public holiday arrangements mean Victoria has a public holiday regime that in effect does not guarantee all Victorians the same number of public holidays each year.

Further, the existing legislation leads to uncertainty about the treatment of public holidays when they fall on weekends including New Year's Day, Australia Day, Christmas Day and Boxing Day.

This bill gives Victorians certainty about public holidays and will allow improved planning for Victorian businesses and employees.

Specifically, this bill will take away the inequality that has existed for many Victorians since Melbourne Cup Day became a public holiday for metropolitan Melbourne in the mid-1870s.

Melbourne Cup Day is acknowledged and celebrated as a special day of national significance around the country, and yet it is mandated as a public holiday only in metropolitan Melbourne.

Non-metropolitan municipal districts may at their discretion, declare Melbourne Cup Day or an alternative day as a public holiday in their municipal district.

In 2007, only 25 of the 48 non-metropolitan municipal districts actually elected to declare either a full or a half-day public holiday on Melbourne Cup Day or an alternative day.

The remaining 23 municipal districts did not declare a local public holiday, which meant one less holiday per year for Victorians in those municipal districts.

This bill corrects that inequality and ensures that a public holiday will be held on Melbourne Cup Day or on an alternative day in every metropolitan and municipal district throughout Victoria.

In the future, non-metropolitan councils will apply to the minister within 90 days of Melbourne Cup Day, and nominate an alternative public holiday that will apply to their entire municipal district.

In effect, the Public Holidays Amendment Bill 2008 will ensure that all Victorians, whether they live in regional, rural, or metropolitan Victoria, will be entitled to enjoy either Melbourne Cup Day or an alternative, given that everyone has the same total number of public holidays each year.

This bill will also address the uncertainty surrounding the treatment of public holidays when they fall on weekends, namely, New Year's Day, Australia Day, Christmas Day, and Boxing Day.

Previously, when a public holiday fell on a weekend the treatment was to do nothing; gazette a substitute public holiday just for that year; or gazette an additional public holiday just for that year.

Uncertainty from one occasion to the next over what action will be taken by the government is confusing for employers and employees and hinders efficient planning.

This bill will formalise in legislation the individual gazettal arrangements for public holidays falling on weekends that have already been made over the past decade. That is, the bill effectively provides for substituted and additional holidays in legislation rather than on an ad hoc gazettal basis.

Specifically, the bill will amend the act to provide automatically:

an additional public holiday when New Year's Day falls on a weekend, so that the following Monday is also a public holiday;

a substitute public holiday when Australia Day falls on a weekend;

a substitute public holiday when Christmas Day falls on a weekend; and

an additional public holiday when Boxing Day falls on a weekend.

The bill ensures Victorian public holidays legislation aligns with the Australian Industrial Relations Commission test case.

These amendments are important because the Victorian public holidays legislation plays a significant role in informing the minimum conditions for employee entitlements in many employment awards.

More directly, it provides entitlements for the small number of Victorian employees who are not covered by federal awards, and those employees are found mostly in unincorporated microbusinesses.

In preparation for the changes to this legislation, the government undertook extensive consultation to determine the quantifiable costs and benefits to business, employees, and Victorian taxpayers.

Individual small businesses as well as employer and employee representatives were consulted. The overwhelming reaction to the proposed changes was positive.

Foremost among the benefits to business is a reduction in uncertainty surrounding the treatment of public holidays that fall on a weekend.

These amendments are to be effective from the date of royal assent. However, public holidays already gazetted for 2008 will stand. Non-metropolitan Victorian regions that had not previously received a Melbourne Cup Day holiday will have a Melbourne Cup Day public holiday from this year onwards.

By legislating for 11 public holidays per year for all Victorians, this bill benefits the work-life balance of working Victorians, and provides productivity benefits for the Victorian economy.

I commend this bill to the house.

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

Debate adjourned until Thursday, 28 August.

FAMILY VIOLENCE PROTECTION BILL

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

For Hon. J. M. MADDEN (Minister for Planning), Mr Jennings tabled following statement in

accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Family Violence Protection Bill 2008.

In my opinion, the Family Violence Protection Bill 2008, 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 recognises the following principles:

non-violence is a fundamental social value that must be promoted

family violence is a fundamental violation of human rights and is unacceptable in any form

family violence is not acceptable in any community or culture

in responding to family violence and promoting the safety of persons who have experienced family violence, the justice system should treat the views of victims of family violence with respect

In enacting this bill, the following features of family violence are also recognised:

while anyone can be a victim or perpetrator of family violence, family violence is predominantly committed by men against women, children and other vulnerable persons

children who are exposed to the effects of family violence are particularly vulnerable and exposure to family violence may have a serious impact on children's current and future physical, psychological and emotional wellbeing

family violence

affects the entire community

occurs in all areas of society, regardless of location, socioeconomic and health status, age, culture, gender, sexual identity, ability, ethnicity or religion

family violence extends beyond physical and sexual violence and may involve emotional, psychological or economic abuse

family violence may involve overt or subtle exploitation of power imbalances and may consist of isolated incidents or patterns of abuse over a period of time.

The bill seeks to:

maximise safety for persons who have experienced family violence

reduce and prevent family violence to the greatest extent possible

promote the accountability of perpetrators of family violence for their actions.

The bill achieves this by providing an effective and accessible system of family violence intervention orders and family violence safety notices and creating offences for contraventions of these orders and notices.

Human rights issues

Section 8: right to recognition and equality before the law

Section 8 of the charter establishes a series of equality rights. The right to recognition as a person before the law means that the law must recognise that all people have legal rights. The right of every person to equality before the law and to the equal protection of the law without discrimination means that the government ought not discriminate against any person, and the content of all legislation ought not be discriminatory.

However, formal equality may cause unequal outcomes, so to achieve substantive equality, differences of treatment may be necessary. To this end, section 8(4) of the charter provides that certain differential measures do not constitute discrimination, namely, measures 'taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination'.

Special provisions for children

Clause 70 of the bill engages section 8(3) of the charter in that it discriminates on the basis of age and disability. Nevertheless, the clause falls within the exception provided for in section 8(4) of the charter, as it provides special measures taken to assist or advance persons or groups of persons disadvantaged because of discrimination.

Clause 67 of the bill raises section 8(3) of the charter as it discriminates on the basis of age. Nevertheless, the clause falls within the bounds of section 8(4) because it constitutes a special measure taken to assist or advance children. In addition, the provision is consistent with section 17(2) of the charter.

Clause 45 of the bill engages and limits the right contained in section 8(3) of the charter as, under clause 17(c)(iv), only a child above the age of 14 may make an application for a family violence intervention order.

Importance of the purpose of the limitation

The limitation is designed to enable children who are of an appropriate age and maturity to make their own application to the court where protection is required. The limitation recognises that children under 14 are generally less mature and therefore less capable of making such an application. In this respect, the provision is likely to be protective and consistent with the interests of children and hence consistent with section 17(2) of the charter.

Nature and extent of the limitation

The nature and extent of the limitation is such that children under 14 years of age cannot make applications on their own behalf. Nevertheless, a parent of a child, a police officer or any other person (with a parent's consent) may apply on behalf of a child, and a child may also be included in an application in respect of a parent (clause 47 of the bill). The court can also make family violence intervention orders of its own motion to protect children. Accordingly, the nature and extent of the limitation is confined.

Relationship between the limitation and its purpose

The limitation is rational because it recognises the capabilities of children and maturity levels of children of different ages. The limitation is proportionate because it applies only to children under 14 and in any event, others may apply on behalf of children if necessary.

Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Section 10(c): right not to be subjected to medical treatment without his or her full, free and informed consent

Section 10(c) of the charter protects a person's right not to be subjected to medical treatment unless they have given their full and free informed consent. In this context 'medical treatment' encompasses all forms of medical treatment and medical intervention, including compulsory counselling, examinations and testing.

Clause 130 engages, and limits, section 10(c) of the charter. It requires, on the order of a court, that a person attend counselling (which constitutes a form of medical treatment).

The importance of the purpose of the limitation

The limitation is important as it operates to ensure that a respondent receives treatment that is intended to address their violent behaviour. In this sense, it works to change a respondent's violent behaviour in respect of which a family violence intervention order has been made. Thus, the limitation also operates indirectly to promote the right to life (pursuant to section 9 of the charter) and the right of families and children to protection (under section 17 of the charter).

The nature and extent of the limitation

The extent of the limitation is restricted to requiring a respondent to attend at a particular location for counselling treatment for a fixed period of time.

The relationship between the limitation and its purpose

Given the importance of the purpose, the limitation is both rational and proportionate.

Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Section 12: freedom of movement and Section 14: freedom of religion and Section 21: right to liberty and security

This section of the statement discusses clauses which engage the right to freedom of movement in section 12. Certain clauses also engage the rights in section 14 and section 21 which are also discussed where relevant.

Section 12 of the charter protects various rights in relation to freedom of movement. These rights include the right to move freely within Victoria, the right to choose where to live in

Victoria, and the right to be free to enter and leave Victoria. The rights conferred by section 12 apply only to persons who are 'lawfully' within Victoria.

Compulsion to attend court

Clauses 49, 32(d) and 134 in the bill require a person to attend at court at a particular time and place, either as a party or as a witness. To this extent, they limit a person's freedom of movement.

Importance of the purpose of the limitation

The limitation of the right to freedom of movement is important in these clauses because they all ensure:

the attendance at court and participation of persons who may be significantly affected by the court's decision

the court will have access to the best evidence when making decisions

Nature and extent of the limitation

Under clause 49, a respondent is required to physically appear before a court to give evidence. The limitation is restricted in that it only applies to a respondent to an application for a family violence intervention order.

A person may be summonsed, pursuant to clause 32, to attend court on a particular date in order for a court to hear an application. Non-attendance at court is not an offence; however, the court may make an order in the absence of a person.

The limitation in clause 134 is confined to requiring the author of a report to attend court and give evidence, where ordered to do so by a court.

Relationship between the limitation and its purpose

There is a direct relationship between the limitation provided for in clauses 49, 32 and 132 for the purpose of ensuring the effective operation of the justice system by compelling a respondent to attend court so that the court may make enquires to establish the truth where there are disputed facts or questions of law.

Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Compulsion to attend counselling

In a similar context, both clauses 129 and 130 engage and limit the right to freedom of movement provided for in section 12 of the charter. This is because a respondent is compelled to attend an interview or any subsequent counselling which is ordered, at a particular time and place, and is guilty of an offence if they fail to do so, without reasonable excuse.

The importance of the purpose of the limitation

The limitation is important because it provides for the assessment of the respondent's suitability for counselling and, if appropriate, requirement to attend counselling. Therefore, it

aims to change a respondent's violent behaviour in respect of which a family violence intervention order has been made. The limitation also operates indirectly to promote the right to life (pursuant to section 9 of the charter) and the right of families and children to protection (under section 17 of the charter).

The nature and extent of the limitation

The extent of the limitation is restricted to requiring a respondent to attend an interview and any subsequent counselling sessions. This is not considered to be a significant limitation. Further, the counselling order regime is presently a trial only, and is currently due to sunset two years after the commencement of the bill.

The relationship between the limitation and its purpose

The limitation is both rational and proportionate, given the importance of the purpose and the restricted circumstances in which the limitation operates.

Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Restricting where a person may be and who they may contact

Insofar as a respondent may be excluded from a protected person's residence, or may be prohibited from being within a particular distance of a person or prohibited from approaching a person (by telephone or otherwise) pursuant to clause 81, the right to freedom of movement is engaged and limited.

Further, clauses 26 and 29 engage, and limit, the right to freedom of movement provided for in section 12 of the charter. This is because a person may be prohibited from living in the family home and going within a certain distance of family members, the family home or other places, such as the protected person's workplace.

It is possible that, in certain circumstances, clauses 81(2)(e), 26 and 29 could engage and limit section 14 of the charter (freedom of thought, conscience, religion and belief). This is because the clauses could result in a person being prohibited from being within a specified distance of a particular spiritual leader or religious centre.

The importance of the purpose of the limitation

In each case, the reason for the limitation is highly important, as it operates to protect a protected person from further family violence. In this sense, the limit on the rights is balanced against the protection of families and children and the right to life.

The nature and extent of the limitation

Although a respondent may be excluded from certain areas or places, a respondent does have the right, under clause 109 of the bill, to apply for the variation or revocation of a family violence intervention order if there is a change in circumstances.

The operation of clauses 26 and 29 means that a respondent may be prohibited from living in the family home and going within a certain distance of family members, the family home

or other places. However, a family violence safety notice is of limited duration (up to 72 hours), may only be made after hours (that is, after 5.00 p.m. or before 9.00 a.m. on a weekday, and at any time on a weekend or public holiday), may only be made in circumstances which require an urgent response and are subject to the supervision of the courts.

The relationship between the limitation and its purpose

The relationship between the limitation and its purpose is both rational and proportionate, given that the legitimate objective of the provisions is to protect a protected person and any children of a respondent from a respondent by, in the case of clause 81, imposing conditions which restrict a respondent from coming within a certain distance of a protected person and from accessing certain places, including a protected person's residence.

Clauses 26 and 29 aim to protect a person from further family violence. A respondent's rights are protected by the fact that they may be granted access to particular places that they are prohibited from entering or going near in circumstances where they are accompanied by a police officer and the police officer has made all reasonable inquiries to ensure that this is practical in the circumstances. The limitation balances the rights of a respondent and the rights of a protected person.

Any less restrictive means available

None apparent.

On balance, the limitation in each clause is reasonable and demonstrably justified in a free and democratic society.

Arrest and detention of a person

Several clauses in the bill provide for the arrest and detention of a person.

Clauses 50, 51, 52, 124 and 38 engage and limit section 12 of the charter as a respondent may be arrested and detained or held in custody, or bailed in accordance with the provisions of the Bail Act 1977.

Further, clause 15 engages and limits the right in section 12 of the charter, as it provides for the detention of a person if they fail to comply with a direction given under clause 14.

The importance of the purpose of the limitation

The limitations that these clauses create are important because they are each designed to protect people from family violence prior to a hearing for a family violence intervention order or charges for contraventions of intervention orders or safety notices being determined by the court.

The nature and extent of the limitation

The limitation created by clauses 50, 51 and 52 is confined to empowering a police officer to arrest and detain a respondent, hold them in custody, or bail them in accordance with the provisions of the Bail Act 1977. This may only occur subsequent to the issuing of a warrant by a registrar or magistrate in situations of urgency.

In the case of clause 124, when a police officer believes on reasonable grounds that a person has breached a family violence intervention order, they can arrest and detain that person without a warrant.

The limitation in clause 15 is restricted to situations where a person refuses to comply with a direction under clause 14 and had been informed that a failure to comply with such a direction may result in the person being apprehended and detained. The nature and extent of the limitation is also minimised by the context in which any detention occurs, namely the protection of another person from family violence. This is further enhanced by the fact that the period for which a person may be apprehended and detained is limited to six hours (with a possible extension to 10 hours by a court order).

Under clause 38, when a police officer believes on reasonable grounds that a person has contravened a family violence safety notice, they can arrest and detain that person without a warrant. Arrest for a contravention of a family violence safety notice can only be made if police believe on reasonable grounds that a person has committed an offence under clause 37 of the bill.

The relationship between the limitation and its purpose

The limitation that each of the clauses imposes is rational and proportionate, given that the legitimate objective of the provisions is to protect a person from further family violence incidents, a breach of a family violence safety notice, or a breach of a family violence intervention order. Furthermore, rights to bail remain available to a respondent. Thus, the limitation strikes a fair balance between the rights of a respondent and the rights of a protected person.

Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Clauses 50, 124, 38 and 18 also engage the right to liberty in section 21 of the charter which provides that a person must not be subjected to arbitrary arrest or detention, and must not be deprived of his or her liberty except on grounds and in accordance with procedures established by law. However, none of these clauses limit the right to liberty because the arrest or detention is not arbitrary and the deprivation of liberty is on grounds and in accordance with procedures established by law. In light of these reasonable and carefully supervised limits, the detention, and any court authorised extension, is not arbitrary.

Direction to attend a particular location

Clause 14 engages and limits section 12 of the charter, the right to freedom of movement. This is because a police officer may direct a person to remain or go to and remain at a specified location (while the officer seeks a family violence safety notice, warrant or interim intervention order), where it is reasonable in the circumstances.

The importance of the purpose of the limitation

The limitation is important as it operates to protect a protected person from family violence. In this sense, the limit on the right to freedom of movement is balanced against the protection of families and children and the right to life.

The nature and extent of the limitation

When a police officer intends to make an application for a family violence intervention order or a family violence safety

notice, the officer may direct a person to remain or go to and remain at a particular location. The person must be warned of the consequences of failing to comply with the direction.

The relationship between the limitation and its purpose

The limitation is rational and proportionate to the purpose it seeks to achieve, given that the legitimate objective of the provision is to protect a protected person from family violence. The limitation balances the rights of a respondent and the rights of a protected person.

Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Section 13: privacy

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

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

Disclosure of personal information

Part 4 engages the right to privacy because a person’s personal information, such as the person’s name and address, may be divulged to a court in an application for a family violence intervention order. In particular:

Clause 45 of the bill empowers a police officer to make an application for a family violence intervention order, regardless of whether an affected family member consents to such an application being made.

Clause 85 engages the right as it requires the court to ask a respondent who is excluded from a protected person’s residence to provide a court with an address for service; however, there is no penalty if a respondent fails to give such an address.

In addition:

Clause 156 engages the right because where a court makes a family violence intervention order against a carer, the registrar is required to serve a copy of the order on the carer’s employer or organisation for whom the carer provides the care to the client.

Clause 32 engages the right to privacy because it provides for personal information to be included in family violence safety notices.

Clauses 140, 141, 142 and 143 of the bill all deal with the confidentiality of personal information disclosed in the process of determining whether counselling orders are appropriate and any subsequent counselling sessions. The provisions engage the right to privacy because they

provide for disclosure of personal information in certain limited circumstances.

Clause 207 of the bill obliges certain public sector organisations to disclose information they hold about a respondent to a police officer if that police officer applies for such information in order to serve documents.

While these provisions interfere with a person’s right to privacy, they do so in a manner that is neither unlawful nor arbitrary. This is because there are proper processes through which the information is divulged and the purpose of the interference is in accordance with the provisions, aims and objectives of the charter (particularly section 17, which provides for the protection of children and families).

Further, in relation to part 4, the information is provided to the court only and the bill restricts publication of proceedings in relation to family violence, thus ensuring that a person’s personal details are only divulged to a limited class of recipients. Also, the privacy of any third party is protected, as the bill provides that where a respondent gives an address for service that is not their place of residence or work, any other person may refuse to consent to the use of the address as the address for service of documents under the bill, invalidating the address for service of documents in the process (see clauses 85(4) and 33).

Privacy of the home

Clause 159 of the bill engages the right to privacy of the home because it provides in certain circumstances for a search for firearms, firearms authority, ammunition and weapons without warrant, of a person’s home or former home. Clause 157 engages the right because it allows a premises to be searched for a person without warrant, in certain circumstances. Clause 160 engages the right because it allows for a search of third parties’ premises for firearms or weapons under warrant.

Additionally, the exclusion of a respondent from a protected person’s residence, may have the effect of interfering with a respondent’s right to privacy of the home. Such exclusion is provided for clause 81(2)(b), clause 82, clause 83 (in relation to child respondents) and clause 29 of the bill.

However, in each instance, the right to privacy of the home is not limited as the interference is lawful and not arbitrary. The interference is not arbitrary because it is in accordance with the provisions, aims and objectives of the charter (particularly section 17, which provides for the protection of children and families) and is reasonable in the circumstances (where the intent is to protect a person from further family violence incidents). Further, in relation to the provisions which provide for exclusion of a respondent from a protected person’s residence, any exclusion only occurs if either police officers (in the case of a family violence safety notice) or a court (in respect of a family violence intervention order) consider it is necessary in the circumstances. Further, in respect of child respondents, clause 83 imposes an obligation on a court to be satisfied as to a number of matters (for example, the availability of alternative accommodation) before making an order excluding a child respondent from a residence. Therefore, the interference with the right is neither unlawful nor arbitrary and the right is not limited.

Bodily privacy

The right to privacy provided by section 13 of the charter is also engaged by clause 16 of the bill which allows a police officer to conduct a personal search of a person subject to a direction or detention under the holding powers. The clause is designed to ensure the safety of police officers, third parties and the directed person.

The clause does not, however, limit the right to privacy because any interference is lawful and not arbitrary. It is legitimate that a police officer should be able to search a person or items in their possession where that police officer believes, on reasonable grounds, that the person is carrying dangerous objects or possesses objects that may assist them to escape.

Further, the clause clearly and precisely sets out the circumstances that do not amount to sufficient grounds for conducting a search. Therefore, a belief that searching the person or any vehicle, package or thing in the person's possession would provide evidence that an offence has been, or is being, committed is not by itself sufficient grounds for conducting the search.

Section 15: freedom of expression

Section 15 establishes a number of rights relating to freedom of expression. It protects the right to hold an opinion without interference and the right to seek, receive and impart both information and 'ideas of all kinds' anywhere and in any form. Section 15(3) of the charter, however, contains a specific limitation on the right to freedom of expression. This invites consideration of particular matters that are identified as ones which, when satisfied, specifically justify a restriction on the right.

The application of section 15(3) involves satisfying a number of conditions. First, the relevant restriction proposed on the right to freedom of expression must be 'lawful'. Second, the relevant restriction must be imposed for a particular purpose, either to respect the rights and reputation of other persons, or in order to protect national security, public order, public health, or public morality. Third, the relevant restriction must be 'reasonably necessary' for one of these purposes.

Clause 81(2)(d) (prohibiting contact of protected person), clause 193 (court declaring a person to be a vexatious litigant), clause 166 (limiting publication of identifying information from proceedings) and clause 17 (limiting who a person can contact if they are detained by police under a holding power) are all clauses which engage the right to freedom of expression under section 15(2) of the charter. However, the clauses all constitute lawful restrictions on the right to freedom of expression because each restriction is for the purpose of public order and the effective operation of the justice system. Further, the restriction in clause 166 is also a lawful restriction to respect the rights of other persons, namely, the right of other persons to privacy protected in section 13 of the charter. In addition, clause 17 does not restrict communication with a friend or relative (other than the affected family member) and is therefore consistent with the rights of families in section 17(1) of the charter.

Restriction on children giving evidence

Clause 45 also engages, and limits, section 15(2) of the charter. This is because a child is restricted from giving

evidence in a proceeding in respect of an application for a family violence intervention order.

The importance of the purpose of the limitation

The purpose of the limitation is to protect the best interests of a child, as provided for under section 17(2) of the charter.

The nature and extent of the limitation

The restriction on the giving of evidence only applies to persons under the age of 18. The extent of the limitation is circumscribed because a court is required to consider, when determining whether to allow a child to give evidence, the desirability of protecting children from unnecessary exposure to the court system and the harm that could occur to a child and to family relationships if a child gave evidence.

The relationship between the limitation and its purpose

There is a direct relationship between the limitation and the purpose of protecting the best interests of the child.

Any less restrictive means available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Compulsion to provide information to court

Clauses 129 and 134 engage, and limit, the right to freedom of expression because they provide for a specified person to be required to express information in a report for the court regarding an assessment of eligibility for counselling and may require that person to give evidence at a hearing to which the report relates.

The importance of the purpose of the limitation

The limitations in clauses 129 and 134 are important as they operate to ensure that a court is provided with relevant evidence about the eligibility of a respondent for counselling which is necessary for the court to determine whether it should order a person to attend counselling under clause 130.

The nature and extent of the limitation

In the case of clause 129, the limitation is restricted to requiring a report to be provided to the court, whilst clause 134 requires a person to give evidence in person to the court.

The relationship between the limitation and its purpose

Given the importance of the purpose, the limitation is both rational and proportionate.

Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Section 17: protection of families and children

Section 17 provides for the protection of families and children. The charter provides that families must be protected

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

Section 20: property rights

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

Division 5 of part 4 governs the conditions that may be made in respect of family violence intervention orders. Several clauses in this part engage the right to property, in particular:

Clause 81(2)(b) enables a family violence intervention order to include a condition which excludes a respondent from a protected person's residence.

Clause 86 (and clause 81(2)(c)) empowers a court to make conditions in relation to the personal property of parties.

Various provisions in part 7, which deal with the search and seizure of firearms and weapons, also engage the right to property contained in section 20 of the charter.

However, in each instance, any deprivation of property is not arbitrary because it has a legitimate objective, the protection of a protected person as well as other family members. Further, clause 88 explicitly states that the inclusion of a condition relating to personal property in a family violence intervention order does not affect any underlying rights a protected person or a respondent may have in relation to the ownership of the property. Therefore, to the extent that these clauses allow for the deprivation of property, the deprivation is in accordance with law and there is no limitation on the right.

Section 24: fair hearing

Section 24 guarantees the right to a fair and public hearing. The right to a fair hearing applies in both civil and criminal proceedings and in courts and tribunals. The requirement for a fair hearing applies to all stages in proceedings and applies in relation to proceedings in any Victorian court or tribunal.

The purpose of the right to a fair hearing is to ensure the proper administration of justice. This right is concerned with procedural fairness (that is, the right of a party to be heard and to respond to any allegations made against them, and the requirement that the court or tribunal be unbiased, independent and impartial) rather than the substantive fairness of a decision or judgement of a court or tribunal (that is, the merits of the decision).

Rules of evidence

This right is engaged, but not limited, by clause 65 which provides that the court is not bound by rules of evidence in proceedings for a family violence intervention order. Clause 65 does not apply to proceedings for contraventions of

family violence intervention orders, which are criminal in nature.

The rule in clause 65 operates in a context in which there are often no witnesses to family violence and the content of statements made by a victim to family, friends or doctors may be the only available evidence. A court, even if not strictly bound by the rules of evidence, must act judicially and impartially. Clause 65 specifies that in determining what evidence to admit, a court must be satisfied that it is just and equitable to admit such evidence, and that the probative value of the evidence is not substantially outweighed by the danger that the evidence might be unfairly prejudicial to a party, or misleading or confusing. Thus, while the right is engaged, it is not limited, because a person will still have the proceeding decided by a competent, independent and impartial court after a fair and public hearing.

A further safeguard is provided for in clause 66 which states that where evidence is admitted in an affidavit or sworn statement, a party to proceedings may, with leave of the court, cross-examine a person who gives evidence by way of affidavit or written statement. This power is in addition to a party's general right to cross-examine witnesses.

Accessibility of the court and court processes

Clause 69 (and clause 269 in relation to the Victorian Civil and Administrative Tribunal) provide for alternative arrangements for giving evidence and conducting proceedings. These provisions engage, but do not limit the right to a fair hearing because a person will still have the proceeding decided by a competent, independent and impartial court after a fair and public hearing. Where such alternative arrangements are taken in relation to children, they are in their best interests and therefore work to promote section 17 of the charter, which recognises the special right of children to protection.

Vexatious litigants

Clause 193 provides that a court may, after hearing or giving a person an opportunity to be heard, make an order declaring a person a vexatious litigant which means that person may not make an application for a family violence intervention order without leave of the court. Clause 196 provides that a person who is declared to be a vexatious litigant may appeal against the order only with leave of the court. Clause 197 provides that a person may apply to vary, set aside or revoke the order only with the leave of a magistrate of the court.

The vexatious litigant provisions engage but do not limit the right to a fair hearing because the provisions do not restrict the person's right to a fair hearing before the court in relation to whether they are to be declared a vexatious litigant and there are a number of safeguards to ensure that the person is guaranteed a fair hearing in relation to challenging the order. The restriction on the person making applications for a family violence intervention order does not engage the right because at that stage a person is not a party to civil proceedings in respect of the family violence intervention order. The provisions preserve the right of a person to seek leave to apply for a family violence intervention and the person will be able to do so where there is no abuse of process. This additional requirement for vexatious litigants exists to protect people from unsubstantiated claims and to ensure the effective operation of the justice system.

A public hearing

Clause 166 of the bill restricts the reporting of family violence intervention order proceedings and clause 68 enables a court to close proceedings to the public. Clauses 69 and 269 enable a court or Victorian Civil and Administrative Tribunal to admit evidence via closed circuit television in courts and the tribunal respectively. These clauses engage the right to a fair hearing which includes the right to a public hearing.

However, sections 24(2) and (3) of the charter enable a court or tribunal to exclude persons or the general public from a hearing and to prohibit the publication of judgements or decisions made by a court. Therefore, these provisions fall within a lawful restriction on the right to a public hearing and do not limit the right.

Right to be heard

It may be argued that clause 173 engages the right to a fair hearing because it enables the Children's Court to vary or revoke a family violence intervention order of its own motion. However, there is no limitation on the right to a fair hearing because under clause 173(3), the court may only act on its own motion if notice is given of the court's intention and parties have the opportunity to be heard.

Applications for interim orders

Clause 54 of the bill engages and limits section 24 of the charter. This is because an application for an interim order may be determined by a court whether or not a respondent has been given notice of the application and whether or not the respondent is present at the time an order is granted.

Importance of the purpose of the limitation

The purpose of the limitation is to ensure the safety of an affected family member from family violence (or to preserve property or protect a child in those circumstances) as swiftly as possible. This is an important purpose in the context of family violence, and the limitation promotes the right to life (section 9 of the charter) which arguably imposes a positive obligation on public authorities, including Victoria Police, to protect the lives of Victorians in certain circumstances.

Nature and extent of the limitation

The nature and extent of the limitation is confined because the duration of an interim order is limited. The order ceases to have effect as soon as the application is finally determined, which is likely to occur within a short period of time.

Further, there are safeguards in place. These include that an applicant must arrange for an application to be served on a respondent as soon as practicable after an order is made (clause 48); a court cannot make an interim order unless it is supported by oral or affidavit evidence (clause 55) (although it can if the application is made by telephone, fax or other electronic communication); and if a respondent is not present, a court must give them a written explanation of the relevant matters set out in the order (clause 57(2)). In addition, the bill provides scope for an application to be made for the variation or revocation of an interim family violence intervention order (clause 100). Unless the interim order is preceded by a family violence safety notice (the terms of which may apply until the interim order is served), a respondent will not be criminally liable for a breach of an interim order until it is served.

Relationship between the limitation and its purpose

Given the importance of the context in which such orders are made, and the safeguards referred to above, the limitation is rational and proportionate to its purpose.

Any less restrictive means reasonably available

None apparent.

On balance, the limitation is reasonable and demonstrably justified in a free and democratic society.

Section 25(1): the right to be presumed innocent

Section 25(1) protects the presumption of innocence in criminal proceedings. The presumption of innocence is a well-recognised civil and political right and a fundamental principle of the common law. Section 25(1) covers persons charged with an offence whether it is indictable or summary. It requires that the prosecution bears the onus of proving that the accused committed the offence and must prove all elements of a criminal offence.

Provisions that merely place an evidential burden on a defendant (that is, the burden of showing that there is sufficient evidence to raise an issue) with respect to any available exception or defence do not generally limit the right to be presumed innocent because the prosecution still bears the legal burden of disproving that matter beyond reasonable doubt.

Clauses 129 and 130 of the bill engage, but do not limit, the right to be presumed innocent pursuant to section 25(1) of the charter. Clauses 129(5) and 130(4) provide that a defendant who, without reasonable excuse, fails to attend an interview or subsequent counselling (as applicable) is guilty of an offence. This places an evidential burden on a respondent with respect to raising such an exception or defence, and the clauses are therefore compatible with the presumption of innocence.

Conclusion

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

JUSTIN MADDEN, MP
Minister for Planning

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

Family violence is a scourge on our community. Every week in Victoria, hundreds of victims turn to the police or the

courts as they respond to violence in their own homes. Even more people are victims of family violence but do not report it to police. Family violence is committed by partners, relatives and other family members — those who are supposed to love and care rather than abuse and dominate.

It was in recognition of this fact that the Crimes (Family Violence) Act 1987 was enacted — almost 21 years ago. That act established a civil system of intervention orders to protect victims from further incidents of family violence. Over the last two decades, many Victorians have relied on this system for protection from abusers. However, it is time to review the protection we offer, particularly to women and children, from violent behaviour that we should not tolerate anywhere — let alone or especially in the home.

In November 2002, the government referred the Crimes (Family Violence) Act to the Victorian Law Reform Commission (VLRC) for review. In March 2006, the VLRC released its final report on this legislation, with a range of recommendations for legislative, procedural and cultural change.

In its report, the VLRC found that:

historically, the legal response to family violence has been inadequate because its particular dynamics and effects have not been well understood. Many people continue to be unaware of the specific characteristics of family violence. It is often seen as covering only physical assault; it may be regarded as something which occurs rarely or as behaviour which is a private family matter and not the business of others.

The Family Violence Protection Bill will replace the Crimes (Family Violence) Act for family violence intervention orders. This bill makes it crystal clear that family violence is not just a private issue — it is a public problem and requires a strong legislative response.

I will outline some of the key features of the bill and explain how these features will improve the civil intervention order system for those experiencing violence at the hands of family members.

Features of the bill

Preamble and purposes

A new bill addressing family violence must send a strong message about what we as a government and community know and believe about family violence.

This bill begins with a preamble that sets out the features of family violence that are recognised by this Parliament. It makes the principles underpinning this legislation crystal clear. Family violence should not be tolerated.

This preamble will ensure that those using, applying or subject to this legislation have a shared understanding of what family violence is, and why it must be prevented. It will promote consistency in the justice system and guide training and implementation initiatives.

The bill has three primary purposes:

to maximise safety for children and adults who have experienced family violence;

to prevent and reduce family violence to the greatest extent possible;

to promote the accountability of perpetrators of family violence for their actions.

Definition of family violence

The bill includes a comprehensive definition of family violence. The definition captures the full range of behaviours that a person subject to family violence might endure, including physical, sexual, economic and emotional abuse. The bill provides examples of this type of behaviour to show that family violence is a broad concept. A comprehensive definition of family violence will mean the dynamics and patterns of family violence will be better recognised by the justice system and lead to better protection.

Definition of family member

A family violence intervention order can only be sought against a family member, so it is important to get the definition of 'family member' right. The majority of family relationships are covered by the existing legislation, but the broad concept of 'family' in our contemporary society meant the definition of family member needed to be expanded. Therefore, the bill includes the relationships covered by the existing legislation (such as husbands and wives, partners and relatives), along with some additions, including, for example, a relative according to Aboriginal or Torres Strait Islander tradition or contemporary social practice.

The bill also provides protection for a victim who is in a 'family-like relationship' with the alleged perpetrator. This category is designed to cover those relationships which may not be strictly family but which are so close that the dynamics of the relationship are family-like and any violence in the relationship approximates the features of family violence. This includes carers of persons with a disability who are in a 'family-like relationship' with their client.

'Associates' of applicants and respondents are also deemed to be family members to ensure that third parties connected to the family do not perpetrate, or become victims of, family violence.

These changes will ensure that the family violence intervention order system is available and accessible to those living in contemporary family situations.

Holding powers

The bill essentially replicates the holding powers provisions in the Crimes (Family Violence) Act with a few key changes to allow them to be used in conjunction with family violence safety notices, interim variations to existing intervention orders and to give police new search powers.

After-hours protection

A key issue identified in the VLRC report concerned access to protection outside of court hours. In response, the bill establishes a system of police-issued family violence safety notices for use outside of court hours to provide another tool to police to ensure that immediate protection is available when police respond to an incident.

The notice system will be trialled and independently evaluated to determine whether it is providing an effective

response to emergency family violence situations after hours. As a trial, it will sunset after two years unless the repeal provision is itself repealed. The Chief Commissioner of Police and the Chief Magistrate will also be required to provide an annual report to the Attorney-General on the operation of the family violence safety notice system.

The bill also provides a court-based system of interim orders and warrants. Police will be able to apply to the court via telephone or fax for an interim order or for a warrant to arrest the respondent after hours. The bill also provides that electronic communication can be used where available.

Family violence intervention orders

Of course, the centrepiece of the Family Violence Protection Bill is an enhanced system of family violence intervention orders.

Grounds

There are two types of family violence intervention orders — interim orders and final orders.

Interim intervention orders are designed to provide short-term, speedy protection to victims of family violence until the court can hear all the evidence and make a final determination. An interim intervention order can be made:

- to ensure the safety of the affected family member
- to preserve the affected family member's property
- to protect a child who has been subjected to family violence committed by the respondent.

Interim intervention orders can be made without the respondent present but are only effective once they are served on the respondent. In appropriate circumstances, police can use their holding powers to assist with serving the respondent.

Final orders are designed to provide longer-term protection to victims of family violence. Such an order can be made if the court is satisfied, on the balance of probabilities, that the respondent has committed family violence against the affected family member and is likely to do so again. Like interim orders, they can be made without the respondent present, but only if the respondent has been served with the application and has notice of the hearing. The final order is only effective once it is served on the respondent. Final orders can be of any duration.

Giving evidence in court

The VLRC report found that giving evidence about family violence in court can be one of the most difficult and traumatic aspects for victims accessing the existing intervention order system.

To ameliorate this impact, the bill includes various changes to how evidence is given and considered in court. For example, the bill provides that alternative ways of giving evidence will be available, such as the use of closed circuit television and permitting support persons to be beside the witness.

The VLRC also found that the operation of the usual rules of evidence, especially hearsay, can put unnecessary barriers in the way of a court hearing and determining a matter. Consequently, the bill provides that a court can hear any

reliable and probative evidence that it sees fit, but not admit evidence it considers unfairly prejudicial. The court will still be bound to apply the protective rules of evidence such as those relating to unfair or harassing questioning and ensuring the competency of all witnesses.

The bill prohibits a respondent directly cross-examining a protected witness, such as the victim, children and others the court declares protected witnesses, unless that witness is an adult and consents to being cross-examined by the respondent and the court decides it would not have a harmful impact upon the protected witness. This prohibition is designed to protect victims and other vulnerable persons, who can find direct questioning by the respondent both intimidating and traumatic.

If the respondent is prevented from directly cross-examining a protected witness and still wishes to cross-examine the witness, they must arrange legal representation to do so. Where the respondent does not arrange representation, the court must order Victoria Legal Aid to provide representation for the purpose of cross-examination. Where this occurs, Victoria Legal Aid must also provide representation to the applicant, if it is not a police application. This is to ensure that a respondent will not be given an unfair advantage over an applicant by being provided with legal representation. In practice, Victoria Legal Aid will not represent both parties, because this would involve a conflict of interest. Instead, Victoria Legal Aid would fund another legal representative to represent one or both of the parties.

Children in the court system

The bill recognises that, wherever possible, children should be protected from exposure to the court system. The bill provides that children should not be present in court or give evidence unless the court gives leave.

The bill also recognises that, if a person applies for an intervention order on behalf of a child, it may not be appropriate for that child to have an active role in the court proceedings. While the child, as a party, can be legally represented, this will only be done with the leave of the court. The court, in making such a decision, must consider the desirability of protecting children from unnecessary exposure to the court system and the harm that could occur to the child and family relationships if the child is directly represented in the proceedings. No other party can apply for a child to be represented. Such a step must be initiated and allowed by the court.

Exclusion conditions

The bill makes a number of changes to the existing law to enable victims of family violence, who wish to, to remain in the home and have the violent person excluded. The VLRC saw this as a very important change, finding that:

various Australian studies have found that women and children are severely economically, educationally and socially disadvantaged if they need to leave their homes due to family violence, and that there is a high risk they will become homeless.

The bill requires the court to consider whether an adult respondent should be excluded from the victim's residence, having regard to a number of factors which emphasise the desirability of keeping the victim and the victim's children within their network of social supports.

The court will initiate consideration of whether a violent adult respondent should remain in the home. This approach is intended to shield the victim from further victimisation if the respondent perceives that the victim initiated the exclusion.

However, the bill takes a different approach where the respondent is a child, in order to make sure that a child will not be excluded from the family home without appropriate supports. The court must establish that there are appropriate support and housing options for a child respondent before the court can exclude a child respondent from the family home. For an Aboriginal child respondent, the court must also consider a range of matters around cultural connection for that child.

Child contact

A difficult issue identified by the VLRC is how child contact arrangements should be made where there is a family violence intervention order in place protecting one parent from another. The VLRC was concerned that the process of arranging child contact can lead to further harassment of the protected person by the respondent to the order.

The bill provides that the court must prohibit any contact between a respondent and child if it has safety concerns. However, if the court is satisfied that safety would not be jeopardised, the court may allow the parties to make arrangements about contact with children in a manner that will minimise any risk to the protected person and the child's safety. The arrangements must be recorded in writing. Arrangements about who a child lives, spends time or communicates with will not be made conditions of a family violence intervention order. Such matters will continue to be made by the parties (if the court considers this is safe) by agreement or under the commonwealth's Family Law Act.

Firearms and weapons

The intersection of the Crimes (Family Violence) Act and the Firearms Act 1996 has always been complex. This bill seeks to clarify the interaction of the two regimes.

The bill makes it clear that, just as under the Crimes (Family Violence) Act, if a firearms licence, permit or authority is expressly revoked in an intervention order, that decision cannot be appealed or reviewed under the Firearms Act. This is because the magistrate, who has heard all the circumstances of the family violence incident, has determined that a firearms licence, permit or authority is no longer appropriate. However, the respondent is entitled to appeal the decision to the County Court (or if the President of the Children's Court, who is a County Court judge, made the decision, the Supreme Court).

If a magistrate makes a final intervention order but makes no order as to firearms or firearms licences, permits or authorities, the respondent becomes a prohibited person under the Firearms Act and cannot possess, use or carry a firearm. However, the respondent can apply to the court to be deemed not a prohibited person or be permitted to retain firearms and hold a firearms licence, permit or authority under section 189 of the Firearms Act.

To clarify the existing law, the bill amends the definition of 'prohibited person' in the Firearms Act to create two categories of 'prohibited person' by virtue of the making of an intervention order. It will now be clear in both the family

violence legislation and the Firearms Act which category of prohibited person can seek review under the Firearms Act.

The bill also extends the regime of search, seizure and forfeiture of firearms to prohibited weapons and certain controlled weapons like spear guns, batons and cudgels listed in the Control of Weapons Regulations.

Search and seizure

The bill gives police a power to enter and search without warrant for firearms, defined weapons, ammunition and firearms licences, permits and authorities. Before doing so, the police officer must be satisfied that there are grounds for issuing a family violence safety notice or making an intervention order and also have reasonable grounds to suspect or is aware that the person is in possession of these things. Searches without warrant are limited to the current or past residence of the person or the place where the incident of family violence occurred.

Despite this wide search power, the police will still need to obtain a warrant to search for firearms, defined weapons, ammunition and firearms licences, permits and authorities in other premises, for example the homes of neighbours or extended family.

The bill also creates a new power for police to direct, in certain defined circumstances, the surrender of any firearms, defined weapons, ammunition and firearms licences, permits and authorities that the police are aware, or suspect on reasonable grounds, are in the person's possession.

Vexatious litigants

The VLRC found that in some situations, the family violence intervention order system can be used against victims to further harass and control them.

The bill therefore provides a fair and accessible system for protecting victims from vexatious litigants in family violence proceedings. If a person is declared a vexatious litigant by either the Chief Magistrate, a Deputy Chief Magistrate or the President of the Children's Court, then that person will not be able to commence any proceedings under the act unless they have first obtained leave from a magistrate. This will ensure that unmeritorious applications brought by a vexatious litigant can be assessed by magistrates before being allowed to proceed. A protected person will only need to attend court if the application appears on its face to have merit and not be an abuse of process.

Section 85 of the Constitution Act 1975

I wish to make a statement under section 85(5) of the Constitution Act 1975 on the reasons for altering or varying that section by this bill.

Clause 208 of the bill provides that it is the intention of clauses 118 and 120 of the bill to alter or vary section 85 of the Constitution Act.

Clause 118 provides that if the applicant for a family violence intervention order was not the protected person and that applicant is appealing a decision, then the appeal cannot proceed unless the protected person or those with responsibility for the protected person (such as a parent or guardian) consents to the appeal. The reason for varying the Supreme Court's jurisdiction in this manner is to ensure that a

protected person or a person with the responsibility for a protected person can decide what matters are appealed on their behalf or on behalf of those for whom they have responsibility.

Clause 120 provides that there is no further appeal from an appeal decision of the Supreme Court. This is appropriate as the rights of the parties in such cases have been tested in a hearing by the President of the Children's Court and the Supreme Court and further appeals could result in a proliferation of proceedings. This may result in the attendance of those subject to family violence at numerous traumatic court hearings. If new facts and circumstances emerge, then the respondent for an order may seek a variation or revocation of the family violence intervention order from the Magistrates' Court.

Tenancy provisions

The bill makes a range of changes to the Residential Tenancies Act 1997 to ensure that there are mechanisms to align residential tenancies with the family violence intervention order system. These amendments may enable victims to remain in their home where they wish to and therefore reduce the risk of homelessness, poverty and social dislocation following family violence.

Stalking intervention orders

The Crimes (Family Violence) Act provides for a system of family violence intervention orders and stalking intervention orders. This bill deals solely with family violence intervention orders as recommended by the VLRC.

This bill repeals the Crimes (Family Violence) Act but adds a provision in section 21A of the Crimes Act 1958 to the effect that, despite the repeal, the Crimes (Family Violence) Act continues to apply to stalking intervention orders. It is my intention to bring a stalking intervention order bill before Parliament this year to preserve the current system of stalking intervention orders. This will be an interim measure whilst the Department of Justice conducts a comprehensive review of the intervention order system for non-family members. The review will look at who should be able to obtain an intervention order against whom and in what circumstances. It will also examine the extent to which some matters currently subject to applications for a stalking intervention order could be resolved in conjunction with, or instead by, an alternative dispute resolution service.

A key part of the review will also involve examining the issue of violence in relationships between a person with a disability and their carer in circumstances where the relationship is not family-like and so falls outside the jurisdiction of the Family Violence Protection Bill.

Conclusion

I have highlighted some of the most important elements of the bill.

In conclusion, I would like to thank the Victorian Law Reform Commission for its report that underpins many of the changes in this bill. I would also like to thank those organisations which have advocated tirelessly for the rights of those experiencing family violence to be safe in their own homes by demanding something better from the justice system.

But most of all I would like to thank all those victims who have come forward and shared their very intimate and personal experiences in the hope that the justice system would be improved for those who come after them. It is the government's firm commitment that this new legislation will be one part of a process to improve the justice system's response to family violence in Victoria.

I commend the bill to the house.

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

Debate adjourned until Thursday, 28 August.

VICTORIA LAW FOUNDATION BILL

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Victoria Law Foundation Bill 2008.

In my opinion, the Victoria Law Foundation Bill 2008, 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 re-enacts the Victoria Law Foundation Act 1978 to modernise and refresh the functions and governance structure of the Victoria Law Foundation (the foundation). The foundation currently provides a range of services to the Victorian community to improve its understanding of the law and access to the justice system. This will continue under the bill, with an increased focus on providing community legal education and information on the law and the justice system.

The bill will reduce the members of the foundation from a maximum of 16 to a maximum of 8. The bill will also change the selection criteria for membership from positions representative of certain interest groups, to appointments based on a range of skills relevant to managing a small statutory body effectively. Members of the foundation will be appointed by the Attorney-General for a period of three years based on these selection criteria. Members of the foundation will only be able to be dismissed by the Attorney-General for specific reasons, such as insolvency or failure to attend a number of board meetings. The bill also contains provisions with respect to conduct of meetings, conflict of interest, and employment of staff.

Human rights issues

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

The bill does not raise any human rights issues.

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

As the bill does not raise any human rights issues, it does not limit any human right and therefore it is not necessary to consider section 7(2) of the charter.

Conclusion

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

Justin Madden MLC
Minister for Planning

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

The Victoria Law Foundation (VLF) was established in 1967 to improve access to justice. Over its 40 years it has played an important role in making the justice system more accessible to the Victorian community. The VLF provides grants to community legal centres for community legal education programs, publishes plain English legal resources, coordinates events such as Law Week, provides resources for law libraries and conducts other activities to educate the community and the legal profession about the law.

Since 1967, the objectives of the VLF have not been reviewed and a number of other organisations have been established in Victoria whose functions overlap with those of the VLF.

Similarly, the governance structure of the VLF has not been reviewed since its inception. Modern policy on appointments to government bodies has shifted from giving places around the board table to representatives of interest groups to a more open recruitment approach that seeks people with the right skill sets to drive the performance of statutory bodies.

Therefore in January 2007, the Department of Justice commissioned an independent review of the objectives and organisational structure of the VLF in order to refresh and modernise the organisation. This review consulted extensively with the VLF and other stakeholders and reported in July 2007 with a number of recommendations to improve the objectives and organisational structure of the VLF.

The report recommended legislative amendments which appear in this bill. These included that:

the function of the VLF be focused on improving information provision on the law and access to the law

up to 8 members of the VLF be appointed based on skills and experience required to direct the business of the VLF

the members should be appointed, after consultation with the Chief Justice, Law Institute of Victoria and the Victorian Bar.

The bill also reflects the government's policy to modernise all acts over 10 years old. While in many other respects the bill replicates provisions in the current act, a number of modern updates have also been included, such as:

the replacement of the statutory president with an appointed chairperson

an update to the financial powers of the VLF to be consistent with the Borrowing and Investment Powers Act 1987

the inclusion of a conflict of interest provision that requires members of the VLF to declare if they have a personal interest in any matter being decided by the VLF, for example an application for grant funding.

I would like to take this opportunity to express my thanks to the members of the current board of the VLF who have contributed to the development of this legislation and have provided their expertise and time to the VLF over many years. I particularly extend my thanks to the chief justice who has served as an outstanding president of the VLF for many years.

I commend the bill to the house.

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

Debate adjourned until Thursday, 28 August.

ADJOURNMENT

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

That the house do now adjourn.

Ambulance services: Stawell

Mr VOGELS (Western Victoria) — I raise a matter for the attention of the Minister for Health. The matter concerns the Stawell ambulance service. In the May 2007 budget \$360 000 was allocated to build housing facilities for Stawell ambulances. Here we are, 18 months later, and the two ambulances based at Stawell are still sitting unprotected in the elements, so in the hot summer months they are sitting out in temperatures that climb into the mid-50s Celsius, while in winter the paramedics need to scrape ice off the windscreens before they can attend emergencies. Obviously these ambulances need to be locked up securely to protect expensive equipment and for safety reasons.

In the May budget this year 100 new paramedics were promised for rural Victoria; of these five were promised

to Stawell, five to Ararat and one to Horsham in the Grampians region. To date, none of these promises have been honoured.

The action I seek from the minister is to immediately intervene and instruct Rural Ambulance Victoria to get on with the job of delivering the commitments made by the Brumby government over two budgets so that Stawell, including the surrounding district, truly is a better place to live for the overworked paramedics.

I conclude by saying that leaving ambulances parked outside in the elements is an accident waiting to happen. Ambulances are a vital part of the system in times of emergency, and at present the ambulances at Stawell are sitting ducks for vandalism. Ambulance paramedics deserve to jump into vehicles that have been securely stored before they take off in them on the way to an emergency.

Warrnambool: football and netball facilities

Ms TIERNEY (Western Victoria) — I raise a matter for the attention of the Minister for Sport, Recreation and Youth Affairs. The matter concerns the latest round of country football and netball programs. We are all fairly familiar with this program, which assists local communities in coming together, being active and playing sport. The program provides up to \$60 000 for football, netball and umpire facilities, for shared community and social facilities and for multi-use facilities. Lighting is also part of the program.

I have become aware that the Warrnambool City Council has applied on behalf of the Old Collegians Football Netball Club for funding for a project to develop a netball change room amenities building and to provide new netball court lighting at Davidson Oval. Something similar to this has happened in terms of the Old Collegians football club, so there are amenities there that are up to date and well used by the football team. I believe it is only fitting that the same sort of regard is shown in terms of the women who are in the netball teams at Warrnambool and who play for the Old Collegians. It is a matter of modernising the area and making sure we have a standard that is appropriate for women's sport in country Victoria, and in particular regional cities such as Warrnambool.

This project will ensure that the overall quality of facilities provided to female sportspeople is equivalent to those provided to male sporting participants at Davidson Oval. I ask that the minister support this application for funding from the Warrnambool City Council for this very worthwhile project.

Drought: rate subsidy

Ms LOVELL (Northern Victoria) — I raise a matter for the attention of the Premier in his role as the chairman of the drought recovery task force. The matter concerns the state government's decision to scrap the municipal rate subsidy for drought-affected farmers. My request of the Premier is that the state government reinstate the critical municipal rate subsidy which, until June 2008, has provided a subsidy of 50 per cent of municipal rate charges for Victorian farmers receiving exceptional circumstances (EC) support since it was introduced in 2005. There has been widespread public outcry from farmers and local shire councils in northern Victoria since the state government quietly pulled funding for this valuable support measure in June without any consultation or prior notification.

I am informed that councils were not notified about the government's decision to cease funding until well into July. What is even more bizarre is that the funding was stopped months before the expected expiry of the federal government's EC assistance on 30 September. We now know that EC assistance has been extended across much of Victoria, including the regions of central Victoria north, central Victoria south, the Mallee-Northern Wimmera, north-eastern Victoria and northern Victoria, until 31 March 2009. Gannawarra Shire Council, Moira Shire Council and the Rural City of Wangaratta are just a few of the EC-declared municipalities which have spoken out against the state government's decision to pull this much-needed funding. More than 100 farmers in the Rural City of Wangaratta have received the rate subsidy, which on average provided them with a \$200 discount on their rates per quarter. In Moira shire the number of farming families assisted by the subsidy was probably into the hundreds, with more than 800 families in Moira receiving drought payments.

Unfortunately farmers have missed out on the subsidy for the current July to September quarter, which would have come as a shock to many families on tight budgets. Wangaratta council has informed me that farmers are under so much financial strain that even with the subsidy some families still could not pay their rates.

The drought continues to impact on northern Victoria, and farming families struggling to survive need all the assistance we can give them. The rate subsidy is critical to assisting farming families to survive what is probably the worst drought in living memory and also to ensure that we will have a viable farming community into the future. Obviously there is enormous need for the subsidy in Victoria's drought-affected municipalities.

Given that EC assistance has been extended across northern Victoria, I call on the Premier to reinstate funding for the municipal rates subsidy for EC-declared farmers.

Intralot: agency costs

Ms HARTLAND (Western Metropolitan) — My adjournment matter tonight is for the Minister for Consumer Affairs. I raise it on behalf of the owners of the Seddon Newsagency, where we buy our newspapers most days.

Raj and AJ run a typical small business. Like many newsagencies they also sell Tattsлото tickets, scratchies and so on. Raj and AJ have told me that the introduction of Intralot to the lottery system has caused a number of problems for them. They have to pay \$10 000, plus GST, for their licence for five years. This is on top of the \$10 000 they pay for the Tattersall's licence. They also have two machines on their front counters, and they pay terminal fees for both of them. The terminal fee for the Intralot machine is \$30 per week, and this machine is very slow. They also pay a courier fee of \$25 a week, whether they need materials couriered or not. This sounds to me like a bit of a rip-off. This is on top of the \$30 a month they pay for the Tatts materials. Why one courier is more expensive than another is beyond me. AJ and Raj say they are out of pocket because the machines are so slow and the customers do not like the new Intralot products. Intralot has introduced new gaming products which they have to explain to customers. They feel they should be paid to advertise the product, not the other way around.

I do not particularly care if the gaming companies fail, but I do care about what happens to small business people. Raj and AJ felt they had no choice but to pay the \$10 000 licence fee. If they did not, someone else in the area would get the licence and they would lose their business. They felt they were pressured into buying a completely untested product, and, now they know how bad the product is, there is no getting out of the contract. On behalf of newsagencies and small businesses, I request that the minister advocate to Intralot to have the licence and other charges substantially reduced.

Police: Bayside station

Mr THORNLEY (Southern Metropolitan) — My adjournment matter is for the Minister for Police and Emergency Services, Mr Cameron. The minister would be aware that in the last election our government promised, as part of its platform, eight new police stations across the state — to continue our excellent

investment in those facilities and the many additional police that now staff them.

One of those new stations was to be the 24-hour station based in Sandringham, called the Bayside station. I know it has been costed at \$13 million, will be built on the old Abbott Street courthouse site in Sandringham and will bring all the policing units currently scattered across the Bayside area together into one location, which will add to both the efficiency and the effectiveness of the policing resources there.

I realise crime in the Bayside area has already dropped substantially — about 32 per cent since 2001 — but I do not believe we should rest on our laurels. This is an important facility. I believe the announcement was greeted very warmly by the community, who saw that that new facility would add further to that record of public safety we have proudly established in the last few years, and that it would be a welcome addition to the 800 new police who have been employed under this government and the 150 new stations around the state.

I believe the people of Bayside have that promise, and over the course of the term of this government we should be delivering against that promise. I ask the minister if he could bring forward that delivery as soon as possible, so that we can have that excellent facility built and delivered and that promise fulfilled.

Roads: maintenance

Mrs PEULICH (South Eastern Metropolitan) — I certainly hope that on this occasion — when I stand up to raise a matter for the Minister for Roads and Ports, my favourite minister, for whose attention I usually have something to raise at these opportunities — the webcast from which we are all now benefiting, as is the community, actually matches the photograph to the member! I understand that previously, whilst I was in the chair, it was Mr Vogels's photograph that was overlaid on my voice. I believe this will be corrected, and I believe that that was just a one-off error.

The matter I wish to raise for the Minister for Roads and Ports is the state of our roads and the need to ensure that adequate maintenance funds are available for the upkeep of existing roads. I have raised previously the issue of building new roads or the bungling of road reconstruction, but now I raise the need to actually ensure that there are sufficient funds to maintain our roads — certainly across the south-east, which is a huge growth area — carrying increasing large volumes of traffic. In particular I am referring to the sealing of shoulders, for example along Old Dandenong Road,

which is now being forced to carry very large volumes of traffic, with trucks attempting to merge into —.

The DEPUTY PRESIDENT — Order! I wish to clarify for the member that from my perspective the adjournment item ought to address a specific matter — not maintenance on all roads or indeed maintenance on all shoulders of roads. I really need, for the sake of the adjournment, to have the member focus on particular roads or a particular issue so that the minister is able to respond.

Mrs PEULICH — The particular issue that I am attempting to raise is the need to ensure sufficient funding for the building of shoulders as part of the maintenance program for our road system. I am talking about shoulders on Wells Road in Aspendale Gardens, shoulders on Old Dandenong Road —

The DEPUTY PRESIDENT — Order!
Mrs Peulich may continue, but if I were raising the matter, I would certainly rely on the example as part of the adjournment item because that will be more helpful to the minister in a response.

Mrs PEULICH — I appreciate your advice, Deputy President. The other day, for example, I drove along Wells Road, which is really carrying the volume of traffic that is intended to be carried by a non-existent road called the Mornington Peninsula Freeway extension, which should have been built but is not being built.

Wells Road is carrying very significant volumes of traffic. We have unsealed shoulders being used by large trucks coming out of the industrial sections of Wells Road such as the National Foods site. We also have buses, and the potholes are significant; not only are they a safety concern, but there is also wear and tear on the vehicles and there is wear and tear on the road and inconvenience and danger to pedestrians.

The shoulders on Old Dandenong Road stretching between Kingston Road and the South Road extension are a danger because the road carries very large loads of traffic with trucks from tips, and that is causing significant concern. I refer also to Cheltenham Road between Boundary Road and the Dingley roundabout, which needs its shoulder sealed to accommodate the higher volumes of traffic. I ask the minister to make sure that happens as soon as possible.

Rail: freight summit

Ms PENNICUIK (Southern Metropolitan) — My adjournment matter is for the attention of the Premier. On 14 August I attended the Rail Freight '08

Community Summit at the St Kilda town hall. The Minister for Public Transport opened the summit and listed the various rail freight related projects that the government is spending about \$360 million on, which, as a subsequent speaker pointed out, is less than the cost of the Geelong or Craigieburn bypasses. Minister Kosky did not stay to hear what the other 12 speakers had to say.

I saw Mr Baillieu and Mr Mulder during the day. A communiqué from the summit was released, and I undertook to bring it to the attention of the Parliament. The points made included the following: much of the Victorian rail freight system is in disrepair; previous Victorian governments have failed to invest in rail maintenance and renewal; government policies have facilitated a movement of freight away from rail to road; and rail freight uses less fuel and produces a fraction of the emissions of road freight for comparable tasks. I would add that it is at least one-third and is estimated to be one-seventh the amount of fuel. Other points included the following: a loaded B-double does 23 000 times the amount of damage to a highway as a private car does; road transport is seven times more dangerous than rail transport, and many parts of the state are congested with truck movements that rail could replace; local government is already overloaded with infrastructure backlogs and does not have the capacity to undertake massive road upgrades; and the Fischer report has provided a blueprint for the renewal of the Victorian rail freight system.

Professor Bill Russell, in summing up, observed that there is no statutory operator of the rail freight network. The meeting called upon the Victorian government to: include in its December transport strategy a clear program for the immediate reinstatement of the platinum and gold lines and a three-year time line for the full reinstatement of the silver and bronze lines identified by the Fischer report; publish in that statement a detailed response to all recommendations of the Fischer report; put in place a robust governance structure to manage and develop the publicly owned tracks, signalling systems and other assets of the Victorian rail freight system, including the appointment of a senior and experienced board and chief executive officer; publish a strategic plan for the standardisation of the remaining broad gauge rail freight lines in Victoria; publish a clear statement for public consultation as to how the government expects its target of 30 per cent of port freight to be moved by rail, covering all major ports and grain as well as container traffic; and establish a permanent internal advisory agency on rail freight.

My request to the Premier is that he take serious note of the communiqué from the summit of the Alliance of Councils for Rail Freight Development and respond to the issues raised in it.

WorkChoices: Roy Morgan Research

Ms PULFORD (Western Victoria) — Roy Morgan Research is a high-profile market and social research company with many high-profile clients, including councils and state and federal government. Roy Morgan also has a dubious history of employment standards, having taken some fairly creative interpretation — —

The DEPUTY PRESIDENT — Order! I ask Ms Pulford to whom is she directing her query?

Ms PULFORD — The Minister for Industrial Relations. Roy Morgan Research has taken some creative interpretations of the use of independent contractors, testing the legal limit as it goes.

Roy Morgan Research employs over 450 people in Melbourne, and about 70 are members of the National Union of Workers. Currently all of the market research interviewers are employed on a WorkChoices agreement which specifically obviates numerous award conditions, including outworker protections. The supervisors are employed on a mixture of Australian workplace agreements and individual transitional employment agreements.

On Monday, 4 August, 56 casual interviewers were summarily dismissed by email. The workers were told one of three broad reasons applied to them: performance, behavioural issues or attendance records. However, when many of the workers attempted to ascertain specific details about why they had been chosen and by what process they had been picked out, the company was unable to identify who had been chosen and why.

One worker, Julia De La Cruz, a 19-year-old university student, is a casual who had been working at the company regularly and systematically for a period of 12 months. Her separation certificate states her period of employment to be from 4 August 2007 to 4 August 2008. She has never received any formal or informal warnings on any matters from the company. In fact just six weeks prior to her dismissal she received an email from the company congratulating her on her performance and length of service with the company.

This case presents a particularly stark example of a substantive unfair dismissal where no due process of any kind was followed, but any complaint would fail on

jurisdictional issues because of WorkChoices. There are rumours aplenty around the call centre that management is compiling a further list of workers to be terminated by email. Obviously the restoration of decent industrial relation laws in this country will come too late for Julia and her co-workers, but my request of Mr Hulls, in his capacity as the Minister for Industrial Relations, is that he request the workplace rights advocate to inform him about any complaints received relating to Roy Morgan Research's recent conduct and that he and seek advice from the advocate about what action he has taken in this matter.

Mr O'Donohue — On a point of order, Deputy President, I seek your advice in relation to this issue. The issue Ms Pulford has raised is a matter regarding the WorkChoices federal legislation. We have heard from Ms Pulford and others about their views on the WorkChoices legislation previously, but the fact is that the Rudd government has not substantially changed the industrial relations landscape. The member's issue is predominantly a federal issue and I seek your advice as to whether this is appropriate.

The DEPUTY PRESIDENT — Order! The issue Ms Pulford raises is fairly clear and I think it stands. The fact is the government has passed legislation establishing the workplace rights advocate. My understanding of the legislation is that the advocate has a capacity to investigate these matters irrespective of whether or not they are covered by awards under WorkChoices. That was specific in the legislation, as I recall. In that context I have no difficulty with the matter.

I must say that I was a little bit concerned about what I would refer to as the woolliness of the question, in so much as I am not sure that asking the minister to inquire what investigations the Office of the Workplace Rights Advocate might already have undertaken was a significant action required of the minister. I would have thought that perhaps some intervention or some reference of the minister to the advocate might have been a more appropriate way of raising a matter — in other words, the reverse of what was posed.

Having made those remarks, I will not ask the member to re-frame the question. I will allow the minister to determine his position on it, but as I said, in the context of legislation that was passed by this house, I believe the matter can stand.

World War I: Cobbers memorial statue

Mrs COOTE (Southern Metropolitan) — On 19 July, together with the Leader of the Opposition in

the other place, Mr Baillieu, I attended a wonderful and moving unveiling by the Premier of a statue to commemorate the people who fought and fell in the Battle of Fromelles from 19 to 20 July 1916. This wonderful statute depicts an ordinary soldier, whose name was Simon Fraser. Simon Fraser was a stretcher-bearer who went back to the field time and again to rescue people who were severely wounded. He rescued one person and went back where there was a guy in the mud who said, 'Don't forget me, mate. Come back and get me too'. And he did; he went back several times. He has never been recognised for those actions and neither has the Battle of Fromelles in any formal way, so an excellent statue has been cast in bronze. It is located near the corner of Domain Road and St Kilda Road in the Shrine precinct near the Domain interchange. I encourage everyone to go and see the statue for themselves. It is particularly moving.

The Premier made a very moving speech on the day. He spoke about his great-uncle, who had been at the Battle of Fromelles. He also spoke about Mr Baillieu's grandfather, who died at Fromelles. It was a particularly moving occasion for everybody who attended, and there were many people there for the commemoration, including some descendants of Simon Fraser.

As I said, I hope that people visit this statue. It was such an auspicious occasion that the mayor of —

The DEPUTY PRESIDENT — Order!

Mrs COOTE — I am getting there.

The DEPUTY PRESIDENT — Order! I hope so because to this point it is a 90-second statement.

Mrs COOTE — I am getting there.

The DEPUTY PRESIDENT — I am assured.

Mrs COOTE — The mayor of Fromelles, Monsieur Huchette, was also at the unveiling. I suggest to the Premier that from hereon it would be good if this corner could be called 'Cobbers Corner' in memory of the statue that is there. That was the consensus of all the people who were there on the day. I ask the Premier if this corner could be renamed 'Cobbers Corner'.

Cardinia Primary School: speed zones

Mr O'DONOHUE (Eastern Victoria) — The matter I wish to raise this evening is for the Minister for Roads and Ports. It concerns speed zones around the Cardinia Primary School. Cardinia is a small town that has been experiencing increased traffic flow along Cardinia Road, with the opening of the Pakenham

bypass. Accessing South Gippsland via the Pakenham bypass and Cardinia Road has become a popular way to get to Phillip Island and other places down in the Bass Coast and South Gippsland areas. As a consequence I have been approached by members of the school community — parents, the principal and members of the school council — to seek a reduction in the existing speed limit along Cardinia Road at the front of Cardinia Primary School from 60 kilometres per hour to 40 kilometres per hour.

The Shire of Cardinia has made representations to VicRoads but to date those representations have been unsuccessful. As someone who travels that road frequently I can say anecdotally that traffic volumes have increased significantly and it appears to me to be dangerous to allow the speed limit to remain at 60 kilometres per hour. I ask the minister to investigate and consider a reduction in the speed limit from 60 kilometres per hour to 40 kilometres per hour in the vicinity of the school during school hours.

Housing: Williamstown

Mr FINN (Western Metropolitan) — I wish to raise a matter for the attention of the Minister for Housing. Members of the house and the minister himself may well be familiar with Williamstown. It is a magnificent part of Melbourne, one that —

Mrs Coote — Does Steve Bracks live there?

Mr FINN — I think Steve Bracks still does live there, as does one other former Premier as well, I understand.

Ms Lovell interjected.

Mr FINN — Indeed Ms Lovell grew up there, as she reminds me.

Honourable members interjecting.

Mr FINN — And Ms Pennicuik! We might stop it there. It is a magnificent part of Melbourne, with a great village atmosphere and the most magnificent views of Melbourne of anywhere within the metropolitan area. It has great restaurants and a great beach. It has everything going for it.

Mr Guy — You haven't been to Preston!

Mr FINN — Yes, I have, Mr Guy, and that is why I speak so highly of Williamstown! Within Williamstown there are also two sizeable housing ministry towers. To say that these towers are somewhat in need of some tender loving care and rejuvenation

would be an understatement. As a result the residents of these towers are subject to living conditions that are perhaps not to a standard that some of us would be prepared to accept.

I propose a solution to the minister that will provide new accommodation for the housing ministry clients of which I speak. This new accommodation will be fully paid for and there will be extra cash for the government — and we all know how much this government loves a dollar. This proposal will provide new homes, with backyards if needs be, and it will provide friendly, family home environments — perhaps, for some of these people, for the first time in many a long year.

In the hands of developers, these housing ministry towers could be converted very quickly and very easily into multimillion-dollar precincts with potential buyers falling over themselves to get hold of a unit in these towers. I ask the minister to begin the process of selling the housing ministry towers in Williamstown, which will provide a new and exciting life for the current residents of the towers. We will see once and for all an end to the stigma associated with what used to be called the housing commission high-rise. This will also provide a great boost for the local Williamstown economy and provide, as I say, a wonderful new life for the residents of the housing ministry towers in Williamstown.

Ms Hartland — Can I make a point of clarification? I worked in one of those high-rise blocks for five years, before I was elected, and it was a fantastic building. I doubt very much that Mr Finn has ever actually been in one of them, and they are wonderful people —

The DEPUTY PRESIDENT — Order! That is not a point of order.

Honourable members interjecting.

The DEPUTY PRESIDENT — Order! The reality is that there is not an opportunity on the adjournment for editorial comment. We will leave it to the minister to establish his position or that of the government on this matter. I thank Ms Hartland for her assistance.

Wind energy: Mount Pollock

Mr GUY (Northern Metropolitan) — Thank you, Deputy President, and I thank Mr Finn, who knows more about the western suburbs than any other member in the chamber. My issue tonight is one for the Minister for Planning, and it concerns a proposal to construct a 14-turbine wind farm facility at Mount Pollock, near Winchelsea, just west of the Barrabool Hills.

As members know, wind energy is literally taking off in Victoria. There are many wind proposals that are popping up across the state, some in terrific locations with strong community support and others that are in questionable or sensitive locations with little community support. At last count I noted four wind farms actually operating in Victoria — albeit four quite large farms — with another 33 proposed, scattered across mostly the southern and central reaches of Victoria. Popular destinations for wind energy companies seem to be the western areas of the state from Ballarat South to the South Australian border and central Victoria. However, despite the Mount Pollock facility's small size compared to most wind farms, what makes this so controversial is its proximity to urban areas and, further, the fact that it falls just short of requiring state government approval. In this case it only requires the approval of the local council, the Surf Coast Shire Council.

As I have stated, the facility will be 14 turbines in size and will have a megawatt output of 29.4, which is 0.6 of a megawatt — or around one turbine — short of the 30-megawatt threshold for the requirement for wind energy proposals to adhere to the more rigorous planning panel approval process of the state government. That more rigorous planning approval would analyse the impact upon local residents, such as the impact upon existing dwellings and farms. Further, a flora and fauna impact study would be required — something which the Surf Coast council did not request, and I believe it erred in this — to analyse the location of the turbines and their impact on what is a sensitive environmental landscape. A flora and fauna study should have been required under the act in the 12 months preceding the application, but I am informed that this did not happen. I am also advised that under detailed examination from the Surf Coast council the proponent was informed that the location could have suited 3 more turbines than the 14 turbines proposed. However, the proponent sought the 14-turbine option to avoid the need for panel approval and the possibility of Victorian Civil and Administrative Tribunal review, and thus only required the shire's approval.

This facility is located on the edge of the highly picturesque Barrabool Hills, close to homes. The area is close to a growth corridor and the new Geelong bypass, where future residential growth will occur. Its approval, falling under the government's radar by 0.6 of a megawatt, will create significant local community division and distress for many families. Tonight the action I seek of the Minister for Planning is that he have his department either conduct or request of the proponent a study of the environmental impact of the Mount Pollock wind farm to ascertain if this really is

the right location for these 14 turbines and to fully ascertain whether the supposed gains of this small facility are really worth the local pain it may cause.

Wind energy: Stockyard Hill

Mr D. DAVIS (Southern Metropolitan) — My adjournment matter is also for the Minister for Planning but also impacts on the responsibilities of the Minister for Environment and Climate Change, who is in the chamber. It concerns the Stockyard Hill wind farm that is situated near Beaufort and Skipton. It is a large wind farm with 282 turbines, although 370 potential turbine sites were originally identified. It is 5 kilometres south of the Beaufort township and 4 kilometres north of Skipton.

As members will be aware, the Pyrenees Shire Council supported a number of renewable energy projects over the years, most prominently in Waubra. In each case it has been because of the proximity of those projects to the 220-kilovolt electricity network that runs through the shire. However, the Stockyard Hill wind farm is not in close proximity to the electricity network; in fact the closest infrastructure is the 220-kilovolt and 500-kilovolt network 25 to 40 kilometres south of Skipton.

The Stockyard Hill proposal is very large, and because of this it has the potential for a number of different types of impact. As I said, this is also a matter for the Minister for Environment and Climate Change, who may, if he chooses, care to make some comment as well as passing this on to the Minister for Planning. In the south-west of the state brolgas are a significant issue. A study of brolgas by Mr Matthew Herring of Charles Sturt University said:

Brologas are considered a threatened species in Victoria ... the southern population has been reduced to alarmingly low numbers. We now know there are fewer than 1000 birds scattered across south-western Victoria, the far south-east of Australia and the New South Wales and Victoria Riverina.

Birds Australia says on its website that brologas are currently at 1 per cent threshold of global population, so there is a very significant risk to brologas. It is also known — and there is quite a lot of research on this, which I will not detail as I am sure the minister has access to it — that wind farms pose a risk to brologas. The location and density of wind farms needs to be closely and carefully monitored to make sure that the impact on brologas is not too great.

I note that the chief executive officer of the shire has written to the minister requesting an environment effects statement. I believe that large wind farms of this

nature should not be built without a full and proper environment effects process and a panel process. I request the Minister for Planning to undertake those and to ensure that no wind farm is built without that effects process being undertaken.

Responses

Mr JENNINGS (Minister for Environment and Climate Change) — I will pretty much refer all the matters on, even though in some cases it might be a bit perplexing to try to find the matter to be referred.

John Vogels raised a matter for the attention of the Minister for Health regarding the Stawell ambulance service and his desire to make sure that service is rolled out and made available as expeditiously as possible.

Gayle Tierney raised a matter for the attention of the Minister for Sport, Recreation and Youth Affairs on behalf of the Old Collegians women in Warnambool, seeking their access to sporting facilities at Davidson Oval.

Wendy Lovell raised a matter for the attention of the Premier, seeking his ongoing support for the important subsidy that has been provided by the state to fund municipal rates for farmers in regions declared as being in exceptional circumstances.

Colleen Hartland raised a matter for the Minister for Gaming, seeking his reflections on the cost structures that have been applied to the new licensing arrangements and the cost burden to newsagents who participate in these schemes.

Evan Thornley raised a matter for the Minister for Police and Emergency Services, seeking his expedition of the building program for the police station in Sandringham, which is a significant commitment of our government.

Inga Peulich raised a matter for the Minister for Roads and Ports, and not for the first time today the Deputy President tried to assist me in getting my thoughts right in relation to this and providing some assistance to the member. I think there is a great degree of difficulty in reining in the member's adjournment matter, if you understand the nature of asking for specific interventions, but I will leave it to my colleague, the Minister for Roads and Ports, to respond.

Mrs Peulich interjected.

Mr JENNINGS — I have mentioned before in relation to this that I understand, and I am sure my colleagues understand, the specific nature of the

adjournment debate, and I think generic issues such as this are very hard to deal with. For instance, if someone asks me to look after the planet, I will do my best, but I think unless we try to work out specifically what we are dealing with, it will not be the most efficient use of our time.

Sue Pennicuik raised a matter for the attention of the Premier, which was to try to make sure that he 'takes seriously' — that was the phrase used — the report from the Rail Freight Community Summit.

Jaala Pulford raised a matter for the attention of the Minister for Industrial Relations, and again I thought the Deputy President's intervention was timely and appropriate in recognising the value and statutory responsibilities of the Workplace Rights Advocate in terms of providing some checks and balances in relation to the application of federal industrial relations legislation and its implications for Victorian workers. Jaala Pulford raised the specific matter of the interests of workers employed by Roy Morgan Research and asked that their rights be protected in relation to unfair dismissal matters.

Andrea Coote raised a matter for the Premier, calling on him — within the scope of his responsibility in terms of placename matters — to deal with 'Cobbers Corner'.

Edward O'Donohue raised a matter for the attention of the Minister for Roads and Ports, seeking the reduction of the speed limits in and around Cardinia Primary School, from 60 to 40 kilometres per hour during school hours.

Bernie Finn raised a matter relating to the 'Preston of the west', Williamstown, which might not be seen favourably by the Minister for Housing as it was a proposal to privatise a very attractive and comfortable environment for Office of Housing tenants in Williamstown. Notwithstanding Mr Finn's expectation that these tenants may be more comfortable elsewhere and might find alternative accommodation more attractive, I am sure the Minister for Housing would be of the view that that would have to be demonstrated and driven by the desire of those tenants rather than the driver being the potential for these towers to be privatised. I am sure the Minister for Housing will derive much pleasure from responding to Mr Finn's adjournment matter.

Matthew Guy raised a matter for the attention of the Minister for Planning, as did David Davis. Both related to environment effects statements or processes to deal with planning decisions relating to wind farms. In

Mr Guy's case it was about Mount Pollock and in Mr Davis's case it was in relation to Stockyard Hill. As someone who lived for 10 years or a bit longer in the Beaufort area and went to the then Beaufort High School for all his secondary education, I know the area fairly well and I can say that I never saw a broilga in all my time.

Mr D. Davis interjected.

Mr JENNINGS — Apparently they were, or they may have been. They are not very prevalent in the landscape. However, that is not to ignore the importance of protecting them and being mindful of their interests.

Mr D. Davis — An EES will uncover that, no doubt.

Mr JENNINGS — I am conveying to Mr Davis their prevalence within the landscape, but that is not withstanding the fact that it is very important to be mindful of their needs in any planning process going forward in relation to the proposal for the Stockyard Hill wind farm. I am sure my colleague the Minister for Planning will be mindful of this issue going forward.

The DEPUTY PRESIDENT — Order! The house stands adjourned.

House adjourned 6.11 p.m. until Tuesday, 9 September.