PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SIXTH PARLIAMENT

FIRST SESSION

Thursday, 4 December 2008

(Extract from book 17)

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By authority of the Victorian Government Printer

The Governor

Professor DAVID de KRETSER, AC

The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

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

Legislative Council committees

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

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

Select Committee on 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 Elasmar and Mr Hall. (*Assembly*): Mr Dixon, Dr Harkness, Mr Herbert, Mr Howard and Mr Kotsiras.

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

Environment and Natural Resources Committee — (*Council*): 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 Elasmar, Mr Guy and Ms Hartland. (*Assembly*): Ms Green, Mr Hodgett, Mr Nardella, Mr Seitz and Mr K. Smith.

Public Accounts and Estimates Committee — (*Council*): Mr Barber, Mr Dalla-Riva, Mr Pakula and Mr Rich-Phillips. (*Assembly*): Ms 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

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Mr JOHN LENDERS

Deputy Leader of the Government:
Mr GAVIN JENNINGS

Leader of the Opposition:
Mr DAVID DAVIS

Deputy Leader of the Opposition:
Mrs WENDY LOVELL

Leader of The Nationals:
Mr PETER HALL

Deputy Leader of The Nationals:
Mr DAMIAN DRUM

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

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THURSDAY, 4 DECEMBER 2008

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Thursday, 4 December 2008

The PRESIDENT (Hon. R. F. Smith) took the chair at 9.34 a.m. and read the prayer.

ROYAL ASSENT

Message read advising royal assent to Water (Commonwealth Powers) Act.

PETITIONS

Following petitions presented to house:

Assisted reproductive treatment: 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 deep community concerns about the Brumby Labor government's artificial reproductive therapy laws which will allow systemic denial of a child's links and knowledge to both biological parents to provide for:

(1) children born into lesbian relationships with the aid of donor sperm allowing only two mothers to be registered on the birth certificate;

(2) children commissioned through surrogacy arrangement to male homosexual couples allowing only two men to be registered on the birth certificate.

And that the undersigned petitioners reject the Brumby Labor government's proposal to systemically deny children knowledge of their parentage where it is known to create a generation of 'lost' children, unable to establish their identity, unable to access full medical facts when required and potentially exposing such children to other risks.

The undersigned therefore respectfully call on the Legislative Council and MPs of all political persuasions to reject Premier Brumby's misguided laws which fail to protect the best interests of all children as required by international covenants to which Australia is a signatory.

By Mr KAVANAGH (Western Victoria) (290 signatures)
Mrs KRONBERG (Eastern Metropolitan) (118 signatures)
Mrs PEULICH (South Eastern Metropolitan) (97 signatures)

Laid on table.

Ordered, by leave, that petitions be considered later this day on motions of Mr KAVANAGH (Western Victoria), Mrs KRONBERG (Eastern Metropolitan) and Mrs PEULICH (South Eastern Metropolitan).

Driver Education Centre of Australia: Careful Cobber program

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

The petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council its opposition to the Brumby Labor government's decision to cease funding for the Careful Cobber program which has been delivered at the Driver Education Centre of Australia (DECA) in Shepparton for 30 years.

We believe the government should immediately reinstate funding for this crucial road safety education program for Victorian primary school students, and therefore call on the Legislative Council to support the reinstatement of funding for the Careful Cobber program.

By Ms LOVELL (Northern Victoria) (73 signatures)

Laid on table.

Ordered to be considered next day on motion of Ms LOVELL (Northern Victoria).

Water: north–south pipeline

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

The petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council its opposition to the proposed building of the north–south pipeline by the Brumby Labor government which will steal water from country Victorian farmers and communities and pipe this water to Melbourne. We believe there are better alternatives to increase Melbourne's water supply such as recycled water and stormwater capture for industry, parks and gardens, and therefore call on the Legislative Council to oppose the construction of the proposed pipeline.

And your petitioners, as in duty bound, will ever pray.

By Ms LOVELL (Northern Victoria) (155 signatures)

Laid on table.

Ordered to be considered next day on motion of Ms LOVELL (Northern Victoria).

Police: Ashburton station

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

The petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council the Victorian government's plan to close the longstanding Ashburton police station.

We oppose the closure of the Ashburton police station, the removal of police from the local area last year and call on the Victorian state government to renounce its plan to close this

essential community asset and maintain a visible and accessible police presence.

The petitioners therefore request that the Victorian government refuse any recommendation to close Ashburton police station.

By Mr D. DAVIS (Southern Metropolitan) (79 signatures)

Laid on table.

Planning: Nillumbik

To the Legislative Council:

This petition is of materially affected stakeholders of arterial Ironbark Road and Pioneer Road in the suburb of Diamond Creek and township of Yarrambat, shire of Nillumbik, Vic. We bring to the attention of the house that this 'urban standard' wide sealed arterial road, designed to take 20 000 cars per day (10 000 in each direction) which strategically links the above planned growth areas, appears to be overlooked in all planning processes since 1999 to date. It may be one reason that these previously 'urban' not 'rural' category lands were back zoned inequitably into 'environmental rural zone' in the year 2000, now 'rural conservation' by state government, 2004 — the most restrictive of all zones. We understand that the correct promised closest fit zone translation for the above areas should have been 'residential one' or 'township' in line with the then applicable legislation.

This would have maintained urban land values and enabled utilisation of the distinctive attached urban reticulated infrastructure paid for by landowners. Urban expansion was planned from the original town centre north of Chute Street–Collins Street, Diamond Creek, along arterial Ironbark Road to the township of Yarrambat and connector roads like Pioneer Road. This prepaid urban planning must be reinstated to respect landowners, urban infrastructure and associated development property rights to which landowners have contributed financially and maintained secure, long-term expectations.

Prayer:

The petitioners hereby request that the Legislative Council urge the planning minister, the Honourable Justin Madden, the minister for roads, the Honourable Tim Pallas, the minister for transport, the Honourable Lynne Kosky, the Premier of Victoria, the Honourable John Brumby, and the Victorian state government to:

1. Acknowledge the status of Ironbark Road as arterial or equivalent status.

2. Defer the release of the transport strategy particularly in regards to Nillumbik shire until the zoning corrections to residential one or township are made to all of the above properties or please assure us that there will be no disadvantage.

3. Ensure equitable corrections to any of the above land that may have been treated differently at any time in the past to other like land that also had any attached, prepaid urban reticulated infrastructure.

4. Where changes need to be made to accommodate the Victorian government's new commitment to preserve areas of high environmental and scenic value or other new community aspirations, mediation should begin to discuss the equitable transfer of or compensation for infrastructure and associated development property rights. In addition new planning aims can be incorporated in the overall development plans of any residential area.

5. Ensure that new amendments to planning schemes such as C53 Diamond Creek major activity centre structure plan and new state transport plans do not result in the expansion of urban growth, township boundaries or new growth corridors that exclude any of the above lands. One group should not have had to pay for urban reticulated infrastructure while it is planned that another will reap the benefits. The entire suburb of Diamond Creek must be included as well as the previously urban areas of Yarrambat, particularly those that were an extension of the Plenty Yarrambat Waterworks Trust district and urban districts. This is irrespective of any final land use for site specific properties.

6. Therefore in regards to Diamond Creek, Yarrambat and Plenty, please ensure that a new prescribed radius or other marker is not used from a new town centre, transport hub or other to disqualify any of the above lands from further urban development, land use or urban recognition to ensure equivalent land values.

7. Investigate the matter further and meet with the petitioners.

By Mr KAVANAGH (Western Victoria) (5 signatures)

Laid on table.

ELECTORAL MATTERS COMMITTEE

International investigations into political donations and disclosure and voter participation and informal voting

Mr SOMYUREK (South Eastern Metropolitan) presented report, including appendices.

Laid on table.

Ordered that report be printed.

AUDITOR-GENERAL

Response by Minister for Finance, WorkCover and the Transport Accident Commission

Mr LENDERS (Treasurer), by leave, presented response to reports for 2007–08.

Laid on table.

MINING WARDEN

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Mr JENNINGS (Minister for Environment and Climate Change), by leave, presented report, together with government response.

Laid on table.

LAW REFORM COMMITTEE

Vexatious litigants

Mr SCHEFFER (Eastern Victoria) presented report, including appendices, together with transcripts of evidence.

Laid on table.

Ordered that report be printed.

Mr SCHEFFER (Eastern Victoria) — I move:

That the Council take note of the report.

In March last year the Law Reform Committee was asked to inquire into the effectiveness of current legislative provisions in dealing with vexatious litigants and to make recommendations that allow the courts to perform their role effectively and efficiently without compromising the right of citizens to access justice. The evidence gathered during the inquiry made it clear to the members of the committee that vexatious litigants do raise difficult issues for our justice system. But it is clear that some people repeatedly bring unmeritorious legal proceedings in our courts and tribunals. Sometimes these individuals sue a series of different people, and sometimes they sue the same people over the same issues again and again.

Victoria introduced specific laws to deal with vexatious litigants in 1928. Under these laws the Supreme Court can make an order stopping a vexatious litigant from continuing or commencing legal proceedings without the leave of the court. The committee found that these laws had been used only 15 times in the last 80 years, and there has been considerable debate over whether these laws are effective and to what extent their application may limit the right of access to justice.

The committee examined the effectiveness of current laws in dealing with the problems associated with the phenomenon of vexatious litigation and devised recommendations that would better enable courts to operate more efficiently and effectively while preserving the community's general right of access to justice. The committee found that in recent years some states and territories of Australia, such as Western Australia and Queensland, have reformed their vexatious litigant laws. Yet the committee found there is very little public information about the nature and extent of this problem in Victoria.

The committee sought the views of judicial officers, the legal profession, psychiatrists, the community legal sector, government agencies, local councils, businesses and members of the general community. The committee commissioned barrister Ian Freckelton to interview judges, magistrates, tribunal members and court and tribunal staff about their experiences. We also conducted our own research on vexatious litigants based on court files and records. The evidence we received was often widely divergent. Some witnesses characterised vexatious litigants as serial pests; others see them as little more than legal mavericks.

Many witnesses told the committee that there are relatively few vexatious litigants in Victoria's courts and tribunals. However, the committee heard evidence that vexatious litigants can have a significant financial and emotional impact on the people they act against. At one end of the scale, one of Australia's major banks told the committee its estimated legal costs from dealing with five actions brought by vexatious litigants over 25 years were over $3.5 million. At the other end of the scale, we heard about a woman who had attended court 60 times in one year as a result of litigation brought by her ex-partner after she took out an intervention order against him.

The committee found that the current laws have not always dealt with these problems effectively. The committee's aim with this report was to strike a balance between the right to access the courts on the one hand and the need to protect the justice system and members of the community from repeated, unmeritorious litigation on the other. We aimed to recognise the human as well as the legal dimensions of the problem and to develop reforms based on clear evidence.

The 32 recommendations in the report focus on preventing and managing vexatious litigants within the justice system where possible and restricting access to justice only in serious cases. The committee has recommended case management strategies in courts and tribunals, more training and guidance for people working in the justice system, and stronger powers to deal with unmeritorious litigation on a case-by-case basis.

The committee has also recommended that the current law be replaced with a more flexible, graduated system

of orders that regulates access to the courts according to the seriousness of the litigant's behaviour. This should put the justice system in a better position to respond to the challenges raised by vexatious litigants in the future.

I would like to thank the members of the committee, especially the deputy chair, the member for Box Hill in the Assembly, Robert Clark, for their active participation and searching examination of the many important issues we encountered. On behalf of the committee, I commend the excellent work of the committee staff led by our executive officer, Kerryn Riseley; researcher Deanna Foong; office manager, Helen Ross-Soden; and principal researcher for this inquiry, Susan Brent, who deserves special commendation for her thorough, methodical and rigorous work which produced this high quality report.

Finally, I would like to thank Dr Ian Freckelton for the important contribution he made through his interviews with the judiciary and his subsequent analysis and excellent report. I commend the report to the house.

Mr O'DONOHUE (Eastern Victoria) — I am also pleased to rise and make a brief contribution on the Law Reform Committee inquiry into vexatious litigants. I would like to start by also congratulating the committee staff, Ms Kerryn Riseley, Ms Susan Brent, Ms Deanna Foong and Ms Helen Ross-Soden, for their excellent work, very professional advice and the way they have gone about assisting the committee.

The issue of vexatious litigants is a complex one. The growth of different jurisdictions over recent years, particularly with the growth of different federal jurisdictions and the greater complexity in interlocutory proceedings, has given potentially vexatious litigants a greater capacity to pursue their grievances through the legal system. The distinction between a vexatious litigant and someone seeking justice is often a very fine one. I agree with the committee chair when he said in his contribution that the current system does not reflect the current legal system and does not achieve the balance of providing adequate protection to the community from vexatious litigants whilst at the same time preserving the rights of an individual to prosecute what he or she may perceive to be a legitimate grievance with an individual, the state or a corporation.

I think this report makes a valuable contribution in providing government with recommendations on how to amend the current legal arrangements for vexatious litigants. The system of graduated orders is one which has been applied in other jurisdictions with success, and I hope the government takes seriously the recommendations that have been made in the report. I again congratulate the committee staff for their work and assistance throughout the year whilst this reference was being considered by the committee.

Mrs KRONBERG (Eastern Metropolitan) — I rise to add my voice to the recognition of the work of the staff of the Law Reform Committee, as they provided support and assiduous attention to detail during the course of the hearings, the compilation of the report and the background research.

The report, with its 32 recommendations, is an important report and is the result of exhaustive inquiry. The recommendations are grouped under the concept of reform of the justice system as it responds to vexatious proceedings. It also recommends other measures and powers to assist legal staff and members of the legal system in this state to deal with vexatious proceedings.

I want to compliment the officers, in particular, for their involvement and work and conscientious approach to seemingly everything they are involved in. I would like to commend the executive officer, Ms Kerryn Riseley, research officers Ms Susan Brent and Ms Deanna Foong, and the administration officer, Ms Helen Ross-Soden. It has been very pleasurable to work with that team, and I look forward to further work with that team.

Motion agreed to.

PAPERS

Laid on table by Clerk:

Commissioner for Environmental Sustainability — State of the Environment Report 2008.

Geoffrey Gardiner Dairy Foundation Limited — Report 2007–08.

Office of Police Integrity — Report under section 31 of the Crimes (Assumed Identities) Act 2004, 2007–08.

Parliamentary Committees Act 2003 —

Government Response to the Electoral Matters Committee's Report on the Conduct of the 2006 Victorian State Election.

Government Response to the Environment and Natural Resources Committee's Report on Impact of Public Land Management Practices on Bushfires in Victoria.

Statutory Rules under the following Acts of Parliament:

Cemeteries and Crematoriums Act 2003 — No. 145.

County Court Act 1958 — Nos. 147 and 148.

Liquor Control Reform Act 1998 — No. 143.

Motor Car Traders Act 1986 — No. 144.

Police Integrity Act 2008 — No. 146.

Second-Hand Dealers and Pawnbrokers Act 1989 — Nos. 140 and 141.

Trade Measurement Act 1995 — Trade Measurement (Administration) Act 1995 — No. 142.

Subordinate Legislation Act 1994 —

Ministers' exception certificates under section 8(4) in respect of Statutory Rule Nos. 124, 138, 139, 147 and 148.

Ministers' exemption certificates under section 9(6) in respect of Statutory Rule Nos. 141, 142 and 145.

Ministers' infringements offence consultation certificates under section 6A(3) in respect of Statutory Rule Nos. 140 and 144.

MEMBERS STATEMENTS

Ukrainian holocaust: commemoration

Mr GUY (Northern Metropolitan) — The end of this year marks the closure of the 75th anniversary of the Ukrainian famine, the Holodomor, which has been remembered over the last two years by millions of Ukrainians across the world. In fact it was here in Victoria that the Holodomor torch had its inception and began its official journey through countries such as Brazil, Canada, the United States and others, before finally making its way to the Ukrainian capital, Kyiv. Eleven million Ukrainians died in the Holodomor, mostly children. While few Ukrainian families were not touched by it, until recently very little was known about it. But thanks to people like Stefan Romaniw, chair of the Association of Ukrainians in Australia, people know more about this tragedy. It was Stefan Romaniw who has inspired, from Australia, much of the Ukrainian government's actions on this commemoration period.

At many turns, he was assisted by Steve Waldon from the *Age*. Tragically, Steve's life was cut all too short in October. He told the Holodomor story, he stood up for those who saw this tragedy unfold and he helped to bring the truth out into the open. Today, as a person whose family was touched by the Holodomor, I say thank you to Stefan Romaniw for his dedication, his efforts and his determination. And I place on record my admiration and respect for Steve Waldon. The Ukrainian community in Australia remains deeply thankful for his work and I, and all the Australian Ukrainian community pass on our deepest sympathies to his wife and children on the loss of such a good man.

Local government: elections

Ms PENNICUIK (Southern Metropolitan) — Today I congratulate the 19 Greens councillors who were elected or re-elected in 15 local government areas at the state-wide local government elections last Saturday. They are Geraldine Brooks in the City of Brimbank; Lynette Keleher in the City of Casey; Stephen Hart in Colac Otway shire; Trent McCarthy in the City of Darebin; Neil Pilling in the City of Glen Eira; Cathy Oke in the City of Melbourne; Rose Iser in the City of Moonee Valley; Jo Connellan and Toby Archer in the City of Moreland; Philip Schier in Mount Alexander shire; John Middleton in the City of Port Phillip; Lloyd Davies in the Borough of Queenscliffe; Simon Northeast in the Surf Coast shire; Helen Harris and Bill Pemberton in the City of Whitehorse; Sam Gaylard, Amanda Stone and Alison Clarke in the City of Yarra; and Cr Samantha Dunn who was re-elected with 54 per cent of the primary vote in Yarra Ranges shire.

The election of these local councillors increases the number of Greens in local government by one-third. I would also like to thank those Greens councillors who either did not stand for re-election or were not re-elected for their dedication and hard work in their communities during their terms as local councillors.

Mordialloc Creek Bridge: reconstruction

Mr SOMYUREK (South Eastern Metropolitan) — I rise to commend the government for the completion of the reconstruction of the Mordialloc Creek Bridge on the Nepean Highway. The $11.6 million project involved reconstructing the existing bridge, widening it from two lanes to four, and improving pedestrian and cycling facilities. The reconstruction of the bridge is an important project for the community in and around Mordialloc and indeed for motorists driving through Mordialloc as the four-lane Nepean Highway becomes two lanes at the bridge. This leads to a traffic bottleneck around the bridge.

This new structure will provide upgraded facilities for cyclists and pedestrians and improve safety for these important road users. Plans for the reconstructed bridge were changed during the construction phase to include wider footpaths and kerbside lanes. The footpath and shared-use paths are 2.9 metres wide on one side, and 5 metres on the other side. The wider kerbside lanes will cater for the many cyclists, as well as pedestrians, who use it each day.

Monash: community grant

Mr SOMYUREK — On another matter, I commend the government for the $30 000 Victorian community support grant that was given to the City of Monash to work with Clayton residents and community groups to develop a plan to address the needs of socially and economically disadvantaged residents to give Clayton residents a chance to have their voices heard about the future of their area. Clayton is a diverse community with many strengths that have yet to be tapped. This project will use the Clayton community centre as its focal point to capture the visions, ideas and opinions of local people who might not otherwise be heard.

Bushfires: public land management

Mr P. DAVIS (Eastern Victoria) — I am pleased to report that on 20 November I attended a public meeting at Omeo on public land management practices and bushfires in Victoria. The meeting adopted a number of resolutions, particularly:

> That the recommendations from the inquiry into impact of public land management practices on bushfires in Victoria be implemented immediately.

I am pleased to note that the government response tabled today indicates that, at least in principle, it recognises those recommendations.

Secondly, the meeting resolved:

> The code of practice for fire management on public land be amended to provide for 10-year fire operation plans, updated annually for planned burns.

It resolved also:

> That the aspect of responsibility in the code of practice be reviewed in order to minimise the 'blame' aspect and incorrect public judgement if fires from fuel reduction burning do get out of hand.

And:

> That where grazing leases adjoin national parks, a suitable natural boundary, within the park area if necessary, be adopted as the boundary of permissible grazing.

And:

> A 'think tank' of individuals, selected regionally, with demonstrable knowledge of public land use and bushfire management be formed to provide advice on policy and practice to the emergency services commissioner.

And:

> That the government support current and ongoing research into the effects of bushfire on the hydrology of upland forest and grasslands initiated originally as a result of the Nairn inquiry.

Another resolution that was adopted is:

> To minimise bushfire risk to life and property, create community protection zones (CPZs) incorporating community assets at the public/private land interface. CPZs to be defined by a community/municipal based forum at which public land management and emergency service agencies have equal right of input with other stakeholders, such as local government, agencies managing transport, communication and power infrastructure, landowners, local community groups and the like. Someone independent of public land management and emergency services must chair the forum — —

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

Pearcedale Primary School: facilities

Mr SCHEFFER (Eastern Victoria) — Last week I had the honour of opening the new facilities at Pearcedale Primary School. The refurbished library and computer centre, reading recovery offices, music centre and physical education areas look spectacular. The redevelopment was funded by the commonwealth and state governments and the local community made a massive contribution. The $5 million rebuild has made a big difference to Pearcedale Primary School. One of the remarkable things about Pearcedale primary is the fact that it includes a terrific program for students with a hearing impairment and the rebuilding included new spaces for them. It was fantastic to see the school choir sign the words they were singing. I congratulate school council president Peter Busher, principal Don Mackenzie, school captains Tynan Bratt and Shannon Wade, and all parents, teachers and students.

Boneo Primary School: facilities

Mr SCHEFFER — On another matter, last week I had the honour of opening the rebuilt Boneo Primary School. While the original one-room timber school was built in 1873, Boneo Primary School today boasts new classrooms, a library and computer centre, rooms for languages other than English, and reading recovery, arts and music facilities and outdoor sports and playground areas with landscaped gardens. The rebuilding cost $3.3 million, with $209 000 from the Boneo school community and $3.16 million provided by the Victorian government. The Boneo school community understands that this funding is part of the Victorian government's plan to redevelop every school in Victoria. I congratulate school council president James Leonard, principal Bob Dalling, school captains Georgia Carrell, Ruby Phillips, Tim Tilley and Kye

Hura, and all the students, teachers, parents and friends of Boneo Primary School and wish them a great future.

Parkinson's Victoria: funding

Mr HALL (Eastern Victoria) — Last week I received a letter from Parkinson's Victoria, seeking support for a budget request of $1.5 million in next year's state budget. Currently the organisation receives $185 000. I think all members would have received such a letter. Members would also be aware of my personal interest in this organisation and the work that it does. Indeed I am a member of Parkinson's Victoria. The services provided by this specialist statewide agency which has more than 40 support groups throughout Victoria are very valuable for people with Parkinson's, their families and carers. The sorts of services provided are information, direct support, education, advocacy, referral and other important things to assist members of the organisation and people who are affected by members.

The letter requesting support makes a comparison between the prevalence and impact of Parkinson's disease and multiple sclerosis (MS). It shows that Parkinson's is far more prevalent amongst Victorians and is of greater economic cost, yet the financial support those two organisations receive from state government is $6 million for MS and $185 000 for Parkinson's. The extra funding sought would enable Parkinson's Victoria to provide regional workers in Bendigo, Geelong, Shepparton, Traralgon and Ballarat as well as in metro Melbourne. The organisation desperately needs this funding. It is a worthwhile cause and I encourage the government to increase the funding to the level requested.

State Emergency Service: Swan Hill unit

Ms BROAD (Northern Victoria) — Last week on a visit to Swan Hill, on behalf on the Brumby Labor government and as member for Northern Victoria Region, I had the privilege of presenting the keys to a new, heavy rescue vehicle to Mr Rob Merrett, the unit controller for the Swan Hill SES (State Emergency Service).

The Brumby Labor government is taking action to support emergency service volunteers across Victoria, including through the government's contribution to this $250 000 rescue vehicle, which is part of a $4 million truck replacement program for the SES right across Victoria. I took the opportunity to congratulate the Swan Hill SES unit on its fundraising efforts in the Swan Hill community and to make my contribution by purchasing a duck in the annual New Year's fundraising duck race.

Emergency service volunteers play a critical role in regional and rural communities not just during the summer fire season but throughout the year. The Swan Hill SES unit has over 15 active volunteers, including a number of long-serving women. I would like to say that they are part of a team of 5500 dedicated volunteers across Victoria who deserve our support.

Youth: leadership training program

Mr EIDEH (Western Metropolitan) — Our youth are our future, and a responsible government acts to assist their development into responsible citizens, active in their communities and committed to our nation and our state. That is why we provide a sound education system, and that is why we promote a strong belief in ethical behaviour and a range of programs that seek to improve the health and minds of the next generation of community leaders, the youth of today.

That is why I am proud to acknowledge and commend the Centre for Dialogue at La Trobe University, the course leader Dr Larry Marshall and the Brumby Labor government for funding a leadership training program for young Muslims. The government has provided $184 000 on top of a prior investment of $375 00 for this great initiative.

It was my privilege to be with the Minister for Sport, Recreation and Youth Affairs, James Merlino, when he presented the awards to the leaders on behalf of the Premier and announced the extra funding. Such a program shows not only our absolute commitment to multiculturalism but also our unswerving dedication to supporting people of all cultures in taking an active role in Victoria's society.

The program itself is one that deeply impressed me. Dr Marshall has ensured that the young students involved receive the very best in leadership training — skills that will help them to grow and develop throughout their lives, that are essential to sustain the future of our community and that can only progress our state. The Brumby Labor government's commitment to this program is further evidence of the leadership it offers to the state and its belief in all young people. I commend the program to the house.

Taylors Road, St Albans: grade separation

Mr PAKULA (Western Metropolitan) — Last week I was very pleased to attend an event to mark the completion of the grade separation project at Taylors Road, St Albans, along with the roads minister, Tim

Pallas, and the member for Kororoit in the Legislative Assembly, Marlene Kairouz. The project has enhanced the amenity and safety for commuters on Taylors Road. It has been completed under its $54 million budget and months ahead of schedule. It is not just motorists that benefit. The removal of the level crossing makes train travel safer, and the creation of the 2-metre-wide shared bike and pedestrian path underneath the rail bridge provides safe and easy access to the station for pedestrians and cyclists.

Whilst VicRoads and Abigroup need to be commended for their work in completing this project early and under budget, real praise needs to be directed to the local community for its forbearance during the works and to the Assembly members for Kororoit and Derrimut, who have championed and continue to champion projects to improve safety and traffic flow in Sunshine, St Albans, Kings Park and surrounds.

Outworkers: pattern-making project

Ms PULFORD (Western Victoria) — I wish to congratulate 13 members of Melbourne's Vietnamese community on their graduation from Victoria's only pattern making course designed for outworkers. I proudly represented the Brumby Labor government at a special RMIT graduation ceremony at Parliament House and was delighted to meet with the graduates, who bravely chose to leave their lounge rooms, where they sewed clothes for as little as $2.50 an hour, to enter the mainstream economy as pattern makers with qualifications and skills that our fashion industry desperately needs.

The graduates are Hoa Le, Thi Tung Le, Thi Tram Ngo, Dung Xuan Nguyen, My Thi Le Nguyen, Phuong Thi Nguyen, Thi Mui Nguyen, Thi Nguyet Nguyen, Thi Thanh Diem Nguyen, Thuy Thi Thu Nguyen, Thi Chuan Tong, Kieu Lan Tran and Hien Van Nguyen. The Outworkers Pattern Making Project involves RMIT, Workforce Victoria, the Council of Textile and Fashion Industries of Australia and the Textile, Clothing and Footwear Union of Australia.

I also congratulate members of the project's steering committee, including Jo-Ann Kellock, Patrick Gavaghan, Claire Fitzpatrick, Helena Spyrou, Kent Williamson, Danielle Le and My-Linh Pham, for supporting the graduates throughout this fabulous project.

Gary Croton

Ms DARVENIZA (Northern Victoria) — I take this opportunity to congratulate Gary Croton from Northeast Health Wangaratta, who received a nursing excellence award for mental health nursing in his role as a sole project worker at the Eastern Hume Dual Diagnosis Service at Northeast Health Wangaratta.

As a former nurse, I appreciate that Gary's commitment to improving the recognition of dual diagnosis and achieving the most effective possible response to all those in the service has been outstanding, wide ranging and innovative.

Gary's primary role is to improve the outcomes for those who have a dual diagnosis — that is, those people who have a mental health issue as well as, perhaps, a drug-related, substance abuse or alcohol problem or perhaps some other form of disability like an intellectual disability.

Gary has been working in the profession for some 33 years. It is great to see him recognised for the work he has done in this area, which needs very specialised people like him who share his commitment to this work.

Housing: homelessness

Mr LEANE (Eastern Metropolitan) — I congratulate our federal and state governments for recently putting a greater emphasis on the plight of homeless people. This is a sad issue for people in the east of Melbourne, as well as the west. It is also a sad issue in our central business district, where only last night I came across a gentleman who was desperately begging for money so that he could afford to stay at a backpackers hostel.

To that end I commend Grocon, the builders, for committing to build at cost price a facility in town to accommodate homeless people. I call on the rest of the building industry, particularly developers but all stakeholders, to think about what they could do to bring forward the development of social housing. Many permits for social or affordable housing are now available. I call on the building industry to see what can be done to accelerate the building of these projects and help improve what is a very sad situation.

STATEMENTS ON REPORTS AND PAPERS

VicRoads: report 2007–08

Mr FINN (Western Metropolitan) — I wish to say a few words regarding the VicRoads annual report for 2007–08. When I first looked at this report, my attention was drawn to the section on the $333 million Deer Park bypass, which will connect the Western

Freeway to the Western Ring-road. The 9.3-kilometre bypass will benefit a good many people in the western suburbs of Melbourne and beyond, and in Werribee and Melton, as well.

I was fortunate to be given a tour of the site, and I was extremely impressed at the work that has been done in developing this bypass. The Deer Park bypass will be an everlasting legacy to the people of the western suburbs from the former Howard federal government. Whenever I use the Deer Park bypass I will think of the support the Howard government gave to the people of the western suburbs. I am sure I will be among many hundreds of thousands if not millions of people in the west who will be grateful to John Howard and Peter Costello when this project is opened next year. We certainly await that with some anticipation.

There are a number of other issues that arise from this report, mainly I have to say because of matters that are not actually in it. For example, I have to ask the Minister for Roads and Ports: where is the money that was promised for Cottrell Street in Werribee, in his own electorate? The people of Werribee are less than impressed, and I think they showed that last week in the council elections and they are going to show it again at the next state election. They are very unhappy that the money that was promised for Cottrell Street in Werribee has not been provided as they sit there waiting at that particularly annoying and at times dangerous level crossing.

I was, I have to say, particularly looking forward to next year's VicRoads annual report because I had been anticipating some major projects as a result of the Eddington report. But picking up the newspapers this morning it would seem that the projects I had been anticipating will remain in anticipation, because they are just not going to happen. I have long been an advocate of an extra crossing over the Yarra around the West Gate Bridge, but it seems that is not going to happen. According to the *Herald Sun* this morning, as a result of a leak presumably from within the government, we have a situation where the government is taking the very bold move — and I use that word 'bold' in inverted commas — of opening the emergency lanes on the bridge to get more cars across. Have you ever heard anything more ludicrous in your life! When the people of the western suburbs need the Brumby government to take bold action, when they need the government to actually bite the bullet on this issue, what do they get? They get the emergency lanes being opened. It is nonsense to suggest that that is going to solve anything. All you need is for a car to break down and we are back to exactly where we were. That is all we need — one car — and that will finish off that particular scheme.

I say to the government that the people of the western suburbs are not going to cop this. We are not going to cop it. It is all very well for the government to say that the people of the west do not matter, but I have to say the people of the west are sick of being told that by this government — sick to the teeth. It is absolutely outrageous.

I had also been looking forward to a tunnel linking the Eastern Freeway and the Tullamarine Freeway, but it seems that is not going to happen. This is obviously as a result of some political influence. There are a few ministers, perhaps Minister Pike and Minister Wynne, who would be in some political bother if that tunnel were to go ahead, so that is out the window. The commuters, the people who travel in cars, are unimportant when compared to the political imperatives that face various Labor ministers in the inner suburbs.

I say to the government that whilst we can say that some things that are happening around the place are probably very good, it is not good enough for the government to pick and choose from the Eddington report. We need some big thinking. We need some action that will resolve many of the issues faced by the people of the western suburbs and show that the government believes the west of Melbourne actually matters.

Hesse Rural Health Service: report 2007–08

Ms TIERNEY (Western Victoria) — I rise to make a statement on the Hesse Rural Health Service 14th annual report, which is for 2007–08. This reporting period has been a very exciting time in the further development of Hesse Rural Health Service with the signing of contracts to commence the building of the specialised, 10-bed rural dementia wing. I would particularly like to thank the Winchelsea and District Community Bank branch of Bendigo Bank for its significant contribution, being a major sponsor of this project.

During the initial work there was an unexpected discovery in the renovation of the old hospital wing to meet aged-care building standards. Building materials that were used in the 1950s were discovered. They were hazardous and required immediate removal. This is a very delicate and difficult process. However, the health service did a marvellous job in resolving that matter. The Brumby state Labor government has provided the health service with over $800 000 to resolve that issue.

In the annual report the president of the Hesse Rural Health Service, Mr John Carr, said:

> Resolution of these issues has received prompt support through the —

Department of Human Services —

> at regional level.

For those who are not aware of the area that the Hesse Rural Health Service covers, it includes Rokewood, Winchelsea, Bannockburn and Beeac, but a number of smaller towns and a lot of smaller communities lie in between. The health service was also successful in its submission to the Geelong Community Foundation for $10 000, and that resulted in a men's shed at Rokewood, which I understand is very well used. A new bus was also provided, through the sustainable fleet funding, for the Beeac community health centre.

As well as providing infrastructure the Hesse Rural Health Service provides a whole host of programs surrounding the health and wellbeing of local communities — for example, the Beeac community health centre provides a range of promotional activities. It has walk-and-talk groups, meet-and-greet groups, yoga, children at play, and a Nesters group. The Nesters is a group of women whose children have now left home and who get together on a regular basis and put on concerts and essentially talk about the issues that confront them. This shows that the Hesse Rural Health Service is not just a hospital or surgery where ill people go; it is at the very heart of the community and plays a vital role in many different ways.

Another specific example of this is the delivery of the sustainable farm families program. During the reporting period 22 people from farms in the catchment area were involved. It is an award-winning program and includes staff from Winchelsea Community Health, Beeac Community Health and Rokewood Community Health. It also involves the Victorian Farmers Federation and the Western District Health Service. The program is funded by the Department of Human Services and addresses the impact the drought is having on farming families and the significance of their health in running their farms.

I would like to congratulate Hesse Rural Health Service on a very successful reporting period and for a very thorough and comprehensive report. I encourage it to continue its excellent work with the Deakin University medical school. As we know, a number of first-year medical students spend time with the health service. This can only have encouraging aspects to ensure that more younger graduate doctors make the decision to settle, work and raise families in rural and regional Victoria.

Budget update: report 2008–09

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I am pleased to rise to make a statement on the Budget update 2008–09 released by the Treasurer yesterday. The house is used to the government bringing in budget updates, annual financial reports and quarterly financial reports which have expenditure galloping far ahead of what was previously reported in the previous budget. Not surprisingly, this budget update released yesterday is no exception. We see expenditure is estimated at $600 million more than was forecast in the budget in May of this year. But the big difference with this budget update is that, unlike with previous updates and quarterly financial reports, we are seeing a much slower growth in revenue. In this budget update revenue is growing at only an additional $160 million above that budgeted in May of this year. So we are seeing a squeezing of the surplus — with revenue growing at $160 million and expenses blowing out by $600 million — and as a consequence the surplus, the net result from transactions, has been cut to $381.8 million.

That figure is fortuitous for the Treasurer, because in May of this year the government finally abandoned its ludicrous target of a surplus of $100 million. After a lot of pressure from the financial press, the opposition and others, the government walked away from its commitment — or from its target — of a $100 million surplus and adopted a more sensible target of a surplus of 1 per cent of revenue. This figure, which is recorded in yesterday's budget update, is fortunate for the Treasurer because at $381.8 million, the forecast surplus is conveniently 1.005 per cent of revenue, so the Treasurer has exactly achieved his forecast target. We can only wonder what riding instructions were given to the Treasury to ensure that we got a surplus which equals exactly the Treasury's target established in May of this year. When the actual result for the 2008–09 year is released at the end of next year it will be interesting to see whether the 1 per cent is achieved as forecast by the Treasurer.

Within the detail of the budget update we see within the revenue area that tax revenue is forecast to drop $500 million below that forecast in the May budget of this year. Within the total tax revenue we see stamp duty dropping by $600 million compared to the budget of May of this year. This is not surprising. Obviously we have seen the turnover in housing sales fall and the proportion of properties sold at auction drop

dramatically. We have seen prices fall, so it is not surprising that there has been a flow-on effect to the stamp duty revenue that was forecast for this financial year.

What is interesting is that the Treasury is forecasting that next year there will be a substantial recovery back to previous levels. I do not know of any commentator in the property market or an economic commentator that is suggesting — —

Mr Lenders interjected.

Mr RICH-PHILLIPS — But we are talking about the next financial year. In the next financial year the Treasurer's budget update is forecasting a recovery in property stamp duty revenue virtually back to the levels of last year. I do not think that there is a commentator in the property market that is suggesting we will see the volume and value of property revenue which is required to meet Treasury's forecast.

Yesterday I asked the Treasurer about the sustainability of the budget position. In this budget update we have a year-on-year growth forecast of revenue of 1.6 per cent. We have an expenditure year-on-year growth forecast of 4.8 per cent. We have a surplus that only just meets the Treasury's target. The question for the Treasurer yesterday was, ' Is this sustainable?'. In his answer the Treasurer said, ' Yes, it is sustainable, and yes, the government is committed to maintaining a surplus and a positive net result from transactions'. The reality is that it is not sustainable. We cannot continue to have revenue growth of 1.6 per cent, expenditure growth of 4.8 per cent and hope that the budget remains in surplus. The Treasurer can get away with it this year; he will not get away with it next year. While he may believe it is sustainable, it is certainly not sustainable beyond this year. It will not be possible for the Treasurer to maintain such a divergence between the growth in revenue and growth in expenditure if he is to maintain his budget surplus into the 2009–10 financial year.

Yesterday in answer to a question from Mr David Davis, with respect to revenue from the provision of services — —

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

Queen Victoria Women's Centre Trust: report 2007–08

Ms BROAD (Northern Victoria) — Today I wish to speak on the 2007–08 annual report of the Queen Victoria Women's Centre. I wish to acknowledge and thank the chair, Catherine Brown, and all the board members of the Queen Victoria Women's Centre Trust, the governing body, for their commitment and work over the last year, together with the general manager, Margaret Burdeu, and staff for providing a place for women to focus on the issues affecting women's lives and to seek to shape those issues.

The Brumby Labor government is pleased to continue its support for the Queen Victoria Women's Centre. Today I wish to particularly highlight the centre's focus on the issue of the prevention of violence against women through the centre's programs and organisations in partnership with the community and the government. In 2005, the Victorian Labor government committed in its policy statement *A Fairer Victoria 2008 — Creating Opportunity and Addressing Disadvantage* to a profound change in the way all of us respond to family violence, because family violence has serious consequences for families, communities, business and society. The government recognised that in order to effectively address family violence our service systems needed to be more responsive and coordinated, community awareness needed to be raised and our justice system needed to be strengthened.

The Brumby Labor government believes every Victorian should be able to live safely in their community and in their homes. That is the reason the government has taken action to support the prevention of family violence and the reduction of family violence over the longer term.

In 2005 Labor committed $35 million to deliver a new approach to family violence across Victoria. That new approach focused on a faster response to incidents, 24-hour referral and support, integrated case management, the provision of new emergency services and longer term accommodation. The government also funded specialist family violence courts to strengthen justice system responses.

Importantly, government action was supported by a new police code of practice, with a strong focus on police taking action that required them to take one or more of three actions: — referral to a support service, as a minimum; criminal action; or civil protective action.

The introduction of the police code of practice for the investigation of family violence was led by the Chief Commissioner of Police, Christine Nixon, who also made an outstanding contribution to developing the government's new approach to delivering integrated family violence services. I take this opportunity to

thank her for her leadership in helping to make Victorian women safer in their own homes.

The government has introduced new laws to better protect the community from family violence and to make those responsible more accountable for their actions. These changes to Victoria's justice system have given police more powers so they can respond quickly and effectively to family violence.

The Queen Victoria Women's Centre provides space and support programs for Victorian women and women's organisations, as well as a home for 10 independent women's organisations including Domestic Violence Victoria, the peak advocacy organisation committed to the rights of women and children to live free from violence.

I would like to take this opportunity to thank Domestic Violence Victoria and the Aboriginal Family Violence Prevention and Legal Service, both of which are housed at the Queen Victoria centre, for their contribution to turning around family violence and furthering the aim, which the centre and the government support, of promoting the rights of women and children to live free from violence.

Regional Development Victoria: report 2007–08

Mr VOGELS (Western Victoria) — I would like to make a few comments on the annual report of Regional Development Victoria, which I think is a very good report. The introduction states:

> RDV pursues five distinct strategies to achieve its objective:
>
> > develop and facilitate investment in provincial Victoria in key industry sectors;
> >
> > provide assistance for strategic infrastructure projects that contribute to economic growth;
> >
> > facilitate sustainable business development through the provision of programs, information and referral services;
> >
> > facilitate rural and regional community building and engagement; and
> >
> > encourage regional population growth.

They are all very worthwhile aims. In his chief executive foreword Justin Hanney says:

> Despite growing challenges facing industry and business — climate change and sustainability, water security, the price of fuel and electricity and access to market funds — the ongoing commitment of all RDV staff has helped drive economic and industry growth and attract investment in regional and rural Victoria in 2007–08.
>
> …
>
> By 2021 Victoria will be home to an extra one million people — a decade earlier than previously forecast — one-quarter of them are expected to locate in rural and regional areas.

I am pleased to say that the joint parliamentary committee of which I am a member, as are Mr Drum and Ms Tierney in this place, is looking at this issue of how we can try to get at least 250 000 of those projected 1 million extra people in Victoria to move into country Victoria. We are currently conducting hearings and briefings right around rural and regional Victoria to see if we can come up with some plans to get these people to move to the regions, rather than them all congregating in this city.

The report mentions an intermodal freight infrastructure program worth $20 million. I think that is a good thing to spend money on. An ideal place for an intermodal freight hub would be the Ballarat airport site. The Ballarat City Council and the Committee for Ballarat have both pushed for this project. There is a railway line going right past the airport site, and four major roads come into Ballarat around that area — the Glenelg, Western, Sunraysia and Midland highways. With the rail line going past, it will be an ideal spot to have an intermodal freight hub. If members know Ballarat at all, they will know it is very hard for the trucks bringing grain from the north or wherever to get through Ballarat. It is a difficult city to get through, especially if you are heading down to Geelong to go to the port. I hope they can take advantage of the $20 million available for that.

The report also talks about local roads to markets. I think that is very important. I still think the best way of fixing up local roads is for the state government to match the federal government's Roads to Recovery funding, which would instantly put $60 million into the pockets of councils to spend on local roads, bridges et cetera where they believe it is really necessary.

The report goes on to talk about the Regional Infrastructure Development Fund's $70 million natural gas extension program, which the government announced three or four years ago. It says that 34 towns have been connected. That is a good outcome. However, it beggars belief for me that a lot of time half a town is connected and not the other half; you would think that while you were doing part of a town you would go and do the lot. Some towns which were promised gas by the Labor government found out that it was promised but they have not got it at all — it was a bit of a hoax, which is sad.

It also talks about stock overpasses and underpasses, which are an excellent initiative. There was $10 million

for that project, and $8 million has been expended, so there should be $2 million left. I hope that $2 million will be expended before 2010. I commend the report to the house.

Bendigo Health Care Group: report 2007–08

Mr DRUM (Northern Victoria) — I wish to make some comments in relation to the 2007–08 annual report of the Bendigo Health Care Group. In doing so I acknowledge the work the chief executive officer, John Mulder, is doing in relation to obtaining a new hospital for the city of Greater Bendigo. Being the service centre that it is, it is critically important to the entire central Victoria region that Bendigo have a world-class hospital, and we need to support his endeavours to force the government's hand and get it to commit to a new hospital in the city of Greater Bendigo. For what it is worth, while the process is still under way, my preference would be for the new hospital to be located on the existing site. I hope that recommendation comes to pass.

It was a very sad year in relation to people passing away. It was a very sad moment when Richard Clarke, who was a huge figure in the health care group and a very strong Labor Party man, passed away. He worked in the office of the federal member for Bendigo, Steve Gibbons, but had a very strong history in health and indeed mental health. When you saw the outpouring of condolences when he passed away you realised the value of the work he did here and in the Australian Capital Territory in relation to health and mental health. He will be sadly missed in the health care group.

Some of the statistics highlighted in the annual report include the emergency department presentations — the number of patients presenting there each year. They show that this year there has been an increase on last year, which was an increase on the previous year. We are seeing more and more people presenting at the emergency department. That will place further stresses on the hospital. We need to make sure that the current funding model is adequate to cater for all the people who present through emergency and end up being admitted to a bed. That system currently creates a slowdown or even a stalling of elective surgery throughout the hospital.

Under extreme pressure we have seen below-par performance in relation to elective surgery. The people involved with the health care group need to be commended, because they have worked amazingly well to deal with the increased workload. However, we need to acknowledge that the funding levels have not been coming through to enable them to do their jobs properly. All of those statistics are in the annual report.

A report listed in the program is the Chum House Day Hospice. This program caters for people in their final stages. It is a non-medical palliative program. It does an amazing job of providing respite to chronically ill patients. A lot of the patients have chronic diseases. They go along for an afternoon or the best part of a day once a week or once a fortnight.

It gives them a fantastic amount of respite. It gives them entertainment and keeps them busy, and it takes their minds off their ailments. It gives their carers an opportunity for some respite as well. It is a great program that was originally piloted for 12 months, but thanks to a very strong local campaign within Bendigo that program was rolled out for a further three years, and we are now about halfway through it. We hope it is rolled out again into the future.

FUNDRAISING APPEALS AND CONSUMER ACTS 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 Fundraising Appeals and Consumer Acts Amendment Bill 2008.

In my opinion, the Fundraising Appeals and Consumer Acts 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 amends the Fundraising Appeals Act 1998 to implement its public review. It clarifies some sections of the act; introduces increased disclosure requirements for fundraisers to increase transparency for the donating public; reduces the regulatory burden on fundraisers; and improves the administrative powers of the director.

The bill also amends the Goods Act 1958 and the Warehousemen's Liens Act 1958 to introduce in Victoria protections for suppliers and purchasers of bulk goods where the bulk store operator goes into liquidation.

Finally the bill makes a range of minor amendments to other consumer acts.

Human rights issues

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

The provisions in this bill do 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 human rights issues.

JUSTIN MADDEN, MLC
MINISTER FOR PLANNING

Second reading

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

Mr LENDERS (Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The purpose of this bill is to further enhance community and donor confidence in fundraising, and increase transparency in fundraising activities. It introduces amendments to implement the public review led by Luke Donellan, the honourable member for Narre Warren North. These amendments also form part of the government's vision for developing community organisations outlined recently by the Premier's release of the *Victorian Government's Action Plan — Strengthening Community Organisations.*

The bill also amends the Warehousemen's Liens Act 1958 and the Goods Act 1958 to protect suppliers and purchasers of commingled goods, particularly when a bulk storage operator goes into liquidation, and makes other minor amendments to other consumer acts.

Dealing first with the fundraising reforms, in Victoria, fundraising appeals are governed by the Fundraising Appeals Act 1998. The director of Consumer Affairs Victoria maintains a public register of persons or bodies who conduct fundraising appeals. The register has been in place since January 2002. As of 1 July 2008, there were 1073 fundraisers registered.

The fundraising reforms clarify some sections of the act; introduce increased disclosure requirements for fundraisers to increase transparency for the donating public; reduce the regulatory burden on fundraisers; and improve the administrative powers of the director.

In particular, the bill changes the name of the act to the Fundraising Act 1998 and clarifies that a fundraising appeal is not only a single event over a limited period of time but can also be an ongoing activity.

The bill inserts a new objects clause to clarify the objectives of the act and clarifies the requirement for commercial fundraisers to register. It includes a new power for the director of Consumer Affairs Victoria to publish guidelines to facilitate understanding of registration conditions.

The bill will remove the exemption relating to soliciting a devise or bequest of any property from the requirements of the act. Currently, this form of fundraising is not a fundraising appeal for the purposes of the act. However, in the majority of instances there does not seem to be anything especially unique about this form of fundraising to justify its exclusion from the provisions of the act.

The act already sets out a number of information disclosure requirements for fundraisers, much of which is made available to the public on the register. As a crucial part in increasing transparency, the bill introduces two new disclosure requirements for fundraisers.

First, fundraisers must disclose details of the actual total amount of proceeds that they estimate they will pass on to beneficiaries. This information can be posted on the public register. This will provide a clearer picture for potential donors of the impact of the fundraising appeal, than the current emphasis upon the proportion of total proceeds.

Second, the bill now requires fundraisers to clearly disclose the exact dollar or percentage amount of funds that will be passed on to the beneficiaries to the donor when obtaining donations as part of the supply of goods or services. This requirement particularly relates to commercial for profit entities taking part in a fundraising appeal. Many commercial for profit entities pride themselves on taking part in fundraising initiatives in this state, but this legislative mechanism ensures that donors will always be aware of how much of the proceeds from goods or services they have purchased will be passed on to the beneficiaries.

The bill significantly reduces the regulatory burden on fundraisers by repealing the specific record keeping and labelling requirements for clothing bins. The review found that those requirements were placing fundraisers at a competitive disadvantage to commercial bin operators who are not required to disclose any information on clothing bins, as well as imposing an unreasonable compliance burden.

The bill also increases the default period of registration from 12 months to three years as part of the government's policy to reduce regulatory burdens.

Currently under the act, the director has the power to deregister fundraisers for breach of a condition. The bill will provide the director with more flexibility, by allowing the director to reduce the period of registration of a fundraiser in some circumstances where full deregistration is not appropriate. In some instances smaller fundraisers breach conditions on registration inadvertently, but otherwise do not merit deregistration. The amendment enables the director to shorten their registration to enable reconsideration of their qualification to conduct fundraising appeals, and to provide them with assistance where necessary.

Finally, the bill provides that a person conducting a fundraising appeal using direct debit deduction forms must ensure that the wording on the form is legible and clear.

This ensures that potential donors have the ability to establish what they are signing up for.

The other key reforms of this bill amend the Warehousemen's Liens Act 1958 and the Goods Act 1958 to protect suppliers and purchasers of mixed goods when the bulk storage operator goes into liquidation.

Currently, under the Warehousemen's Liens Act 1958, should a storage facility go into liquidation, ownership of any commingled goods may pass to the owner of the storage facility and the goods become available to be sold to satisfy general creditors.

Similarly, under the Goods Act 1958, ownership of any part of the mixed goods already sold but of which the purchaser has not taken delivery at the time the storage facility goes into liquidation, may pass to the owner of the storage facility and the goods become available to be sold to satisfy general creditors.

In both cases, it is not clear where ownership lies.

Potential problems with the current wording of the legislation were demonstrated in New South Wales in 2005, when Creasy Grain Enterprises went into receivership. The liquidators relied on the provisions within the then New South Wales legislation, which were similar to Victoria's current legislation, and claimed ownership of the warehoused grain. This was contested by one of the grain suppliers and the matter was later settled out of court.

The proposed legislative amendments clarify the ownership rights of both suppliers and purchasers of mixed goods in the event a bulk storage operator goes into liquidation. They are modelled upon legislative changes made in 2006 in New South Wales.

The amendments are consistent with broader Victorian government policy for strengthening regional Victoria. They provide legal certainty for grain growers and other rural producers of commingled and bulk goods concerning their title in those goods in the event of insolvency of a bulk storage operator.

The bill also amends the Conveyancers Act 2006 to make void dealings with things that are the subject of an embargo notice; the Fair Trading Act 1999 to clarify the definition of goods for the purposes of hire purchase agreements; the Liquor Control Reform Act 1998 to strengthen the power to make regulations for the operation of security cameras in high-risk licensed premises; the Trustee Companies Act 1984 to update the names of authorised trustee companies and adjust reporting dates; and the Travel Agents Act 1986 to correct a cross-reference.

I commend the bill to the house.

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

Debate adjourned until Thursday, 11 December.

ASSISTED REPRODUCTIVE TREATMENT BILL

Legislation Committee

Mr LENDERS (Treasurer) — On behalf of my colleague Mr Jennings I move:

That the Council adopt the report of the Legislation Committee on the Assisted Reproductive Treatment Bill 2008.

Mr TEE (Eastern Metropolitan) — I want to speak briefly on the motion to say that when I moved the motion to refer the bill to the Legislation Committee I thought it would be a good opportunity for those who had concerns about the Assisted Reproductive Treatment Bill to explore some of those concerns and misunderstandings. Having done that, the Legislation Committee certainly provided an opportunity for many of those issues to be explored. The committee met on a couple of occasions and spent some 5 hours going through the bill on a clause-by-clause basis. There was an opportunity for a number of members of this house to participate either as members or as substitute members or, as in the case of Mr Finn, not as a member of the committee but as a member of this Council who was provided with an opportunity to participate.

It was a very healthy and open process, and I want to thank those who participated, particularly the Minister for Environment and Climate Change, Mr Jennings, who was able to elaborate on a number of the issues that were raised. I think the process has demonstrated that the bill should be proceeded with, and I note there were no amendments. I would like to thank those who participated in the process.

Ms PENNICUIK (Southern Metropolitan) — I want to speak briefly as a member of the Legislation Committee. The committee took 5 hours to go through the bill in great detail, and I hope members of the Council have had an opportunity to read the transcript. I congratulate the minister for his forbearance during the many questions that were asked, and I think his answers clarified for members many of the issues.

Motion agreed to.

Committed.

Committee

The DEPUTY PRESIDENT — Order! The committee has been asked to consider and comment on proposed amendments to the Assisted Reproductive Treatment Bill 2008.

Clauses 1 and 2 agreed to.

Clause 3

The DEPUTY PRESIDENT — Order! Ms Pennicuik has submitted amendment 1. I ask her to move the amendment formally and make any remarks in respect of it.

Ms PENNICUIK (Southern Metropolitan) — Before I move the amendment could you, Deputy President, clarify whether it is a test for other amendments?

The DEPUTY PRESIDENT — In my view it is not.

Ms PENNICUIK — I move:

1. Clause 3, lines 23 to 31, omit all words and expressions on these lines.

The amendment is to clause 3, which is the definitions clause, and would remove the definition of a child protection order under the Children, Youth and Families Act in regard to the provisions of the bill which require a provider of assisted reproductive technology to apply to the Department of Human Services to know whether an applicant has had a child protection order made against them. It foreshadows further amendments which I will move to remove provisions in the bill for applicants to have that child protection order check done and to have police checks done.

Mr DRUM (Northern Victoria) — I support leaving in the legislation the provision for police checks to be done, and will not be supporting the amendment. Ms Pennicuik's amendments down to amendment 8 — and maybe even amendment 9 and possibly even further, but in particular amendment 8 — relate to the issue. If we are going to be helping subfertile couples and even fertile couples take this step into parenthood, the very least we can do is check they are free of conviction, serious conviction especially, and ensure we are giving the children the best start we possibly can.

Ms PENNICUIK (Southern Metropolitan) — Further to my initial comments, very briefly I will point out to members who have not had the opportunity of reading the Legislation Committee's report that Victoria would be the only jurisdiction with these provisions in place. They are not in place in any other jurisdiction. The only other jurisdiction that has anything similar is South Australia, where applicants for assisted reproductive technology are required to provide a statutory declaration stating whether they have a conviction for an offence of violence or a sexual offence and/or have a child protection order against them. There is no other jurisdiction that requires a police check for applicants for assisted reproductive technology treatment, and the Greens believe it is inappropriate to have that in the Victorian legislation.

Mr FINN (Western Metropolitan) — I will be voting against this amendment. I very strongly support the police checks. Some might say that what I am about to say is a bit outlandish, but it is a very real possibility, knowing how some of these people think. My very great concern is that we could have a situation where two male paedophiles commission — and I have to say to the house that I detest that word in this context; the use of that word very much reflects the government's attitude to children — a child, and if there were no police checks, there would be nothing anybody could do to stop them. I would not want to see a child put into a position where they would be effectively under the guardianship of paedophiles. To allow that to happen would be a total abrogation of our responsibility as members of Parliament. For that reason I will be opposing this particular amendment.

The DEPUTY PRESIDENT — Order! I ask the minister whether there is any proposal to review the police check provision down the track.

Mr JENNINGS (Minister for Environment and Climate Change) — As a starting point, in terms of dealing with the sequence of the issues that have been raised, whilst in a technical sense this amendment to the definitions does not necessarily preclude or test other provisions, it does by intent. Removing the definitions of 'police checks' and 'child protection orders' has the intent of removing those concepts from the bill, and it would only make sense to remove those definitions if the Parliament were to agree to the removal of the requirement for police checks and child protection orders to be evaluated. It is the view of the government that those provisions should stand. It might be literally correct that it does not test it, but ultimately the concept is being tested as we speak and consider whether the definitions should be removed. The government believes the definitions should not be removed and that the requirements for police checks and child protection orders should be maintained. This might be one of the occasions — not necessarily with the level of detail that Mr Finn brought to his contribution — where he and I agree. Today by the net effect of our contributions we are in alignment.

In terms of the Deputy President's question about whether it is the government's intention to monitor the ongoing effectiveness of the provisions of the bill, including police checks, the government is alive to

monitoring the application of all provisions of this bill and will be hoping that the patient review panel undertakes a range of assessments about the ongoing success or potential weaknesses in the application of the bill. Within that context all the provisions would be reviewed over time, but there is no specific intention of the government to set a time frame or a mechanism that would lead anyone to say in the abstract that this is a provision that the government would not want to consider in its own right as distinct from the totality of the provisions of the act.

Ms PENNICUIK (Southern Metropolitan) — Without wanting to rehash the debate in the Legislation Committee, could the minister put on the record why the government has chosen to do this when it was advised by the Victorian Law Reform Commission not to do so?

Mr JENNINGS (Minister for Environment and Climate Change) — The reason I find that a bit amusing is that Ms Pennicuik knows she asked me that question directly in the Legislation Committee, and she knows that I answered that question. About 10 minutes ago she congratulated me for giving fulsome answers and implored other members of this committee not to rehash matters. If she wants that standard to apply to everyone, she might have to reflect on it a bit.

The DEPUTY PRESIDENT — Order! The minister is looking at me. What does the minister wish me to do?

Mr JENNINGS — The reason is that I do not know whether I want to be drawn into the situation of going back through the detailed answers I have given, either by recalling them, re-reading them or imploring members of this committee to call upon those answers. That is a bit of a test that I am now perhaps throwing to the committee.

The DEPUTY PRESIDENT — Order! I understand the minister's position. What I would suggest in defence of the procedure that is raised by the question is that it might well be prudent for the committee to revisit some answers, albeit perhaps in an abbreviated form, on the basis of their relevance to the specific amendments moved. That is a different situation to addressing the matters canvassed in the Legislation Committee that were clearly not directly the subject of amendments that are now before the committee. Nonetheless the minister's suggestion to members is one that ought to be regarded fairly and appropriately.

I want to clarify the matter raised by the minister. Ms Pennicuik has somewhat of an expectation that this amendment does to some extent test her other amendments. In an explicit form that is not the case, because simply removing the definitions might leave the legislation somewhat deficient, particularly in the government's mind, and might have some people scratching their heads as to where other provisions in the legislation might apply. The definition is not integral to some of the specific amendments that are proposed by Ms Pennicuik in terms of deleting the requirement for police checks in subsequent clauses. It is not absolutely necessary to retain this clause in respect of how we vote on the other clauses. I agree with the minister and with what I think was Ms Pennicuik's expectation — that this amendment and the subsequent ones are a package in terms of the way the committee ought to regard them.

Mr JENNINGS — In the spirit of trying to assist us in dealing with the package I am happy to make some comments in relation to the question, even though I think the question is unhelpful in relation to how the committee would work.

The DEPUTY PRESIDENT — Order! If the minister is happy to facilitate that, that is fine.

Mr JENNINGS — The critical issue in relation to the way the government formed its view about the appropriate way to bring forward this piece of legislation — which is predicated on opening up access to a variety of assisted reproductive technologies and services to assist individuals in the state of Victoria to receive those services, receive that support and receive a variety of technical and professional health expertise to enable them to have children delivered and arriving within their care — is that we have tried to account for a number of community concerns about access to these services. Whilst the overwhelming principle the government has adopted is to increase access to services and to apply a human rights perspective in terms of equal opportunity and making those services available to a broader cross-section of the community than they have previously been available to, we are mindful of a number of things, including community concern and apprehension about those services being provided to those in our community who may not be able to provide for the care of children, and in those contexts we have tried to look at how that could be ascertained and evaluated.

The most significant element of the provisions of this bill in relation to this are the counselling services and the professional standards and rigour that are going to be applied to the counselling and consideration, to make sure that the value systems and caring capabilities of the individuals who want to have children in the state of Victoria through the use of these technologies and

these services is rigorously tested. People are asked to dig deep in relation to an evaluation of their ability to care for children and to talk about the consequences of having a child come into their care as a result of these services. That is the most appropriate level of scrutiny.

Beyond this there are a number of measures in terms of indicators of a person's ability to provide for the care of children, in terms of personal history or ability or demonstrable engagement with other members of the community. A police check will indicate any previous criminal behaviour, and in the eyes of many members of the community this is an appropriate scrutiny to bring to this process. The government has accepted that that is a reasonable community expectation and a reasonable community standard. Beyond this the government also believes it is appropriate to have an understanding of a person's previous parenting record, as may be indicated by a child protection order having been taken out against an individual or an individual having been subject to intervention to either complement or structure their parenting capability. That is the type of information that will be available through the child protection order check. The government believes that is extremely relevant information in making the decision to allow an individual to proceed through this process.

Everything I have just outlined to this committee I have outlined to it previously. Those, on balance, are the reasons why the government supports the framework proposed within the legislation that is before us.

Committee divided on amendment:

Ayes, 3

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

Noes, 34

Atkinson, Mr	Lenders, Mr (*Teller*)
Broad, Ms	Lovell, Ms
Coote, Mrs	Madden, Mr
Dalla-Riva, Mr	Mikakos, Ms
Darveniza, Ms (*Teller*)	O'Donohue, Mr
Davis, Mr D.	Pakula, Mr
Davis, Mr P.	Petrovich, Mrs
Drum, Mr	Peulich, Mrs
Eideh, Mr	Pulford, Ms
Finn, Mr	Scheffer, Mr
Guy, Mr	Smith, Mr
Hall, Mr	Somyurek, Mr
Jennings, Mr	Tee, Mr
Kavanagh, Mr	Thornley, Mr
Koch, Mr	Tierney, Ms
Kronberg, Mrs	Viney, Mr
Leane, Mr	Vogels, Mr

Amendment negatived.

Ms HARTLAND (Western Metropolitan) — I move —

1. Clause 3, lines 29 to 31, omit all words and expressions on these lines.

I move this amendment for the reasons outlined previously in relation to Ms Pennicuik's amendment 1. I will not make any further statement because I think it is quite obvious why the Greens are doing this. The meaning of the amendment is that the only requirement would be a statutory declaration rather than a police check, as is the case in South Australia. We do not believe police checks are necessary, and we think this is a more acceptable way of doing it.

Mr FINN (Western Metropolitan) — After some discussion, it seems to me and those around me that this amendment has the same principal effect as the last amendment, which has just been defeated. Is it necessary to vote on this when, as a result of the last division, it is clear what the position of the committee is?

The DEPUTY PRESIDENT — Order! This is an amendment with less scope. In that sense it is a valid amendment in its own right. Whilst the previous amendment by Ms Pennicuik tested a stronger proposition, this one is more limited and therefore is a valid amendment that might well offer members a lesser alternative in terms of dealing with this matter. The discussion being held at the table is in regard to the impact of proceeding with this amendment, which Ms Pennicuik believes has some ramifications or implications for her further amendments on subsequent clauses.

Ms PENNICUIK (Southern Metropolitan) — I start with our intentions relating to my amendments 1 to 8, which members have in front of them. The effect of those amendments is to remove the requirement for police checks and child protection order checks by the ART providers, and in particular by counsellors who work for the ART providers, because under the provisions of the bill counsellors who work for ART providers would be involved in looking at police checks. My amendments 1 to 8 went to removing the sections in the bill that refer to the requirements for the ART provider to undertake police checks.

The intention of Ms Hartland's proposed amendments is that if my amendments 1 to 8 — that is, the complete removal of police checks and child protection orders — fail, then Ms Hartland's amendments propose to insert what we feel is a less onerous requirement, which is that applicants for assisted reproductive technology would supply a statutory declaration to the effect that they do not have a conviction for a sexual offence or a

violent offence and they do not have a child protection order against them. The applicant would supply that statutory declaration along with their other paperwork to the ART provider. That system mirrors the system that applies in South Australia, which is the only other jurisdiction that has anything to do with police checks or child protection orders in relation to these matters. That is the intention and is why I was a bit confused and asked at the start whether my amendment 1 was a test for amendments 1 to 8. I hope that assists the committee to see where we are going, but I am not quite sure what we do.

The DEPUTY PRESIDENT — Order! I am happy to proceed with Ms Hartland's amendment on the same basis that we proceeded with Ms Pennicuik's amendment 1. Essentially we are dealing with the definitions rather than the substantive clauses. Whilst there would be those who might say that removal from the definitions has an impact on those more direct clauses, the reality is that we are only dealing with definitions. The definition is not a test substantively for Ms Pennicuik's other amendments.

On that basis it is the view of the Chair that Ms Hartland's proposition is a lesser proposition than the one already tested. As I indicated to Mr Finn in response to his point of order, it is appropriate to proceed with Ms Hartland's amendment.

Ms PENNICUIK — I am happy to be guided by the Chair as to the procedure. I just wanted to make sure that members understood exactly what the provisions were.

The DEPUTY PRESIDENT — Order! The clarification was warranted.

Committee divided on amendment:

Ayes, 8

Atkinson, Mr	Hartland, Ms
Barber, Mr (*Teller*)	Lovell, Ms (*Teller*)
Coote, Mrs	O'Donohue, Mr
Davis, Mr D.	Pennicuik, Ms

Noes, 29

Broad, Ms	Madden, Mr
Dalla-Riva, Mr	Mikakos, Ms
Darveniza, Ms	Pakula, Mr
Davis, Mr P.	Petrovich, Mrs
Drum, Mr	Peulich, Mrs
Eideh, Mr	Pulford, Ms
Finn, Mr	Scheffer, Mr
Guy, Mr	Smith, Mr
Hall, Mr	Somyurek, Mr
Jennings, Mr	Tee, Mr
Kavanagh, Mr	Thornley, Mr
Koch, Mr	Tierney, Ms (*Teller*)
Kronberg, Mrs	Viney, Mr
Leane, Mr	Vogels, Mr (*Teller*)
Lenders, Mr	

Amendment negatived.

Ms PENNICUIK (Southern Metropolitan) — I move:

2. Clause 3, page 4, lines 6 to 22, omit all words and expressions on these lines.

This removes the definition of 'criminal records check' from the definitions clause, clause 3. I will not make any further comments on that. I think the committee understands that the intent of that amendment is to remove the whole regime of police checks from the bill.

Committee divided on amendment:

Ayes, 9

Atkinson, Mr	Hartland, Ms
Barber, Mr	Lovell, Ms
Coote, Mrs	O'Donohue, Mr
Dalla-Riva, Mr (*Teller*)	Pennicuik, Ms (*Teller*)
Davis, Mr D.	

Noes, 28

Broad, Ms	Madden, Mr
Darveniza, Ms	Mikakos, Ms
Davis, Mr P.	Pakula, Mr
Drum, Mr	Petrovich, Mrs
Eideh, Mr	Peulich, Mrs
Finn, Mr	Pulford, Ms
Guy, Mr	Scheffer, Mr
Hall, Mr (*Teller*)	Smith, Mr
Jennings, Mr	Somyurek, Mr
Kavanagh, Mr	Tee, Mr
Koch, Mr	Thornley, Mr
Kronberg, Mrs	Tierney, Ms
Leane, Mr (*Teller*)	Viney, Mr
Lenders, Mr	Vogels, Mr

Amendment negatived.

Ms PENNICUIK (Southern Metropolitan) — I move:

3. Clause 3, page 6, lines 16 and 17, omit all words and expressions on these lines.

This is a consequential amendment regarding the removal of child protection orders and goes to the definition of 'secretary' under the act.

Amendment negatived.

The DEPUTY PRESIDENT — Order! Ms Hartland circulated an identical amendment, and it is my view that the house has just tested that amendment.

Clause agreed to; clauses 4 to 10 agreed to.

Clause 11

The DEPUTY PRESIDENT — Order! I call on Ms Pennicuik to formally move amendments 4 and 5 standing in her name and to make any remarks she wishes to in support of those amendments. I indicate to the committee that I regard amendments 4 and 5 as a test for amendment 13.

Ms PENNICUIK (Southern Metropolitan) — I move:

4. Clause 11, line 27, omit "place; and" and insert "place.".

5. Clause 11, lines 28 to 33, and page 13, lines 1 to 4, omit all words and expressions on these lines.

Amendment 5 would remove paragraph (c) of clause 11(1), which requires a counsellor to sight a criminal records check. Both in the debate in the house and in the Legislation Committee it was canvassed quite openly that in our view it is not the role of a counsellor, who has a specific role in counselling people about their options under assisted reproductive technology, to be involved in receiving and sighting criminal records checks and passing those on to the ART provider. Notwithstanding whether people have a view that police checks should be part of the provisions of this bill, our view is that it should not involve the counsellor. Certainly the organisations that represent counsellors and individual counsellors have approached us — and I am sure other members of the house — saying they do not believe it is part of their role. I know that some of the ART providers themselves have said it should not be the role of the counsellor to be involved in sighting and receiving police checks if that is part of the regime. This amendment is to remove the role of the counsellor from the police check provisions of the bill.

Mr JENNINGS (Minister for Environment and Climate Change) — For the sake of the committee's clarity on this matter, following my substantive answer to the definitions issue when I outlined the arguments explaining why the government believes it is appropriate to have scrutiny in terms of both police checks and child protection audit checks in this process, this is the mechanism in this clause by which the relevant counsellor can verify that that evidence has been gathered and account for it before further decision making and procedures under ART. In the government's view this is the mechanism by which the counsellor will ensure that that material has been accounted for. The government clearly supports this provision staying in the bill.

Ms PENNICUIK (Southern Metropolitan) — I thank the minister. I understand that is the government's position, but it is certainly our strong position that there can be other mechanisms by which that can be achieved, rather than this one, including even in regulation. I urge members to think about whether they support police checks. It is not supported by the counsellors themselves that they be involved in this issue and it is not supported by ART providers. With that I would seriously urge members to support these amendments.

Committee divided on amendments:

Ayes, 8

Atkinson, Mr	Hartland, Ms (*Teller*)
Barber, Mr	Lovell, Ms
Coote, Mrs (*Teller*)	O'Donohue, Mr
Davis, Mr D.	Pennicuik, Ms

Noes, 29

Broad, Ms	Madden, Mr
Dalla-Riva, Mr	Mikakos, Ms
Darveniza, Ms	Pakula, Mr *(Teller)*
Davis, Mr P. *(Teller)*	Petrovich, Mrs
Drum, Mr	Peulich, Mrs
Eideh, Mr	Pulford, Ms
Finn, Mr	Scheffer, Mr
Guy, Mr	Smith, Mr
Hall, Mr	Somyurek, Mr
Jennings, Mr	Tee, Mr
Kavanagh, Mr	Thornley, Mr
Koch, Mr	Tierney, Ms
Kronberg, Mrs	Viney, Mr
Leane, Mr	Vogels, Mr
Lenders, Mr	

Amendments negatived.

The DEPUTY PRESIDENT — Order! I call on Ms Hartland to move her amendment 4, which I also regard as a test of her amendment 6. As with the previous amendment moved by Ms Hartland, it is my view that this amendment is lesser in scope than that proposed by Ms Pennicuik and therefore has not been determined by the house.

Ms HARTLAND (Western Metropolitan) — I move:

4. Clause 11, lines 28 to 33, and page 13, lines 1 to 4, omit all words and expressions on these lines and insert —

"(c) must be accompanied by a statutory declaration from the woman and her partner, if any, as to the following —

(i) whether a child protection order has been made removing a child from the custody or guardianship of the woman or her partner;

(ii) whether charges have been proven against the woman or her partner for a sexual offence

referred to in clause 1 of Schedule 1 of the **Sentencing Act 1991**;

(iii) whether the woman or her partner has been convicted of a violent offence referred to in clause 2 of Schedule 1 of the **Sentencing Act 1991**.".

The DEPUTY PRESIDENT — Order! Does Ms Hartland wish to make any remarks on the amendment?

Ms HARTLAND — No, I think it is self-explanatory.

The DEPUTY PRESIDENT — Order! Is there any further discussion on the amendment before the chair?

Ms PENNICUIK (Southern Metropolitan) — Yes, Deputy President, with your indulgence I would like to clarify that the amendment moved by Ms Hartland, as you say, is for a lesser regime than what I have been proposing with my amendments to remove child protection orders and police checks. This amendment would replace paragraph (c) under clause 11, which would mean that applicants for assisted reproductive technology treatment would not have to undergo a police check or a check on child protection orders against them, but under 'Requirements as to consent' they would supply a statutory declaration as to whether they have been convicted of a sexual offence under the Sentencing Act or a violent offence under the Sentencing Act or have had a child protection order against them. They would supply that statutory declaration with the paperwork, and that would be supplied to the provider. That is mirroring the regime that exists in South Australia.

Committee divided on amendment:

Ayes, 6

Atkinson, Mr	Lovell, Ms
Barber, Mr	O'Donohue, Mr (*Teller*)
Hartland, Ms (*Teller*)	Pennicuik, Ms

Noes, 29

Broad, Ms	Madden, Mr
Dalla-Riva, Mr	Mikakos, Ms (*Teller*)
Darveniza, Ms	Pakula, Mr
Davis, Mr P.	Petrovich, Mrs
Drum, Mr	Peulich, Mrs
Eideh, Mr	Pulford, Ms
Finn, Mr	Scheffer, Mr
Guy, Mr	Smith, Mr
Hall, Mr	Somyurek, Mr
Jennings, Mr	Tee, Mr
Kavanagh, Mr	Thornley, Mr
Koch, Mr (*Teller*)	Tierney, Ms
Kronberg, Mrs	Viney, Mr
Leane, Mr	Vogels, Mr
Lenders, Mr	

Amendment negatived.

Clause agreed to.

Clause 12

The DEPUTY PRESIDENT — Order! There are proposed amendments from both Ms Pennicuik and Ms Hartland on this clause — Ms Pennicuik's is no. 6 and Ms Hartland's is no. 5. Both amendments have the same impact in the sense that they seek the omission of the clause. In regard to the omission of this clause, I believe it is also a test for Ms Pennicuik's subsequent amendment 13. Ms Pennicuik does not need to formally move amendment 6, because she is inviting the committee to vote against the clause.

Ms PENNICUIK (Southern Metropolitan) — My amendment invites the committee to vote against clause 12, which is also what is proposed by Ms Hartland's amendment. Clause 12 talks about child protection order checks. The amendment is in the spirit of what we are trying to achieve here, which is the removal of police checks and child protection order checks from the bill.

The DEPUTY PRESIDENT — Order! I will test the clause. As I have indicated, both Ms Hartland and Ms Pennicuik are inviting the committee to vote against the clause.

Committee divided on clause:

Ayes, 30

Atkinson, Mr	Lenders, Mr
Broad, Ms	Madden, Mr
Dalla-Riva, Mr	Mikakos, Ms
Darveniza, Ms	Pakula, Mr (*Teller*)
Davis, Mr P.	Petrovich, Mrs
Drum, Mr	Peulich, Mrs (*Teller*)
Eideh, Mr	Pulford, Ms
Finn, Mr	Scheffer, Mr
Guy, Mr	Smith, Mr
Hall, Mr	Somyurek, Mr
Jennings, Mr	Tee, Mr
Kavanagh, Mr	Thornley, Mr
Koch, Mr	Tierney, Ms
Kronberg, Mrs	Viney, Mr
Leane, Mr	Vogels, Mr,

Noes, 6

Barber, Mr (*Teller*)	Davis, Mr D.
Hartland, Ms	Lovell, Ms (*Teller*)
O'Donohue, Mr	Pennicuik, Ms

Clause agreed to.

Business interrupted pursuant to sessional orders.

QUESTIONS WITHOUT NOTICE

Planning: urban growth boundary

Mr GUY (Northern Metropolitan) — My question is to the Minister for Planning. I refer the minister to a letter dated 11 November 2008 written by his department which states, 'There are no plans to review the UGB at this time', and I ask: why is it now departmental practice to deliberately mislead Victorians about critically important planning issues such as the urban growth boundary?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Guy's question in relation to all these matters. I welcome it because I know he has an interest in housing, but I am not sure he has any answers to housing. I know he has an interest in planning, but I am not sure he has any answers to planning. I know he has an interest in a lot of matters when it comes to this portfolio, but I am sure he has no answers in many of these areas.

I would like to reinforce that we have made an announcement. That announcement stands and will stand. From the point of view of making that announcement I am pleased that we have a plan for Melbourne @ 5 Million. I am aware that the opposition does not have one. We will continue — —

Mr Atkinson — On a point of order, President, the minister has been told on many occasions that he is not to comment on the opposition in answering questions. Most of his answer to this point has been reflecting on the opposition and the opposition spokesperson rather than on the subject matter of the question.

The PRESIDENT — Order! I concur with the Deputy President to the extent that I recognise that the minister's response at the moment has not done anything other than criticise the opposition. There is a rule about overt criticism. I am not sure it is overt yet, but it is very close. The minister might like to consider the answer he is giving.

Hon. J. M. MADDEN — We have made our announcement. The plan stands from the date of the announcement. We are pleased that we have a plan for Melbourne @ 5 Million, and we know there are others who do not.

Supplementary question

Mr GUY (Northern Metropolitan) — I thank the minister for his answer. I ask if the minister can now inform the house when exactly he first became involved in the plans to change the urban growth boundary. Was it many months ago, or was it just one week ago after a telephone call from the Premier telling the minister what his new UGB policy would be?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Guy's interest in these matters, but if one reads any of the published material in relation to the urban growth boundary and any of the published material from the department or from the government in relation to policy on the urban growth boundary, then one will acknowledge and appreciate — —

Mr Guy interjected.

Hon. J. M. MADDEN — If one has read that material, Mr Guy — and I suggest Mr Guy go back and look at that material — one will note that one of our commitments — —

Mr Guy interjected.

Hon. J. M. MADDEN — Mr Guy has asked about this commitment on a number of occasions, and has asked us to confirm our commitment. In our announcement earlier this week we reaffirmed that commitment to 15 years land supply in growth areas.

Mr Guy interjected.

Hon. J. M. MADDEN — You cannot have it both ways. We have a commitment to 15 years land supply. We are adhering to that commitment. Our announcement of Melbourne @ 5 Million confirms that commitment. We will provide for that supply to ensure that our plan is delivered, that our policy complies with our plan and that we have one. We know there are others who have no plans in this area at all and who have no commitment to housing in this area. We will continue to provide opportunities for Victorians. We will continue to meet our commitment to Victorians to ensure that Victoria is the best place to live, work and raise a family. That will continue with Melbourne @ 5 Million.

Planning: government initiatives

Mr LEANE (Eastern Metropolitan) — My question is also to the Minister for Planning, Justin Madden. It has been obvious this year that, while members of the opposition have been off playing its internal games like blog the leader, our government ministers have been working tirelessly to maintain Victoria's reputation as one of the world's most livable places to live, work and raise a family. I ask the minister to inform the house of what action the Brumby Labor government has taken in 2008 to enhance Victoria's livability.

The PRESIDENT — Order! I want to make a comment on that question — not the content but the delivery of the question. I remind the house that question time is specifically designed to get information from a minister. I want members to utilise that and not debate or give a massive background or running commentary on their questions — just get to the matter. I expect ministers to respond accordingly.

Hon. J. M. MADDEN (Minister for Planning) — I thank Mr Tee — sorry, Mr Leane — I thank both of them for their interest in these matters relating to planning. We have had a very busy year when it comes to planning.

Honourable members interjecting.

Hon. J. M. MADDEN — I know the opposition has not been busy, but we have been very busy. We have been busy on a number of fronts. Let me remind the chamber and the opposition how busy we have been. We had the expert audit group's review of Melbourne 2030. As part of that we released *Planning for All of Melbourne*. That reaffirmed our commitment to Melbourne 2030, but it also highlighted that we need to do even more when it comes to implementing Melbourne 2030. We finished the year by releasing *Melbourne @ 5 Million*, which reaffirms our commitment to Melbourne 2030 and highlights the need to bolster it on more fronts than ever before so we can accommodate the enormous growth that comes with the sound work that is being done right across this state.

Melbourne is probably the most affordable city, particularly when it comes to cities on the eastern seaboard. We have an enormous number of jobs on offer, so people are coming here in droves, as I have said on many occasions. The great thing about that is that they provide skills and prosperity. It is because Victoria and Melbourne are great places to live, work and raise a family.

Earlier in the year we announced the urban growth zone to help us speed up the planning process to make sure we get more land to market, thereby keeping a lid on some of the land prices out on the urban fringe. As well as that, we have been working collaboratively with councils. I reaffirm our commitment to working collaboratively with councils. One of the differences between other governments and this government is that we recognise that planning is about a partnership with local government, and we recognise that local issues have to complement state issues and vice versa. We will continue to work collaboratively with local governments and assist them as we have done through the year. We have done it through the Creating Better Places program and through the expert assistance program. It has been part of $4.6 million worth of funding to assist local governments to do their job when it comes to planning.

We have also ensured that through this process we are working with local governments to identify large redevelopment sites, particularly in inner and middle areas, so we can get those sites — those activity centres or those brownfield sites — developed to provide more housing opportunities close to principal public transport routes. We have also highlighted the critical role that a number of centres will play in shaping that development. We have recently announced developments at Box Hill, Broadmeadows, Dandenong, Footscray, Frankston and Ringwood as part of an investment program of $63.3 million that has been directed to many of these centres as part of infrastructure works.

We have seen an enormous amount of work done by cutting regulation and regulatory red tape to bring more development to market. We have commenced a review of the Planning and Environment Act so it can be updated to provide for the growth we are expecting going into the future, which will give certainty and reliability to the planning system. People, whether they be proponents or otherwise, will feel more confident in knowing, as we approach the challenges for growth, where that growth can be located. They will be able to identify growth areas with certainty so they can be promoted. It will give people comfort in knowing that the things they love about the city and about Victoria are protected by a good planning system, good planning policy and overall good planning. Whether it be the heritage values or whether it be the green, leafy suburbs that we have come to know and love, we know that it is reflected by this government, although others in this chamber are comprehensively deficient in that regard. We look forward to continuing to make Victoria the best place to live, work and raise a family.

Environment: national packaging covenant

Ms HARTLAND (Western Metropolitan) — My question today is to the Minister for Environment and Climate Change and relates to the national packaging covenant and the Environment Protection and Heritage Council meeting that he attended on 7 November. When the minister attended the meeting, was he aware of the Total Environment Centre's report that estimates the recycling rate at under 50 per cent, not 56 per cent as reported at the meeting, that it shows an increase in packaging sent to landfill and that it estimates it is unlikely that the national packaging covenant will meet its target of 65 per cent?

Mr JENNINGS (Minister for Environment and Climate Change) — I thank Ms Hartland for her question. I do recall being in Adelaide on the date she mentions. I recall being well and truly apprised of the success of the national packaging covenant. I am also acutely aware of the engagement by people from the Total Environment Centre in the consideration of the success of the national packaging covenant and the decision very late in the day to jump ship in relation to the statistics and the evaluation that underpins it.

The interesting thing about this is that not for the first time in this chamber I have been asked a question about the statistical reliability of evidence that has been put to us by the Total Environment Centre. While I totally support its intention of trying to drive better environmental outcomes and I share that aspiration, I have to say there are views that contest the reliability of its data and the confidence that can be placed by the Australian community in some of the arguments it mounts based on its understanding and appreciation of statistical method.

There is an assertion by the Total Environment Centre, and Ms Hartland has repeated it in her question. A proper scrutiny of the statistics and the evidence that is available to us shows that we are well on track to deliver the targets set by the national packaging covenant. In fact I am confident that we can embark on a partnership approach across the jurisdictions and derive the benefits that would flow from the targets. I am happy to be accountable for the statistical validity of the method by which we reach those targets across the country. I encourage the Total Environment Centre to share that commitment and have its statistics verified in terms of the arguments that it mounts.

Supplementary question

Ms HARTLAND (Western Metropolitan) — I understand the minister praised the audit that took place, but what I am concerned about is that it did not include all cardboard milk cartons, fruit juice cartons, 125 000 tonnes of plastic and cardboard delivery packaging, 96 000 tonnes of imported glass packaging and 23 000 tonnes of imported plastic packaging. I wonder how the minister can praise an audit that did not include all those statistics.

Mr JENNINGS (Minister for Environment and Climate Change) — Without necessarily going through the particular volumes that Ms Hartland refers to, my specific, general and principled response is exactly the same in terms of the importance of the ambition to reduce the amount of material which is going into landfill or which ends up in the litter stream. We have a huge obligation to make sure that we are the most efficient resource recovery nation across the planet, and I am very committed to achieving that outcome. To the extent that the Total Environment Centre participates in processes for a long part of the journey, it is disappointing that it then jumps ship when it is convenient and reports different outcomes. It is a bit unfortunate, given that I think the centre has a lot to contribute to this national policy.

Just as Ms Hartland says to me that she wants the Environment Protection Authority to work with the local community in Tullamarine, my message back is that the Total Environment Centre should work through the national packaging covenant to deliver the best outcomes and make sure that we have a reconciliation of our method, because that is the real challenge.

Dandenong: transit city

Mr SOMYUREK (South Eastern Metropolitan) — My question is to the Minister for Planning, Justin Madden. It has been a year of action for the Brumby Labor government in rejuvenating Dandenong, a key area of economic and social significance for Melbourne's south-east. Can the minister outline to the house the major projects initiated by the Brumby Labor government to revitalise central Dandenong?

Hon. J. M. MADDEN (Minister for Planning) — I welcome Mr Somyurek's interest in these matters, because I know he is very committed to the project for the renewal of central Dandenong. Let us not underestimate the significance — although the opposition will — of this urban renewal project. This is one of the largest urban renewal projects across the country. The Revitalising Central Dandenong project will not happen overnight, but it will happen. Already our commitment to make it a central activity district-type centre reaffirms our commitment to central Dandenong and complements the level of investment to date.

I will go back to some of the things that have happened in this centre across the course of this year. Deal Corporation's $50 million corporate serviced apartments have been commenced, as well as a retail complex on the old Arkana site, and that is due for completion late next year.

Grenda Corporation — and a great corporation it is — opened its new $15 million sustainable bus facility on the southern side of Dandenong railway station. It is a major boost of confidence to the local community that such a substantial organisation wants to remain in the

area and give its commitment to the area, as it has done for so long.

As the same time we as a government have invested $8 million to realign and upgrade Cheltenham Road to provide better access to central Dandenong from the recently completed EastLink. Let us not underestimate what EastLink will do for Dandenong and what Dandenong in the future can do for EastLink.

As well as that we have seen progress this year with the Dandenong LOGIS project. That is the first eco-industrial park to be established, and that is being done through VicUrban and Melbourne Water. No doubt a lot of work has been done to rehabilitate aspects of the site.

Furthermore, we have called for expressions of interest in the process of building a new government services building in Dandenong. That $73 million project represents a commitment of this government and should hearten the local community and act as a symbol of the way in which we expect to be able attract other organisations into the area.

As well as that there was VicUrban's acquisition and consolidation of 7 hectares of land near the train station at a cost of approximately $82 million — no mean feat! What this means is that we will have a significant parcel of land that can deliver on the urban renewal outcomes, and that is a major commitment to the central Dandenong revitalisation.

In all the government has allocated $290 million to central Dandenong for the revitalisation of the area. This, combined with other investment, will we expect bring up to over $1 billion the investment in the area through partnerships and being able to attract the private sector. By any measure — —

Mr Lenders — The action government!

Hon. J. M. MADDEN — Absolutely! As Mr Lenders said, it is an action government that not only talks the action but delivers the action through its commitment to the funding of these projects.

In terms of the recent announcement of the Melbourne @ 5 Million investment in Melbourne — an enormous amount of development is taking place in the south-east of Melbourne — the investment in Dandenong will make central Dandenong a hub of activity going into the future, with additional investment from others and the location to provide a diversity of business, retail and housing types to accommodate the growth in that area. It is symbolic and representative of this government's commitment to urban renewal in that positive outcomes will come more broadly across the community, not only from our investment in the building industry and development but also in the broader social impacts and benefits that will be brought to the community of central Dandenong, which will complement the rest of Victoria to make Victoria the best place to live, work and raise a family.

Victorian Funds Management Corporation: investments

Mr D. DAVIS (Southern Metropolitan) — My question is for the Treasurer. Does the Treasurer approve of John Brumby's financial centre of excellence, otherwise known as the Victorian Funds Management Corporation (VFMC), investing $600 million of superannuants' money on a bet that some Americans will die prematurely?

The PRESIDENT — Order! Before I ask the Treasurer to respond, I ask whether Mr Davis meant to address the question to the Premier, Mr Brumby. Is that correct?

Mr D. DAVIS — Yes.

Mr LENDERS (Treasurer) — I thank David Davis for his question about the Victorian Funds Management Corporation. Obviously he refers to a particular product called Life Settlement Funds, which is one of a group of areas that the VFMC is entitled to invest in. The VFMC is a financial centre of excellence. It was set up by, of all people, Mr Alan Stockdale, with a charter from him. This government has made some — —

Mr D. Davis — A long time ago.

Mr LENDERS — Mr Davis said, 'A long time ago', but it was set up by Alan Stockdale as Treasurer. This government has then added to that some supervisory actions from the Auditor-General in significant areas such as that to make it more accountable, but the model was actually set up by Alan Stockdale.

What the VFMC is about is an independent board of experts is asked to manage the funds of the state, whether they be from superannuation, from the Transport Accident Commission or from the Victorian WorkCover Authority and a range of other funds that are managed by that body. It is also worth noting that over time that body has performed better than the benchmark. It has actually performed better for Victorians not only against the benchmark of other funds but also — and I have previously reported on this in this house — but also against the shareholdings of Mr Davis and most of the shadow cabinet. It has done

better than that. It has performed better than the share market and the benchmark. It has also performed better over the last five years than if the state had actually put the money into a bank.

Do I endorse the model that was initiated by Alan Stockdale and enhanced by my predecessor as Treasurer? Yes, I do. Do I support a diversification so that the VFMC can balance its portfolio over a period of time? Yes, I do.

On the specific issue that Mr Davis raised, I think I have answered his question in my substantive answer. What we cannot lose track of at these times of global financial uncertainty, where we have seen the share market drop in value across the planet and we have seen an extraordinary lack of confidence in the financial sector, we actually have in the VFMC a body that is performing better than its peers. I endorse the model.

As Treasurer I am not going to get involved in the day-to-day individual decision making of the funds management body. If Mr Davis suggests that a Treasurer should be handling the day-to-day individual investment decisions of an independent body set up by a previous Liberal Treasurer, I am not doing that. I will certainly deal with the prudential guidelines generally, I will certainly hold the board accountable and I will certainly work with it, but the individual investment decisions, correctly, are made by the experts. I endorse the VFMC. It has performed better than the benchmark. It has performed better than if the state funds were in cash, and it has certainly performed better than Mr Davis's portfolio, his leader's portfolio, his shadow Treasurer's portfolio or the portfolio of anybody opposite.

Supplementary question

Mr D. DAVIS (Southern Metropolitan) — I thank the Treasurer for his answer and note that he supports the VFMC but does not obviously approve of this particular investment. I therefore ask: has the Treasurer been briefed on the potential losses of the VFMC's extraordinary $600 million investment in, as the *Age* put it today, an 'obscure Gold Coast death fund', the firm called Life Settlement Funds; if so, what did those briefings say, and if not, why not?

Mr LENDERS (Treasurer) — The first thing I will do is give a word of caution to David Davis about when he reads a newspaper and comes into the house. The last time he did this he and the shadow Treasurer, the member for Scoresby in the Assembly, Mr Wells, started a run on Members Equity Bank. That bank then needed to take out full-page advertisements in newspapers to protect its reputation because of what was inaccurate information that was taken out of a newspaper in the morning and read in this house.

Firstly, let us make it absolutely clear that if we are going to be talking about financial institutions at a time of global financial uncertainty when the regulatory authorities of all the G20 countries are trying to get some sense into the system and act in a measured way, for a shadow Treasurer and his mouthpiece in this house to come in on the basis of what they read in a newspaper that morning and under parliamentary privilege trash reputations is not good enough. They should look back to what they did last time they did this. They caused a run on the Members Equity Bank. They almost caused a run on the VTU Credit Union. They trashed the reputations of numerous bodies around this state. My starting point is: if we are going to have a serious debate in this place, let us base it on a little bit more than a half-baked reading of a newspaper article in the morning to get it there in time for an opposition questions meeting and then come and parrot it in this house.

The planet as we stand — the global financial markets as we stand — requires leaders across the world to have measured responses to difficult economic times. Mr Davis should look to what the Australian Prudential Regulation Authority has done in dealing with regulatory authorities across the world by sitting back and saying, 'We have issues like short selling of unusual products. How do we pause? How do we go forward? We have the commonwealth government and other governments saying that bank guarantees are necessary to stabilise the turbulent system. How do we act? How do we move forward?'.

What we need is something more measured than picking up a newspaper in the morning and attempting to sensationalise it in the Parliament with no regard for the consequences. The proof of the pudding is that Members Equity Bank had to take out full-page advertisements in newspapers to counter the damage caused by reckless rock throwers in this house.

Innovation: government initiatives

Mr PAKULA (Western Metropolitan) — My question is to the Minister for Innovation, Gavin Jennings. I ask the minister to outline to the house how 2008 has been a year of action for the Brumby Labor government in the innovation portfolio.

Mr JENNINGS (Minister for Innovation) — I am inspired not only by Mr Pakula's question but by the leadership that has been provided by the Minister for

Planning in relation to walking the talk and demonstrating not necessarily through our words but through our deeds that we are very committed to making sure that we try to provide an incentive and a constructive framework for great innovation in Victoria.

We have seen many examples of this being the case, far beyond the support through the $300 million innovation statement that was released in the context of the budget, which provides opportunities for great scientific endeavour. There is a $145 million Victorian science agenda which is part of that, there are significant investments in terms of fibre linkages throughout the Victorian community — which I discussed in the house again yesterday — and there are the ways in which we support small and medium enterprises, with $40 million of activity.

What does it mean in practice? What it means in practice is that we as a state have great scientific endeavour, great commercial acumen is being demonstrated and great collaborations are occurring across the globe. We have seen this year the consolidation of collaborations with organisations in California, New Zealand, Israel and other Australian jurisdictions leading to a combination of commercial interests and research and development taking place across the international economy.

We have seen the establishment of great capability in Victoria. This year we have added a number of key capabilities far beyond the synchrotron, which this chamber has heard me speak on many times. The synchrotron is the centrepiece of our scientific capability. We have seen an extension of beamlines to support medical imaging, which will mean that our community can be supported by the best medical imaging regime in the world, which is part of that scientific capability.

But that has not been the only new capability we have developed this year. We have seen the establishment of the Victorian Centre for Functional Genomics, BioGrid Australia and the metabolomic centre at Melbourne University. At Monash University we have seen the Zebrafish Core Research Facility being established. We have seen the Australian Mineral Science Research Institute redevelopment at Melbourne University, and just last week I was down in Gippsland opening a new facility, the Australian Sustainable Industry Research Centre, at Warragul. This will not only support great scientific endeavour across the Victorian community but will apply it in very tangible ways to support better, more sustainable outcomes in our community and to rise up and meet the health challenges that our community and people around Australia and internationally are confronting.

We have seen great achievement right across that innovation space. As Mr Leane would understand, there is a little bit more; there is always a little bit more. We are developing that in relation to the great success of our support for the design sector. We have seen great enthusiasm by the Victorian community. National and international visitors have shared our commitment to design, and we have seen great application not only from the arts and graphic design but right up to high industrial applications in aerospace during this year. That has been a great success.

And of course there is the film industry, which I reported on at length yesterday. I will not repeat myself, but we should be very proud of some of the cinematic products we have delivered as a community through the film studio. We continue to see that demonstrated by Victorian filmmakers receiving awards. At Cannes this year the film *Jerrycan* was successful. I did not quite get there; I missed my opportunity to travel internationally. Cannes would be a pretty fantastic place to go to, and Victorian filmmakers got to Cannes and won an award this year. We will see some more outcomes of the great Victorian film industry in its contribution to the Australian Film Institute awards that are going to be held this weekend. This is part of a very exciting and broad range of activity and action in innovation this year. It has been a great year for innovation in Victoria.

Economy: performance

Mr D. DAVIS (Southern Metropolitan) — My question is for the Treasurer. Does the Treasurer still stand by his statement to the house on 7 October this year that, and I quote, 'Victoria is the engine room of the country', after yesterday's national accounts figures showed that Victoria is the economic drag on the national economy, with the worst demand performance of any state in Australia, including New South Wales, in the September quarter?

Mr LENDERS (Treasurer) — Yes.

Supplementary question

Mr D. DAVIS (Southern Metropolitan) — I thank the Treasurer for his answer. The national accounts data is backed up by the latest Sensis small business survey, which says amongst many things that Victorian SMEs (small and medium enterprises) recorded the second-lowest level of business confidence among SMEs in the past quarter and the second-lowest

perceptions of the economy in the past quarter, that performance indicators fell for all indicators for SMEs in the past quarter and that Victoria recorded the lowest results in the past quarter for performance in employment and wages of any state or territory. But what I am particularly worried about are the future expectations — —

The PRESIDENT — Order! Does Mr Davis have a question here?

Mr D. DAVIS — Yes, I do.

The PRESIDENT — I would like to hear it.

Mr D. DAVIS — Now that Victoria is dragging the national economy backwards, does the Treasurer stand by the latest 1.5 per cent growth forecast for the Victorian economy in 2008–09?

Mr LENDERS (Treasurer) — I could give a simple 'yes' answer to that, but I will expand slightly on it. What I will say, firstly, is this: we need to put this into the context that we are in a time of global economic slowdown, and in the context of a global economic slowdown the investment by this state over time in its people and in its infrastructure is what positions Victoria better than any other part of the country to trade on the skills of its people and the infrastructure it has invested in to take Victoria forward into the future. In that context I say unequivocally that I am a proud Victorian and Victoria is a powerhouse.

What I would also say to David Davis, the gleeful prophet of gloom who rubs his hands like Ebenezer — he could be the Prophet Jeremiah — and looks for anything gloomy and revels in it, is that if he wants to think about Victoria and if he wants to talk about statistics, let us look at what the statistics say. In the budget this year we forecast that this state would grow at 3 per cent, but we thought it would slow, and in the budget update we forecast that — and it is not a dissimilar view to that of the Reserve Bank of Australia, most private sector commentators, the IMF (International Monetary Fund) and many other commentators.

Yes, David Davis had the quarterly account figures yesterday, and yes, if he looks at the last quarter, he will get a grim figure. But if he looks at the whole year, he will get a figure that is better than the average. If he wants to talk of figures and he looks at the figures in the Treasury forecasts for this month versus another, he will see that the most recent employment figures are up rather than down. Last week's retail trade figures were up rather than down. David Davis can pick the figures he uses, but what Sensis shows quite clearly and what the accounts yesterday showed quite clearly — I can read Sensis; David Davis does not have to help me — is that confidence is at a lower level than it was earlier, which is exactly what I predicted yesterday in the midyear budget update. It is what every forecaster predicts. But the proof of the pudding is in what you do about a global economic slowdown. Do you put actions in place to build on the skills of your people and your infrastructure or do you talk down the show like a modern-day Jeremiah — like a modern-day, lemon-sucking Jeremiah, to be more graphic?

What you have here is a government that has started a stimulus package in its budget. To date, since and including the budget, the state of Victoria has invested almost $5.9 billion in economic stimulus packages — whether it be in infrastructure in the budget or in the drought package, which the shadow minister for finance, Mr Rich-Phillips, the shadow Treasurer in the other place, Mr Wells, the Leader of the Opposition in the other place, Mr Baillieu, and presumably David Davis do not think is money we should have been spending.

We have been criticised because suddenly we have extra expenditure in the state. What is it? It is funding for a drought package. Is the opposition saying we should not fund the drought package in regional Victoria? It is obviously an echo of Jeff Kennett's thinking that regional Victoria is the toenails not the beating heart of the state. Should we not invest in the home stimulus boost of the federal government, which is part of the expenditure? All we have from the opposition is a gleeful recitation of any statistics it thinks are gloomy. It ignores any good statistics, and it criticises anything in the stimulus packages that actually deals with the situation.

Yesterday we had a debate on a motion about skills. The opposition opposed the motion. Yesterday we had a budget statement showing investment in — of all things — a housing boost and in drought relief. The opposition criticised it as irresponsible. What we have here is a modern-day, lemon-sucking Jeremiah who looks at any dark statistics and gets excited, ignoring all the positive statistics. There is no mention of retail trade, the Department of Treasury and Finance figures, the IMF, the Reserve Bank of Australia, the ANZ, Westpac and the Commonwealth Bank and no mention of a 100-point cut in basic rates the day before yesterday, which means the average Victorian has since mid-July — between interest rate cuts, tax cuts and petrol prices — seen a $633-a-month reduction in costs.

David Davis should crawl back under his rock, go and suck on a lemon and continue to act as if he were a

modern-day Jeremiah, but he should also get on with the business of boosting confidence and supporting Victorians with a shoulder to the wheel — because if he does not do that, it is harder to make this state a better place to live, work and raise a family.

Climate change: government initiatives

Ms DARVENIZA (Northern Victoria) — My question is for the Minister for Environment and Climate Change, Gavin Jennings. Can the minister outline to the house how the Brumby Labor government continues to lead Australia in the implementation of innovative and effective policies to tackle climate change and protect the environment?

Mr JENNINGS (Minister for Environment and Climate Change) — I thank Ms Darveniza, and I thank the President for the opportunity to respond to the question and briefly outline some of the great actions the Brumby government has taken this year and will continue to take in the lead-up to the introduction of the carbon pollution reduction scheme.

The government is sharing Victoria's role in playing a leadership part across this nation for better environmental outcomes by reducing our environmental footprint, making sure our industries are at the leading edge of the transformation of their efficiency and ensuring that we are good at resource recovery, which is an issue that I know a number of people across this chamber say they are committed to.

We are pretty keen to keep up that momentum. This year we have done this by bringing together parts of the Victorian community in the context of the climate change summit and the work that has been undertaken on what will be the green paper on climate change, which is to be introduced to the Victorian community following the imminent introduction of the commonwealth's carbon pollution reduction scheme.

What we will see next year is that momentum being maintained. We have spent a lot of time considering the implications for land and biodiversity, and there has been a huge degree of community engagement on that concept. When you look at what has been delivered in relation to reducing the footprint of some of our larger emitters and some of our larger consumers in an industrial context, you see that the EPA (Environment Protection Authority) has shown great leadership by working in collaboration and providing regulatory control, scientific guidance and support to our industries to change their activities.

The introduction of the environment and resource efficiency plans this year will apply to companies that are very large users of energy — those that use more than 100 terajoules of energy or more than 120 megalitres of water annually. They will be enrolled in a scheme that builds on the success of the industry greenhouse program, which has seen the EPA drive change in companies across Victoria. This has led not only to a reduction of more than 1.23 million tonnes in the CO_2 being emitted into the atmosphere but also to those companies being more efficient. We have seen significant savings — $38 million annually — on their bottom lines. What is good for the environment is in many instances good for business, and the EPA has shown significant leadership in driving that momentum across the nation.

Other jurisdictions are looking to replicate that model. They should look also to the EPA's ability to reduce the corporate licensing regime. I know that my colleague the Treasurer is very supportive of any idea for a reduction in the regulatory burden, but not to the extent of an erosion of environmental standards. That is a difficult balancing act, and it is something that has been achieved successfully through the EPA working with Victorian industry.

In terms of resource recovery, we want to make sure that we drive better outcomes. The Victorian advanced resource recovery initiative, which is part of the innovation statement, will see a major change in resource recovery in the years to come, as will the hazardous waste fund, by reducing the amount of prescribed waste that goes into landfill. We have been very successful in reducing those volumes this year, and we are well on the way to achieving a reduction to 40 000 tonnes by the end of this year. That is a great success in its own right.

We understand that it is very important to support the take-up of technologies, particularly solar technologies, so our support for solar systems will result in one of the largest not only manufacturing but electricity generation capabilities in the solar industry across the globe. It is going to happen in Victoria, and it is going to happen following $50 million in support created by the Victorian government. It builds on the $33 million of support we have provided to the Victorian community for installing solar hot-water systems. It has been a very successful program throughout Victoria. In fact I have received advice from Sustainability Victoria that it is an extremely popular and well-utilised program that might, in fact, lead to cash flow problems in the out years. We might have sufficient demand to actually exceed our target very early because it is so successful.

Beyond that, in terms of the natural environment we have seen a big year, with the creation of the Cobboboonee National Park and the resolution of forest protection in the Strzeleckis — we can be very pleased as a community that we have achieved that. We have further work to do which is coming up in the context of land and biodiversity, as I foreshadowed, and other reforms in the reserve system within the next year.

The last point, which I would like to conclude on, is the very sensible and timely use of strategic environmental flows to support environmental values. In just the last week we were very happy to release some of those flows into the Barmah forest to support native habitat and hopefully the survival of those important river red gums. It is very important for Victorians to make sure that we use water wisely. Certainly in environmental flow management we are very strategic: we support habitat and the survival of our species as much as we can. That will continue into 2009.

Australian Synchrotron: operations

Mrs KRONBERG (Eastern Metropolitan) — My question is to the Minister for Innovation. I refer the minister to *The National Science Case for the Initial Suite of Beamlines*, which was published in December 2003 and indicates that the cost to build the nine essential beamlines before the synchrotron was opened in 2007 was $49.5 million, and further to the government's media release of 21 July 2006, which stated that 'funding commitments for the initial nine beamlines had reached $50 million'. I ask: can the minister confirm that the imaging and medical therapy beamline, which is considered to be one of the essential beamlines and one that will be used more than any other beamline at a cost of $10 million, was not even built, and instead a $7.6 million empty shell has been constructed to hide this government's incompetence at managing major projects?

Mr JENNINGS (Minister for Innovation) — I think anybody who was listening to Mrs Kronberg's question will know what a contrived and contorted question it was. They will absolutely understand that this has been made up on the run, in a desperate attempt to hide the fact that the synchrotron is and will continue to be one of the centres of scientific excellence in this country and something of which we as a community should be proud. In fact only 10 minutes ago I was actually talking about the medical imaging beamline, which the Victorian government has supported. It will be supported to make sure that it delivers scientific and medical services of the highest calibre. Within the next 12 months people in our community will have access to this beamline and to services that will be virtually the best quality care that will be provided around the globe.

The notion that this is a contorted, esoteric or non-worthy endeavour is absolutely refuted by the government. We are extremely proud of it in terms of both the calibre of the construction and the science that is undertaken there, as well as its application in the broader community. We do not shirk from that one iota.

Supplementary question

Mrs KRONBERG (Eastern Metropolitan) — Does the minister agree with Professor Robert Lamb, synchrotron director, who said in the recent synchrotron news that the synchrotron is running at 30 per cent capacity of what was planned?

Mr JENNINGS (Minister for Innovation) — It is again a pretty extraordinary question. This is a bit of a problem, knowing only a little bit about the subject matter that the member is talking about. I do not mean to be completely gratuitous about it, but that is a bit of a problem.

In fact the synchrotron has been designed to have nine beamlines in the first stage, but the synchrotron is capable of having 30 beamlines. In terms of its efficiency or its optimum capacity, literally the answer to the question is yes, because it can continue to have beamlines as additional investment, capacity and application come and it has been designed to scale up to 30 beamlines.

Victorian Environmental Assessment Council: river red gum forests investigation

Mr DRUM (Northern Victoria) — My question without notice is to the Minister for Environment and Climate Change, Gavin Jennings. Building on what has been the most divisive year on record of government in this state, in relation to the Victorian Environmental Assessment Council (VEAC) river red gum report and more specifically the community engagement panel's report which is due next week, is the minister confident that that report will adequately cover the community's views, when the chair of the panel spent four weeks out of the country watching the cricket in India?

Mr JENNINGS (Minister for Environment and Climate Change) — I advise Mr Drum that I do not think I am the most divisive minister I have ever come across in my life. I think my default position is to try to be inclusive. My default position is actually to try to account for the range of views and expectations of members of the Victorian community. I take it as a responsibility of my office to engage with members of

the community, to eyeball them and to actually talk through their issues with them. I do it, I have done it in relation to VEAC and I will continue to do it.

In terms of working through the nature of the implementation of VEAC's considerations and recommendations, the panel has engaged extensively. In the first instance, VEAC members embarked upon consultation that took the best part of two years, with hundreds of hours of meetings and conversations and thousands of submissions. After VEAC did that, I did a whistlestop tour and talked to people — engaged in conversations — about what their hopes and aspirations are. I subsequently put in place a panel, whose members did the same thing again.

Mr Drum interjected.

Mr JENNINGS — I have received a report from the panel. I actually know who the panel members have met. I have the very long list of stakeholders who were engaged, and I know the dedication and engagement of people on the panel. They have provided me with some further consideration. The government is just about to try to digest that material. There have been a lot of conversations.

With some elements of community aspirations you can do your best and you can bend over backwards to try to address them and be reasonable about them, but at the end of the day some people see them as black and white and they say, 'You can't in absolute terms meet my expectations'. Unfortunately we might get to that situation. I would be a bit unhappy about that, because I would like to do the right thing by the majority of people, but you cannot be all things to all people.

Honourable members interjecting.

Mr JENNINGS — You understand how difficult that is. You understand that it is a bit tricky. If you try to be all things to all people, you end up making somebody unhappy. Just by pointing that out, I have made you a little bit unhappy. I can tell that.

Honourable members interjecting.

Mr JENNINGS — I know that I have. It is a worthwhile thing to try to do your best, to engage, but ultimately you have to stand for something.

Supplementary question

Mr DRUM (Northern Victoria) — I thank the minister for his answer. Now that he has told the house that he actually has the report from the community engagement panel, can he guarantee that he will not release this report under the camouflage of Christmas and the holiday period, as he has done with so many other unpopular reports in the lead-up to Christmas? Can the minister in effect tell us when he is going to release the report?

Mr JENNINGS (Minister for Environment and Climate Change) — I do not know if Mr Drum has any evidence about the timing of any reports or any issues I have been associated with; I am not quite sure if he has any evidence which backs up his assertion. If he can bring anything to my attention that shows I have shirked the issue of engaging with the community, I am very happy to reflect on it. I am a pretty accessible sort of bloke. I am pretty happy to talk to members of the community whatever the time of year and consistently work through the issues. Regardless of when the report is released, that will be the case in relation to this matter.

QUESTIONS ON NOTICE

Answers

Mr LENDERS (Treasurer) — I have answers to a further 294 questions on notice: 2795, 3029, 3359, 3375, 3429, 3430, 3435, 3436, 3524, 3573, 3575, 3744, 3751, 3758, 3765, 3772, 3779, 3786, 3793, 3800, 3807, 3814, 3821, 3828, 3835, 3842, 3849, 3856, 3863, 3870, 3877, 3884, 3891, 3898, 3905, 3912, 3919, 3926, 3933, 3940, 3947, 3954, 3961, 3968, 3975, 3982, 3989, 3995, 4013, 4020, 4027, 4034, 4041, 4047, 4054, 4061, 4068, 4075, 4082, 4089, 4096, 4103,4635–7, 4642–4, 4649–51, 4656–8, 4663–5, 4670–2, 4677–9, 4684–6, 4691–3, 4698–700, 4705–7, 4712–14, 4719–21, 4726–8, 4810–2, 4817–9, 4824–6, 4831–3, 4838–40, 4845–7, 4852–4, 4859–61, 4866–8, 4873–5, 4880–2, 4887–9, 4894–6, 4901–3, 4908–10, 4915–7, 4922–4, 4929–31, 4936–8, 4943–5, 4950–2, 4957–9, 4964–6, 4971–3, 4978–80, 4985–87, 4992–4, 4999–5001, 5006–8, 5013–5, 5020–2, 5027–9, 5031–72, 5191–205, 5781, 5836–43, 5851–7, 5964, 5966, 5970–5, 5993–7, 6601–8.

ASSISTED REPRODUCTIVE TREATMENT BILL

Committee

Debate resumed.

Clause 13 agreed to.

Clause 14

The DEPUTY PRESIDENT — Order!
Ms Hartland's amendment 6 was tested by her amendment 4, and on that basis I will not proceed with

amendment 6. Ms Pennicuik, however, has an amendment that is relevant to clause 14 — amendment 7. As she did with clause 12, she is inviting the committee to omit clause 14 in its entirety. This is the clause that deals with presumption against treatment.

Ms PENNICUIK (Southern Metropolitan) — I invite members to vote against this clause, which is involved in that whole regime of police checks that we are seeking to remove from the bill. If I could just have the Chair's clarification on Ms Hartland's amendment 6. It was my understanding that if my amendment to omit the clause failed, Ms Hartland's amendment 6, which seeks to amend the clause, would have a chance to be looked at.

The DEPUTY PRESIDENT — Order! As I understand it, it was felt that Ms Hartland's amendment 4 was a test for amendment 6.

Ms PENNICUIK — I wanted to clarify that, because we were intending, if my proposed omission of the clause failed, that Ms Hartland's amendment to the clause would be considered. Is that not right?

The DEPUTY PRESIDENT — Order! The indication to me is that in procedural terms Ms Hartland's amendment 6 was tested by her amendment 4, which failed. Because of that we will not be proceeding with her amendment 6.

We are dealing with Ms Pennicuik's amendment 7, which invites members to vote against the clause. It is my view that this amendment is also a test for Ms Pennicuik's amendments 17 to 19.

Sitting suspended from 12.59 p.m. to 2.04 p.m.

Committee divided on clause:

Ayes, 30

Atkinson, Mr	Madden, Mr
Broad, Ms	Mikakos, Ms
Dalla-Riva, Mr	Pakula, Mr
Darveniza, Ms	Petrovich, Mrs
Davis, Mr P.	Peulich, Mrs
Drum, Mr	Pulford, Ms
Eideh, Mr	Rich-Phillips, Mr
Finn, Mr	Scheffer, Mr (*Teller*)
Guy, Mr	Smith, Mr
Hall, Mr	Somyurek, Mr
Jennings, Mr	Tee, Mr
Kavanagh, Mr	Thornley, Mr (*Teller*)
Koch, Mr	Tierney, Ms
Leane, Mr	Viney, Mr
Lenders, Mr	Vogels, Mr

Noes, 5

Barber, Mr	O'Donohue, Mr
Hartland, Ms (*Teller*)	Pennicuik, Ms
Lovell, Ms (*Teller*)	

Clause agreed to.

Clause 15

The DEPUTY PRESIDENT — Order! Clause 15 is the one that deals with an application for review. Ms Pennicuik has circulated an amendment in respect of this. It is her amendment 8. I invite Ms Pennicuik to formally move that amendment standing in her name and make any remarks in regard to that.

Ms PENNICUIK (Southern Metropolitan) — Chair, I wish to withdraw amendment 8 in that that amendment provides for a review for the police checks, et cetera, which are remaining in the bill. Therefore I believe the review should remain in the bill.

The DEPUTY PRESIDENT — Order! There is no need for Ms Pennicuik to withdraw; we will simply not proceed with the amendment. It has been circulated but she has not formally moved it. Is there any other discussion on clause 15? If not, given that that amendment is not to proceed I will test the clause.

Clause agreed to; clauses 16 to 28 agreed to.

Clause 29

The DEPUTY PRESIDENT — Order! I invite Ms Pennicuik to formally move amendment 9 standing in her name, which relates to the clause heading. In my view it is also a test of amendments 10 and 11.

Ms PENNICUIK (Southern Metropolitan) — I move:

9. Clause heading to clause 29, omit "10" and insert "5".

This amendment proposes a change to the heading of clause 29 and is related to amendments 9 and 10. At the moment clause 29 of the bill allows for up to 10 families to be created using gametes from the same donor and our amendment proposes to reduce that number from 10 to 5, as is the case in the legislation in New South Wales. It has been raised with us — and I am sure with other members in this place — that 10 is not the appropriate number and 5 is a better number, as there will not be so many families created using gametes from the same donor, resulting in fewer siblings, cousins et cetera being related unbeknown to each other in the community. I am sure groups such as Tangled Web et cetera have raised these issues with all members. We have chosen 5 because that is the number

in the New South Wales legislation, so the Victorian legislation would then be consistent with the legislation in New South Wales in this regard.

Mr DRUM (Northern Victoria) — Chair, I wish to support this amendment for the same reasons as Ms Pennicuik has outlined. We believe that is the figure that was put forward by the Victorian Law Reform Commission when it was conducting its inquiry into this legislation. We believe the government has made the change of its own volition. We would like to bring this back to a more controllable number and limit the risk and the danger of future siblings matching up, unaware of their genetic link and maybe creating their own offspring. It is a very practical measure, and I support this amendment.

Mr JENNINGS (Minister for Environment and Climate Change) — The two members who have just spoken both know that this matter was discussed at some length in the Legislation Committee, and the arguments that have just been put to this committee were put at that time. I will give just a brief outline of the way in which I responded to those issues at the time in defence of the current provision within the bill, which the government will continue to support — that is, 10 being the appropriate number for donors' biological material being used to support reproductive technologies.

As a starting point, it is important to understand that the genetic risk which is at the heart of the concern expressed by members today, and a concern that is in the broader community, is based more on a feel for this issue rather than perhaps a statistical appreciation of the likelihood that the offspring of such a process would actually be united in a romantic way later in life. That, statistically, is an extremely unlikely occurrence, whether it is 5, 10 or even if it is a number much higher than 10 — and I am not advocating that. In fact if it were of the order of hundreds, statistically it would be very difficult to have the consequence the members are concerned about. That is a starting point. Mathematically, statistically, contingency they are concerned about is very unlikely.

The other consideration in this relates to an alignment of jurisdictions. It is quite right to say that it will probably be sensible for jurisdictions to be in alignment. Interestingly enough, the one jurisdiction that Ms Pennicuik and others have relied on for a variety of different propositions is the South Australian jurisdiction. A couple of hours ago I heard that the South Australian model was the appropriate model for Victoria to replicate, and in this instance we have. The provision in South Australia, which allows 10 to be the operative number, reflects the logic and structure the Victorian government has put into this bill. The momentum is being established by South Australia and Victoria, as distinct from a bill in New South Wales which has a different number but which has not been passed. In terms of jurisdictional alignment, we are closer to forming an alignment than what is argued.

The last element that has determined the government's position is a question of supply and demand, in a sense, in that we have looked at the current licensing provisions that apply to these providers in Victoria and at the number of donors who could be used to comply with those licensing arrangements. That number is 10. In terms of the availability of the existing service, 10 is a number that enables those services, even though they may have limited opportunities to have a reliable ongoing source of genetic material. Ten has been able to satisfy the demand, and if the number was limited to five, that would lead to severe shortages unless there was a major recruitment drive for additional donors.

Interestingly enough, even though Mr Drum is supporting Ms Pennicuik in this regard, I remember that during the Legislation Committee meeting he raised the issue of marrying up supply and demand. He was very concerned that through some of the elements involved in opening up access to this service we may be adding to either costs or restrictions or waiting lists. That is an issue he is alive to. I say to him that the effect of the amendment he is supporting would be to add to those pressures he is concerned about.

On balance, for that variety of three reasons, the Victorian government will continue to support the position that 10 is the appropriate number within this provision.

Mr DRUM (Northern Victoria) — If the minister is so confident that there is no risk or that a risk is absolutely minuscule, and there is a problem with supply and demand and a shortage of donors, then why do we not make it 100 or 200, or why not make it 500 so we take away the risk, the shortfalls and any problems with supply?

Mr JENNINGS (Minister for Environment and Climate Change) — Mr Drum has provided me with the opportunity to say that we have arrived at this number on reasonable balance and by applying reason.

Mr DRUM (Northern Victoria) — Is there a risk that makes 50 inappropriate or that makes 200 inappropriate? Is it a risk that the minister thinks needs to be whittled down to a low number of 5 or 10 or 1?

Mr JENNINGS (Minister for Environment and Climate Change) — I have given Mr Drum the answer. Regardless of how many times he may recast the same question, on balance, applying reason, applying the factors that I have outlined, we believe 10 is the appropriate number.

Committee divided on amendment:

Ayes, 16

Atkinson, Mr	Kronberg, Mrs
Barber, Mr	Lovell, Ms
Dalla-Riva, Mr	Pennicuik, Ms
Drum, Mr	Petrovich, Mrs
Finn, Mr	Peulich, Mrs
Guy, Mr	Rich-Phillips, Mr (*Teller*)
Hartland, Ms	Somyurek, Mr
Kavanagh, Mr	Vogels, Mr (*Teller*)

Noes, 19

Broad, Ms	O'Donohue, Mr
Coote, Mrs	Pakula, Mr
Darveniza, Ms	Pulford, Ms (*Teller*)
Davis, Mr P.	Scheffer, Mr
Eideh, Mr	Smith, Mr
Hall, Mr	Tee, Mr (*Teller*)
Jennings, Mr	Thornley, Mr
Leane, Mr	Tierney, Ms
Lenders, Mr	Viney, Mr
Madden, Mr	

Amendment negatived.

Clause agreed to; clauses 30 to 39 agreed to.

Clause 40

The DEPUTY PRESIDENT — Order! Mr Tee has proposed amendment 1, which I regard as also being a test for his amendment 3.

Mr TEE (Eastern Metropolitan) — I move:

1. Clause 40, after line 24, insert —

"(ab) that the surrogate mother's oocyte will not be used in the conception of the child;

(ac) that the surrogate mother has previously carried a pregnancy and given birth to a live child;".

This amendment goes to surrogacy arrangements and will improve the safeguards relating to them. Specifically the amendment ensures that a surrogate mother's oocyte will not be used in the conception of the child. Essentially what that means is that the surrogate mother will not have her genetic or biological material in that child. It will require the egg of another woman. That is the first part of the amendment. The second part of the amendment requires that the surrogate mother has previously carried a pregnancy and given birth to a live child. The rationale for that is that we can be confident that the surrogate mother understands the difficulty or otherwise of carrying a child, and therefore understands the nature and gravity of the decision if that child is to be provided to the commissioning parent. Those are the reasons and the logic behind amendment 1 standing in my name.

Mr DALLA-RIVA (Eastern Metropolitan) — I must say that during the Legislation Committee stage — and I was just seeking some guidance from Sue Pennicuik — we spent an enormous amount of time, as the minister may recall, on part 4 of the bill. This proposed amendment to clause 40 obviously falls within that. I said at the time, much to the chagrin of the group, that I thought the part 4 component of the bill regarding surrogacy was a bit like Swiss cheese, because as you delved into it more and more you found there were a lot of holes.

For the record, I will be supporting Mr Tee's proposed amendments because they obviously go towards filling some of those holes in the Swiss cheese. I still think there are enormous problems in part 4 of the bill, which includes clause 40. It needs to be made clear to the chamber that the Legislation Committee spent an enormous amount of time on this issue. I think the amendments proposed by Mr Tee will go some way towards dealing with the concerns raised, but nowhere dealing with all the concerns raised.

Mrs PEULICH (South Eastern Metropolitan) — I would like to ask a question of the minister. I was not privy to the debate in the Legislation Committee, and most of the concerns I raised during my contributions were centred on identity. I wish to explore the reasons for this proposed amendment. Was it intended to respond to some of those concerns about creating a set of circumstances or a context where a child may not be able to establish their identity or would suffer from identity confusion? How does introducing yet another player into the number of players involved in this respond to that issue or is this amendment derived from other considerations?

Mr JENNINGS (Minister for Environment and Climate Change) — I thank Mrs Peulich for the opportunity to answer this question, even though I was not necessarily the proponent of the amendment. The government will accept this amendment. Matters raised in the Legislation Committee shed some light on the depth of concern and the confidence members of the Parliament might want to demonstrate to their constituents in representing that concern in these

debates. The amendment has the effect of placing an additional limit on the availability of surrogacy. It is quite understandable that that will have a limiting effect because the oocyte would need to be obtained from another donor source instead of the surrogate mother. It increases the number of people who need to be relied on to provide biological opportunities for a child to be born in this way. It will make the procedure and access to it more difficult for those who wish to procure this form of surrogacy. That is one consideration.

A concern was expressed in a very passionate and heartfelt fashion by members of the committee representing some community-held views about whether the degree of emotional distress a woman would experience in relinquishing a child would be exacerbated if her genetic material was part of the child. That is the logic that underpins the accommodation. As I said at the committee, we are doing our best, in terms of the piece of legislation, to create on balance the best legislative framework, best process and best procedures. However, I think it is pretty presumptuous of any of us, ultimately, to try to speak with certainty or confidence about the psychological capacity of any woman to relinquish a child.

Mrs Peulich — It was the child, not the woman. I was asking about the effect on the child.

Mr JENNINGS — I am answering the member with the factors that have led to this decision. We are trying to consider on balance the best way we can put in place a legislative regime that will accommodate a reasonable test of how we get the balancing of the interests of everybody right in relation to these procedures.

While there are people who could mount an argument from any vantage point in relation to hypothesising about what this might mean for the residual emotional wellbeing and identification of a child born through a surrogacy process, in a sense we are all crystal ball gazing about where emotionally they will fall. Ultimately that will depend on the loving, caring and nurturing relationships they enter into and maintain. That is the ultimate success in these arrangements. We would be speculating about the impact of this provision on that. That was not a prime driver for the government in accepting the logic and intent of this amendment. However, we hope all people who enter into these arrangements have an appreciation of not only the biological challenge but also the emotional challenge they have to address in making sure that a child is born and lives within a caring and nurturing relationship.

Mr O'DONOHUE (Eastern Victoria) — I indicate to the committee that I will be supporting this amendment, and I am pleased the government has brought the amendment before the committee. However, I would like to make the point that this legislation is the result of a referral from 2002 and a report from 2007. I think it is highly unsatisfactory that this amendment was circulated less than 24 hours before this matter came before us. It makes me ask the question: what other issues have not been dealt with appropriately?

I admit that I was unable to attend Parliament in the last sitting week for personal reasons, but I am concerned that the minister responsible for this bill in the Assembly saw no reason for this amendment, and yet here we are in the Council and the government is proposing an amendment to its own bill.

Mr FINN (Western Metropolitan) — I have to say to the committee that I am at sixes and sevens as to where I am going to go on this amendment. I see the benefits, but I also see some potential damage to the child. Throughout this debate I have made no secret of the fact that the welfare and interests of the child are foremost in my thoughts. Going back to the question asked by Mrs Peulich, I would like to ask the minister if any studies or any evidence have been presented or have been before the government as to what effect this amendment would have on a child conceived through the processes outlined in this provision.

Mr JENNINGS (Minister for Environment and Climate Change) — In dealing with some of those matters in sequence I say to Mr O'Donohue that while he may not be totally satisfied with the process, the timing and the ability to deal with these matters and while there may be some degree of discomfort in his personal circumstances about dealing with this particular matter today, ultimately I think it is a good thing for the Parliament to have a house of review and processes of review and reflection. If we can enhance legislation, that is a good thing to do. I volunteer that, even knowing that I might be the victim of the process and find myself spending more of my life in committee stages of bills over the remainder of the term, as is my wont apparently. Nonetheless, ultimately in terms of democratic principles we are in a better place than if we were not doing it.

In response to Mr Finn's question, various studies have been done on this matter but my answer on the confidence I would bring to the table about the depth of analysis and the confidence you would have about this particular aspect and the long-term benefits or disbenefits of this amendment unfortunately falls into

the area of speculation. It is a response to a reasonable but passionately held set of views about potential risks brought forward by advocates of this amendment. Those views have been accepted. Ultimately the government has found its way to supporting this amendment. That was not its first position, but it recognised the value of trying to accommodate community expectations and concerns. If this is a provision that errs on the side of caution, it errs on the side of caution.

The DEPUTY PRESIDENT — Order! Before Mr Finn continues, clearly I do not wish to enter into the debate from this position, but I indicate that in the Legislation Committee I pursued a line of inquiry in this area. It would be true to say that the government's amendments have been pursued in discussions with me and a number of others, because it was an area of concern that I had. I think the government members might not be saying who was concerned about these amendments in a bid to protect the Chair, but the reality is these were matters I raised and the government has responded to them. I know I was not the only one who raised those issues.

Mr FINN (Western Metropolitan) — I would like to ask the minister again whether there is any evidence to show that the proposal we are considering at the moment will be of benefit to the child, apart from a guesstimate.

Mr JENNINGS (Minister for Environment and Climate Change) — I will take advice. I am pretty confident about the advice I have given, but I will get additional advice. I doubt it will be very different to the answer I have already given.

I have had a consultation, and I return to the table with two pieces of paper, but ultimately my answer is the same. Research has been undertaken, and there are some longitudinal studies about the effect on children born through a process of surrogacy, but in terms of finding with any statistical validity the dividing line which underpins the question, that is not available to us.

Again, in relation to the qualitative evidence that I have been asked to call upon, the real issue in this matter is whether in fact the driver of the concern which has led to this amendment is the difficulty for a woman to relinquish a child to whom she has given birth. There is a symbiotic relationship with the child, and in fact the nature of their connection and the ability for them both to either bond or to live in separation is something of great depth and profound consequence for them and is impossible to predict with absolutely crystal certainty. Those people who are asking for pristine crystal certainty in relation to this are never going to find it.

Mr Finn — Just evidence.

Mr JENNINGS — I am volunteering to Mr Finn that the evidence on which this amendment will be accepted is not either quantitative or qualitative statistical evidence in relation to the difference of the question you have asked. Should we be continually vigilant over time in relation to looking at the consequences of these practices, and should the patient review panel be mindful to ensure that we are alive to the potential consequences for all parties concerned? Of course we should, because of the gravity of the issues that we are talking about. But if Mr Finn is asking for statistical evidence to help him decide one way or the other about how he votes on this amendment, then I will not be able to help him.

Ms PENNICUIK (Southern Metropolitan) — I will be supporting this amendment, and I understand my colleagues Ms Hartland and Mr Barber will also be supporting it. Members will be aware that on 7 November I circulated an email to all members of the Council foreshadowing the amendments that I would be having drawn up to be moved at the committee stage. In that email I foreshadowed that I would have an amendment along the lines of the government's amendment 1 which inserts, in part, the following:

> (ac) that the surrogate mother has previously carried a pregnancy and given birth to a live child.

It appears to us and to many in the community who, as the minister said, have made strong representations to us about the biological and emotional risks with regard to surrogacy, that it is about adding an extra person to the assisted reproductive treatment area. It is not just a couple and a donor gamete involved in the creation of a child; it is a couple and another person. They are difficult issues and it is difficult to give answers to them, but there are very strong feelings in the community.

On seeing the government's amendments which were circulated last night I redrafted the amendments that I had already drafted to remove any reference to surrogacy, so the amendments we have before us now are new amendments from me. To put it in context, during the sitting of the Legislation Committee I, like the Deputy President, pursued a line of questioning about this because it is an issue of great concern and great significance. It is worth noting too that in its report the Victorian Law Reform Commission spoke at length about surrogacy but made the point that it was not given the terms of reference to look at the sort of

questions that have been raised in the community. I think the government should perhaps consider at some stage commissioning some more research in that area and asking the law reform commission to have a look at it in an ongoing way, because I do not think the issue was canvassed enough in that report. With those comments, I say we will support the amendment.

Ms MIKAKOS (Northern Metropolitan) — In speaking in support of Mr Tee's amendment I want to indicate to the house that the whole issue of surrogacy is the issue that I have had the most philosophical concerns about in relation to the bill. Members may recall that last year I voted against the Infertility Treatment Amendment Bill, in part because of my concerns about the implications for women's health of egg harvesting for scientific research and the dangers of viewing women as egg factories. It is why I also voted against the Research Involving Human Embryos Bill a few weeks ago, given that it replicated the egg harvesting provisions.

There are some serious concerns held in relation to surrogacy generally, but the concerns that I have about it are magnified when we are talking about a surrogate mother using her own eggs. In response to Mr Finn and Ms Peulich, who I think expressed quite valid points and arguments in relation to the contrary arguments that could be put about this amendment, I draw their attention in particular to the sections in the Victorian Law Reform Commission's report that relate to legal disputes. Certainly during the course of debate on the bill we have heard about happy cases of surrogacy, but we also know that when matters go haywire things can get very complicated, and we have seen two sets of parents fighting out complex issues in the courts. In particular the Victorian Law Reform Commission's report refers to cases such as the Baby M case and the case of Re Evelyn, which were both very high profile cases involving partial surrogacy — that is, the use of a surrogate mother's own eggs.

I ask members who have some ambivalence about this amendment to take into consideration that evidence from past legal disputes shows that partial surrogacy arrangements are prone to legal conflict. I do not believe that is in the interests of the child; I do not believe it is in the interests of the surrogate mother or of the commissioning parents, for that matter.

I also draw the attention of members to the fact that the Monash IVF clinic has written to members indicating that it will not facilitate partial surrogacy, and I understand other clinics have expressed similar concerns. I am also thankful to a number of organisations for their views, which have informed my thoughts on the whole issue of surrogacy and the need for this amendment. Those organisations include TangledWebs, Vanish and the Association of Relinquishing Mothers. I am extremely grateful to the women who shared with me and other members of Parliament their personal stories of having relinquished a child in the past. Those women relinquished children on the understanding that it was in the best interests of their children and consistent with the social norms of the time, yet they have suffered and continue to suffer enormous guilt, anguish and personal trauma — in some cases more than 40 years after the event.

It is my strong view that we should take into account the experiences of these women and let them serve as a cautionary tale to all of us about the issue of surrogacy. It serves as a strong argument as to why we should consider supporting Mr Tee's amendment, irrespective of the views we might have about the bill as a whole. The women with whom I spoke about their personal experiences of relinquishing children took the view that, whilst this amendment may not be perfect, it may save some other women from experiencing the same pain and anguish as them and is therefore worthwhile supporting.

I also want to put on the record my gratitude to my colleague Mr Hudson, the member for Bentleigh in the other place, who — with his courageous partner, Marie — shared their personal story of relinquishment during the Assembly debate. I point out that Mr Hudson moved a number of amendments in the Assembly similar to those before us. Members in that house to the left and right across the political divide were prepared to support those amendments, having regard to the merits of the issue. I urge members to have regard to the merits of this amendment, because it offers some further protections to both the children and surrogate mothers.

I accept the point that was implicit in Mr Finn's — —

The DEPUTY PRESIDENT — Order! I have some problem with this contribution, because it really is more like a second-reading speech than a committee contribution that is focused on the clause. I am mindful that Ms Mikakos has given me the courtesy of saying that she only intends to have one bite of the cherry, and I am therefore a little more lenient, but if every member gave the same sort of set-piece speech, then there would be a real problem with the management of the committee. I ask Ms Mikakos to focus a little bit more on a committee stage debate rather than a second-reading stage debate.

Ms MIKAKOS — I thank the Deputy President and the chamber for their indulgence. I am addressing Mr Tee's amendment and seeking to advocate a point of view as to why that amendment is worthy of support. I will not take up too much further time, but I do want to point out that an Australian study is referred to in the Victorian Law Reform Commission report. I am specifically raising this because in his question to the minister Mr Finn asked about empirical research. There is a reference on page 177 of the law reform commission report to an Australian study that relates to the psychological and social experiences of women who have acted as surrogates and are not the genetic parents, which the report found was an important consideration. Women who participated in that study indicated that using the commissioning couple's gametes helped them to treat the pregnancy differently from their previous pregnancies with their own children. The report says:

> One woman said:
>
> > [The baby is] not part of me … It's their egg, their sperm … Basically I am just growing it, so it's no part of me. I am just helping it grow. I couldn't do it if it wasn't my sister and it was any part of [my partner] and myself.

I refer to that not to make the argument that the use of another person's gametes may necessarily mean that there is no emotional connection between the surrogate and the child but to say the research that has been done shows there is a reduced likelihood that the surrogate will feel some physical connection to the child in those circumstances and therefore experience the same trauma when relinquishing that child.

I also draw attention to the Australian Capital Territory legislation, the Parentage Act 2004, which requires that the commissioning couple can only be recognised as the parents of the child if the surrogate and partner are not the genetic parents of the child. So there are precedents; there are other examples where these types of provisions have been put in place in legislation.

In relation to the last aspect of Mr Tee's amendment, which requires a prospective surrogate to have experienced the pregnancy and birth of a live child, I do not believe a potential surrogate can know what she is getting herself in for without having had that previous experience of bonding physically and emotionally with her child. This is an important additional safeguard in the legislation. In its submission to the law reform commission the Fertility Society of Australia stated that a potential surrogate should have experienced pregnancy and childbirth so she is able to give informed consent as to the task she has proposed to undertake. The women from the Association of Relinquishing Mothers to whom I spoke pointed out to me that no amount of counselling can prepare a woman for the trauma of giving up a child.

I am not suggesting that it is a panacea. However, I think the amendment is important. It seeks to put additional safeguards in place for potential surrogates and children. I urge members to support Mr Tee's amendment on that basis.

Mrs PEULICH (South Eastern Metropolitan) — The reason I will not be voting on this amendment is that it will increase the number of players in the creation of life, the creation of a person. Therefore on my assessment, given my most significant concern, it compounds and exacerbates the challenges for a child to establish a clear sense of its own identity and to unravel that identity because it introduces another layer — that is, the surrogate; the carrying mother; the incubator — to the gamete donor, potentially male and female, and the receiving parents. It becomes an even greater web. Whilst it might be more convenient legally for the adults, for me it has always been about the children, and I believe this is a retrograde step.

Mr ATKINSON (Eastern Metropolitan) — When this legislation came to the Parliament and was considered in the second-reading stage it was of concern to many members in large measure because of the surrogacy provisions. It was put to us at different times that maybe the bill should have been split with the provisions dealing with surrogacy coming forward as another bill. There are certainly a great many issues that this amendment goes to in terms of the legislation and the concerns people had with it. Some of those issues which have just been highlighted by Mrs Peulich and have been acknowledged in what the minister said relate very much to identity.

To me the identity issues are one of the central areas of this whole legislation. I am certainly concerned about some contradictions between the way government policy and legislation has gone in terms of adoption and the route that we are taking in terms of surrogacy, because I think there are a great many similarities between the two. They both involve relinquishing a child, and in fact some people who have spoken to a number of us about surrogacy matters have drawn on their experience of relinquishing children in adoption circumstances that to all intents and purposes mirrors a surrogacy arrangement, because they discovered very early in their pregnancies, often in teenage pregnancies, that their child would be going to other people who they had found.

At the risk of flouting my own ruling just a couple of moments ago in regard to Ms Mikakos, but not wanting to come back to this place in another part of the debate, can I indicate that I think some aspects of this legislation are already allowable under High Court rulings. Certainly the access to IVF (in-vitro fertilisation) and so forth is already provided for under High Court rulings. I am pleased to see that the government is at least attempting to provide some sort of a regulatory framework, which is better than no framework, given that there are already children who have been born under the very arrangements that are covered by the broad extent of this legislation.

I am concerned still about the lack of consultation, and that concern has been borne out by the fact that the government has had to make these amendments because a number of members of Parliament took the issues up with the government in the Legislation Committee after talking to organisations that had been banging on the door of the government for months, unable to get anybody to even come to the door, let alone listen to the sorts of issues that they had. I find that is really disappointing in these circumstances.

I am also mindful of the importance of counselling in these surrogacy arrangements, and I know this is covered by some of the provisions we are yet to get to. Counselling, not just beforehand but indeed afterwards for an extended period, is a very important component of this process. I believe for some relinquishing mothers the trauma and emotional angst of having made these decisions and participated in certain arrangements are likely to come back and haunt them for some time, not necessarily in the immediate period following the actual decision being made but also possibly at some future time.

These are very significant decisions, and I certainly appreciate that the government has addressed a couple of matters in this amendment in particular that were of concern, certainly to Ms Pennicuik, Ms Mikakos and myself and no doubt to some other members. As some other members have perhaps indicated, it is not a perfect framework, but it is certainly an improved framework for the surrogacy provisions under this legislation.

Amendment agreed to.

Mr TEE (Eastern Metropolitan) — I move:

2. Clause 40, page 33, line 7, omit all words and expressions on that line and insert the following —

"with the parties' intentions, including —

(i) the consequences if the commissioning parent decides not to accept the child once born; and

(ii) the consequences if the surrogate mother refuses to relinquish the child to the commissioning parent.".

This amendment deals with clause 40. Clause 40 outlines the matters that the patient review panel must be satisfied of before it can approve a surrogacy arrangement. Currently clause 40 provides that the panel must be satisfied that the parties to the surrogacy arrangement are prepared for the consequences if that arrangement does not proceed in accordance with the parties' intentions. What this amendment does is clarify that the patient review panel must be satisfied that the parties are prepared for the consequences in two specific circumstances: firstly, if the commissioning parents decide not to accept the child once he or she has been born; and secondly, if the surrogate mother refuses to relinquish the child to the commissioning parents. Again, I think this is an important clarification of those existing provisions of the Assisted Reproductive Treatment Bill. It is designed to protect the best interests of the surrogate mother, the commissioning parents and indeed the child born as a result of that arrangement. What it will do is ensure that all parties are fully aware of the nature of the arrangement they are entering into and of the issues that may arise if the arrangement does not proceed as first planned.

Mr DALLA-RIVA (Eastern Metropolitan) — I want to indicate that I will be supporting this amendment. This is the second in a series of amendments proposed by the government which recognise that there are some shortcomings in the legislation, as the Chair and others have indicated, because of concerns about part 4 of the bill. My view is that you could probably go through each of the proposed sections under part 4 and make amendments, because there are quite a few issues. Obviously that is not going to be the case, but it does draw attention to some of the concerns. Notwithstanding that, I will also be supporting this clause, as amended by Mr Tee.

Ms PENNICUIK (Southern Metropolitan) — I will be supporting this amendment, and I know Mr Barber and Ms Hartland will also support it. As I expressed previously, surrogacy arrangements can be difficult situations. As Ms Mikakos put it so well, things can go well as people start out on the road to a surrogacy arrangement. They expect everything to go well, but the arrangement may not go well, or it may not go as planned.

For one reason or another the commissioning parents may decide not to accept the child. The surrogate mother may decide that she does not want to relinquish

the child, and therefore the arrangement is not the arrangement that was originally entered into. It is important that the patient review panel, in approving surrogacy arrangements, is sure that the people entering into an arrangement are very clear as to the consequences of any arrangement not working out the way it was meant to, not only for themselves but for the child in question.

As Mrs Peulich raised in her contribution, we must always remember the child. One of the guiding principles of this bill is that the welfare of children should be paramount. We will support the amendment.

Mr JENNINGS (Minister for Environment and Climate Change) — I confirm that the government finds this amendment acceptable, and I will also be supporting it. I raise an item in addition to the issues discussed by members who have spoken in favour of this amendment. We acknowledge that there needs to be confidence in the counselling provided. It needs to have depth to cover all issues, and it needs to rigorously test those who are entering into these arrangements so that they have the confidence and resilience to start to deal with these matters. We want them to come through that process.

We are also mindful of the fact that there have been some questions asked about the independence of the counselling. Whilst we are not deserting the confidence that underpins these arrangements within the bill, we have considered whether there needs to be, in the context of the regulatory environment that is attached to this bill, some provision or some opportunity to enhance the availability or the offer of independent counselling for people who are going through the process. That is a matter that will be beyond the scope of this amendment. It will be considered in the regulatory process.

Amendment agreed to; amended clause agreed to; clause 41 agreed to.

Clause 42

The DEPUTY PRESIDENT — Order! I indicated earlier to Ms Pennicuik that her amendment 12 was in effect tested by amendments 4 and 6, and as they were not successful, amendment 12 cannot proceed.

Does Ms Hartland wish to proceed with her amendment 7? I consider that amendment has been tested by amendments 4 and 5.

Ms HARTLAND (Western Metropolitan) — I wish to withdraw.

The DEPUTY PRESIDENT — Order! That amendment will not proceed either.

Clause agreed to.

Clause 43

The DEPUTY PRESIDENT — Order! I invite Mr Tee to move his amendment 3. As I have said, this amendment has already been tested to some extent by amendment 1.

Mr TEE (Eastern Metropolitan) — I move:

3. Clause 43, lines 27 and 28, omit "if the surrogate mother's oocyte is to be used in the conception of the child,".

I will not speak to this amendment because it has been tested by and is consequential to amendment 1.

Amendment agreed to; amended clause agreed to; clauses 44 to 52 agreed to.

Clause 53

Ms PENNICUIK (Southern Metropolitan) — I move:

13. Clause 53, after line 23 insert —

"(ab) for each donor, the number of persons born as a result of a treatment procedure or artificial insemination using that donor's gametes; and".

Amendment 13 amends clause 53 to insert a new paragraph (ab) after clause 53(a), which would require the registrar to keep, amongst other things, for each donor the number of persons born as a result of a treatment procedure or artificial insemination using that donor's gametes. Under the legislation that information would be collected and held by the providers and should be provided to the central register. It is basically to make sure that information is held at the central register if it needs to be accessed by donor-conceived persons at a later date.

Mr DRUM (Northern Victoria) — I see this as a very common-sense approach to further information. I urge members within the chamber to support this amendment as it simply increases the information that is going to be kept by the registrar.

Mr JENNINGS (Minister for Environment and Climate Change) — I would like to respond to what will be a reoccurring set of amendments and the concept that underpins them. For simplicity's sake I will outline the government's response to matters of recordkeeping, data collection and information services.

We acknowledge that this is an area in which there have been a range of expressions of concern to ensure that human rights with regard to one's identity — to have confidence about one's genetic make-up, cultural background and a whole variety of other rights — should be protected and consistent with our obligations both under the charter in Victoria and other relevant equal opportunity provisions and international conventions. We understand that is extremely important, and it has been a feature of the information available from various forms of registers that have been in existence for some time.

In terms of the amendments that Ms Pennicuik is intending to proceed with — and that relates not only to this clause but to amendments to clauses 59 and 153; so taking that suite of issues — the government recognises there needs to be some work done to be able to provide some confidence. At this point in time we will not be supporting any of the amendments that relate to those clauses — 53, 59 and 153 — but acknowledge that further work needs to be done in terms of greater confidence and reliability.

The government intends to do that in a structured way. I have been asked to read into *Hansard* a statement to cover those issues.

> A number of people have raised concerns that people conceived using gametes donated before 1998 in Victoria cannot access information about their genetic origins on the same basis as those conceived using gametes donated since 1998. There are concerns that this may affect the health and wellbeing of some donor-conceived people.
>
> The government would like to further consider the appropriateness of the current arrangements. The government proposes to refer issues associated with providing donor-conceived people with more access to information about their genetic origins to the Law Reform Committee of the Parliament. The government will ask the Law Reform Committee to consider and advise on:
>
> (a) the legal, practical and other issues that would arise if all donor-conceived people were given access to identifying information about their donors and their donor-conceived siblings, regardless of the date that the donation was made; and
>
> (b) the legal, practical and other issues that would arise if the birth certificates of donor-conceived people indicated their generic origins.
>
> In advising on the issues associated with each proposal, the government will ask the committee to note and take into account:
>
> (a) the possible implications under the Charter of Human Rights and Responsibilities;
>
> (b) any practical difficulties in releasing information about donors who provided their gametes before 1 July 1988, because in many cases records are not available either because the procedure was carried out privately or records were not stored centrally;
>
> (c) the options for implementing any changes to the current arrangements, including non-legislative options;
>
> (d) the impact that any such changes may have on the donor, the donor-conceived person and future donor programs; and
>
> (e) the transfer of the donor registers currently held by the Infertility Treatment Authority to the registrar of births, deaths and marriages.

I appreciate the indulgence of the committee to outline that. That is the reason the government will not accept any specific amendments to this legislation at this time, because we want to make the appropriate referral and consideration of those matters, acknowledging the importance of them and to make sure that we get that process right.

Mr DALLA-RIVA (Eastern Metropolitan) — This is the bombshell, isn't it? We have been through the Legislation Committee process, and we are now in the process of the committee of the whole. We have just accepted in good faith a range of amendments from Mr Tee and the government about ensuring that the legislation is fine, even though many here admit there are some concerns with the legislation. Suddenly Ms Pennicuik proposes to move more amendments, and the minister is going to refer it off to the Law Reform Committee.

The very issue I raised during the Legislation Committee proceedings was that there is not enough information. I was prepared to move forward in terms of going through the clauses where there was a necessity for change. What the government has done now is basically admit that the legislation before the chamber is really not up to speed and therefore it is not going to accept any more amendments, even though it accepted its own. I am flabbergasted, because it makes a mockery of the whole process that we have just gone through. The government is now going to refer the legislation off to the Law Reform Committee with very limited terms of reference which have been determined by the minister and the government.

I am at a loss. We have been debating clause 53, which relates to an issue that Ms Pennicuik brought up in good faith as a result of the Legislation Committee process — as a result of people listening and attending to the issues — and suddenly the government has said, 'It is all too hard. We will now refer it to the Law Reform Committee to look at other matters'.

Firstly I wonder what, then, is the point of our undergoing this process now, and secondly I wonder what that will mean for the legislation if it passes. Will it mean it will be amended? Will it mean that what we are debating will be changed? I genuinely feel sorry for those in the community who are expecting this legislation to go through. The government has basically said, 'We do not have this right. We will move some amendments that we want you to support. Now we think the bill has not been properly thought out, and if it is passed we will throw it away and have it reviewed'. The message the government is sending to the community and to the chamber is so mixed, I do not know if I should be voting for anything — and I will not be, if this is the way the government is going to deal with this matter.

The DEPUTY PRESIDENT — Order! I invite the minister to respond to the question Mr Dalla-Riva posed in his contribution — that is, whether he envisages, as a result of the process he has outlined, future amending legislation will come back to the house. I extend that question by asking the minister to comment on the time frame he envisages for this process.

Mr Dalla-Riva — I went through this in good faith.

Mr JENNINGS (Minister for Environment and Climate Change) — I never doubted that anybody who has gone through this process has done so in good faith.

Mr Dalla-Riva — I supported the government's amendments.

Mr JENNINGS — I noticed that the member did that. I am not doubting his credibility but responding to some mutterings of concern that began when I started my contribution.

I have indicated to the chamber the response of the government, which will be the same for any amendments to clauses 53, 59 or 153. I have not prevented the committee from dealing with any of them; I have just foreshadowed the consistent approach the government would take on each of them.

If I chose to debate these issues, I could refer to the difficulties that any of the proposed amendments would create in practice and in law if they were agreed to by the committee. If necessary, I will spend a bit of time just doing that — for example, the assumption that we have access to documentary evidence to provide the relevant connection between donors and children who were conceived through in-vitro fertilisation processes prior to 1998 cannot be backed up by the statistical capability of the records that have been kept, nor would it be consistent with the privacy provisions that applied at that time. That is not to say that there may not be some merit in trying to deal with this matter by identifying a voluntary way of making those connections where that information can be found. That is a tangible example of the difficulties that could be created by the black-and-white letter application of the amendments that were put to the committee today. I could give any number of other examples, but I will not waste the time of the committee by doing so.

I indicate to the committee that the government is prepared to run, in parallel with the commencement phase of the new provisions of the legislation, a process of reflection upon the administrative arrangements that underpin information systems. That would hopefully result in the development of practices that would enhance the reliability and availability of and access to information so that all interested parties could get and share information in the future. The vast majority of those practices will be administrative. I do not believe they will require any legislative change; in fact, there would be some elements that you would not want to have in the law.

I am sure the proponents of the idea that identifying information be put on birth certificates as the primary source of information in the future would be extremely distressed if, as a consequence of the law being passed this afternoon, that information were abused and that led to great pain and suffering on the part of those whose birth certificates had been marked in that way. We should be very cautious about this matter.

We could have taken the approach that we are confident that we have the wit and wherewithal to decide upon these administrative arrangements without the additional scrutiny or engagement of the Parliament or other members of the community, but after reflection and the conversations we have had during the review of this bill we have decided that we would be better off considering the views of members of Parliament who represent stakeholders and concerned citizens in the community. We will consider in a thoughtful fashion the best practice around the world, running in parallel with the new administrative arrangements a reflection upon how we can best deal with this issue in the future.

It is ironic that in this instance the government has been criticised for making a referral to a multiparty committee of the chamber, because it often gets pilloried for opposing referrals of matters to parliamentary committees or inquiries. On this occasion we have seen the valid role that a committee structure could play.

To respond to the last issue the Deputy President wanted me to clarify, there may be further amendments to this legislation, but that is not the intention of the review. The intention of the review is to consider ways of dealing with these matters administratively; if there are any matters relating to legislation, we could take advice on them as they come through the committee.

The DEPUTY PRESIDENT — Order! What would the time frame be?

Mr JENNINGS — The time frame is that the government would want to give this referral to the committee in the near future with the implementation of this bill. We would anticipate that it would be appropriate for this to take some time, maybe within a year or so of reference, to consider and reflect on the administrative practices that are developed under the bill.

Mr O'DONOHUE (Eastern Victoria) — I bring to the minister's attention, if he is not already aware, that the Law Reform Committee received two additional references this morning from the Legislative Assembly. I speak as a member of that committee. The Law Reform Committee has a reference on foot at the moment and the committee has experienced resourcing issues throughout the year. I believe the minister's reference to a year or so would be optimistic unless the government appropriately resources the committee to investigate this reference and perhaps gives some priority to the references that may be coming its way over the other references which it received this morning from the Assembly. I make that point as a member of the committee and hope if those references proceed, they are done as quickly as practicable.

I also make the point I made previously, that it is very difficult for me as a member of this place to vote in favour of a bill which appears to be subject to amendments on the run, that is subject to further consideration and that has issues which have been raised with the government and which are only now being considered. It creates difficulties for us, as members, to come to a final position on the overall bill. In effect the government is saying, 'Trust us, we will look into this'. In the minister's second-reading speech it appeared that the government was saying, 'This has gone through an exhaustive process already and therefore does not need any further examination or analysis'. That is a contradictory position that the government is putting.

Mrs PEULICH (South Eastern Metropolitan) — It is instructive that after so many hours of debate we have actually come down to the central problem. The central problem relates to all the issues that I have raised, that Mr Finn has raised and that Mr Dalla-Riva spoke about earlier, which the government is now prepared to refer to the Law Reform Committee because they had not been considered as part and parcel of these reforms. The minister is now prepared to say that it requires further work because the regime that existed in the past did not capture a lot of that information. The government is using that as a basis to argue against the amendments before us, saying that the mechanisms and the consequences have not been fully considered. Yet we are also being asked in the same breath to support legislation which clearly allows a regime where that information is not fully captured. This legislation is half-baked and incomplete. The government should withdraw it, do its homework and bring it back to this Parliament.

Mr FINN (Western Metropolitan) — I fully support the comments made by Mrs Peulich. In doing so I commend the minister, because with the Venezuelan soft-shoe shuffle that he has been perpetrating over the past weeks, both in the Legislation Committee and in this chamber, he has led us a merry dance. Perhaps he should be on *Dancing with the Stars*. He has led us to believe the government might have had its act together on this, but what we have heard in the last few minutes in this chamber is a clear indication that the government has not got a clue. The government has not done its homework. The government has brought to this chamber a piece of legislation that is a dog's breakfast. Nobody knows what various sections mean; the government certainly does not know. If the government does not know it, I am not sure how anybody else is supposed to know.

I support completely the comments made by Mrs Peulich. This legislation should be, and in my view must be, withdrawn. This is a very important matter, to which members on both sides of the chamber have given a great deal of thought. We have not just shown up on the day and had this thrust before us. This is not something on which we have just tossed a coin in the air. A great deal of thought and a great deal of heartache has been created by this bill. This is something that comes down to the very basis of our existence on the earth. This is about the creation of human life. I do not think there is anything that could possibly be more important, so when we are talking about legislation of this nature we have to get it right.

The government has to get it right, but it is clear the government has not got it right. What this government needs to do is what I suggested in this chamber some weeks ago: it needs to withdraw the legislation. It needs to open it up to a public discussion and to public

scrutiny to allow the people of Victoria to have a say on where our society should be going. It needs to do that now so that we can then have this legislation brought back to us, perhaps in 2009, and we can have a fair dinkum look at this and have some confidence that the government has the first idea of what it is doing.

Mrs KRONBERG (Eastern Metropolitan) — I would like to start my contribution and endorse what Mr Finn and Mrs Peulich have said with this old-fashioned saying, 'Oh, what a tangled web you weave when you first set out to plot and to deceive'. All the people who have come here today are fairly stressed. I have plenty of tension up and down the back of my neck and between my shoulder blades. We have come here in an earnest endeavour to do the right thing by paying close attention to the detail today, so that we can reach a point where we deliver up to the people of Victoria an optimised piece of legislation with all of our heartfelt feelings entwined in it.

I am profoundly disappointed, and I think many people are probably feeling a rising level of bile through disgust with the government for what it has set out to do. The minister knows he has responded far too quickly to something that has far-reaching consequences. He has started to undertake social engineering on values that have been in place for millennia, and he has set to go through some response based on the mores of perhaps a decade or two and wants to throw everything out. This is why, as the minister drills down through this, his voyage of discovery will be one where he finds out how complex all this is. He will discover the measure of the consequences — and there will be a cascade, a cavalcade and a constellation of unintended consequences that will flow from this legislation. Today we are giving the minister the kind of grace that he has not given us — that is, the opportunity to resume some point of dignity in this and to withdraw this legislation while there is still a shred of credibility on this issue of massive social engineering on behalf of this government.

Ms MIKAKOS (Northern Metropolitan) — I apologise to the committee. I did say earlier I was not going to speak again, but I will be brief. I want to remind members that we are considering Ms Pennicuik's amendment at the moment. We seem to have digressed and are speaking on all sorts of other issues.

I have a lot of sympathy for Ms Pennicuik's position on this issue. I know that many members were approached by an organisation called TangledWebs, an organisation that has members who were children — they are now adults — conceived through IVF (in-vitro fertilisation) pre-1988. Because of the legislative framework at that time, which ensured that donors were guaranteed anonymity, those children conceived pre-1988 do not have access to donor information. In my view it is absolutely essential to a person's wellbeing that they have information about their biological origins. I would hope that all parents of children conceived through ART (assisted reproductive treatment), whether through IVF, surrogacy, or whatever type of arrangement, would ensure that they have that information available to them at the earliest opportunity.

I have great sympathy for those people who have enormous mental anguish in not knowing who their biological father is. For that reason I have sympathy with Ms Pennicuik's position. However, I accept that the minister has said there are logistical issues that have to be considered here.

It is our job as parliamentarians to ensure that we can achieve the best possible legislation that we can passing through this Parliament. We need to ensure that where donors have provided gametes in the past, in the pre-1988 framework, they have an opportunity to inform their families about those circumstances. If we are to pass Ms Pennicuik's amendment as it is currently drafted, we are not giving any window of opportunity for these men to have those conversations that obviously need to occur within their own families and social structures.

While I have enormous sympathy for Ms Pennicuik's position, I am greatly comforted by the assurances and the undertaking the minister has outlined as to a process — a way forward — for addressing this issue. I think the minister has set out a very positive and constructive process in terms of how we resolve this issue in the future. I would hope members would consider this and see it as a way forward to resolve an issue — an anomaly — in the legislation that in my view must be resolved in the future.

I would urge members to put aside for a moment the high moral ground and the position that people might take in relation to the whole package of the legislation, to focus on the pre-1988-conceived children; their best interests are served in having these issues resolved. Therefore I urge members to take on board the minister's assurances in this regard and to look at what we can do to serve the best interests of these pre-1988-conceived children.

Ms PENNICUIK (Southern Metropolitan) — I thank Ms Mikakos for reminding us of what we are

talking about here, which is my amendment to clause 53. As the minister foreshadowed — and his comments have opened up this argument — my amendment foreshadows other amendments about access to genetic identity information by donor-conceived people. This particular amendment is just about information being stored in the central register about the number of persons born as a result of a treatment procedure or artificial insemination. That is what this amendment is about. It is basically a common-sense amendment. It will not do any harm, but it would facilitate future access to that information contained in the central register. I would urge people to support that amendment.

I will explain my reasons for the next amendment, which is to allow all donor-conceived persons access to their genetic identity. But I want to, in a short amount of time, respond to some of the issues that have been raised. I do share some of the concerns raised by members. I have raised this issue many times with the government. In fact I made a public statement and issued a media release saying that the best thing the government could have done would have been to release this bill halfway through the year, have it out there for public comment and be open to some amendments before the bill actually went into the lower house. That would have been the preferred position on these types of social bills. That is what the government should do. Any government should do that, and many governments do do that. They actually release exposure drafts of bills. Then people can go back to them and say, 'I don't think you have got this quite right' or 'I don't think you have got that quite right', and then before the bill even goes into the Parliament the anomalies and problems with it are sorted out.

That is not the situation we have here now. I do not agree with some of the speakers who have said the bill should be withdrawn, it should go away and that it is totally hopeless. I think the bill is generally a good bill. It has had some problems with it, which I have raised through my amendments. One is the issue of police checks. We have had that argument and we have lost that argument. We accept that, but we still think it is a problem with the bill. Another problem is the number of families that can be created with the one donor. There is also the issue of surrogacy, and some improvements have been made in that area.

This is the last area where we think there are major concerns with the bill — the lack of access to identity by donor-conceived persons. Like every bill that comes into this chamber, there are issues with it, but otherwise generally it is a good bill. I would like members to keep sight of that and to work out ways of improving it and allowing for its passage. We are now talking about only a small amendment to clause 53.

Mr JENNINGS (Minister for Environment and Climate Change) — I thank Ms Pennicuik and Ms Mikakos for bringing us back to focus on what we are currently debating, and the dimensions of what I have sought to indicate cover these issues — that is, the government would support a process to review three things. The issue Ms Pennicuik has just been talking about, which relates to the number of children who could be born through a single donor, is one issue. The next issue is in relation to whether we change the way in which we describe in this legislation people who were born prior to 1988 or after 1988; in effect it is the way we will describe them in the bill. The third issue is whether you put a marker on a person's birth certificate. They are the three things. There has been a pretty elaborate philosophical structure put around those three things. They are extremely important in terms of people's empowerment and knowledge of their identity. Access to information to confirm their identity and their relationships is an extremely important element of the bill.

When we say we want to do some more work on the legislation, we want to deal with the administrative difficulties and have a look at the way in which access should be provided, and we want to have confidence that that information will be used to empower people rather than disempower people. I do not think that undermines the integrity of the bill, as is alleged.

The government acknowledges the importance of these issues, but they are the three issues the government wants to refer off within the considered framework of the Law Reform Committee of the Parliament. It is not locking out people who want to express a view in the Parliament; it is engaging people in the Parliament on those matters.

Mr DALLA-RIVA (Eastern Metropolitan) — I appreciate the minister's comments. Are those terms of reference going to be distributed or are they something that we will have to apply for under FOI and then get at the end of the three months or something?

Mr JENNINGS (Minister for Environment and Climate Change) — There is no reason why the document cannot be made available. It is not written as a set of terms of reference but would form the basis of terms of reference that would be provided by the government to the committee. The copy I have has some handwriting on it, but I am happy to see if we can tidy it up and circulate it. Maybe I read it too quickly

and people are worried that it says something other than what I think it says.

Mr DALLA-RIVA (Eastern Metropolitan) — I am just concerned. I agree with Ms Pennicuik about clause 53. I intended to support it, but then we digressed to the other matters. I will raise this matter now. Clause 1, which we have dealt with, says in part:

> (b) to regulate access to information about treatment procedures …
>
> …
>
> (f) to provide for the keeping of the Central Register …

The minister also talked about a range of other matters, but I am trying to work out why it is that we have to get up to clause 53, which in my view and in Ms Pennicuik's view is not related to the reference to the Law Reform Committee. Why did the minister not bring up earlier in the committee stage that it was the intention of the government to make this reference?

Mr JENNINGS (Minister for Environment and Climate Change) — I know Mr Dalla-Riva is concerned that some bombshell has been dropped, but when he has a look at the subject matter he will see there is no bombshell. We will not be dealing with elements of the bill other than the collation of information, access to information and the appropriate use of information.

The reason the government is not necessarily immediately embracing this amendment or subsequent amendments is that it is concerned about the possible abuse of the information or inappropriate access that may not actually account for the way in which that information could best be used to empower those who are involved in the process. There is an inbuilt assumption that a person — this relates to clause 53 — who is born through a process of surrogacy is empowered by having an annotation on their birth certificate. I contest that it is a reasonable assumption to say that the default position is that you would be empowered by that. You may be, but you may be disempowered by it.

That goes to the heart of why the government is concerned about it. It is not to deny that the information should be gathered, kept and made accessible to people who want to access it, but it wants to provide certainty that the information will be accessed in a way that actually maximises the degree of confidence that that information will not be abused to the detriment of anybody. That is our concern. That is the issue we are now acknowledging in terms of responding to the call that the information should be provided in a more explicit way than what is provided for in the bill, even though we have confidence in what is in the bill — our confidence in what we have in the bill has not deserted us. We are acknowledging the issue and saying that we have to be more mindful of it. We are actually saying, whilst we address it, that we do not want to create information in a way that could lead to detrimental and unintended consequences.

I know that the people who are advocates of this amendment are only proposing it in the best of spirits and with the best of intent. I do not doubt that for one second. However, we have to consider the downstream consequences of any action we take in relation to this matter.

Mr FINN (Western Metropolitan) — I just want to be very clear in my mind exactly what time frame the minister is proposing. It is almost as if the minister is suggesting that an inquiry will be held by the Law Reform Committee before this legislation — if it is passed — is enacted. It is my understanding that that is not the case and that such an inquiry by the Law Reform Committee would only be held some considerable time after the enactment of this legislation and after this legislation had become law and had been a part of the lifestyle of certain people throughout Victoria. It would only be then that we would have an inquiry. I would like the exact time frame the minister is referring to to be made clear in the minds of members.

Mr JENNINGS (Minister for Environment and Climate Change) — I appreciate that Mr Finn wants clarity. I would like to give clarity on this matter. I indicated what I thought the time frame would be. The inquiry would run in parallel with the commencement of the act and would probably take a year. Mr O'Donohue has drawn to my attention — obviously he heard my answer — that he thought it might create resource and time allocation difficulties for the committee to comply with that. He was clear about that. It is certainly not my intention to obfuscate that. I have listened and already taken home the message that we need to be thinking about the priority and resource allocation that may be incumbent upon us to provide. We ask the committee to undertake that referral.

Mr FINN (Western Metropolitan) — Is the minister saying that the bill, if it were passed by this house, would become law and would be in practice before the inquiry that the minister was referring to came aboard and before we were aware of the results of any such inquiry?

The DEPUTY PRESIDENT — Order! The minister has indicated yes.

Mr DALLA-RIVA (Eastern Metropolitan) — I will get back to the central theme of referring the matter to a joint parliamentary committee. The minister says that he wants to have the matter referred because there are many deep issues that need to be explored.

I just put on the record that so far we have had eight divisions in the committee stage — eight divisions where members have made decisions based on the amendments put before the chamber. We are going through the amendments, and I gather we will continue to go through the amendments. The minister has ruled point blank that the government will not be supporting any further amendments, despite the fact that it did not raise the issue of referring the matter to a joint parliamentary committee until after its amendments had been moved, voted on and passed. With that in mind, the minister is now asking us to accept in good faith what he is proposing in terms of referring parts of the bill to a joint parliamentary committee.

I ask the question: given what appears to be some process of which we are unaware, was referring the bill to the Law Reform Committee considered before or after the Legislation Committee stage?

Mr JENNINGS (Minister for Environment and Climate Change) — In fact the first time it was raised with me was after the Legislation Committee stage, so that is the answer to that question. I can understand if people outside the Parliament in the community think there is something in the member's line of questioning about the sequence in which these matters have been rolled out in the committee stage. However, the member knows that every committee stage goes through the clauses in a bill in sequential order, and that is exactly what has been undertaken in this process.

There is an allegation of a conspiracy where no conspiracy exists. Applying the member's logic, I could have answered the matters of substance on each and every occasion in relation to clauses 53 and 59, and when we get to clause 153 I could propose a way of dealing with it. If the member's conspiracy allegation was right, I would not have done this for another hour or two. I would have saved this debate and it would have been the last matter we dealt with. We are halfway through the committee stage. We have 159 clauses in this bill and we are at clause 53. The conspiracy theory just does not stack up.

Mr DALLA-RIVA (Eastern Metropolitan) — For the record I do not think I used the word 'conspiracy', but if the minister is implying that that is what I said, I am glad he thinks that. I did not say it, but the minister did.

The DEPUTY PRESIDENT — Order! I indicate to the committee that I want to make some remarks on this, given the information that has been provided by the minister. I call on Mr Finn to take the chair.

Mr ATKINSON (Eastern Metropolitan) — This area is absolutely fundamental to me in terms of this legislation. I have had discussions with some members of the government, particularly Mr Tee, who has had some carriage of this legislation within the government. He has been keen to address my concerns. I believe to some extent, probably to a large extent, this statement tries to address concerns that I and others have expressed. It is probably imprudent to name them, but I would have thought from the line of questioning we had in the Legislation Committee that Ms Pennicuik shared some of those concerns.

Those concerns were about the identity issues and the ability of people to know who they are and to know some of the implications relating to who they are. In a health sense our genetic background is extraordinarily important today. We have passed a number of bills that relate to that. This issue goes to the core. To me the register provisions Ms Pennicuik has sought to change by way of this amendment and her subsequent amendments have tried to address some of what I refer to as identity issues. I hear what the government is saying in acknowledging that there possibly is a case to answer in terms of those identity issues.

This has probably troubled me more than any other part of the legislation, because, as I said, to me it is the core. Interestingly Mrs Peulich has expressed a similar view in the chamber today. The reality is we are dealing with people's lives. This is not a situation where we are putting out a new Nintendo or something and we are not quite sure if it is going to work, but we will find out in about six months whether it is the right Nintendo and whether it should be on the market. We are talking about people's lives. The proposal that has been put here troubles me so much because it proposes a hiatus and a period of legal uncertainty where we pass the legislation and then we wait for the outcome of an inquiry to determine some of the fundamental issues within the legislation.

I appreciate the goodwill of the government in the way it has embraced the talks with me and with others. I appreciate the goodwill of the government in terms of the offer it has put on the table now for a Law Reform Committee review. When it comes to these things, my party colleagues will tell you, much to their chagrin, that there is probably no-one in my party who argues process more than me. When it comes to this legislation, what worries me is whether we are putting

the cart before the horse. Where else could we look at any piece of legislation that we have put out there on the basis that we know there is a problem, or we believe there is a problem, and we are going to address it but we are going to address it in the future? A legal uncertainty is created by enacting a piece of legislation that has core components that directly affect people's lives, and we are going to resolve those matters at a later time.

I accept the goodwill but I find it very troubling. It upsets my sense of process and the importance of process. It concerns me in terms of the capacity of this Parliament to oversight legislation and to put in place legislation that we know will be the very best legislation in regulating areas of people's lives. There is no doubt that this is landmark legislation, and there is no doubt that it has got to be right. What concerns me is, notwithstanding that I think the whole proposition is put fairly by the government and with goodwill, it creates a period of legal uncertainty, and I just cannot get over the hurdle.

Committee divided on amendment:

Ayes, 18

Atkinson, Mr	Hartland, Ms
Barber, Mr	Kavanagh, Mr
Coote, Mrs	Kronberg, Mrs
Dalla-Riva, Mr	Lovell, Ms
Davis, Mr D.	O'Donohue, Mr
Drum, Mr	Pennicuik, Ms
Finn, Mr	Petrovich, Mrs (*Teller*)
Guy, Mr (*Teller*)	Peulich, Mrs
Hall, Mr	Vogels, Mr

Noes, 17

Broad, Ms (*Teller*)	Pakula, Mr
Darveniza, Ms	Pulford, Ms
Davis, Mr P.	Scheffer, Mr
Eideh, Mr	Smith, Mr
Jennings, Mr	Tee, Mr
Leane, Mr	Thornley, Mr
Lenders, Mr	Tierney, Ms
Madden, Mr (*Teller*)	Viney, Mr
Mikakos, Ms	

Amendment agreed to.

Amended clause agreed to; clauses 54 to 58 agreed to.

Clause 59

Ms PENNICUIK (Southern Metropolitan) — I move:

14. Clause 59, lines 7 to 27, omit all words and expressions on these lines and insert —

"person if the applicant —

(a) is an adult; or

(b) is a child and —

(i) the person's parent or guardian has consented to the making of the application; or

(ii) a counsellor has provided counselling to the person and advised the Registrar, in writing, that the person is sufficiently mature to understand the consequences of the disclosure.

(2) To avoid doubt, this section applies regardless of when the gametes used to conceive the applicant were donated.".

Clause 59 goes to the disclosure of information to persons born as a result of donor treatment procedure. Currently the bill allows access to that information to donor-conceived persons if they are adults or, under clause 59(a)(ii), if they are a child when:

(A) the person's parent or guardian has consented to the making of the application; or

(B) a counsellor has provided counselling to the person and advised the Registrar … that the person is sufficiently mature to understand the consequences of the disclosure …

Clause 59(b) qualifies access to that information. It states that the applicant must have been conceived:

(i) using gametes donated after 31 December 1997; or

(ii) the person was conceived using gametes donated between 1 July 1988 and 31 December 1997 and the condor has given consent to the disclosure.

I do not want to spend too much time going over the debate we have already had here today at the committee stage, but the reason why I bring this amendment to the chamber is that for many reasons I feel we need to amend the clause. My amendment would retain clause 59(a) but would remove clause 59(b), which is the qualification that some people born at certain times are allowed access to certain information, some people are allowed access to full information, some people are allowed access to information if the donor agrees and people born before 1988 are not permitted access to any information about their genetic identity. As many people in the house have said, and as I have said, this is not a situation we should allow to continue by passing a law to perpetuate it.

In support of my amendment I draw the attention of members to the guiding principles at clause 5. The guiding principles are shown at clause 5(a) to (e). Clause 5(a) states:

the welfare and interests of persons born or to be born as a result of treatment procedures are paramount …

The guiding principle in clause 5(c) states:

> children born as the result of the use of donated gametes have a right to information about their genetic parents …

The first reason for my moving this amendment is that clause 59 is completely contradictory to the two guiding principles I just read out. You cannot have a guiding principle in the bill that children born of donor-conceived treatment have the right to the information and then have a clause that precludes them from gaining access to that information. My amendment would remove that anomaly in the bill. My amendment includes:

> To avoid doubt, this section applies regardless of when the gametes used to conceive the applicant were donated.

In effect it would mean that all donor-conceived persons in the state of Victoria would have the right to access information about their genetic identity.

Since the introduction of the bill members have, like I have, been approached by individuals and groups to, as Mr Dalla-Riva said, try to draw the attention of the government to their plight and their anguish at not having access to this information. It is hard for people who know their genetic identity to stand in their shoes and understand how they feel about not having that information. Some members on the government side have said they fully sympathise with those groups, that the government is going to look at the issue and that they understand how it causes them anguish. But it is not only about their not having access to that information, it is also about the fact that the Parliament is going to legislate against their having that information. The law will preclude them from having that information. The right to privacy of the donors will be held above the human right for people to know their genetic identity as expressed in the United Nations convention and in the guiding principles of the bill. I do not agree with that. In my view the bill needs to be amended because that is a serious flaw.

Ms Mikakos spoke in defence of the government's position that we should not amend the bill, that we should not fix this problem, but that we should go away and look at it, and come back at some later time. The bill is due to commence on 1 January 2010. The government is suggesting that the bill should operate for a while, the committee should look at it and then we should bring it back. We are looking at years hence.

There are people who have already been denied this information, and they would be denied it for longer, still with no guarantee that they will have it provided at the end of that process. Probably there is not a large number of donor-conceived people who were born between 1980–81, when in-vitro fertilisation first started, and 1988. Sadly and tragically for the donor-conceived people involved, some of the information is gone, and even with the right to access it, they will not be able to. We are looking at a small number of people. If this amendment passes — and I believe strongly it should — the government can put in place mechanisms to contact those donors and work through the issues that will come with the access of people to that information. I have listened to what the government has said, but I still feel that I need to stand up here today and say that we should not be legislating to continue this injustice. I urge members to support the amendment.

Mr JENNINGS (Minister for Environment and Climate Change) — For completeness I will state that the issue between us is about the way in which people are classified within this legislation in terms of the availability of information and access to it. The government does not dispute the philosophical position and the intent to create a circumstance where people can get access to information. We are particularly concerned about the reliability of that information and how it can be accessed and the consequences of the privacy provisions that may have applied prior to 1988, which is why we have taken a cautionary approach to the drafting of this legislation. That ultimately is the only area of difference between us. We would hope people would willingly provide that information and people would have information made available to them to be more secure and more certain about their identity.

Committee divided on amendment:

Ayes, 13

Atkinson, Mr	Kronberg, Mrs
Barber, Mr	Lovell, Ms
Drum, Mr	Pennicuik, Ms
Finn, Mr	Petrovich, Mrs (*Teller*)
Guy, Mr	Peulich, Mrs
Hartland, Ms	Vogels, Mr
Kavanagh, Mr (*Teller*)	

Noes, 22

Broad, Ms	O'Donohue, Mr
Coote, Mrs	Pakula, Mr
Darveniza, Ms (*Teller*)	Pulford, Ms
Davis, Mr P.	Rich-Phillips, Mr
Eideh, Mr	Scheffer, Mr
Hall, Mr	Smith, Mr
Jennings, Mr	Somyurek, Mr (*Teller*)
Leane, Mr	Tee, Mr
Lenders, Mr	Thornley, Mr
Madden, Mr	Tierney, Ms
Mikakos, Ms	Viney, Mr

Amendment negatived.

Clause agreed to.

Clauses 60 to 149

The DEPUTY PRESIDENT — Order! Are there any other members who have any other issues or comments to make with regard to clauses 60 to 149? I advise the committee that Ms Pennicuik had circulated amendments that affected clauses 85, 91 and 96, but those amendments were effectively tested by an earlier amendment, amendment 7, which was lost, so I would not expect that she would be proceeding with those.

Clauses agreed to.

Clause 150

Ms PENNICUIK (Southern Metropolitan) — I believe my amendments 18 and 19 refer to my previous amendments regarding child protection orders and police checks, and therefore I withdraw them.

The DEPUTY PRESIDENT — Order! Ms Pennicuik is not proceeding with her amendments 18 and 19.

Clause agreed to; clauses 151 and 152 agreed to.

Progress reported.

RELATIONSHIPS AMENDMENT (CARING RELATIONSHIPS) BILL

Introduction and first reading

Received from Assembly.

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

CRIMES LEGISLATION AMENDMENT (FOOD AND DRINK SPIKING) BILL

Introduction and first reading

Received from Assembly.

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

MAJOR CRIME LEGISLATION AMENDMENT BILL

Introduction and first reading

Received from Assembly.

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

SHERIFF BILL

Introduction and first reading

Received from Assembly.

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

Sitting suspended 4.39 p.m. until 4.47 p.m.

RELATIONSHIPS AMENDMENT (CARING RELATIONSHIPS) 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 Relationships Amendment (Caring Relationships) 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 Relationships Act 2008 (the principal act) establishes a relationships register in Victoria for the registration of domestic relationships. The principal act also provides a single location for statutory requirements governing property matters in the event of a breakdown of a domestic relationship and amends Victorian acts that currently recognise domestic relationships, in order to make provision for registered relationships.

The bill amends the principal act to allow for the registration of caring relationships on the relationships register and for the recognition, where appropriate, of registered caring relationships across the statute book.

A registrable caring relationship is a relationship between two adults, which is not a marriage or a couple-relationship, and where the partners may be related by family. Not to be confused with the notion of a 'carer', a registrable caring relationship is one where the partners in the relationship provide each other with personal or financial commitment and support of a domestic nature, other than for fee or reward.

The purpose of the relationships register, for both domestic and caring relationships is to allow people to register one relationship, their primary relationship, which will be recognised as such for the purposes of Victorian law. Like registered domestic relationships, registration of a caring

relationship will provide conclusive proof of the relationship where caring relationships are recognised under Victorian law. Also like domestic relationships, the bill allows partners in registered caring relationships that have broken down to apply to a court for the adjustment of interests in the property of the relationship and for maintenance, and allows people to enter into relationship agreements in relation to a caring relationship.

The principal act is a fundamentally beneficial piece of legislation. The bill enhances the benefit of the principal act by recognising registered caring relationships in Victorian legislation where there has previously been no such recognition and by according them with a range of legal rights and obligations. As such, the bill acknowledges that people form a diverse range of relationships and allows them to define which of their personal relationships is most important. It also moves the Victorian registration scheme closer to that of the scheme first established in Tasmania in 2004 by its Relationships Act 2003.

Human rights issues

Recognition of equality before the law

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

Age limitation

The definition of a 'registrable caring relationship' in the bill requires the partners in that relationship to be 18 years of age or over to register their relationship. This requirement limits the right to equality on the ground of age.

(a) the nature of the right being limited

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

(b) the importance of the purpose of the limitation

The purpose of the age requirement is to protect persons under 18 years of age who are more vulnerable than adults because of their age, and therefore are less likely to have the maturity and capacity to make an informed decision about registering a relationship and to understand the consequences of registration.

(c) the nature and extent of the limitation

The age requirement limits the right to equality to the extent that a person cannot register a registrable caring relationship if a person in the relationship is under 18 years of age.

(d) the relationship between the limitation and its purpose

There is a direct relationship between the limitation on registration to adults and the purpose of protecting persons under 18 years of age, who because of their age, are less likely to have the maturity and capacity to make an informed decision about registration and understand the intended consequences of registration.

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

There are no less restrictive means reasonably available to achieve the purpose of protecting persons under 18 years of age who are less likely to have the maturity and capacity to make an informed decision about registration. It would be unreasonably onerous to require the registrar of births, deaths and marriages (the registrar) to assess each individual aged 16 or 17 to determine whether he or she has sufficient capacity to consent to registration. While the age requirement involves a degree of generalisation about the particular abilities and maturity of individuals, it is necessary and reasonable for Parliament to set an age limit reflecting its assessment of when most persons will have sufficient maturity to ensure responsible decisions are made in relation to registration.

(f) any other relevant factors

Under the principal act, partners in registrable domestic relationships must be adults to register that relationship. It is also a requirement that applies to the registration of caring relationships under the Tasmanian Relationships Act 2003.

(g) conclusion

Accordingly, the age requirement for partners in registrable caring relationships is a reasonable and demonstrably justifiable limitation of the charter right to equality.

Inability to register a caring relationship if already married, in a domestic relationship or in another relationship

The bill extends the application requirements in section 6 of the principal act to people in registrable caring relationships who wish to register their relationship. In so doing, the bill prevents people in a registrable caring relationship from registering the relationship if they are already married, in a registered relationship or in another relationship that could be registered in Victoria. These are the same requirements that apply under the principal act to people in registrable domestic relationships, and are similar to those that apply under the Tasmanian Relationships Act.

The requirements are reasonable given the purpose of the registration scheme is to allow people to register their primary relationship, which will be recognised as such for the purposes of Victorian laws. The registration scheme provides certainty about who the law applies to and it would become unworkable if someone could register numerous relationships. The scheme is also voluntary and, in relation to caring relationships, a person may instead choose to have informal relationships and can make various arrangements to benefit others, such as by making a will.

Preventing people in registrable caring relationships from registering more than one relationship does not amount to discrimination based on an attribute recognised in the Equal Opportunity Act.

Preventing married people and people in domestic relationships from registering a caring relationship raises an argument of differential treatment on the basis of a person's marital status, which under the Equal Opportunity Act includes a person's status of being a domestic partner. However, it does not amount to less favourable treatment when compared to a person who is not married or in a domestic relationship being able to register a caring

relationship. Marriage itself confers benefits, as does recognition as a domestic partner and, in most cases, spouses and domestic partners are treated equally across the statute book. The bill otherwise allows for the recognition of registered caring relationships in Victorian legislation where there has previously been no recognition.

It is therefore considered that the application requirements in the bill do not limit the charter right to equality.

Additional registration requirements for partners in caring relationships

The bill imposes an additional registration requirement on partners in registrable caring relationships to first obtain independent legal advice about the consequences of registration. The same requirement applies to caring partners under the Tasmanian Registration Act. This is an important requirement given that partners in a caring relationship may be less likely than domestic partners to expect legal consequences to attach to their relationship, particularly consequences whereby the registered caring relationship takes precedence over other family relationships.

Imposing the additional registration requirement on registrable caring relationships does not amount to discrimination based on an attribute recognised in the Equal Opportunity Act and there is therefore no limitation on the charter right to equality.

Differential treatment of registered caring relationships across the statute book

In addition to allowing for the registration of caring relationships, the bill provides for the recognition of registered caring relationships across the statute book. Partners in registered caring relationships will generally be treated in the same way as partners in registered domestic relationships but there are exceptions to this in appropriate circumstances.

Treating registered caring partners differently from domestic partners and spouses does not amount to discrimination based on an attribute recognised in the Equal Opportunity Act and there is therefore no limitation on the charter right to equality. It is noted that under the Tasmanian Relationships Act, caring partners are not treated in the same way as partners in 'significant relationships' or spouses in all cases.

Privacy and reputation

Section 13 of the charter provides that a person has the right not to have their privacy or family unlawfully or arbitrarily interfered with.

Powers of the registrar

The bill provides that the same processes that apply to the registration of registrable domestic relationships under the principal act apply to registrable caring relationships. This means that the registrar of births, deaths and marriages has the same powers in relation to the registration of registrable caring relationships as for registrable domestic relationships.

As set out in the statement of compatibility for the principal act, the powers of the registrar are clear and appropriately circumscribed, and do not amount to an unlawful or arbitrary interference with privacy or family.

For example:

Registrar's powers to require information and conduct inquiries

Sections 7(d) and 8 of the principal act allow the registrar to require information for the purposes of determining an application for registration, the requirements of which are set out in sections 6 and 7. The purpose of the registrar's power is clear and limited, being only to obtain information to ensure that applicants meet the eligibility requirements for registration and does not amount to an unlawful or arbitrary interference with the right to privacy.

Section 18 allows the registrar to conduct an inquiry to find out particulars to verify information given in connection with a registration application or whether the particulars of a registered relationship are correctly recorded. Again, the purpose of the registrar's power is clear and limited. Moreover, the power is necessary to ensure the integrity of the relationships register and reflects current powers of the registrar in relation to other registers under the Births, Deaths and Marriages Registration Act 1996.

Registrar's power to refuse to register

Section 10 of the principal act provides that, unless an application for registration is withdrawn, the registrar may register the relationship within a reasonable period after the expiry of 28 days from the date the application was made or after further information required by the registrar is provided. The registrar may also refuse to register the relationship. In this context, the basis for the registrar's refusal to register is that the application for registration has not met the application requirements set out in clauses 6 and 7 of the principal act.

Access to and disclosure of personal information

Sections 21 and 22 of the principal act allow the registrar, on application, to search the relationships register for an entry about a particular registered relationship and issue a certificate of the search results. Section 24 provides that the registrar may allow a person or organisation access to information in the register or provide information extracted from the register.

The circumstances in which the principal act authorises the registrar to allow access to and disclose personal information are circumscribed. Applicants must provide adequate reasons for requesting a search or access to information on the register. In deciding whether an applicant has an adequate reason, the registrar must have regard to a number of relevant factors. Further, section 20 requires the registrar, when providing information from the register, to protect the persons to whom the information relates from unreasonable intrusions on their privacy and the registrar must maintain a written statement of the policies on which access to information is to be given or denied.

In all of the above examples, section 28 of the principal act allows a person whose interests are affected by a decision of the registrar to apply to the Victorian Civil and Administrative Tribunal (VCAT) for review of the decision. This provides a further safeguard to ensure that the basis for the registrar's decision is reasonable.

The registrar is also a public authority for the purposes of the charter and is therefore required to act in a way that is compatible with a human right and, in making a decision, must not fail to give proper consideration to a relevant human right.

Ability of a court to revoke registration or to order the registrar not to revoke registration

The principal act sets out reasonable mechanisms for the revocation of a registration. Under the bill, these mechanisms will apply in the same way to the revocation of registered caring relationships.

The mechanisms include automatic revocation if either partner in the registered relationship dies or gets married, and revocation on application to the registrar by one or both of the parties to the relationship. It also appropriately provides for the courts to have a role. This might happen during proceedings for property matters as a way of finally determining the relationship, or it could happen on review of the registrar's decision by VCAT. Such a role for the courts is reflected in the Births, Deaths and Marriages Registration Act, in relation to other registers maintained by the registrar, as well as in the Tasmanian Relationships Act in relation to their registration scheme. Furthermore, courts and tribunals must interpret all statutory provisions in a way that is compatible with human rights so far as it is possible to do so consistently with the purpose of the statutory provisions.

As such, the ability of the court to revoke registration or to order the registrar not to revoke registration cannot be regarded as limiting the right of a person not to have their privacy or family unlawfully or arbitrarily interfered with.

Property rights

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

The bill extends the provisions in the principal act dealing with relationship agreements, property and maintenance to partners in registered caring relationships. In so doing, the bill affords property rights to registered caring partners for the first time, giving them the ability to seek court orders in relation to property of the relationship after the relationship has broken down. As part of this regime, a court may make an order for the adjustment of property interests, or for maintenance, which deprives a registered caring partner of their property. However, the principal act provides that the order be just and equitable having regard to a number of matters that are clearly articulated. The court's powers are formulated in a precise manner and occur under powers conferred by legislation. Any deprivation of property will therefore be in accordance with law and there is no limitation of the right granted in section 20 of the charter.

Fair hearing

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

Section 61 of the principal act, which the bill extends to partners in registered caring relationships, raises the right to a fair hearing by allowing a court to make an order or grant an injunction in relation to a property matter in the absence of one of the parties to the proceeding, where it is a case of urgency.

(a) the nature of the right being limited

The purpose of the right to a fair hearing is to ensure the proper administration of justice and is concerned with procedural fairness.

(b) the importance of the purpose of the limitation

The purpose of section 61 is to:

> protect the property of one or both parties to a registered caring relationship that has broken down where either of the parties has applied to the court for a property or maintenance order
>
> to aid enforcement of any other order made in respect of the property or maintenance application.

This may arise, for example, in situations where there is a need to make an order to stay the distribution of interests in property on the breakdown of a relationship where one party cannot be located or where delaying the making of such an order would result in serious injustice to the party making the application.

(c) the nature and extent of the limitation

The bill limits the right to a fair hearing to the extent that a court can make an order or grant an injunction ex parte. However, the court can only make orders ex parte in the case of urgency and only for specified purposes. Further, an order or injunction must be expressed to operate or apply only until a specified time or the further order of the court.

(d) the relationship between the limitation and its purpose

There is a direct relationship between the limitation and its purpose. The limitation goes no further than is necessary to achieve the purpose of protecting property and/or enforcing an order, in circumstances where not having the power to make temporary orders ex parte would result in serious injustice to the applicant.

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

There are no less restrictive means reasonably available to protect property or to enforce an order. Due to the urgency of such matters, it is unreasonable for a court to delay making such an order until all parties are present.

(f) any other relevant factors

Section 61 of the principal act currently applies to partners in domestic relationships. A similar provision existed under section 293 of the Property Law Act 1958.

(g) conclusion

Accordingly, the court's power to make orders and injunctions in the absence of a party in section 61 as it relates to parties in registered caring relationships is reasonable and demonstrably justifiable under section 7 of the charter.

Conclusion

I consider that the bill is compatible with the charter because to the extent that some provisions may limit human rights those limitations are reasonable and justified in the circumstances.

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:

In April this year, Parliament passed the Relationships Act 2008, establishing for the first time in Victoria a relationships register for the registration of domestic relationships. Registration will allow couples in these relationships easier access to existing entitlements without having to argue repeatedly that they are in a committed partnership, or to have to prove this in court.

The Relationships Act also provides a single location for statutory requirements governing property matters in the event of a breakdown of a domestic relationship and amends Victorian acts that currently recognise domestic relationships in order to make provision for registered relationships.

Before the Relationships Act commences operation on 1 December 2008, I am today introducing a bill that enhances its important reforms. In so doing, I am also fulfilling a commitment I made to the house during debate on the Relationships Act.

The Relationships Amendment (Caring Relationships) Bill amends the Relationships Act to allow for the registration of caring relationships on the relationships register and for the recognition, where appropriate, of registered caring relationships across the statute book.

The bill enhances the fundamentally beneficial nature of the Relationships Act by recognising registered caring relationships in Victorian legislation where there has previously been no such recognition and by according them with a range of legal rights and obligations. As such, the bill recognises and values diversity, and moves the Victorian registration scheme closer to that of the scheme first established in Tasmania in 2004 by its Relationships Act 2003.

The purpose of the relationships register, for both domestic and caring relationships, is to allow people to register one relationship, their primary relationship, which will be recognised as such for the purposes of Victorian law.

Like registered domestic relationships, registration of a caring relationship will provide conclusive proof of the relationship where caring relationships are recognised under Victorian law. Also like domestic relationships, the bill allows partners in registered caring relationships that have broken down to apply to a court for the adjustment of interests in the property of the relationship and for maintenance, and allows people to enter into relationship agreements in relation to a caring relationship.

Turning now to the key aspects of the bill in more detail, the bill includes a separate definition of a registrable caring relationship that is distinguishable from the definition of a registrable domestic relationship already contained in the Relationships Act. The definition makes it clear that a caring relationship, while being between two people, is not marriage or a couple-relationship. Caring partners may be related by family. Both partners must be over 18 years of age.

Not to be confused with the commonly understood notion of a carer, a registrable caring relationship is one where the partners in the relationship provide each other with personal or financial commitment and support of a domestic nature. It does not, however, include a relationship in which a person simply provides domestic support and personal care to the other person for fee or reward, such as on a commercial or for-profit basis. So, in essence, this is a broader concept of relationship than a couple that could, for example, include two adult companions, or two adult siblings, who have a mutual commitment to support each other in practical and emotional ways.

The bill provides that the same registration requirements that apply to registrable domestic relationships apply to registrable caring relationships — that is, the partners to the relationship must both be domiciled or ordinarily resident in Victoria and must not be married, already in a registered relationship or in another relationship that could be registered in Victoria. These requirements mean that a person cannot be in both a registered domestic relationship and a registered caring relationship because the purpose of the registration scheme is to allow people to register their primary relationship for the purposes of recognition under Victorian law.

However, as is the case under the Tasmanian registration scheme, partners applying to register a caring relationship will be required to first receive independent legal advice about the consequences of registration. Independent advice of course means that the partners in the relationship should receive this advice separately from each other and from different legal practitioners.

Independent legal advice is a necessary additional requirement because parties to caring relationships may be less likely than domestic partners to expect legal consequences to attach to their relationship, particularly consequences whereby the caring relationship overrides other family relationships. Independent legal advice will also act as a safeguard against caring relationships being orchestrated by unscrupulous people in contact with a vulnerable older person, or by family members seeking to advantage themselves over other family members in relation to access to financial resources and inheritance.

The bill provides that only partners who have registered their caring relationship will be able to access rights and obligations under Victorian law. While different from the approach taken for domestic relationships, this provides certainty about who Victorian law applies to and ensures that only people who intend to have their caring relationship legally recognised as their primary relationship are captured by the registration scheme.

Finally, the bill reflects the intention that, across the statute book, registered caring relationships be generally treated in the same way as registered domestic relationships with exceptions in appropriate circumstances. This approach is similar to that taken in Tasmania, where caring partners are not treated in the same way as partners in 'significant relationships' or spouses in all cases.

So, while the property and maintenance jurisdiction under the Relationships Act will be extended to registered caring partners, the bill makes consequential amendments to a number of other acts to clarify that the rights and obligations that currently apply to domestic partners in those acts do not extend to partners in registered caring relationships. I note that in clarifying the application of these existing laws to registered caring partners, it is not intended to change the current entitlements of spouses and domestic partners under Victorian law.

The majority of exceptions apply to legislation that gives entitlements to reversionary pensions under superannuation and judicial pension schemes. Such entitlements are given to a spouse or spouse-like partner on the death of the judicial or superannuation member. Extending the entitlement to registered caring partners would constitute a fundamental change to this policy basis. This contrasts with the recent legislative change to recognise registered domestic relationships, something that does not fundamentally change the scope of who is covered by these schemes but rather provides a method by which people can prove their relationship to access such schemes. It is also an appropriate approach given that this is the first time that caring relationships are being recognised in Victorian law.

Before concluding, I would like to address some further matters that arose during debate on the Relationships Act.

There have been a number of calls to amend the Relationships Act to allow for recognition of relationships formalised in other jurisdictions. This is particularly relevant for other registration schemes in Australia such as in Tasmania and in the ACT. This continues to be the subject of discussion with these and other jurisdictions but it is important that we agree on how such a recognition scheme will work. Consideration of this issue will therefore take some more time. However, it was important that this bill not be delayed while those further discussions are taking place.

There have also been further suggestions to amend the Relationships Act to bring the state property and maintenance jurisdiction more in line with the commonwealth Family Law Act 1975. The commonwealth government has now acted on the referral by a number of states of their legislation-making powers over property matters for de facto couples. The commonwealth reforms will amend the Family Law Act 1975 to provide for opposite-sex and same-sex de facto couples to access the federal family law courts on property and maintenance matters. They will also allow a de facto couple whose relationship breaks down prior to the commencement of the commonwealth legislation to opt in to the new regime. Once the new commonwealth jurisdiction commences, the majority of new matters for separating Victorian couples should be able to proceed in the Family Court.

The state jurisdiction will, however, need to remain in place to deal with property and financial matters arising out of a registered caring relationship that has broken down, as the commonwealth jurisdiction will not cover these relationships. My department will therefore continue to monitor the need for any further reform in this area.

I am pleased that the bill has received broad support from a number of different stakeholders. It is a further step in recognising that people form a diverse range of relationships and will allow people to define which of their personal relationships is most important.

I commend the bill to the house.

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

Debate adjourned until Thursday, 11 December.

CRIMES LEGISLATION AMENDMENT (FOOD AND DRINK SPIKING) 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 Crimes Legislation Amendment (Food and Drink Spiking) Bill 2008.

In my opinion, the Crimes Legislation Amendment (Food and Drink Spiking) 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

This bill creates two new offences which relate to food or drink spiking behaviour. Both were recommended to the Standing Committee of Attorneys-General (SCAG) by the Model Criminal Law Officers Committee (MCLOC) in its review of drink spiking. SCAG endorsed MCLOC's recommendations.

Clause 3 of the bill inserts a new subsection into section 53 of the Crimes Act 1958. That subsection creates a new offence of administering a drug with the intention of rendering a person incapable of resisting an indecent act. The existing provision only applies to situations where a person has been rendered incapable of resisting sexual penetration. Accordingly, this new provision addresses a gap, which was identified by MCLOC.

Clause 4 of the bill creates a new offence in the Summary Offences Act 1966 of food or drink spiking. In keeping with MCLOC's recommendation, but adopting Victorian drafting conventions, this bill creates an offence where a person:

> gives another person, or causes another person to be given or to consume, food or drink that is spiked; and

knows that the victim is not aware, or is reckless as to whether the victim is aware, that the food or drink is spiked; and

intends the victim to be harmed by the consumption of the food or drink.

The offence is also made out if the victim has been given more of an intoxicating substance than they could reasonably expect their food or drink to contain. This means that it captures the spiking of an alcoholic drink with additional alcohol where the elements of the offence are also satisfied.

The offence is a preparatory offence. It is not necessary for food or drink to be consumed, nor is it necessary that a person's senses or understanding to actually be impaired. If a person's senses or understanding are actually impaired, this is likely to be covered by assault offences and, in Victoria, the offence of 'administering certain substances' (an offence under the Crimes Act which applies where there is likely to be a substantial impairment of bodily functions).

Human rights issues

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

There are two human rights protected by the charter that are relevant to the bill, as set out below.

1. Section 13 — privacy and reputation

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

The term privacy includes 'bodily privacy'. The bill promotes the right to bodily privacy, namely the protection of physical selves against invasive procedures, which arguably include food or drink spiking. It does this by criminalising behaviour associated with food or drink spiking.

2. Section 21 — right to liberty and security of person

Section 21 of the charter provides that every person has the right to liberty and security.

This bill promotes the right to security. Under that right, public authorities (such as the state) must protect a person's physical security where it is aware that security may be under threat.

This bill does this by criminalising certain behaviours relating to food and drink spiking which may not currently be captured by existing offences.

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 Crimes Legislation Amendment (Food and Drink Spiking) Bill 2008 is compatible with the Charter of Human Rights and Responsibilities on the basis that it enhances two human rights, and does not limit any rights.

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 delivers on the government's commitment to reform the law relating to food and drink spiking to increase the protection, particularly for young people, against harm and sexual assault.

The term 'spiking' refers to the practice of adding drugs or alcohol to another person's food or drink, without that person's consent. There has been considerable media reporting of cases in which perpetrators have added 'date rape' drugs to alcohol with the aim of taking sexual advantage, and indeed sexually assaulting, victims. This is clearly very serious offending behaviour. Other examples of 'spiking' include someone adding extra alcohol to an alcoholic drink with the aim of, for example, seeing the victim make a fool of himself or herself. Such behaviour can obviously have very serious consequences for the victim, but also the broader community.

We do not know precisely how prevalent drink spiking is. This is due to a range of factors including high levels of underreporting and difficulties associated with verifying whether a reported incident actually occurred. There is no typical incident of drink spiking. What we do know from the available research is that it disproportionately affects young women, and a third of all drink spiking incidents are associated with sexual assault.

This bill arises directly out of recommendations by the Model Criminal Law Officers Committee (MCLOC) of the Standing Committee of Attorneys-General (SCAG), which SCAG subsequently endorsed. It builds on the work of the Australian Institute of Criminology and the Ministerial Council on Drug Strategy.

MCLOC concluded that while other general offences cover spiking cases where the spiking results in injury or death, in most jurisdictions there was a gap in relation to the lower end of the spectrum of drink spiking behaviour.

It proposed the creation of a preparatory offence in which it would not be necessary for food or drink to be consumed, nor for a person's senses or understanding actually be impaired.

If a person's senses or understanding are actually impaired, this would be covered by assault offences (or in the most extreme cases, murder) and, in Victoria, the offence of 'administering certain substances'.

Accordingly, in keeping with MCLOC's recommendation, but adopting Victorian drafting conventions, this bill creates an offence where a person:

gives another person, or causes another person to be given or to consume, food or drink that is spiked; and

knows that the victim is not aware, or is reckless as to whether the victim is aware, that the food or drink is spiked; and

intends the victim to be harmed by the consumption of the food or drink.

The offence is also made out if the victim has been given more of an intoxicating substance than they could reasonably expect their food or drink to contain. This means that it captures the spiking of an alcoholic drink with additional alcohol where the elements of the offence are also satisfied.

As such the offence does not criminalise all instances in which a person gives another person more alcohol than they are aware of — for example, the extra 'birthday' shot given as a gesture of goodwill — but it will capture this behaviour if there is an intention to harm the other person.

MCLOC proposed that the maximum penalty for this offence be two years imprisonment. In Victoria this means that the offence is a summary offence. As such, the offence appropriately fits into the Summary Offences Act 1966.

The bill also implements a recommendation that MCLOC made in respect of section 53 of the Crimes Act 1958, which creates the offence of administering a drug with the intention of rendering a person incapable of resisting sexual penetration. MCLOC identified a gap in this provision where the intention is to render the person incapable of resisting an indecent act, rather than sexual penetration. The bill addresses this gap by also making this an offence.

This bill sends an important message about the dangers of food and drink spiking behaviour. It makes it clear that this behaviour is unacceptable, regardless of the extent of harm which results from it.

I commend the bill to the house.

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

Debate adjourned until Thursday, 11 December.

MAJOR CRIME LEGISLATION 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 Major Crime Legislation Amendment Bill 2008.

In my opinion, the Major Crime Legislation 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 bill

The bill will amend the Major Crime (Investigative Powers) Act 2004 to make it clear that an indictable offence that has a purpose of sexual gratification involving a child is an organised crime offence; to prescribe procedures for the revocation of coercive powers orders; improve the operation of confidentiality provisions and generally improve the operation of the act.

The bill will also amend the Casino Control Act 1991 and the Racing Act 1958 in relation to the review of decisions making exclusion orders, and will amend the Surveillance Devices Act 1999 in relation to assistance to law enforcement officers.

Human rights issues

The provisions of the bill raise several human rights issues.

Right to a fair hearing — s 24; rights in criminal proceedings — s 25(2)

1. Clauses 4, 14 and 15 of the bill

Clause 4 of part 2 of the bill provides for the procedure for the hearing by the Supreme Court of applications for the revocation of coercive powers orders. Clauses 14 and 15 of part 3 of the bill provide for the procedure for the review by the Supreme Court of decisions by the chief commissioner to make exclusion orders under the Casino Control Act 1991 and the Racing Act 1958.

Under these clauses, if the chief commissioner objects to the disclosure of protected information at a hearing for the revocation of an order, the chief commissioner can apply to the Supreme Court to determine a matter of the revocation of coercive powers orders, or exclusion orders, by way of confidential affidavit, at a hearing in a closed court, at a hearing held without notice to, and without the presence of, one or more of the parties or any representative of those parties, or by any combination of these methods. If the court is satisfied that it is not in the public interest to determine the matter by the method elected by the chief commissioner, the court may determine the matter by any of the other methods. In deciding which method to determine the matter by, the court must take into account a number of specified factors, including the public interest in protecting the confidentiality of any intelligence information, and whether any such intelligence information would disclose the identity of police officers, witnesses or other relevant persons.

The bill also provides in clauses 4, 14 and 15 that if the court decides to determine an application at a hearing held without notice to, and without the presence of, one or more of the parties or any representative of those parties, the court may appoint a special counsel to represent the interests of a party to the proceeding at the hearing.

Right to a 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.

Persons named in, or affected by, coercive powers orders or exclusion orders, and seeking the revocation by the Supreme Court of such orders, are potentially parties to civil proceedings. Consequently, clauses 4, 14 and 15 engage the right to a fair hearing in section 24 of the charter.

The right to a fair hearing encompasses the principle of 'equality of arms'. This principle means that everyone who is a party to a proceeding must have a reasonable opportunity of presenting his or her case to the court under conditions that do not place that party at a substantial disadvantage to his or her opponent. By potentially preventing a person from presenting his or her case to the court, clauses 4, 14 and 15 limit the right to a fair hearing under section 24 of the charter. However, any limit imposed by clauses 4, 14 and 15 of the bill 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:

The nature of the right being limited

The right to present a case is an important element of the principle of equality of arms recognised in section 24 of the charter. However, as with all of the human rights protected in the charter, the rights in section 24 may be subject to reasonable limits.

The importance of the purpose of the limitation

In determining which procedure should be followed in relation to the hearing of an application for revocation, the court must take into account the public interest in protecting the confidentiality of the intelligence information provided to the court for the purposes of obtaining a coercive powers order or obtained or to be obtained under the coercive powers order (and if the court is satisfied that it is not in the public interest to determine the matter in the method elected by the chief commissioner, the court may determine the matter using one of the other methods provided). Thus, the court would only determine the application without notice to and without the presence of certain parties if it was in the public interest to do so. Thus, the limitation serves the important purpose of protecting the confidentiality of intelligence information where it is in the public interest to do so.

The nature and extent of the limitation

The limitation will potentially operate to prevent parties from presenting their case to the court, in order to protect the confidentiality of intelligence information. Courts have been prepared to allow limits on the disclosure of material where necessary to protect the public interest. The concept of a 'fair' hearing takes into account not only the accused's interest, but also those of the victim and society. Additionally, the interests of parties seeking the revocation of orders will be protected by the appointment of a special counsel to represent the interests of a party to the proceeding at the hearing, where the court decides to proceed by way of a hearing held without notice to and without the presence of a party, which provides an additional safeguard.

The relationship between the limitation and its purpose

The limitation is directly and rationally connected to its purpose of protecting the confidentiality of intelligence information.

Any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means to reasonably achieve the purpose of protecting confidential intelligence information.

Accordingly, I consider that these provisions are compatible with the right to a fair hearing in section 24 of the charter.

Rights in criminal proceedings

Section 25(2) of the charter provides that a person charged with a criminal offence is entitled to certain minimum guarantees. While a person charged with a criminal offence may also be affected by a coercive powers or exclusion order, and may seek review of such orders, such orders are incidental to any criminal proceeding relating to any offences with which such a person may be charged. Applications for the revocation of coercive powers or exclusion orders are separate proceedings to any criminal proceedings relating to the hearing of criminal charges against such persons. Accordingly, clauses 4, 14 and 15 do not engage section 25(2) of the charter.

2. Clause 10 of the bill

Clause 10 of the bill amends section 43 of the Major Crime (Investigative Powers) Act 2004 and provides that the chief commissioner and any witness whose interests are involved have an opportunity to make submissions to the court as to whether or not evidence should be made available, in full or part, to a person charged or the legal practitioner representing the person. Under section 43 a court can, if it considers that it is desirable in the interests of justice, give a certificate to the chief commissioner so that the chief commissioner must make the evidence available to the court and potentially to a person charged with an offence.

Clause 10 does not prevent a person from having access to evidence, but merely allows interested persons to make submissions as to whether or not evidence should be made available. Further, the court has discretion to allow access to evidence under section 43 in the interests of justice. Accordingly, clause 10 does not engage sections 24 or 25(2) of the charter.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because to the extent that some provisions do raise human rights issues:

these provisions do not limit human rights; or

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

JUSTIN MADDEN, MLC
Minister for Planning

Second reading

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

Mr LENDERS (Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Major Crime (Investigative Powers) Act 2004 (the major crime act) represented one significant element of the government's comprehensive 2004 package of reform measures to combat organised crime and corruption. Section 62 of the major crime act requires the special investigations monitor (the SIM) to report to the Parliament within three years of the commencement of certain provisions of that act on the need for the act and the adequacy of the performance of the chief examiner, examiners and members of the police force of functions and powers under the act. On 26 June 2008, the SIM, Mr David Jones, tabled his comprehensive section 62 report.

The SIM concludes that the Victorian coercive questioning model generally works well and has been effective in achieving its objectives. Although some issues are raised about the operation of a number of the provisions of the major crime act, the fundamentals of the Victorian model have proven to be solid and the government believes that the model stands up very well against the other models of coercive questioning that are used throughout Australia.

The SIM has made a number of recommendations for improvement to the technical operation of the major crime act. The government is keenly aware of the importance of maintaining an appropriate and effective coercive questioning regime and, accordingly, this bill represents a swift response by government to the recommendations contained in the SIM's report — the vast majority of which will be implemented by the bill. The bill also addresses a number of technical issues that have been raised by the chief examiner and Victoria Police.

In addition to implementing the recommendations of the SIM, the bill fulfils the government's community safety election commitment to implement safeguards against the potential disclosure of sensitive police intelligence arising from challenges to exclusion orders banning crime figures from racecourses and the Melbourne casino.

Amendments to the Casino Control Act 1991 and the Racing Act 1958 will provide a means by which such challenges can be heard and determined by the courts in a fair manner that also provides protection for sensitive police intelligence. The bill also makes one technical amendment to the Surveillance Devices Act 1999. I will address each category of amendments contained in the bill in turn.

Amendments to the Major Crime (Investigative Powers) Act 2004

The bill introduces a new element to the definition of 'organised crime offence'. Currently under the major crime act, an organised crime offence is defined as an indictable offence against the law of Victoria, irrespective of when the offence is suspected to have been committed and that is punishable by a maximum of 10 years imprisonment. Further, an organised crime offence must involve two or more offenders, must involve substantial planning and organisation, must form part of a systemic and continuing criminal activity and must have a purpose of obtaining profit, gain, power or influence.

The bill inserts an additional element into the final limb of the definition to ensure that serious and organised crime involving the abuse of children and paedophilia networks is captured for the purpose of the coercive questioning powers. This will be achieved by expanding the purposes for the offending to include sexual gratification where the victim is a child. The amendment is necessary as organised crime groups involved in child abuse and pornography are not necessarily motivated by profit, gain, power or influence.

The bill establishes new procedures for the court to follow in hearing an application for the revocation of a coercive powers order. These are designed to protect the sensitive information that has been obtained or is sought to be obtained under a coercive powers order. The procedures are based upon those included in the Police Integrity Act 2008 for the determination of objections by protected persons, such as the director, police integrity, to a subpoena issued during the course of criminal proceedings for the production of documents or other things that have come into the protected persons' possession in the performance of functions under that act.

The bill does not limit or oust the standing of a third party, such as a summoned witness, to bring an application to the Supreme Court where that person's rights and liberties have been affected by the making of a coercive powers order. However, if a person does make application, the court will have clear legislative procedures within which it may determine the matter, by way of confidential affidavit, in a closed court, or at a hearing in the absence of one or more of the parties. The court will also have the power to appoint a special counsel to represent the interests of an absent party.

The bill implements three interrelated recommendations made by the SIM in relation to the cessation of confidentiality notices. A confidentiality notice is given to a summoned witness by the Supreme Court or the chief examiner if the court or the chief examiner is satisfied that a failure to give a confidentiality notice would or may prejudice the safety or reputation or the fair trial of a person or the effectiveness of an investigation of the organised crime offence.

As the existing criteria to effect a cessation of a confidentiality notice has proven to be inflexible, the bill requires the court or the chief examiner to give a notice causing the confidentiality notice to cease effect where the basis upon which the original confidentiality notice was given no longer applies. The bill also provides for confidentiality notices to cease effect after five years but allows for the chief examiner and the chief commissioner to apply to the Supreme Court for an extension of the five-year period if an extension is necessary to protect a continuing investigation, any proceedings that have commenced but are not yet finalised, the safety or reputation of a person or the fair trial of a person.

The major crime act empowers the chief examiner to give a direction restricting the publication of evidence related to an examination. If a court, in hearing a criminal matter, considers that it may be desirable that particular evidence given before

the chief examiner be made available to the defendant or their legal representative, the court may give the chief examiner or the chief commissioner a certificate requiring evidence to be provided to the court for the purpose of the court determining whether to make the evidence available. In accordance with the recommendations of the SIM, the bill makes provision for a process whereby the chief examiner, the chief commissioner and an interested witness may make submissions on whether the evidence should be made available. Although it may be possible to argue that it is inherent from the relevant provisions that interested parties, including the chief commissioner or the chief examiner, can make submissions to the court, the bill puts the matter beyond doubt.

The major crime act already precludes the conduct of coercive questioning examinations at a police station or at a police jail. There is currently no definition of the term 'police station' in any Victorian statute. The bill clarifies that, for the purposes of the major crime act, 'police station' means any police premises where a counter inquiry service for the public is provided. The bill ensures the confidentiality of witnesses and the examination process while enabling questioning to occur at facilities that may be shared with Victoria Police. It is intended that any separate police activity operating within the same building as that of the chief examiner will not involve the attendance of members of the public or the interviewing or detention of arrested persons.

The bill amends the major crime act to give the Supreme and County courts jurisdiction to determine any dispute regarding legal professional privilege that arises during an examination hearing. This amendment gives effect to a recommendation of the SIM that the superior courts are best placed to determine such complex matters arising out of the coercive powers scheme. Accordingly, the Magistrates Court will no longer be the arbiter of these matters.

The bill amends the major crime act to enable applications for arrest warrants to be made to either the County or the Supreme court, in circumstances where a witness, who has been summoned by the chief examiner, fails to attend for an examination, absconds or is evading service of the summons. This will provide greater flexibility in the warrant application and enforcement process. Where the witness summons was issued by the Supreme Court, the act will continue to require applications for a warrant to be brought before that court.

The bill includes a new definition of 'member of police personnel' in the major crime act. A member of police personnel includes public servants employed by the chief commissioner and contractors engaged by the chief commissioner, to clarify that such persons may provide assistance to the chief examiner's office and are clearly bound by the confidentiality provisions under the act.

Amendments to other acts

The bill amends the Surveillance Devices Act 1999 to clarify that civilians can provide assistance or technical expertise to the law enforcement officer who is primarily responsible for a surveillance devices warrant. The assistance is necessary for the installation, use, maintenance and retrieval of surveillance devices and enhanced equipment. It is the practice of law enforcement agencies in Victoria and other states and territories to engage technical experts, such as persons holding qualifications in electrical engineering, radio communications or similar field, to provide assistance to law enforcement officers. The amendment is purely clarificatory.

Finally, the bill amends both the Casino Control Act 1991 and the Racing Act 1958 to establish a process that the court can apply where a person challenges an order made by the chief commissioner excluding that person from attending or remaining at the casino or a racecourse. The process is designed to protect the highly sensitive intelligence upon which the chief commissioner bases his or her decision to make an exclusion order and is similar to the process that is also included in the bill for the hearing of an application for the revocation of a coercive powers order. While the bill does not preclude an excluded person from seeking judicial review of the chief commissioner's decision, it does afford a suitable level of protection for the intelligence upon which the exclusion order was made by enabling such proceedings to be conducted by way of confidential affidavit, in a closed court, or at a hearing in the absence of one or more of the parties. The court will also have the power to appoint a special counsel to represent the interests of an absent party.

The bill makes various technical yet important amendments to enhance the effectiveness of major crime legislation in Victoria.

I commend the bill to the house.

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

Debate adjourned until Thursday, 11 December.

SHERIFF 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 Sheriff Bill 2008.

In my opinion, the Sheriff 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 consolidates into one piece of legislation a number of key powers currently exercised by the sheriff. These include the power to arrest a person named in a warrant, restrain, enter premises, seize and sell property, demand payment and request name and address.

The bill also modernises the sheriff's practices in a number of areas. These include:

a new power of forced entry when executing civil warrants, subject to a number of appropriate safeguards

a power to enter premises to serve seven-day notices

the ability to receive payment from third parties in certain circumstances

the ability to request payment on enforcement orders

a power to seek address information from state and local government bodies, subject to appropriate safeguards.

Further, the bill simplifies procedures for enforcement in certain key areas, providing clarity for the sheriff's office and the community. This includes simplifying the procedures for executing multiple types of warrants at the same time, and allowing the sheriff to enforce warrants based on electronic verification.

Human rights issues

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

Section 12 — freedom of movement, and section 21 — right to liberty and security

Section 21(1) of the charter provides that every person has the right to liberty. Section 21(2) provides that a person must not be subjected to arbitrary arrest or detention, and section 21(3) provides that a person must not be deprived of his or her liberty except on grounds, and in accordance with procedures, established by law.

Section 12 of the charter provides that every person lawfully within Victoria has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where to live.

Three clauses in the bill restrict a person's right to liberty, and by necessary implication, their freedom of movement.

Clause 15 provides the sheriff with the power to arrest a person named in a warrant authorising that person's arrest, or where court and enforcement legislation provides for the person's arrest. Such warrants are issued by a relevant court for a range of reasons, such as to ensure the appearance of the person before the court. This may be because of the person's failure to pay a fine, or because the person is in contempt of court.

Clause 16 provides that the sheriff may temporarily restrain a person who is hindering the enforcement of a warrant. Restraint in this context may include temporarily detaining a person. Temporary restraint ensures that the resister's liberty is restricted to the minimum degree necessary to enforce the warrant. If the power is used, only necessary force is permitted.

Clause 30 provides that, where a member of the police force requests or signals a driver of a motor vehicle to stop the vehicle, the sheriff may direct the driver of the vehicle to do certain things, such as drive to a designated spot, in order to determine whether the driver, or any person accompanying the driver, is named in any warrant.

The limits on these rights are 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 rights to liberty and freedom of movement are not regarded as absolute rights in international law and can be subject to reasonable limitations.

(b) the importance of the purpose of the limitation

The power of arrest under clause 15 is necessary to ensure that the person to be arrested complies with the order of the court.

The ability to temporarily restrain a person who is hindering the enforcement of a warrant under clause 16 is vital to ensure that the sheriff is able to effectively perform his or her functions and duties in a timely manner, and free from interference.

Providing directions to drivers under clause 30 allows the sheriff to quickly determine, in a safe and efficient manner, whether a person is named in any warrant.

(c) the nature and extent of the limitation

The proposed power to arrest a person under clause 15 only applies where the sheriff is executing a warrant that authorises that person's arrest. An arrest and subsequent detention would only continue for the minimum period necessary to satisfy the warrant.

Any restraint under clause 16 will only occur where a person is hindering the enforcement of a warrant. Restraint under this provision must cease as soon as the activity that the person was hindering has been completed. The sheriff receives comprehensive training in procedures for arrest and restraint, to ensure that the person is dealt with in a consistent and safe manner.

Any direction given under clause 30 is only permissible to allow the sheriff to determine whether the person is named in any warrant. Any resulting restrictions on liberty or movement will only continue for the minimum period necessary for the sheriff to determine whether there are any warrants and, if so, deal with the matter accordingly.

(d) the relationship between the limitation and its purpose

The limitations imposed are directly and rationally connected with their purpose.

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

A warrant to arrest under clause 15 is only issued by the court in circumstances where the court has attempted to ensure compliance through less restrictive means, such as the issue of a fine, or the issue of a summons to appear, and these have failed.

The power to restrain a person under clause 16 is used only as a last resort when a person is hindering the enforcement of a warrant.

The power to give directions under clause 30 only applies where a member of the police force has stopped a vehicle and the sheriff is in attendance. In order to determine whether the driver or any other person is named in any warrant, it is necessary for the sheriff to give that person certain directions. In these circumstances, any limit on the right to liberty or

freedom of movement will continue for the shortest possible time.

Section 13 — privacy and reputation

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

Power to enter premises

Clauses 18–22 give the sheriff the power, when executing a relevant warrant, to enter premises to search for a person to be arrested, or to search for property to be seized, as the case may be. These clauses engage the right of a person not to have their privacy or home unlawfully or arbitrarily interfered with. The right is not limited, however, as the interference is not arbitrary and is lawful.

Clauses 18–22 specify in detail in what circumstances entry to premises is authorised. Clause 18 provides that the sheriff can only enter premises where a person to be arrested is suspected to be. Clause 19 limits entry, when searching for property, to premises occupied by the person, or where property is reasonably suspected to be. Clause 22 provides that the sheriff can only use force to enter premises under a civil warrant where a number of requirements are met. To use force under clause 22, the sheriff must:

have a reasonable belief that there is or may be personal property at the premises

request the consent of the owner or occupier to enter

only use force where consent is unreasonably withheld, or where the owner or occupier cannot be contacted after reasonable attempts have been made to make contact

only use force to enter residential premises between 9.00 a.m. and 5.00 p.m.

The power of entry in these circumstances is only granted to allow the sheriff to enter premises to search for the person to be arrested or property to be seized. Without this power of entry, the sheriff would be unable to carry into effect the will of the court. In these circumstances, the power of entry is reasonable and, therefore, not arbitrary.

Provision of information

Clauses 52–55 provide the sheriff with the power to request the name and address of a person from a public sector body or council for the purpose of exercising or performing an enforcement function or power. These clauses engage, but do not limit, the right to privacy.

The relevant clauses stipulate the circumstances in which the sheriff may request information, and the type of information that can be requested, from a public sector body or council. There is a restriction that the power can only be exercised where attempts to enforce the warrant have been made and have failed. This ensures that the power to request information will only be used where it is reasonable.

Request name and address

Clause 29, which gives the sheriff the power to request a person's name and address, engages, but does not limit, the right of a person not to have his or her privacy unlawfully or arbitrarily interfered with.

Clause 29 specifies in detail the circumstances in which the sheriff may request a person's name and address, namely where the sheriff believes on reasonable grounds that the person may be named in a warrant being enforced by the sheriff. The sheriff must inform the person of the grounds for his or her belief in relation to the person's identity, and the person is not required to give their name and address if they have a reasonable excuse for not doing so. As a result, the power is reasonable and, therefore, not arbitrary.

Give directions at roadblocks

Clause 30 provides that, where a member of the police force requests or signals a driver of a motor vehicle to stop the vehicle, the sheriff may direct the driver of the vehicle to do certain things, such as produce his or her licence, or provide other information in order to determine whether the driver, or any person accompanying the driver, is named in any warrant. In providing a power to require the production of personal information, this clause engages but does not limit the right to privacy as the interference with privacy is neither unlawful nor arbitrary.

The power to give directions under clause 30 only applies where a member of the police force has stopped a vehicle and the sheriff is in attendance. Any direction given under clause 30 is only permissible to allow the sheriff to determine whether the person is named in any warrant. The person is not required to comply with a direction given under clause 30 if they have a reasonable excuse for not doing so: for example, that providing information might tend to incriminate that person. This ensures that the power to give directions will only be used where it is reasonable.

Section 20 — property rights

Section 20 of the charter provides that a person must not be deprived of his or her property other than in accordance with law. A deprivation of property is in accordance with law where the deprivation occurs under powers conferred by legislation pursuant to a law, which is formulated precisely and is not arbitrary.

Clauses 23–24 give the sheriff the power to seize property of a person where relevant legislation or a warrant authorises that seizure, and sell any property seized to enable the payment of any outstanding warrant amounts. These clauses engage, but do not limit, the right of a person not to be deprived of his or her property.

The legislation clearly provides the sheriff with the power to seize and sell property of a person. The sheriff will only seize and sell property where he or she is acting under court and enforcement legislation or a warrant. The sheriff will only seize enough property to satisfy the outstanding amount(s) and any enforcement costs, and section 42 of the Supreme Court Act 1986 provides limitations on the type of property that the sheriff can seize. In these circumstances, clauses 23–24 do not limit the right not to be deprived of property.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities. Provisions of the bill engage with, but do not limit, rights conferred by sections 13

and 20 of the charter. The provisions of the bill that limit human rights under sections 21 and 12 of the charter are reasonable and proportionate.

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 will combine under a single new act various pieces of legislation and some common law relating to the powers and obligations of the sheriff in the state of Victoria. It will provide a consolidated resource of key powers to be used by the sheriff and the sheriff's officers when applying sanctions and enforcing warrants issued by the courts. Also, the bill provides for modernising practices such as using advanced electronic data technologies to effectively target outstanding warrants. Additionally, it will provide a source of clarity and consistency to the public and those being enforced against.

Background

The office of the sheriff is one of the oldest legal institutions, spanning more than a millennium from the 8th century laws of Wessex. The strong sense of history related to the office presents a stable base for community recognition and awareness, as well as promoting effective legitimate enforcement and compliance.

The Victorian office of the sheriff maintains a relevant role by enforcing and executing criminal, in addition to civil, warrants. The sheriff is responsible for warrants for non-payment of fines, including failure to pay infringement notices for 'on-the-spot' fines registered as infringements court orders, and failure to pay fines imposed by a court. In 2006–07, over 900 000 warrants were issued. Approximately 155 sheriff's officers are responsible for actioning the warrants and enforce sanctions against those who do not comply with court orders.

When executing these warrants, the sheriff and her officers' powers and obligations are currently derived from a range of Victorian acts of Parliament, numerous regulations and some common law dating back to 1604. This array of legislation can cause confusion, which can stymie the efficiency and effectiveness of the sheriff's operations, and reduce clarity for the broader community and those enforced against.

Reviews received by my department have identified the potential for a new Sheriff Act to provide greater clarity regarding the functions and powers of the sheriff and sheriff's officers. Due to the confusion over the sources of the sheriff's powers, it is important that we have a single act outlining the powers and obligations of the sheriff and sheriff's officers in Victoria. This is to reflect modern enforcement practices and provide the community with a greater understanding of the sheriff's profile.

The bill aims to improve and develop the operations of the sheriff consistent with three broad themes — consolidation, modernisation and simplification. The bill will:

consolidate existing key powers used to enforce warrants;

provide updated solutions to specific problems that have arisen when enforcing warrants to reflect community expectations; and

simplify ambiguous procedures.

Consolidation

The bill will include a consolidated set of key powers for the sheriff and, by delegation, sheriff's officers, to use when enforcing warrants. It will not detract from existing warrant powers.

Particular powers that are proposed to be consolidated are the powers to: arrest, restrain, serve documents, enter and search, demand payment, seize property, deal with seized property, request name and address, and give directions at roadblocks.

Modernisation

The bill will provide the power to enter property using such force as is reasonably necessary, and this will also include civil warrants. The right to use force to enter premises is not currently authorised for civil warrants. Instead, the issue is determined by common law dating back 400 years.

In the modern context, there is strong justification for effective enforcement in the civil context. The rationale for the use of forced entry when executing civil warrants is that civil and criminal warrants are both orders of the court. The fact that one is a criminal warrant does not necessarily mean the matter is more serious than a civil matter. For instance, while a sheriff's officer is empowered to use forced entry to seize assets on a person's premises in respect of a $50 infringement penalty for littering, the sheriff's officer is currently powerless to enter and seize property to enforce a civil judgement obtained against an employer for $11 000 in unpaid wages.

Forced entry in the civil context will be subject to a number of appropriate safeguards drawn from a range of sources, including the Victorian Parliament Law Reform Committee's Report on Warrant Powers and Procedures. These safeguards include:

forced entry between the hours of 9.00 a.m. to 5.00 p.m. only for residential premises;

that consent to entry has been requested and unreasonably withheld; or

the sheriff is unable to locate the owner or occupier of the residence after making reasonable attempts to do so.

The bill will address operational areas in need of modernisation. The relevant proposals include powers for a sheriff's officer to:

enter and serve seven-day notices;

receive payment from third parties;

request payment on enforcement orders; and

enable a debtor to elect to forgo the seven-day notice period, in instances of genuine consent.

Some criminal warrants require the service of a seven-day notice on a defendant prior to the commencement of execution. This allows the defendant seven days to explore their options to deal with the matter. Currently, when serving a seven-day notice, a sheriff's officer relies on the same right as any citizen to enter private property. The occupier can revoke this right verbally, or with a sign at the property denying admittance. The bill will provide for rights of entry for the sheriff to enforce court orders.

Due to the difficulties faced by the sheriff in locating some defendants, the bill also proposes to include a power for the sheriff to compel Victorian state government agencies to provide updated address information.

The provision is intended to apply to agencies such as VicRoads and the Residential Tenancies Bond Authority, and others that typically have up-to-date address information. The sheriff will only have the power to request, and not compel information from certain bodies under the Surveillance Devices Act 1999, such as Victoria Police and the Office of Police Integrity. This is to ensure that investigations being conducted by these bodies are not jeopardised by a compulsion to provide information to the sheriff.

In addition, the bill will provide that agencies are not required to provide information to the sheriff where exceptional circumstances apply. This would cover situations such as where the Department of Human Services has confidential address information regarding child protection, or where the agency reasonably suspects disclosing the relevant information is likely to endanger the person's safety.

Reasonable costs of execution

A comprehensive power for the sheriff to recover all reasonable and necessary costs of execution is required. This is because the sheriff is often required to incur costs other than prescribed fees, such as locksmith and removalist fees, and costs of conducting an auction.

Simplification

Simultaneous execution of multiple warrants (criminal and civil)

The bill will simplify a number of processes, including providing for clarity regarding the processes for the simultaneous execution of multiple warrants. This is an area which has generated confusion. The bill will provide guidance on matters dealing with the priorities and procedure in multiple warrant scenarios. These include disbursement of proceeds and procedure for enforcement of particular warrant combinations.

Electronic verification and execution of warrants

A key change in the bill will be to allow for the execution of warrants that are identified electronically. The proposal in relation to execution based on electronic verification of warrants is to incorporate a range of safeguards for the defendant. The bill will provide sheriff's officers with the power to execute a warrant against a defendant where they are able to:

verify electronically the existence of a warrant or warrants;

provide the defendant with an appropriate form of specified warrant details, being key information in relation to the warrant;

satisfy requirements for the serving of any relevant seven-day notices; and

provide the defendant with a document summarising the powers in respect of the warrant(s) being exercised against them.

Offences

The bill will also consolidate and modernise relevant offence provisions. These offences include:

not complying with a reasonable direction of a sheriff's officer;

assaulting a sheriff's officer;

resisting the execution of a warrant;

escaping or attempting to escape lawful custody of a sheriff's officer;

attempting to retrieve property seized by a sheriff's officer; and

impersonating a sheriff's officer.

The Sheriff Bill will also make consequential amendments to relevant acts (such as the Supreme Court Act 1986 and the Magistrates' Court Act 1989).

Conclusion

The office of the sheriff has had a long history. This will be the first time that the Victorian Parliament has had an extensive consolidated resource for the sheriff and her officers. The bill provides an opportunity to clarify the powers and procedures in relation to the sheriff's operations. It will result in an important resource, both for those enforcing court orders and the community.

I commend the bill to the house.

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

Debate adjourned until Thursday, 11 December.

CORONERS BILL

Committee

Resumed from 3 December; further discussion of clause 55.

Clause agreed to; clauses 56 to 66 agreed to.

Clause 67

Ms PENNICUIK (Southern Metropolitan) — I move:

9. Clause 67, line 25, omit "or the administration of justice" and insert ", the prevention of future deaths or the administration of justice or any other matter relating to the purposes of this Act".

Amendment 9 is an amendment to clause 67(3) so that it states, 'A coroner may comment on any matter connected with the death, including matters relating to public health and safety'. The amendment adds the words 'the prevention of future deaths or the administration of justice or any other matter relating to the purposes of this act'.

The reason for the amendment is that, as explained in the earlier committee stage and in the second-reading debate, one of the key focuses of this new Coroners Bill is the prevention of death. That is laid out in the purposes of the bill. It has been underpinned by the parliamentary Law Reform Committee's report into the Coroners Act, which said the coroner's office needed to have much more of a prevention focus. But there is nothing in the bill about the comments that a coroner may make in connection with the death that refers to the prevention of future deaths. The reason for the amendment is to strengthen the requirements on the coroner to make these comments regarding deaths or fires.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — The coalition parties certainly support the intent of Ms Pennicuik's amendment insofar as it relates to closing the loop on coronial activities and for the community to get a benefit from the work of the coroner in terms of giving advice and recommendations to prevent future deaths of the type that the coroner has investigated. However, the existing clause 67 that Ms Pennicuik is seeking to amend states quite clearly that 'A coroner may comment on any matter connected with the death', and then goes on to list some matters which are included within that. It is our view that the matters Ms Pennicuik is seeking to insert, important as they are, are already covered in the existing reference that a coroner may comment on any matter. As such, the coalition parties will not support this amendment.

Hon. J. M. MADDEN (Minister for Planning) — I certainly appreciate the intent of the amendment but, as with most of the amendments recommended by Ms Pennicuik, we believe it is unnecessary because it is already covered by provisions within the bill. While Ms Pennicuik is trying to be prescriptive in those matters, we believe they are covered by the provisions in the bill. Hence this amendment is unnecessary, and we will not be supporting it.

Ms PENNICUIK (Southern Metropolitan) — In support of my amendment and just taking up the minister's response, the clause is already prescriptive. It is prescriptive in saying 'any matter connected with the death', which is broad, but it does not talk about prevention of future deaths in particular. It does, however, talk about public health and safety and the administration of justice, which are prescriptive matters. The purpose of my amendment is to insert into that clause the prevention of future deaths, which is, I am to understand, one of the key aspects of the refocusing of the coroner's office. In fact I think it is an oversight that the prevention of future deaths is not in that clause rather than being somehow covered in the other wording there, which I really do not agree with.

Committee divided on amendment:

Ayes, 4

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

Noes, 34

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

Amendment negatived.

Clause agreed to; clauses 68 to 71 agreed to.

Clause 72

Ms PENNICUIK (Southern Metropolitan) — I move:

10. Clause 72, after line 17 insert —

"( ) If a public statutory authority or entity receives recommendations made by the coroner under subsection (2), the public statutory authority or entity must provide a written response, not later than 3 months after the date of receipt of the recommendations, in accordance with subsection (4).

( ) A written response to the coroner by a public statutory authority or entity must specify a statement of action (if any) that has, is or will be taken in relation to the recommendations made by the coroner.

( ) The coroner must —

(a) publish the response of a public authority or entity on the Internet; and

(b) provide a copy of the response to any person —

(i) who has advised the principal registrar that they have an interest in the subject of the recommendations; and

(ii) who the principal registrar considers to have a sufficient interest in the subject of the recommendations.".

This amendment inserts new provisions into clause 72, which as it stands says:

(1) A coroner may report to the Attorney-General on a death or fire which the coroner has investigated.

(2) A coroner may make recommendations to any Minister, public statutory authority or entity on any matter connected with a death or fire which the coroner has investigated, including recommendations relating to public health and safety or the administration of justice.

My amendment would provide that the public statutory authority or entity that receives the recommendations made by the coroner under subclause (2) must provide a written response no later than three months after the receipt of the recommendations and that this written response must include a statement setting out the actions, if any, that have been taken or will be taken in response to the coroner's recommendations. It would further provide that upon receipt of the response the coroner must publish the response on the internet in the same way that the coroner is required by another part of the bill to publish the recommendations on the internet. The coroner must provide a copy of the response to any person who has advised the principal registrar that they have an interest in the subject of the recommendations, if the principal registrar considers they have a sufficient interest. That mirrors clause 21 in terms of who the principal registrar would consider has a sufficient interest in the subject.

In terms of the refocus of the work of the coroner's office towards the prevention of death, it is very important that public authorities — for example, WorkSafe, the Transport Accident Commission or other entities such as the Medical Practitioners Board of Victoria — be required to be more cognisant of recommendations made by the coroner and to respond to these recommendations in a formal and public way. If we are going to refocus the work of the coroner's office in this way, there needs to be a transparent process. Recommendations are made as a result of a death or a fire by the coroner to public authorities with the aim of changing their processes, regulations, laws or whatever in order to prevent deaths. At present there is no requirement on those authorities or entities to make a response or to indicate what action they will or will not take and give reasons for those in a public way. The recommendations of the coroner sort of go into a vortex; they do not go anywhere. There is no tracking of the recommendations in a public way, and that is what this insertion into clause 72 seeks to do. It will impose a duty on the public entity or authority to which that recommendation is made. I envisage that in most cases they would be the sorts of public authorities I have talked about or the type of entity I gave an example of. They would be the types of organisations that will be captured by this amendment that makes the process more formal and expeditious. It does not necessarily mean the public authority has to make the change within three months, but they have to make a response about what they are going to do, and that becomes public. I think that would be a big improvement to the bill, and I urge members to support the amendment.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I will make a brief comment on Ms Pennicuik's amendment, the intent of which the coalition parties are sympathetic to. It is a matter that Mr Clark, the shadow Attorney-General in the other place, canvassed in his contribution on this bill in the other place. We believe it is a sensible step to close the loop on recommendations from the coroner. It is a practice we currently have in this Parliament with recommendations that are made by the Auditor-General to government agencies. The agency responds directly to the Auditor-General at the time the report is prepared, and the minister for finance does a whole-of-government response to the Auditor-General's recommendations annually.

Likewise where recommendations are made to agencies of government from joint committees of this Parliament, there is a follow-up provided to the Parliament in response to those recommendations. We see the suggestion that coroners' recommendations have a similar follow-up as being consistent with that practice. It is also consistent with a recommendation made by the parliamentary Law Reform Committee in its report on the Coroners Act.

As Ms Pennicuik noted, this amendment does not oblige a party to implement a recommendation made by

the coroner; it merely requires them to provide a response as to their views on the recommendation. That response could be anything from saying they will implement the recommendation to saying they will take no action on the recommendation or indeed that they make no formal response on the recommendation. It is simply putting on the public record the relevant entity's formal response to the recommendations. The coalition parties would be interested in the government's view on this amendment.

Hon. J. M. MADDEN (Minister for Planning) — I am informed that the amendment would create a statutory requirement on the Coroners Court to monitor the responses and implementation of coronial prevention recommendations. I am also informed that no other court — and I want to make that point, no other court — has a statutory obligation to monitor compliance with its own decisions or orders. In other jurisdictions, where compulsory responses are required they are made to the Attorney-General. I understand this is the approach in the Northern Territory. If there is an obligation to publish the response, then potentially the obligation should be placed on the principal registrar rather than the coroner. This would be consistent with the functions that are given to the principal registrar; members may refer to clauses 17(2), 8(2), 21, 29 and 49.

So that members of this chamber are aware, the government is addressing prevention in the following ways:

a. The government is establishing a prevention unit which will engage with people who are subject to recommendations and monitor their compliance.

b. The government has provided funding for the Judicial College of Victoria to train coroners in relation to the drafting of recommendations.

c. The bill establishes a coronial council under the bill, which will consider matters relating to the preventative role of the Coroners Court.

In the context of amendments that were moved earlier, we have already mentioned what we intend to do in reviewing the preventive role of the Coroners Court after four years. I am advised:

d. Under the bill the findings of an inquest must be published on the internet in accordance with the court rules (subject to a direction of the coroner). Access to these findings will increase the effectiveness of coronial recommendations and promote transparency. They will be accessible to people inside and outside Victoria.

In light of that background, whilst we acknowledge the intent we believe we are moving in that direction and doing that through the measures I have outlined here, particularly around the preventive role of the Coroners Court. We will not be supporting the amendment.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — Would the government support Ms Pennicuik's amendment if it referred to the principal registrar rather than the coroner?

Hon. J. M. MADDEN (Minister for Planning) — It is not likely that we would support that recommendation unless it was worked through quite comprehensively at this stage.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I wonder if the minister could expand on his answer. What is the issue? In his earlier response the minister indicated that the fact that the coroner was the subject of the amendment was the issue. Proposing a way forward that addresses the matter raised by the government, I am wondering what the issue is now.

Hon. J. M. MADDEN (Minister for Planning) — I think I have outlined our position. If there were to be that situation, there might be some consideration about the register. But it is not for me to make that decision here now. But, even then, it would be unlikely that we would support that recommendation. As I have said in the second part of my previous substantive answer, I believe we are moving to focus the Coroners Court significantly on prevention. As was mentioned last evening when we were discussing these issues, we have a process which will evolve over four years. It will be funded, and that will be reviewed at the end of four years. We believe we have made the changes that are necessary, they are the subject of this legislation, and at the point of time when we undertake that review these might be matters which might be considered under that review.

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I thank the minister for his response. From the point of view of the coalition parties, we do not take comfort from the minister's answer, and accordingly we will support Ms Pennicuik's amendment.

Committee divided on amendment:

Ayes, 19

Atkinson, Mr	Hartland, Ms
Barber, Mr	Kavanagh, Mr
Coote, Mrs	Koch, Mr
Dalla-Riva, Mr	Kronberg, Mrs (*Teller*)
Davis, Mr D.	O'Donohue, Mr
Davis, Mr P.	Pennicuik, Ms
Drum, Mr	Petrovich, Mrs
Finn, Mr	Rich-Phillips, Mr

Guy, Mr	Vogels, Mr (*Teller*)
Hall, Mr	

Noes, 16

Broad, Ms	Pulford, Ms
Darveniza, Ms	Scheffer, Mr
Eideh, Mr	Smith, Mr
Jennings, Mr	Somyurek, Mr (*Teller*)
Leane, Mr	Tee, Mr
Madden, Mr	Thornley, Mr (*Teller*)
Mikakos, Ms	Tierney, Ms
Pakula, Mr	Viney, Mr

Pairs

Ms Lovell	Mr Elasmar
Mrs Peulich	Mr Lenders

Amendment agreed to.

Amended clause agreed to; clauses 73 to 130 agreed to; schedules 1 and 2 agreed to.

Preamble agreed to.

Reported to house with amendments.

Report adopted.

Third reading

Motion agreed to.

Read third time.

Sitting suspended 5.25 p.m. until 5.48 p.m.

HEALTH SERVICES LEGISLATION AMENDMENT BILL

Second reading

Debate resumed from 3 December; motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr D. DAVIS (Southern Metropolitan) — I am pleased to make a contribution to the Health Services Legislation Amendment Bill 2008, and in doing so I indicate that the opposition will support it. We are aware of the importance of the bill. It is a bill that the government has mishandled from the start.

The background to this important bill is that our community health centres and the community health centre movement and sector in Victoria are some of the strongest in the country. Victoria's community health centres are the model for much of the rest of the country; they are envied across the nation. In reality they were put at risk by the government's tardy approach to dealing with issues surrounding the Australian Taxation Office (ATO) and the regulatory framework and arrangements for community health centres. They centred on the issue of whether community health centres were in fact under the direction or control of the executive — that is, the government in Victoria. In fact with the governance arrangements in place there was a legitimate argument to be made by the Australian Taxation Office, and indeed by anyone else, that they were instrumentalities largely under the control of the government.

This bill amends the Health Services (Conciliation and Review) Act 1987 to provide that members of the Health Services Review Council can be appointed for a term of up to three years and for a maximum of nine consecutive years. As I said at the start of my contribution, the legislation provides a new regulatory framework for community health centres to bring them into line with Australian Taxation Office arrangements where at a national level their genuine status is as community organisations rather than as organisations that are at the behest and control of the government. It provides for the annual general meeting of a multipurpose service to be held between 1 July and 31 December, and I will come back and say something about that in due course.

As I said, the community health sector in Victoria is the envy of the nation. In Victoria these organisations deliver a wide range of community-based health services. By and large they are funded by the state government, but that is not the whole story. They are funded in part federally, in part from private sources and in part from own-sourced incomes as well.

Victoria has 100 community health centres operating from 400 sites, and around 60 per cent of them operate in association with or as part of a hospital or health service. In fact, there are 38 independent or stand-alone community health services which are incorporated under the Associations Incorporation Act. It is the independence and uniqueness of these services, their community links and the fact that they are able to tailor their services to the needs of the community that are so important.

The community health services have been recognised as public benevolent institutions or health promotion charities for the purpose of taxation benefits, which gave them an exemption from fringe benefits tax of $30 000 for each staff member. The equivalent exemption for hospital staff is $17 500. As I said, the ATO's views on this have in effect forced the state government to finally move on this.

I place on the record the opposition's concern with the government's approach to this. The shadow Minister for Health, the member for Caulfield in the Assembly, warned, as did I and others in this chamber, about the impact of the ATO rulings on community health services. It has taken the government years to move. Then in the dying days of this parliamentary session we find the government suddenly wants to rush this bill through. Frankly, a version of this bill should have been before the Parliament a long, long time ago.

I see Ms Hartland nodding. I know she has raised these matters on the adjournment debate and at other times, as have I and other members of the chamber. The government was deaf to those concerns that were raised again and again. The Minister for Health, Daniel Andrews, and a former health minister — going back that far — Bronwyn Pike, now the Minister for Education, blocked or obstructed sensible changes that would have put the future of community health services in Victoria beyond doubt. At one point I remember raising a leaked memo from the acute health services section, which pointed to the ATO implications for the community health sector and what it would cost in terms of community-level services — a devastating impact and an impact that this tardy and slack government has allowed to run far too long.

According to government documents, following the implementation of the national tax reform agenda in 2000, the ATO reviewed the endorsement of public sector health organisations and providers as charities, applying legal definitions and tests. One of these tests was to ascertain whether a body is a government entity or is relevantly controlled by government. There is a difference between an organisation that is totally beholden to government and an organisation that delivers services funded by government. This is an important distinction. The Australian Taxation Office was conscious of that.

I make the point that this need not be seen as a negative step; it should be seen as a positive step because it will enhance the independence and capacity of community health services and centres to reflect local community needs and desires rather than being subservient to the state government, as they have increasingly become over the last 10 years, with the state government clamping down on them in every way. I see this as a very positive step in terms of not only protecting the revenue stream and the strength of community health centres financially but also enhancing their character, independence and local control and identity, which are their strengths and the strengths of the community health sector in Victoria.

It is important to put on record that the current health minister had, as parliamentary secretary, been appointed to head the stand-alone community health centre working group to address the issue. In that role he failed to come up with a solution, even though the Victorian Healthcare Association, representing community health centres, provided a formal proposal regarding the possible negative impact of the ATO ruling. In April 2007 the government informed the ATO that it would not be amending the Health Services Act 1988 to remove government control of community health centres. At that time I said in the chamber, and the shadow minister, Mrs Shardey, said in the other place, these community health centres needed their independence, they needed the government to move and break the shackles, they needed to comply with the federal laws that the ATO was implementing and they needed to do that as fast as possible. That was in April 2007, and it had been discussed well before that time.

Now we are at the end of 2008, and the government came to the opposition this week and said we must expedite the bill. We have agreed to do so because of its importance to the sector, but I must place on the record my irritation with the government, my anger at the government, for its delay and tardiness — in fact, its arrogance — in standing against what is critical for one of the most important sectors in the health system in Victoria.

I do not think I need to go through the full details of this. The key point is that what we will see with this bill is a more genuine community health sector. It will remove the existing legislative controls over the community health centres contained in the Health Services Act 1988. I note that in the second-reading speech the government said the bill removes existing legislative controls over community health centres contained in the Health Services Act 1988. In effect this means the definition of 'community health centre' is repealed and replaced by the definition of 'registered community health centre', meaning a community health centre that is registered.

The state government, whilst not having a formal, direct and absolutely iron grip on community health centres, must of course maintain a regulatory environment that ensures that standards are maintained and community health centres are able to meet the expectations of the community in terms of quality and service delivery, the importance of which anyone in our community would understand. This regime sets up such an arrangement.

As the second-reading speech says, the government will no longer be involved in appointing community health

centre boards or chief executive officers (CEOs). The iron grip on the CEOs of community health centres across the state has been a negative measure, because those CEOs have been in the position to massage and manipulate boards but they have owed their future to the Department of Human Services. This is an important step.

The department will no longer have the ability to direct a registered community health service to do certain things, such as alter its constitution or amalgamate with another registered or funded agency. This is addressed in the bill under part 3, clause 8, where it substitutes division 6 with the heading 'Division 6 — Registered community health centres'. Registered community health services will have to meet these arrangements for registration, which will be a one-off process. The secretary of the department will have the power to revoke registration under certain circumstances. There is safety and protection for the community on one hand, and flexibility is enhanced on the other.

The Department of Human Services will manage the registration system against a set of registration criteria, with an appeal process to the Victorian Civil and Administrative Tribunal for a refusal to register. Registered agencies must be companies. An administrator can be appointed by the minister if there is a failure to meet certain performance standards. So those controls will remain.

I want to say something about the multipurpose service clauses and the fact that they change the reporting dates. In effect they bring them into line with the arrangements for health services in this state. The opposition is on record as expressing its concern about the widening of the reporting dates that is being allowed by the government under this clause and under earlier clauses. Let me explain what this is about. I am concerned that the government is again seeking to avoid scrutiny and to delay proper reporting by community health services, and multipurpose services in this case, until a later period each year.

Let me paint this scenario for you, Acting President. What will occur is what occurred in 2002 and 2006 when the government allowed a number of health services that had unfavourable reports to skate through without their reports becoming public before the general state election. It is my prediction that this clause will allow a number of underperforming multipurpose services to skate through ahead of the 2010 state election. I want to put on record my concern about those annual reports being tabled in Parliament prior to the 2010 state election. I am sorry to say that I have been around long enough to have seen this government's tricks. Its tricks were most savagely employed in 2002, when a number of the major health services failed to report in the lead-up to the state election. Their annual reports were tabled in Parliament in February of 2003. As the shadow health minister at that time, I saw the reports listing deficits amounting to tens of millions of dollars that had been hidden from the Victorian people prior to the state election.

Let me explain what is going to happen in 2010. The government has already changed the law to enable the large health services to report at a later date where their annual general meeting is for some reason — perhaps a plausible reason — held before 31 October, and they may thereby be able to avoid appropriate scrutiny. It is my view that this clause brings the multipurpose services into line, and any mendicant multipurpose service that is going to report a large deficit or an unfortunate aspect in its report will delay its annual meeting until after November 2010 so that it cannot be scrutinised in the lead-up to the state election. I think this failure of scrutiny is a significant concern.

I want to also put on record some responses to other aspects of this bill, such as the Health Services Review Council. Clauses 4 and 5 of the bill provide for the insertion of two new subsections into the Health Services (Conciliation and Review Act) 1987, clarifying that the minister may appoint a member for a specified three-year period and that members may be reappointed but not for a period exceeding nine consecutive years. While the second-reading speech claims these changes will provide greater flexibility, I have got to say I am not sure they will make a great difference.

The issues in this bill relate fundamentally to community health services and centres. The independence of those centres will be enhanced by the bill. That is why the opposition is prepared to strongly support it. Indeed the Victorian Healthcare Association, the opposition and others called strongly for this change, or a similar change, to be made to bring things into line with the Australian Taxation Office, and I am frankly just glad that at this point this significant change has been made and our community health centres are not at risk in the way they were.

The opposition, as I say, will support the bill but expresses its reservations at the government's frankly tardy approach and its 'we must pass this bill at the last moment' request, when it could have been dealt with in a timely way, providing greater security for the centres much earlier.

Mr HALL (Eastern Victoria) — I just want to say a couple of words on this bill, which addresses community health services and multipurpose services. I want to start by thanking the government for bringing the debate on. It was my request to the Leader of the Government in this house earlier this week that the government do so because some very good health service providers in my electorate had asked me to try to bring the debate forward and make sure it got through before Christmas. I thank the government for accommodating that request.

We know why this legislation is so important for our community health service providers. It is to overcome an unfortunate judgement by the Australian Taxation Office that some of their funding may have become subject to taxation. This is a situation community health services are not happy about because it would impact on their funding level and consequently their ability to employ health professionals in a range of areas. As David Davis has said, this has been of some concern to health services across Victoria for some time now so we are pleased about this legislation and hope it will clarify that issue and eliminate all of the concerns we have in relation to this.

I also want to make quick mention of multipurpose services. Again, I think these have been an outstanding success. At least one of these is located in my electorate at Orbost. The centre at Orbost has been a multipurpose service for some time now; it does it extremely well. It delivers a range of services, from acute services right through to aged care and ancillary medical services, and does a fantastic job.

The centre also provides dental services through the multipurpose service. I was instructed by one of the staff at the Orbost multipurpose service that a comment I had made publicly some time ago now about the waiting list was not up to date. I had sought the information from the website and was advised subsequently by the health service that indeed that waiting list for public dental services had been reduced significantly. I pay a compliment to those people at the Orbost multipurpose health service for their efforts in doing so because in towns like Orbost in country Victoria it is difficult to get access to private dental services. To my knowledge there is no private dental practice in the township of Orbost — there may be a visiting service but certainly not a permanent one — so the role the multipurpose service plays in providing those public health services is extremely important, and it does it very well.

I would recommend that anybody passing through Orbost drop in and have a chat to the people there — they are very friendly people — and see the things that can be achieved when funding is flexible and service delivery is driven by local demand. Again, I thank the government for bringing forward this legislation, which will address some of the real concerns experienced by our health service providers across the state and will also assist multipurpose services in their reporting dates to the Parliament.

Ms HARTLAND (Western Metropolitan) — The Greens will be supporting this bill. I would agree with David Davis that it has been brought on very quickly. However, it has been on our radar, and fortunately I have been able to do the checking that the Greens always do when a bill like this comes along. My checking has been with people such as the Victorian Healthcare Association and a number of community centres.

Before I became a member of Parliament I actually worked for the Western Region Health Centre for five years. The great thing about community health centres is that they deliver the bold services and they deliver those services to people who are the most marginalised. An example of this would be some of the dental services. At Western Region Health Centre they do an outreach service into a number of rooming houses in the area and would leave aside two dental appointments on any one day so that they could bring people back to the health centre and see the dentist straight away. Often with itinerant people it is very hard for them to keep appointments. There was flexibility within the health services to deliver services that no hospital would ever be able to deliver. It also operated needle exchanges and delivered services to sex workers. The program I worked in was in an older person's high-rise building. Community health services are incredibly important.

Last year the Victorian Healthcare Association and a number of community centres contacted me about the Australian Taxation Office ruling, and I was quite horrified because in the five years I worked at the health centre I was also one of the shop stewards. Frankly, one of the reasons we did not go for the pay rises we deserved was because we had that salary packaging component to our wage. People saw that as one of the unique benefits that could be offered by a community health centre. I was horrified when I first realised that the tax office had decided for some bizarre reason that that was no longer appropriate.

I raised the matter with the Treasurer, as did a number of other members in the form of questions and adjournment matters, and I am pleased the government has decided to rectify this problem and make sure that

people who work in community health centres are recognised for the fantastic work they do, but also to resolve those other issues.

I will not go into the technical detail of this bill, as David Davis has already done that. I thank him for that, and generally the Greens support this bill. We have had the opportunity to speak to the people we need to speak to, and the feedback I have received from a number of groups is that this is an excellent piece of legislation and should go through as quickly as possible.

Ms BROAD (Northern Victoria) — I rise to support the Health Services Legislation Amendment Bill 2008. This bill will remove existing legislative controls over community health centres by repealing existing provisions of the Health Services Act 1988 relating to community health centres. It will also introduce new provisions in the act for regulation and governance of community health centres. It will allow multipurpose services to hold their annual general meetings after their annual reports have been tabled in Parliament as required under the Financial Management Act 1994, and it will provide greater flexibility in the length of the term of appointment of members of the Health Services Review Council.

I deal now with an issue that was raised by David Davis in relation to transparency and accountability, and scenarios around the holding of elections. I point out that these changes will not change the requirements under the Financial Management Act for these bodies to table their reports in Parliament by the end of October in each year, which will be in plenty of time and provide plenty of opportunities for MPs to raise any issues about those reports in Parliament if they choose to do so.

The legislative framework that governs stand-alone community health centres has been amended over time resulting in the operations and governance management of the sector being significantly controlled by the Secretary of the Department of Human Services and in some instances by the Minister for Health. In March the Minister for Health announced that the department would undertake a review of community health centre governance and accountability. I draw the attention of the house to the fact that there was significant consultation with the sector involving the release in June of a discussion paper outlining proposed new governance arrangements, with comments sought from the sector and consultation forums. Arising from those consultations it is clear the sector is strongly in support of the provisions contained within the bill before the house.

That decision to proceed with the review recognised that the role of community health centres in the health service system has changed over time. The provisions in the act that were historically appropriate may no longer represent an appropriate regulatory framework. As has been referred to, the review was informed by a recent decision by the Australian Taxation Office in relation to the charitable status of community health centres. Clearly the Australian Taxation Office is a body not controlled by the Victorian government, so that decision and its consequences were outside the control of the Victorian government, but they needed to be quickly dealt with because the consequences of that decision by the ATO was to revoke the endorsement of independent community health centres as tax concession charities or deductible gift recipients and as public benevolent institutions or health promotion charities.

I acknowledge and thank the Minister for Health, Daniel Andrews, for his actions and intervention, because as a result of those actions and intervention the decision by the ATO was not applied. The ATO took the view that in light of the announcement by Minister Andrews to commence a review, the proposed changes in the legislation were about ensuring that community health centres maintain their fringe benefits tax and other charitable concessions.

That was an important intervention by the minister, and it is very much in line with what has been strong support from the Victorian Labor government and previous Victorian Labor governments for community health centres, which are a key component of our health system which the current Brumby Labor government strongly supports. That is why the Brumby government invests more than $250 million annually in community health centres, as they are Victoria's main providers of state-funded primary medical, dental, allied health and nursing services. As a result of the services they provide and that funding, there are a million visits each year to these services. It is an important service that is provided to communities right across Victoria.

I would also like to acknowledge and thank the sector for the many representations that it made not only to me but to probably all of my Labor colleagues in their respective areas. Those were very helpful in bringing about the framework contained in the bill, which is now before the house. I conclude by pointing out that the Brumby government has provided one-off funding to the Victorian Health Care Association to support the implementation of these proposed new arrangements and to assist the sector in the transition. I commend the bill to the house.

Motion agreed to.

Read second time.

Third reading

Mr LENDERS (Treasurer) — By leave, I move:

That the bill be now read a third time.

In doing so I thank the house for its cooperation in expediting this bill at this time.

Motion agreed to.

Read third time.

PRIMARY INDUSTRIES LEGISLATION AMENDMENT BILL

Committed.

Committee

Clause 1

The DEPUTY PRESIDENT — Order! Clause 1 is the purposes clause of the Primary Industries Legislation Amendment Bill. I understand Mr Hall has an intended amendment to this clause. It is my view that the amendment he proposes will also be a test for further amendments — namely, amendments 6 to 16, 18, 19, 21, 22 and 26. The key amendment is amendment 6, which seeks to remove a new provision setting out consultation principles. The first amendment is part of the purposes clause, and we will deal with that first. I invite Mr Hall to formally move his amendment and make any remarks in support of it.

Mr HALL (Eastern Victoria) — I move:

1. Clause 1, page 2, lines 23 and 24, omit subparagraph (i).

I was going to argue that I thought this single amendment would test all the others, because all the amendments from amendment 1 right through to amendment 35 address the same principle. I am happy to explain how I have come to that view so that the committee might agree with me and we can deal with this in one go, if you like.

The DEPUTY PRESIDENT — Order! I will be guided by the member on this one. Technically we have made a judgement, but if Mr Hall is happy for this to be a test for all of them, I will accept that premise. Obviously the committee understands that that is the position.

Mr HALL — These are all related to the following extent. I invite members of the committee to look at exactly where the first amendment fits. My amendment is to omit subparagraph (i), which says:

to replace consultative arrangements under that Act.

That act of course is the Fisheries Act. The simple intention of the 35 amendments that have been circulated in my name is to achieve that intent — that is, to knock out all of the amendments relating to the consultation process that the government advances in this bill. The result, if all of these amendments are actually accepted, would be that the status quo would be retained with respect to consultation requirements in the Fisheries Act.

The Liberal-Nationals coalition does not believe the government has made it clear enough as to what consultation arrangements would be pursued after the abolition of the current arrangements prescribed within the act. All we know is that those particular provisions, which I have referred to in amendment 6 — that is, in respect of clause 27 of the bill — propose to put in place a new section 3A, headed 'Consultation of principles'. It is our strong view and, we believe, the view of industry, that the government needs to be more definite about what it is going to replace the current consultative arrangements with.

To its credit I have to say that a government representative approached me after the second-reading speech on Tuesday and gave me a document entitled *Consultative Arrangements for Victoria's Fisheries Resources*, a policy statement dated October 2000. I thank Robert Mitchell from the minister's office for having a chat to me about that. That particular document in part spelt out what the government intentions were. An oversight of the new consultative framework was set out in the document, and it talked about establishing a new body called the Fisheries Consultative Body. The document went on to describe what it believed the functions of that body would be, how it would work and who it would comprise.

As I said in my contribution to the second-reading debate, if the government has a definite proposal for how it wants to change the consultative mechanisms, it should put it on the table so that we can have a look at it and have that discussion. It should give us some time so that we can go back to those in the industry to make sure they are happy with the new arrangements.

When I read the second-reading speech and the contributions to the second-reading debate I was surprised that no mention was made of the government's intention to establish a new fisheries

consultative body. The coalition is left with this proposal, a policy statement from the government that is not recognised in the minister's second-reading speech or in the legislation.

In my contribution to the second-reading debate I spoke about recreational fishers who were very happy with the recreational fisheries round table forums that have been held by the government over the last 12 months or so. Again I say if this is going to be the model, the government should have spelt it out for us either in the second-reading speech or in the legislation so that we could go to industry and talk about it and see if that is what it wants. I note that some professional fishermen presented me with their preferred model.

The problem we have with this piece of legislation and the amendments it makes to the Fisheries Act is that despite our urgings there is no clear commitment or statement from the minister that tells us what sort of consultation process will replace those mechanisms that the bill removes through its amendments to the Fisheries Act. As I said in my contribution to the second-reading debate, we are happy to debate and have a look at models, but in the absence of any definitive models we cannot support the abolition of the consultative arrangements currently provided for in the act.

I pursue these amendments on behalf of the coalition. If you look at them, you will see that they delete 20 clauses of the bill entirely and 2 clauses in part. All these amendments go to the same thing — that is, the mechanisms by which the current consultation arrangements are provided for in the Fisheries Act. In the absence of any other definite proposals we put these amendments to ensure that at least the current consultative arrangements are set out in the statute. We believe there should be some statutory requirements on how the government embarks upon consultation. If the government does not agree, we believe we are better off with what we have got. That is why this series of amendments will retain the status quo in the act with regard to consultation.

Mr JENNINGS (Minister for Environment and Climate Change) — I have a couple of issues. Firstly, I accept Mr Hall's argument that a single vote will test all his amendments, and the government supports that occurring. I agree with Mr Hall that his amendments are aimed at maintaining the status quo in the act. The government has sought to change the status quo and establish far more flexible arrangements for consultation with the fisheries industry. The government thinks its proposal is far more flexible than the status quo that Mr Hall seeks to maintain, but I guess we agree to disagree on that. I will not pursue the arguments; they have been pursued in two houses, and they have certainly been pursued publicly and privately between the parties in this place.

The government will not support Mr Hall's amendment. We believe the proposed consultative process provides greater flexibility and better consultation. We believe the consultation paper is of assistance, but we will agree to disagree. We will not be supporting Mr Hall's amendments.

Mr BARBER (Northern Metropolitan) — We are with Mr Hall for the reasons that he stated. As I have had the opportunity to further consult with interested persons, it has become even more clear to me that they are not happy with the proposed model. They believe there is a way to improve the status quo, but they are not at all behind the current proposal, specifically because of its lack of certainty. Interestingly, they put it to me that without what they consider to be an ironclad guarantee, they do not believe all these promises will be worth much.

From the point of view of those whom the government expects to be consulting in the future, the government's attempt to manage the politics of this issue and to bring it to a conclusion — and none of us have any particular agenda about what we end up with — has been particularly ham-fisted.

Committee divided on amendment:

Ayes, 21

Atkinson, Mr	Kavanagh, Mr
Barber, Mr	Koch, Mr
Coote, Mrs	Kronberg, Mrs (*Teller*)
Dalla-Riva, Mr	Lovell, Ms
Davis, Mr D.	O'Donohue, Mr (*Teller*)
Davis, Mr P.	Pennicuik, Ms
Drum, Mr	Petrovich, Mrs
Finn, Mr	Peulich, Mrs
Guy, Mr	Rich-Phillips, Mr
Hall, Mr	Vogels, Mr
Hartland, Ms	

Noes, 17

Broad, Ms	Pulford, Ms
Darveniza, Ms	Scheffer, Mr
Eideh, Mr	Smith, Mr
Jennings, Mr	Somyurek, Mr
Leane, Mr	Tee, Mr
Lenders, Mr	Thornley, Mr
Madden, Mr	Tierney, Ms (*Teller*)
Mikakos, Ms	Viney, Mr (*Teller*)
Pakula, Mr	

Amendment agreed to.

Amended clause agreed to.

Clause 2 postponed.

Clause 3

The DEPUTY PRESIDENT — Order! I call on Mr Barber to formally move amendment 1 standing in his name and to make any remarks in support of that amendment. I indicate to the committee that I regard amendment 1 as a test for amendments 2 and 3.

Mr BARBER (Northern Metropolitan) — I move:

1. Clause 3, page 6, lines 11 to 14, omit all words and expressions on these lines.

The amendment relates to the definitions clause, but my queries to the minister are a bit more broad than that, if that is okay. As I said during the second-reading debate, the purpose of this section of the government's bill is that aerial sprayers — crop dusters — are no longer required to carry public liability insurance as a condition of their licensing. My question to the minister is: can he inform the house how many people are currently licensed under these provisions, what is the cost of such a public liability insurance policy and is there any information about how many claims have been made against these types of policies?

Mr LENDERS (Treasurer) — There are 27 licensed agricultural aircraft operators, and there are 51 pilots with a chemical rating at the moment. I am seeking advice as to whether we have a sense of numbers in response to the other two parts of Mr Barber's question.

I am advised that we do not have the exact information. Probably the best guess for those costs, and these are obviously plane by plane, is that they are of the order of $7000 per policy. No data is available as to the number of claims.

Mr BARBER (Northern Metropolitan) — That latter bit is my concern. If we do not know how many claims have been made against these policies, we cannot be sure of the impact of removing the licensing requirement to have a policy. That is not to assume, of course, that if it were not a requirement people would not necessarily carry the insurance; they may still choose to do so. But given the description of the industry we are talking about, there would be some real concern.

The argument has been put that no other form of spraying contractor has to hold such a policy as a condition of their licence. No, but other spraying contractors, I presume, largely work on the ground and they usually work within the confines of one particular property or its environs. What we are talking about here is people who fly at very high speed at very low altitude. Maybe sometimes they spray the wrong crop, maybe they spray a house — has that ever happened, Mr Vogels?

Mr Vogels — It does, in drifts.

Mr BARBER — I thank Mr Vogels for backing me up — not to mention the issues of drift, which Mr Vogels mentioned, and drift can be considerable. It can take place over great distances and it can have a great impact.

I urge members of the Liberal Party and The Nationals to consider what they are doing here. The first person to be harmed by the proposal in this bill will most likely be a farmer — it could be a homemaker or another business; it could be a school within an agricultural area. That person is likely to have little recourse beyond an individual — who is possibly highly geared, who maybe does not even own their own equipment; maybe it was on hire purchase — and would have no opportunity to reach further beyond that individual to someone else with deeper pockets. But if the government is unable to tell us what the likely impact of this will be, because it has no data available to it — it is possibly not available to the minister or the government, and possibly not available to anybody — then that seems to be a particularly poor jumping-off platform for a piece of public policy.

Mr HALL (Eastern Victoria) — I briefly inform the committee that the Liberal-Nationals coalition will be supporting this amendment. I can understand the sentiment that the government wanted to achieve — that is, a reduction of red tape in respect of this matter — but again I think there needs to be some even balance about whether cutting red tape is sufficiently weighed up against the increased risk of the public liability components of aerial spraying. It is a difficult job, and you would need to be highly skilled to do it. From time to time we have heard of incidents in respect of the drift of aerial sprays and the inadvertent placement or end point of some of those sprays. I would have thought that most aerial sprayers would, as a matter of course anyway, hold public liability insurance. But in the absence of an exact figure on that, we think, on balance, that Mr Barber's amendment is reasonable. That is why we have made a decision to support it.

Ms LOVELL (Northern Victoria) — I feel I need to clarify the position I outlined during the second-reading debate when I said I thought it was good practice of the government to remove this requirement. I said later in my speech that I always think it is good when we can

reduce red tape and regulatory burdens on business. But I have since had a conversation with the mover of this motion. We have discussed the problems that could occur with wrong crops being sprayed et cetera, and I am happy to support the motion.

Mr VOGELS (Western Victoria) — I was watching TV down in the Western District and saw a helicopter with a saw hanging down about 20 metres that was cutting cypress hedges. It is probably a good way of clearing vegetation around powerlines and high country, steep country et cetera, but I thought it looked dangerous, and I hoped the people involved were insured.

Mr LENDERS (Treasurer) — It is always a question of balance, and on balance the government obviously supports this, for a couple of reasons. Firstly, the reduction of regulatory burden is something that industry calls for daily, whether that be the Victorian Farmers Federation, the Australian Industry Group or the Victorian Employers Chamber of Commerce and Industry — whether it be any of the other business groups in Victoria that call for a reduction in regulatory burden.

I am surprised — and disappointed, I guess — that the coalition is not opposing the Greens amendment. That is important, because the arguments have been put and the question 'What if?' has been posed. If that were the rationale used, we would never reform any legislation and we would never reduce any regulatory burden, because someone always has to ask 'What if?'. If people rally round that banner every time, we will not get any regulatory burden reductions. But that is in the hands of the chamber.

The other thing I would say is that we are seeking to get national uniformity, which every single business group I have met with has called for. Every single business group I have met with has called for national uniformity where possible. This is an opportunity for national uniformity. If in the end we say we have no evidence that this policy is working — or the existing regime is not working for that matter — it probably implies it is a regulatory thing that is in place and it is not particularly working well.

I also disagree with the hypothesis Mr Barber is putting forward that if a person is disadvantaged, the common law would not assist them. There is no evidence of that. How are we to know if in a particular situation suddenly we find someone cannot be sued, where we cannot find remedies and where licences cannot be withdrawn?

In the end it is in the hands of the chamber; it is about how it votes. The government would say that on balance you can argue this both ways; it is not a black-and-white situation. If every time the response of the coalition is to change its mind because it is trying to make an arrangement with the Greens political party, that is its prerogative. But if we are not prepared to try to reduce regulatory burden, if we are not prepared to harmonise, we will never reduce the regulatory burden, and business will be disappointed with all of us as costs go up for them and their consumers and for people who buy food.

Mr BARBER (Northern Metropolitan) — The minister raised the issue of national uniformity, which I do not think we have yet canvassed. Can the minister inform us of the situation on the specific issue in the relevant agricultural and veterinary chemicals legislation of the state of Tasmania?

Mr LENDERS (Treasurer) — What I can tell the committee is that the jurisdictions have agreed to seek harmony, and this is part of Victoria seeking to move to that harmonisation. Each jurisdiction needs to move forward in all these areas. There has not been harmony to date. We are seeking to get harmony on this, as in all areas of business deregulation, in reducing regulatory burden and reducing costs to farmers, businesses and consumers. This is the start of that process. Not all jurisdictions are there, but we are committed to trying to go there.

Committee divided on amendment:

Ayes, 19

Atkinson, Mr	Hartland
Barber, Mr	Koch, Mr
Coote, Mrs (*Teller*)	Kronberg, Mrs
Dalla-Riva, Mr	Lovell, Ms
Davis, Mr D.	O'Donohue, Mr
Davis, Mr P.	Pennicuik, Ms
Drum, Mr (*Teller*)	Petrovich, Mrs
Finn, Mr	Peulich, Mrs
Guy, Mr	Vogels, Mr
Hall, Mr	

Noes, 18

Broad, Ms	Pakula, Mr
Darveniza, Ms	Pulford, Ms
Eideh, Mr	Scheffer, Mr (*Teller*)
Jennings, Mr	Smith, Mr
Kavanagh, Mr	Somyurek, Mr
Leane, Mr	Tee, Mr
Lenders, Mr	Thornley, Mr
Madden, Mr	Tierney, Ms
Mikakos, Ms (*Teller*)	Viney, Mr

Pair

Rich-Phillips, Mr	Elasmar, Mr

Amendment agreed to.

Amended clause agreed to.

Clause 4

The DEPUTY PRESIDENT — Order! Mr Barber's amendment 2 invites the committee to vote against clause 4. The omission of clause 4 has already been tested by Mr Barber's first amendment. Did Mr Barber wish to make any remarks in respect of his amendment?

Mr BARBER (Northern Metropolitan) — No.

Clause negatived.

Clauses 5 to 7 agreed to.

Clause 8

The DEPUTY PRESIDENT — Order! Mr Barber has an amendment 3 which invites the committee to vote against clause 8. That is consistent with his amendment 1.

Clause negatived.

Clauses 9 to 26 agreed to.

Clauses 27 and 28

The DEPUTY PRESIDENT — Order! I will put clauses 27 and 28 together. Amendments 6 and 7 standing in Mr Hall's name invite the committee to vote against those clauses. The substance of Mr Hall's amendments has been tested by his first amendment.

Mr LENDERS (Treasurer) — The government will not test these amendments, as it did not test Mr Barber's last amendments, for the simple reason that once they were put to a vote the committee formed a view on the issue of aerial spraying and the issue of consultation. Our view is that the committee has formed a view, and we will accept these amendments going forward in the spirit of a decision already having been made in this chamber.

The DEPUTY PRESIDENT — Order! I will put the clauses, but what is happening is, as I said, Mr Hall's amendments invite the committee to vote against both of these clauses.

Clauses negatived.

Clause 29

Mr HALL (Eastern Victoria) — I move:

8. Clause 29, lines 18 to 20, omit subsection (1).

9. Clause 29, lines 21 and 22, omit "Sections 32(1)(a) and 32(6) of the **Fisheries Act 1995** are" and insert "Section 32(6) of the **Fisheries Act 1995** is".

Amendments agreed to; amended clause agreed to.

Clauses 30 to 32

The DEPUTY PRESIDENT — Order! Mr Hall's amendments 10 to 12 invite the committee to vote against clauses 30 to 32, which have been tested by previous amendments that have been voted upon.

Clauses negatived.

Clause 33

Mr HALL (Eastern Victoria) — I move:

13. Clause 33, lines 4 and 5, omit subsection (1).

Amendment agreed to; amended clause agreed to.

Clause 34

Mr HALL (Eastern Victoria) — I move:

14. Clause 34, lines 10 to 12, omit subsection (1).

15. Clause 34, lines 13 and 14, omit subsection (2).

Amendments agreed to; amended clause agreed to.

Clauses 35 to 49

The DEPUTY PRESIDENT — Order! Mr Hall's amendments 16 to 30 invite the committee to vote against clauses 35 to 49. There being no discussion on any of the amendments or clauses, I will test the amendments by putting the clauses to the test.

Clauses negatived.

Clauses 50 to 73 agreed to.

Clause 74

The DEPUTY PRESIDENT — Order! Mr Hall's amendment 31 involves renumbering clauses in the bill. Given that there have been significant omissions, I think it would be important for the committee to consider this amendment carefully.

Mr HALL (Eastern Victoria) — On the advice of the Clerk I need to read out the renumbered sections. This amendment has been changed because of the renumbering needed as a result of the elimination of two clauses through Mr Barber's amendments. I move:

31. Clause 74, lines 22 and 23, omit "50(4), 50(6), 55, 56(1), 56(2), 58(1) and 61(3)" and insert "28(4), 28(6), 33, 34(1), 34(2), 36(1) and 39(3)".

Amendment agreed to; amended clause agreed to; clauses 75 to 104 agreed to.

Clause 105

Mr HALL (Eastern Victoria) — Again, these amendments have been renumbered because of Mr Barber's amendments which omitted two clauses. I move:

32. Clause 105, line 15, omit "88" and insert "66".

33. Clause 105, line 20, omit "88" and insert "66".

34. Clause 105, line 25, omit "90" and insert "68".

35. Clause 105, line 28, omit "90" and insert "68".

Amendments agreed to; amended clause agreed to; clauses 106 to 121 agreed to.

Postponed clause 2

The DEPUTY PRESIDENT — Order! Earlier I indicated to the committee that clause 2 ought be postponed because there were matters to be considered in the amendments that had a bearing on the committee's decision on that clause. As the earlier amendments have been agreed to I call on Mr Hall to move his remaining amendments 2 to 5, which also involve renumbering.

Mr HALL (Eastern Victoria) — I move:

2. Clause 2, line 5, omit "107" and insert "85".

3. Clause 2, line 6, omit "109 to 119" and insert "87 to 97".

4. Clause 2, line 12, omit "107" and insert "85".

5. Clause 2, line 14, omit "109 to 119" and insert "87 to 97".

Amendments agreed to; amended clause agreed to.

Reported to house with amendments.

Report adopted.

Third reading

Motion agreed to.

Read third time.

Sitting suspended 7.10 p.m. until 8.03 p.m.

ASSISTED REPRODUCTIVE TREATMENT BILL

Committee

Resumed from earlier this day.

Clause 153

Ms PENNICUIK (Southern Metropolitan) — I move:

20. Clause heading to clause 153, omit this heading and insert —

"New sections 17A and 17B".

This amendment makes a change to the heading of clause 153 by changing the heading from 'New section 17A' to 'New sections 17A and 17B'. This makes way for my proposed new section 17B which provides that in relation to the birth registration of a child conceived by a treatment procedure, the information held by the registrar of births, deaths and marriages would indicate to a person who is donor conceived who applies for a birth certificate that there is more information available about their birth.

This amendment is in the spirit of the discussions we have been having for quite some time in the committee regarding the access of donor-conceived persons to information about their genetic identity, and therefore that change to the heading is required.

Amendment agreed to.

Ms PENNICUIK (Southern Metropolitan) — I move:

21. Clause 153, page 125, line 13, omit 'pregnancy.".' and insert "pregnancy.".

This is a consequential amendment regarding necessary changes to punctuation, basically, following on from the previous amendment. The amendment is therefore required.

Amendment agreed to.

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

1. Clause 153, page 125, after line 13 insert —

'17B Birth registration of child conceived by a treatment procedure

(1) If a birth registration statement specifies the child was conceived by a donor treatment procedure, the Registrar must mark the words "donor conceived"

against the entry about the child's birth in the Register.

(2) Subject to subsection (3), when the Registrar issues a certificate certifying particulars contained in an entry about the birth of a person conceived by a donor treatment procedure, the Registrar must attach an addendum to the certificate stating that further information is available about the entry.

(3) The Registrar must not issue the addendum referred to in (2) to any person other than the person conceived by a donor treatment procedure named in the entry.

(4) In this section ***donor treatment procedure*** means a donor treatment procedure within the meaning of the **Assisted Reproductive Treatment Act 2008**.".'.

This amendment to clause 153 of the bill inserts a provision after section 17A. It deals with birth registration — —

Mrs Peulich — On a point of order, Deputy President, I ask you to request all speakers to speak a little louder. There is a bit of background noise that the minister is competing with.

The DEPUTY PRESIDENT — Order! I ask the minister to take that into account.

Mr JENNINGS — The good news is that the point of order was heard and will be responded to. The amendment that has been circulated inserts new clause 17B, which deals with the birth registration of a child conceived by a treatment procedure. By 'treatment procedure' we mean a donor treatment procedure, as defined in the new clause. It is a clause that will also define the circumstances in which this provision will apply. New clause 17B will apply to the way in which birth registration will be dealt with. It provides that the database of the registry of births, deaths and marriages will identify when it has been recorded on a birth registration statement that a child has been born through a process of donor treatment. There will be an indicator on the register as distinct from the certificate itself. That is the important distinction that the government is very concerned to protect.

This amendment provides for the security and confidence of all children who are born in Victoria that the certificate itself will be in the usual form and will not indicate the circumstances by which a child has been born. However, if a person subsequently comes into the registry of births, deaths and marriages and seeks a certificate, the person at the registry will provides that person — and only the person in question — with an addendum that will be attached to the certificate to indicate that additional information about the circumstances of their birth is available for that individual to obtain. No other individual who seeks access to that birth certificate will be given access to that addendum or to what is associated with it in terms of any information that relates to the circumstances of their birth.

Earlier today and on previous occasions when this issue has been debated in committee and in the community the government has clearly expressed a concern about any form of identification appearing on the birth certificate itself and, beyond that, the potential for the information recorded to be abused or used in a way that will disempower the person whose birth certificate is marked in such a way. We have exercised our minds consistently and agonised about this process right up until today. If Mr Dalla-Riva were here and asked me when we thought about the mechanism that has been adopted with this amendment today, I would answer that the construction of this amendment occurred in the debate this afternoon, between when we considered clause 53 and when we considered clause 59.

Clause 53 was amended against the government's intention, and clause 59 was not amended consistent with the government's intention. Whether or not this is seen as a matter of expediency, I can say that in the cold, hard light of day we tried to consider what was a reasonable request and what were the reasonable expectations of the members of this committee about the way this should be handled, and we have tried to open up access and the availability of information to an individual so that they can empower themselves with knowledge. But access to that knowledge has parameters around it which administratively restrict any opportunities for anybody to use that information for any other purpose. That is what the nature of this amendment is designed to do. The government now has confidence that it will achieve that range of expectations, rights, entitlements and protections that the original amendment as proposed by Ms Pennicuik was unable to do.

Ms PENNICUIK (Southern Metropolitan) — If the amendment passes, the effect will be that there is no need for my further amendments to the same clause, which go in the same direction. The minister has discussed with me what his amendment means, as he outlined to the committee. I thought it was worth my standing up and saying that I have discussed it at length with the minister and that, given what I am trying to achieve, my colleagues and I are prepared to support the government's amendment in this regard.

Mr O'DONOHUE (Eastern Victoria) — If this amendment is successful, will the minister still refer matters to the Victorian Law Reform Committee, as outlined in the information he read into the Hansard record and distributed earlier this day?

Mr JENNINGS (Minister for Environment and Climate Change) — Given that the offer the government made in relation to these matters was to deal with any aspect of the information collection, distribution and access questions, the net effect of the two amendments — the one that has been already adopted by the committee and the one that is now being proposed by the government — may be fairly compared to what was the original intention of that referral. We would need to give some consideration to whether in fact there is an expectation — and the committee may express a view about this matter during its deliberations — and whether the reference has the same relevance or rigour that needs to be applied to it.

In the intervening period the government has not formed a definitive view one way or the other, although the proponents of reform in terms of the amendment to the original bill have, by and large, had a reasonable day out in relation to the accommodation the government has given to the intention of their amendments. Perhaps the concern for ongoing scrutiny may not be the same, but the government, as I indicated, is quite alive to having a look at the way in which this piece of legislation will be effectively implemented and how all the administrative practices and processes associated with it will be successful in meeting the expectation of the legislation. It is not a definitive yes or no. We are happy to reflect on whether, firstly, there is a desire expressed by the committee, and then, secondly, to consider on reflection whether there is still the utility of the reference that I flagged, and then make a decision about what is the best way forward.

Amendment agreed to; amended clause agreed to.

The DEPUTY PRESIDENT — Order! I ask Ms Pennicuik what her intentions are in regard to the rest of the amendments in her name.

Ms PENNICUIK (Southern Metropolitan) — I do not intend to proceed with the rest of the amendments in my name.

Clauses 154 to 159 agreed to.

Reported to house with amendments.

Report adopted.

Third reading

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

That the bill be now read a third time.

In doing so I thank members for their consideration and the way in which the debate has proceeded today.

House divided on motion:

Ayes, 20

Atkinson, Mr	Mikakos, Ms
Barber, Mr	Pakula, Mr
Broad, Ms	Pennicuik, Ms
Darveniza, Ms	Pulford, Ms
Eideh, Mr	Scheffer, Mr
Hartland, Ms (*Teller*)	Smith, Mr
Jennings, Mr	Tee, Mr
Leane, Mr (*Teller*)	Thornley, Mr
Lenders, Mr	Tierney, Ms
Madden, Mr	Viney, Mr

Noes, 18

Coote, Mrs	Koch, Mr
Dalla-Riva, Mr	Kronberg, Mrs
Davis, Mr D.	Lovell, Ms
Davis, Mr P.	O'Donohue, Mr
Drum, Mr	Petrovich, Mrs
Finn, Mr (*Teller*)	Peulich, Mrs (*Teller*)
Guy, Mr	Rich-Phillips, Mr
Hall, Mr	Somyurek, Mr
Kavanagh, Mr	Vogels, Mr

Motion agreed to.

Read third time.

TRANSPORT LEGISLATION AMENDMENT (DRIVER AND INDUSTRY STANDARDS) BILL

Second reading

Debate resumed from 3 December; motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr KOCH (Western Victoria) — I am pleased to make my contribution on the Transport Legislation Amendment (Driver and Industry Standards) Bill 2008. The purpose of the bill before us this evening is to amend the Transport Act 1983 in relation to accreditations and to amend the Working with Children Act 2004 in relation to exemptions for accredited drivers of public passenger vehicles.

The coalition has indicated we will cooperate with the government and offer a speedy passage of the bill

through the house. We appreciate the circumstances that have brought this legislation to the Parliament and we will, as I have said, look after it accordingly. The opposition is very aware that the government has had ample time to amend the original act but has elected to use this opportunity, and unfortunately it is using it to obtain as much publicity in its own favour as it can, which certainly members on this side of the house will be disappointed about.

The bill has been quickly cobbled together and we see it as an unsatisfactory manner in which to handle the business of the house. As we all appreciate, the bill has come forward due to an outcome of a recent finding by the Victorian Civil and Administrative Tribunal, and for that reason the government has seen fit to bring it before us.

We are all more than aware that we have a duty of care in offering greater security for our travelling public, particularly the aged, infirm and of course children. The bill covers not only taxis, although the emphasis is on taxis, but hire cars and buses. The taxi industry has had a history of much stress and violence across its service area. In the past that has been more in the after-dark hours than during daylight, but it is certainly of concern and we acknowledge that this problem has been in the taxi industry particularly. Too much emphasis has been focused on that aspect in the bill and the Victorian Taxi Directorate, as the organisation that covers the taxi industry, certainly has to do some more work in relation to picking up on this situation.

The central objective of the new accreditation regime is to provide for safe, reliable and efficient taxi services that meet reasonable community expectations. Driver accreditation is based on explicit public-care objectives focused on the safety of our travelling public, and this is no less important in moving the public by taxi. It is mandatory for the director of public transport to reject applicants who have been convicted of certain serious criminal offences, including murder, terrorism, rape and other sexual offences, particularly against children. These amendments also make it mandatory for the director of public transport to refuse accreditation if the applicant has been found guilty of murder on the grounds of insanity or mental impairment.

Mr Pakula — Not guilty.

Mr KOCH — Thank you very much, Mr Pakula. I meant to say if the applicant has been found not guilty.

In the last 17 months the Victorian Taxi Directorate (VTD) has received approximately 4300 accreditation applications from prospective taxidrivers. Two hundred applications have been refused, while over the same period more than 220 taxidrivers have had their accreditation cancelled or suspended on various grounds. The past year has seen the Victorian Taxi Directorate provided with substantial extra personnel and resources to ensure compliance with the accreditation standards and to lift levels of safety and service in the taxi industry.

The disqualifying offences for driver accreditation provide that applicants for accreditation or those who already hold accreditation must be automatically refused accreditation or have their accreditation cancelled if they have been found guilty of specified criminal offences. The bill elevates serious offences against a licensed person to those involving dangerous driving causing death or serious injury and includes those involving serious acts of violence. A critical element of the accreditation schemes is the protection of children and vulnerable people. When it comes to protection of children, only the highest regulatory standards are acceptable. The changes also cut red tape, eliminating the need for a person to apply under both the accreditation scheme and the working-with-children scheme where the high standards under both regimes are clearly met.

We accept that driver accreditation is particularly important and is not new, but this amendment is prospective, not retrospective, and it will not resolve the present dilemma arising as a result of the recent Victorian Civil and Administrative Tribunal finding.

In closing, I think it is important to say that this bill coming before the house at this time is not well timed, especially in light of the recent Auditor-General's review, which was critical of the multipurpose taxi program on behalf of the aged, the vulnerable and the disabled. The VTD has not got on top of these problems in recent times. In particular fraud by drivers seems to continue unabated. The directorate has no broad-risk register in place, and there is little evidence of any recovery undertaken or gained by the VTD when these offences take place.

The hire car industry remains an industry trusted by users, but over recent months it has been found wanting on far too many occasions. In saying that, I also apologise to the reliable drivers in the industry. Unfortunately they have far too many colleagues who let the industry down by taking advantage of this program. Only the VTD can resolve that position.

The opposition coalition is willing, as I said earlier, to assist in the cleaning up of this mess. The current VCAT situation cannot and will not be fixed up by the

minister; it will have to be resolved by to this legislation. The other one will be resolved in its own course.

I will finish as I opened. We appreciate very much what has taken place and what has brought this amendment before the house. As I indicated earlier, the coalition is only too glad to cooperate with the government. From that point of view we do not oppose the bill and we wish it a speedy passage through the house.

Mr BARBER (Northern Metropolitan) — This bill has been brought up all in a rush. Therefore I need to raise some issues which are a matter of process before I get to the content of the bill. The first is that this bill could not have been brought into this place in the way it has without leave, because it was introduced and went through the lower house, was brought into the upper house and has now been brought on for debate all within the space of a few days. We would have been in a position to refuse leave for this bill to be debated. We had not yet determined whether we were going to grant that leave, because, as I am about to explain, there are important issues of process here. Yesterday afternoon I had an undertaking from the parliamentary secretary to the Minister for Public Transport that the bill would not be brought up and be second read until after we had finished with the Assisted Reproductive Treatment Bill. In fact the bill was brought up and second read and brought to this point when the Greens were not in the chamber to refuse leave. There are only three of us; we cannot be everywhere. But that was a very clear undertaking that I had, and I understood it exactly as that.

The second issue is that this bill, which raises important questions under the Charter of Human Rights and Responsibilities — questions that require considered thought, pondering, research and consultation with experts — has not been to the Scrutiny of Acts and Regulations Committee. It is possible that it could. With the involvement of the chamber we could convene a meeting of the Scrutiny of Acts and Regulations Committee. There are 88 members sitting in the lower house waiting on us for a change, and I presume that would mean that all members of the Scrutiny of Acts and Regulations Committee are present. We believe the committee should still consider the bill, because it is in that sort of considered environment that the impact of the bill upon the important human rights in the charter can be properly interrogated. If debate continues past the time available to us tonight and into tomorrow, that is perfectly fine with the Greens. With a bill as tricky as this, we will simply have to do the sort of work that we ordinarily would have done via the chamber.

We are under no illusions: the reason this piece of legislation has been brought into the lower house, debated and passed and brought into this house, and it is now being debated with the expectation that it will be passed within the one week is that the government is reacting to headlines in the *Herald Sun*. As a political consideration that is fine. Each party can make up its own mind about how it reacts to popular opinion and to the accountability mechanism put up by the media, and we Greens will have our own view as well. However, we are not prepared to shortcut our processes. We oppose the shortcutting of the parliamentary processes for the sole reason that there are headlines that say 'Killer cabbie' and that there might be more tomorrow. If the government wants to go with or react to the mob, and concertina, shortcut and, to my mind, trash the regular processes of this Parliament, that is its business. However, other governments have tried that and have damaged not only themselves but also their reputations.

Of course the Greens are concerned about the welfare of people who catch cabs. We are equally concerned about the welfare of taxidrivers, as was demonstrated earlier this year when a young taxidriver, a relative stranger to this country, was left in a very bad way after an attack and we joined those cabbies protesting and campaigning for measures to be put in place to protect their safety. Of course the Greens understand that taking a taxi late at night can, in the wrong circumstances, be a dangerous and vulnerable position to be in.

My two colleagues in the Greens regularly take taxis home; my female friends take taxis; I have poured drunken people into taxis and relied only on the trust I implicitly have in those taxidrivers to take those people home, my trust being that nothing will happen to them on that journey. Nobody can come at us waving headlines, trying to go from running from the mob to joining with the mob, and take it on to the Greens. It will not stand. People are not yet so ill considered that they will not ask why the Parliament is not giving this bill proper scrutiny. People understand that the Parliament is there to protect them from bad laws and that ill-thought-out, rushed laws can have poor consequences that then have to be examined, corrected and so on into the future.

Importantly, when legislation comes in here that affects the rights, conditions and opportunity for employment of workers, the Greens expect to be able to consult those workers' representatives. Too often we find legislation brought in by the government — there were two other examples this week — when the relevant workers associations, their representative bodies, the people they rely on to protect them, have not been

consulted, have not properly been consulted or have not had the opportunity to examine the legislation, talk to their members and consider a way forward.

Those are concerns about the process by which this legislation has been brought forward. We are happy to come back next Tuesday, if we need to. We will do this properly. We will come back next Tuesday — the Clerks are looking even more po-faced than usual — and get it right. If the government says it is an absolute imperative that this legislation is passed before Christmas, we will pass it before Christmas. That is not what is stopping this legislation from moving forward. The essential need for proper scrutiny is what, in our view, should stop it from moving forward and being dealt with in this way.

Before moving on to the substantive issues, I point out that the upshot of what I just said is that the Greens need to do the job we normally do on a piece of legislation like this, but we will need to do it via the chamber, so we will do it in the committee stage. The three Greens will all be participating, taking the usual team approach we take to a piece of legislation. We will be asking the government to call in the relevant facts to answer a whole range of questions. That is what we do every time a piece of legislation comes to us. I am not saying members of other parties do not do it; I am saying that with our limited resources we do a hell of a job. We do not get the million dollars as a gratuity paid from the Premier's budget to the opposition simply to run their offices. We get nothing, and we know the reason why. The Premier told me straight out in the estimates committee — 'Talk to us about how you cooperate with the legislative agenda'. I am talking to him right now.

We have been told that the government was already considering legislation like this some months ago and that they have rushed this up as a result of recent media attention. The case that we are all referring to was covered in the *Law Report* on ABC radio, and that was the case of an individual, still unidentified, known as XFJ. He killed his wife 18 years ago. He was found not guilty by way of insanity, and it is the view of that ABC program that since his release 10 years ago he has led a blameless life. He now wants to be a cabbie. He was refused accreditation on a number of occasions. He appealed to the Victorian Civil and Administrative Tribunal, and VCAT has ruled that he is to be accredited as a taxidriver.

The ABC Radio National program interviewed the Minister for Public Transport, Lynne Kosky, and it also interviewed Professor Bernadette McSherry from the Monash University law school, one of Australia's leading experts in mental health laws, who at the time of the interview was also familiar with the case. I am not going to read slavishly this entire transcript into *Hansard,* but I am going to quote various parts of it.

Professor McSherry tells us that the individual was formerly a refugee. He is 52 years old, and he killed his wife in 1990. He was detained for a number of years in a psychiatric institution, and given that the killing was found to be by reason of insanity, he did not immediately walk free. Individuals are treated and detained both for the purposes of treatment and for community protection. When we come to the committee stage we will be asking some specific questions about how this particular provision works under the Crimes Act and how it has worked in the past. What this legislation does is attempt to rule out from accreditation an individual who has committed and has been convicted of certain offences under the Crimes Act, or at least to create a very strong supposition that such a person should never be accredited.

Since his release back into the community this man has worked as a volunteer for a charity supporting the homeless, he has had a position where he worked with the elderly, and he has also worked as a kitchenhand in a hotel. This is going to become important in our questioning, because the proposition has been put that being a taxidriver is a particularly sensitive role given the circumstances of how it operates, and we agree with that. But what the Greens are trying to get their heads around is how this rule would be applied to other occupations and how it is currently applied across a range of different, highly sensitive occupations. We want to be sure that if we agree to this particular proposition it will not create some automatic supposition on the part of the government that the next time it gets another set of headlines it is just going to keep rolling this out or rolling like laws out across every area of employment, presumably including an ever-widening group of people who at some stage in their life have fallen foul of the law.

According to Professor McSherry, this individual now has a 19-month-old son who has been diagnosed with leukaemia and the individual is his primary carer. He wanted to find a job that allowed for some flexibility, which is why he decided to look into the possibility of driving taxis. He applied to the director of public transport a couple of times, he was knocked back a couple of times and eventually his appeal went before VCAT. At the tribunal hearing the individual called two psychiatrists as witnesses — two incredibly well-respected psychiatrists, this transcript tells me. They testified that the individual had for years been in

remission from his particular form of mental illness; he experienced very serious depression at the time he killed his wife. We are also told that in insanity defence cases quite often mental illness, such as paranoid schizophrenia, is more likely to be involved than depression because there is a tendency towards violence with that illness. According to Professor McSherry, the individual had depression and has been in remission for years, free of any symptoms of mental illness, and does not need to be on medication. There was also testimony that there was a minimal possibility of recurrence of depression.

Very strong arguments were put to the tribunal that this individual was not a risk to the public. The government's bill, as I understand it, intends to change that. To a much greater extent than it does currently, it simply takes the conviction as the necessary evidence of whether a person is a risk to others rather than the sort of examination that has been allowed to occur in particular circumstances.

If the proposition of this bill is that we need to keep people safe, then we need to keep people safe. The question then becomes: how do you do that? Is it through a blanket prohibition, or is it through a process that allows for some consideration of the circumstances? Is it through a process that allows for the possibility of rehabilitation? That is a pretty big question in law and order and justice. There are wide-ranging views, but there would be many in this community who hold out the hope that part of crime and punishment is the capacity for rehabilitation, for treatment — obviously, in the case of mental illness — and maybe even for redemption. We would all know of stories like that, and we hold onto those stories hoping they could be more true, more often. That is one question members will need to keep in mind when they consider the bill.

Part of the consideration, according to the presenter of the ABC Radio National program *Law Report* that I am referring to, was that the outburst of violence was against a family member — a spouse. The fact that it was not against a complete stranger may have had some bearing on the kind of risk analysis undertaken by the tribunal. I do not know what I think about that. I think we recognise that violence in domestic situations and violence against strangers or in public situations are in some ways qualitatively different, but maybe that is not such an important distinction.

However, as Professor McSherry noted you do have to look at past behaviour as a method of gauging future behaviour. Clearly the particulars of this circumstance are that the individual, in a one-off situation under obviously dreadful circumstances, committed a dreadful act of violence, but he had not shown any subsequent tendency to do that. Nobody would want to diminish that, but that certainly would have influenced the psychiatrists in their testimony to VCAT (Victorian Civil and Administrative Tribunal). The psychiatrists were clear in their testimony that they were not giving any ironclad assurances, and there is no such thing. You can never say that a person, through any process of examination, will never, ever commit a crime in the future.

The program talked about and gave an extremely good exposition of how the tribunal hearing played out. It examined the fact that being a taxidriver can be stressful, that it can be a stressful job being on the road and that it can be stressful dealing with passengers who are intoxicated or aggressive or refuse to pay their fares. The presenter went on to ask Professor McSherry, whose expert testimony I am now relying on to a considerable extent, what she thought of the state government's move to close what it calls a loophole through this bill. Professor McSherry said:

> I think this is quite a difficult question because we have here a person who has been acquitted. He hasn't actually been convicted of any crime, and I think the problem with such a reaction to say, 'Well we'll ban everyone who has committed a crime because they were mentally ill at the time', it really buys into I think a lot of misunderstanding and prejudice about mental illness. And I want to stress here that it's only a small percentage of those with mental illnesses who commit crimes, and usually that correlation is between paranoid schizophrenia and violence, rather than depression and violence. So it might be old-fashioned, but I think one of the issues here is the notion of redemption, and whether a person who has committed a horrible crime can actually atone for … crime in some way.

She went on to make the point that if we looked merely at risk factors, males between the ages of 14 and 45 would be banned from driving taxis.

Mr Pakula — They are the same as killers, are they?

Mr BARBER — There is no question that statistically most violence in this society is committed by young males. And I have to say that frequently it is committed against young males; young males are often the victims of assaults or any other activity that we might like to consider. For the benefit of Mr Pakula, I have not said the Greens are voting against this bill. I have been very clear to the chamber that the Greens, because we have been rushed upon by this piece of legislation, are having to work out our considerations and weigh the evidence via the debate. That is the process we have to go through.

The bill before us references various parts of the Crimes Act and tells us that people will find it increasingly difficult to be accredited as taxidrivers if they have been convicted of certain categories of offences. I think Ms Pennicuik, when she provides a contribution in a moment, might run us through various sections of the Crimes Act and say what those categories are.

In terms of the accreditation process, I have been given some information today during a briefing by an adviser to Ms Kosky, the Minister for Public Transport. We are grateful for that briefing; however, it had to occur in about four separate mini sessions as we rushed in and out to divide on another important piece of priority legislation.

Over the last 18 months the government has accredited about 4500 individuals as taxidrivers. As I understand it, there is a rolling accreditation process. Around 200 people were refused accreditation; a small number of those appealed. There is also the fact that in recent times the standards for accreditation have been raised considerably by the government. I am sure it is much better than it was back in the old days. As a result of that re-accreditation under the new standards, around 200 people — existing drivers — did not meet the standards. That equates to about a 5 per cent rejection rate. Those individuals were given the opportunity, given that that was their livelihood at the time and they were about to be without it, to make a fast-track appeal to VCAT. Their cases were expedited. In effect they had instant access to VCAT.

My understanding in broad terms — and we will need to have some further interrogation with the minister to tease this out — is that the government intends to change in some ways the test for accreditation from being whether the applicant is a fit and proper person — a generally understood standard — to being about meeting a public care objective. According to the way it has been explained to me, the decision-makers — the accreditors — will be given the opportunity to take into account wider considerations and in some ways, to my understanding of it, to reverse the onus of proof, perhaps not in a legal sense but in a sense of what needs to be taken into consideration. In other words, the consideration might be that to retain confidence in the taxi industry we cannot accredit people who we know are not risky or we believe are acceptably safe but who other people, on hearing something about their circumstances, might not believe are safe. In this way the public may lose confidence in the safety of catching taxis. Those are both good objectives.

When you are providing a form of public transport, which is what taxis are, it is important to remember that public perceptions matter. It is also important that we have fairness, proper process and that other very valued feature, which is the presumption of innocence — or perhaps the presumption of humanity.

The government is in effect putting up a new test for accreditation which moves that balance. The difficulty for the Greens is that we have not had the time to properly consider where that balance should be put. We have not had the chance to consult all the various experts from the industry, from those who work with people with mental illnesses to those people who deal with justice and human rights, to satisfy ourselves that this balance is right and acceptable. Other members have a different view.

I have seen the way legislation is passed around here. The big parties and most members follow the leader. The Greens have an advantage and the additional burden that there are only a few of us. We have to give things proper consideration and at least get three heads nodding, because we work by consensus. I will leave it there. As I said earlier, we will save our range of more detailed questioning to when the minister is at the table.

Mr PAKULA (Western Metropolitan) — Where do I begin? I am not in the habit of standing up in the chamber and making the focal point of my discussion private conversations I have had with other members of this house prior to the debate on a bill. But given Mr Barber's opening comments, I do not feel I have any other choice but to set the record straight.

Mr Barber made comments about a discussion he had with the Parliamentary Secretary for Public Transport and the Arts. That person is Rob Hudson, the member for Bentleigh in the Assembly, but I assume Mr Barber meant the Parliamentary Secretary for Roads and Ports, which is me. In order to deal with that matter, I will go through a bit of a chronology.

On Tuesday of this week I approached the Greens Whip, Ms Pennicuik, and Mr Kavanagh from the Democratic Labor Party. I indicated to them that the government had an interest in dealing with this bill this week, and they were asked if leave would be denied. Mr Kavanagh indicated he was unlikely to deny leave. Ms Pennicuik indicated that the Greens would not deny leave. She checked with Mr Barber during that conversation and then confirmed that the Greens would not deny leave. That was on Tuesday.

Late yesterday, near dinner time, I was approached by Mr Barber. I must say I feel uncomfortable reading this

into the record, but as I said at the outset I do not think Mr Barber has left me with any choice. Mr Barber indicated to me that, contrary to the undertaking I had been given on Tuesday, the Greens were now reconsidering their position and might deny leave unless they were confident that, before they debated this matter, they would have an opportunity to talk to the Transport Workers Union (TWU) and the taxidrivers' association.

I then spoke to the Government Whip, ascertained that the bill was not going to be debated that night or early today, and certainly not before the Assisted Reproductive Treatment Bill was debated. I conveyed that to Mr Barber and said, 'You will have plenty of time, I imagine, to speak to both the TWU and the taxidrivers before you have to make up your mind about how you are going to handle this debate'. His response was, 'That should give us plenty of time; no worries'.

Mr Barber clearly had a different understanding of that conversation than I did. The point I would make to Mr Barber is that he and I have both been here since 9.30 a.m. He had the best part of 12 hours in which to raise his concern with me before he got to his feet. The fact that he did not says more about his integrity than mine, and more about his courage than it says about me.

Ms Hartland — This is helpful.

Mr PAKULA — Ms Hartland interjected by saying, 'This is helpful'. I did not come into the chamber and without any notice attack the integrity and the honesty of another member of this chamber. As you reap, so shall you sow. That is what occurred. Mr Barber knows that is what occurred. For him to stand up in this chamber and make the comments that he did, when he had the best part of a day to raise any of those matters privately with me, I think does him no credit.

I will go on to the bill itself. Let me say that all of this nonsense about how this bill has been rushed in and how the Greens have not had an opportunity consider it could have been resolved very simply. On Tuesday, when I asked the Greens whether or not they would deny leave, they could have said, 'Yes, we will'. Then none of this would have occurred. But the Greens indicated they would not deny leave. There is a television program which I think is called *Thank God You're Here*. Thank God you are here! Thank God that after more than 100 years of democracy there is a party that considers legislation!

Obviously the Labor Party, the Liberal Party and The Nationals do not give — what was the term? — proper consideration to pieces of legislation. No-one else gives proper consideration to pieces of legislation. We have 37 automatons who just walk in the door and do as they are directed. What a slight on Mr Barber's parliamentary colleagues, but enough about that.

In the interests of the sanity of members of this Parliament, my contribution will be marked by its brevity. I will not go to the details of the bill, because Mr Koch did that very well. I commend him on his contribution. He went to the detail of the bill considerably, and despite all the rhetoric we have heard in the last 20 minutes this is actually a rather simple piece of legislation. It is a simple piece of legislation because it is founded on one core belief — that is, that people who kill other people when they are insane probably should not be driving taxis. That is the basis of this legislation. It is based on the notion that the rights and safety of the travelling public ought to be paramount. One should never forget that in the best of times, people — often vulnerable people, many times women on their own — are getting into a car with a stranger at the wheel. They are entitled to know that the person at the wheel is not someone who has killed another person.

It is already the case that the director of public transport has to reject any application from a person who has been convicted of certain serious offences, and Mr Koch went through those offences in detail. A recent VCAT (Victorian Civil and Administrative Tribunal) decision indicated that there is a loophole which means people who are acquitted of murder by reason of insanity do not fall within the ambit of the act. That is what this piece of legislation is designed to correct. It is not as if VCAT review is not still available; VCAT review is still available. However, it is not good enough to have a situation where this kind of loophole is perpetuated. The bill is designed to correct a situation that the vast majority of the travelling public — those who use taxis and those who do not — believes needs to be rectified. It is not just about actual safety; it is about the perception of safety. Confidence in the system requires members of the travelling public to perceive that they are going to be safe when they get into a taxi.

Mr Barber made this nonsensical comparison between people who have killed other people and been acquitted on the grounds of insanity on the one hand and the general population of 14 to 45-year-old males on the other, as if in any way those two groups are comparable. I do not need to give my critique on whether they are comparable; I think that speaks for

itself. If Mr Barber wants to persist with a comparison between people who have been acquitted of murder on the grounds of insanity and the rest of the male population aged under 45, he is welcome to do so, and I hope he does.

But, as I said, there is one key element of this bill that I think should meet with the absolute agreement of all members of this Council, and it is this: there are almost no circumstances that I can conceive of, and I am sure almost no circumstances that any member of the government or any member of the opposition can conceive of, where it is appropriate for a person who kills while insane to be driving a taxi.

Mr Barber — While sane.

Mr PAKULA — If they kill while they are sane, Mr Barber, in most circumstances they are convicted and they are ruled out by virtue of the current legislation. If they kill while they are insane, as we have seen, there may be circumstances in which they slip through the net, and that is what this bill is designed to rectify.

This is another part of a suite of measures designed to protect not just the travelling public but also the drivers themselves. There has been the implementation of arrangements for the prepaying of fares between 10 at night and 5 in the morning, and the compulsory availability of protection screens for all cabs with the cost shared by the operator and the government. Those changes were designed to protect drivers. These changes are designed to protect the travelling public, to increase the perception of safety amongst the travelling public, to provide peace of mind to the travelling public, but most importantly to ensure that the state's legislative framework reflects the sentiment held by most members of this Parliament and by an overwhelming majority of the Victorian people that people who have killed and been convicted of murder should not drive cabs, as is currently the case, and that people who have killed and been acquitted by reason of insanity should not be driving cabs either.

That is the basis of this legislation. There is no great trick to it. There is no great complexity in it. That is what this bill is designed to do. It is reflective of the will of the majority in this Parliament and public opinion, and it ought to be passed without delay.

Motion agreed to.

Read second time.

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

That the bill be now read a third time.

Leave refused.

Committed.

Committee

The DEPUTY PRESIDENT — Order! I understand there are not any amendments to the bill but a series of questions.

Clause 1

Mr BARBER (Northern Metropolitan) — I have a question for the Minister for Planning. How many persons do we know of in the state of Victoria who have been found not guilty of the crime of murder by reason of insanity, as relates to this bill?

Hon. J. M. MADDEN (Minister for Planning) — I do not pretend to have that information before me. I am advised that those figures are available on the website of the Sentencing Advisory Council.

Mr BARBER (Northern Metropolitan) — I cannot look at the website from my place. Perhaps the minister can help me out. He has a few advisers in the box; perhaps they could give us the figure.

Hon. J. M. MADDEN (Minister for Planning) — I think Mr Barber might notice, too, that they are both in the chamber, and I am in the chamber as well. They are sitting in the advisers box. The figures are available, and in the same way as they would access them he can access them as well.

Mr BARBER (Northern Metropolitan) — So we have no idea how many people this legislation would actually affect or, if you want to look at it the other way, how many it might catch. We have no idea potentially how many other killer cabbies there are out there, given the way this legislation has been brought forward. That is fine to establish.

My understanding is that that provision in the Crimes Act framed that way is not an original provision. It is in the Crimes Act 1958. Can the minister tell me when that provision of the Crimes Act — that is, the ability to be found not guilty by reason of insanity — was first brought into the Crimes Act?

Hon. J. M. MADDEN (Minister for Planning) — I am advised that being found not guilty on the ground of reasons of insanity is a common-law concept.

The DEPUTY PRESIDENT — Order! With respect, Minister, that was not the question.

Mr BARBER (Northern Metropolitan) — That is right. The minister will have to pardon me because I have not had the opportunity to follow this legislation through to all the other acts it amends. Can the minister explain to me how the mechanics of the bill work? I thought it was going to reference certain sections of the Crimes Act. I had presumed that those crimes were actually in the Crimes Act.

Hon. J. M. MADDEN (Minister for Planning) — Mr Barber might want to repeat the question just to make it a bit clearer for me.

Mr BARBER (Northern Metropolitan) — My understanding of how this bill works is that it actually references certain sections of the Crimes Act. I am looking here at the explanatory memorandum, and it says:

> Subclause (3) provides that a finding under the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 —

I am sorry. It is not the Crimes Act; it is the act I have just mentioned —

> of not guilty by reason of mental impairment is brought within the taxi industry accreditation scheme to deem such a finding as a finding of guilt.

Can I take it from that, which is on page 2 of the explanatory memorandum, that no-one was found not guilty in such a way prior to 1997, because that is when that particular offence arose as a result of that particular piece of legislation?

Hon. J. M. MADDEN (Minister for Planning) — I think Mr Barber might have used a double negative towards the end of that sentence. He might want to just rephrase the last sentence to make it a bit clearer.

Mr BARBER (Northern Metropolitan) — That is good advice. I am reading the explanatory memorandum. It says that the operative act that this relates to is the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997. Does that mean that this bill will not affect anybody except those who were found not guilty in 1997 or later?

Hon. J. M. MADDEN (Minister for Planning) — I am advised that prior to 1997 people were found not guilty by reason of insanity, and I am advised that since 1997 they have been found not guilty on a similar basis by reason of mental impairment.

Mr BARBER (Northern Metropolitan) — Does that mean that people who may have killed someone and were found not guilty prior to 1997 can still be accredited to drive taxis?

Hon. J. M. MADDEN (Minister for Planning) — I am advised that they are now deemed to be one and the same thing.

Mr BARBER (Northern Metropolitan) — Well, they may be deemed to be one and same. Maybe the minister just has to point me to the right clause of the bill itself, because the explanatory memorandum is referencing a specific piece of legislation. Can the minister just point me to the bit of the bill that says that that gives it the backwards-moving effect that he has just described — backwards in time?

Hon. J. M. MADDEN (Minister for Planning) — I am advised that it is in clause 9 of the bill.

Mr BARBER (Northern Metropolitan) — Can the minister just refer me to the particular line?

Hon. J. M. MADDEN (Minister for Planning) — If we go to clause 9, I will be able to locate it for Mr Barber in a moment. I am advised it is in clause 9(b)(iii), which says:

> … the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 of not guilty because of mental impairment …

Has Mr Barber got that one there?

Mr BARBER (Northern Metropolitan) — Perhaps there is some other section of the Transport Act that brings in the other thing that the minister is referring to, but I am still seeing a reference to only one particular act.

Hon. J. M. MADDEN (Minister for Planning) — I may not have made myself clear to Mr Barber, but I understand that the 1997 act covers what the other definition was. I think both definitions of insanity and mental impairment are covered in that act. In a sense the 1997 act catches what went before it.

Mr BARBER (Northern Metropolitan) — This also brings in a number of other types of offences — tier 1 offences, tier 2 offences and so forth. Tier 2 offences include fraud, which is probably not a violent offence. Let me put it to the minister like this: are those tier 2 offences already reasons why people must not be accredited, or is this bill having an additional effect?

Hon. J. M. MADDEN (Minister for Planning) — I am advised that tier 2 offences are not necessarily mandatory but are presumptive.

Mr BARBER (Northern Metropolitan) — Looking at clause 5, can the minister assure me that will be only in relation to tier 1 offences, and can he tell me whether

that regime is different from the way the act currently works?

Hon. J. M. MADDEN (Minister for Planning) — In relation to the word 'regime' which the member used, my understanding from the advisers is that there are two regimes. I understand there is the driver regime and the industry regime. There are two sets of regimes, so it depends which one Mr Barber is referring to specifically.

Mr BARBER (Northern Metropolitan) — I can clarify it now. Clause 5 is about the mandatory refusal of accreditation. Clause 6 is about presumption in favour of refusal of accreditation, which would still allow for some sort of appeal mechanism. Under the second one — presumption in favour of refusal of accreditation — we find those tier 2 offences which include fraud, as I said. Is that new, or is there already a presumption in favour of refusal of accreditation for tier 2 offences in the current act that we have not yet amended?

Hon. J. M. MADDEN (Minister for Planning) — I understand Mr Barber is talking about the industry regime in relation to that one.

Mr Barber interjected.

Hon. J. M. MADDEN — Yes, but, as I said, there are two regimes. I understand that the reference is in relation to the industry regime, and there is already presumptive refusal in the industry regime for that.

Mr BARBER (Northern Metropolitan) — Where clause 6 says 'as a provider of taxicab network services', does that refer to the guy who owns the plate, not the driver?

Hon. J. M. MADDEN (Minister for Planning) — That is right.

Mr BARBER (Northern Metropolitan) — It is a new provision. Otherwise it would not be mentioned in the bill that a guy who wants to own a plate cannot have been convicted of fraud.

Hon. J. M. MADDEN (Minister for Planning) — I understand this provision is consequential, based on clause 4. It is not a substantive provision; it is consequential.

Ms HARTLAND (Western Metropolitan) — I have a number of questions. When was this bill first drawn up?

Hon. J. M. MADDEN (Minister for Planning) — Does Ms Hartland have a number of questions or does she want to ask me one question at a time?

Ms HARTLAND (Western Metropolitan) — Why is debate on the bill so rushed? Why has the bill not gone to the Scrutiny of Acts and Regulations Committee? I do not quite understand why we have suddenly been landed with this bill with no time to consult.

Hon. J. M. MADDEN (Minister for Planning) — I think the issue here is that obviously there was a loophole which was brought to the attention of the public. As Mr Pakula suggested in his speech, this is a response to the recognition that that loophole exists. In a sense that was not only a surprise within the industry but also a surprise to the public. This legislation has been developed recently, and no doubt it has been concertinaed in terms of its passage through the Parliament in order to overcome the existence of that loophole.

Ms HARTLAND (Western Metropolitan) — I think my question is a bit more specific than that. When we were speaking to an adviser this afternoon we were told that the legislation had been drawn up before this was mentioned in the press. I am asking how long ago this legislation was drawn up.

Hon. J. M. MADDEN (Minister for Planning) — I am not able to give the exact details of whether it was drawn up in a particular form or drafted in a particular way and has been sitting on a shelf, but I do know the significant decision to bring it into the Parliament has only recently been made.

Ms HARTLAND (Western Metropolitan) — Does that mean that in fact it was legislation the government wanted, or was the legislation the government formulated in response to media concern?

Hon. J. M. MADDEN (Minister for Planning) — I think neither is an appropriate description of the need to introduce the bill. It was not introduced as a response to the media so much as in recognition of a loophole that has allowed people to obtain licences who may not have been expected to be able to obtain a licence. The legislation was introduced into the Parliament to overcome that loophole. In terms of whether or not it had been drafted in any form prior to this coming to public notice, I do not believe that was the case. I understand this was really developed in response to the recognition of the loophole. Whether that aligns with the response that came through the media, or the media's response to it, I am unaware, but I am

conscious of the fact that this legislation seeks to overcome that loophole.

The DEPUTY PRESIDENT — Order! Just for the benefit of the committee, the minister has used the word 'loophole' quite a number of times. What exactly is the loophole?

Hon. J. M. MADDEN — I used the term generically. It is really a reference to the way in which Mr Pakula described it tonight, which is that an individual may be able to obtain a drivers licence after having been involved in a murder. As Mr Pakula mentioned in his contribution, it is seen as — and I use the word loosely — a loophole under which a person can drive after having been involved in a murder. No matter how you describe it, that is the issue we are trying to overcome here by introducing this legislation.

The DEPUTY PRESIDENT — Can I ask whether, if the same gentleman tried to be a train driver, it would be a loophole that would also disqualify him from being a train driver?

Hon. J. M. MADDEN — I am informed that the same provisions do not exist for a train driver because train drivers do not come into ready contact with the public. The critical difference in this instance is not so much a person's ability to hold the wheel or operate the machine, but the fact that they come into contact with the public.

The DEPUTY PRESIDENT — It says a lot for rehabilitation and our thoughts on mental illness.

Ms HARTLAND (Western Metropolitan) — I find that quite fascinating. Can the minister tell us roughly when the government discovered the loophole?

Hon. J. M. MADDEN (Minister for Planning) — I am advised that the answer to that is during the course of this year.

The DEPUTY PRESIDENT — With respect, I think the question is fairly specific, and the answer is extremely clever. I do not think it is helpful to the committee if members asking proper questions cannot get proper answers. Clearly Ms Hartland's question went to whether or not this legislation has been drafted following the media reports or following some report to the government of the Victorian Civil and Administrative Tribunal decision at some other point in time, or whenever. I think Ms Hartland deserves a better answer than 'Sometime this year', given we are now in December.

Hon. J. M. MADDEN (Minister for Planning) — To assist Ms Hartland, if I understand her request correctly, there are three critical times that she is seeking clarification on. I understand Ms Hartland wants to know about when — and I use the word loosely — a loophole was understood to exist; whether that was before or after the Victorian Civil and Administrative Tribunal decision and whether legislation was in some way drafted either before or after the VCAT decision. I understand they are the sorts of matters that Ms Hartland is seeking to have clarified.

I do not have specific dates, but I will try to do justice to that request by giving some order of those dates. I understand the regime was introduced in the middle of last year. I understand the individual who no doubt much of this legislation is based on was refused a licence earlier this year. Legislation was drafted in some form in and around that time. That individual sought to go to VCAT, and I understand the VCAT decision was at the end of October. Hence we have the legislation with us at this point in time.

Ms HARTLAND (Western Metropolitan) — I have a question about consultation. Yesterday I contacted the Transport Workers Union, the Victorian Taxi Association and the Mental Health Legal Centre about this bill. None of them were aware of the bill. Can the minister advise me of any other groups that he may have consulted about this legislation?

Hon. J. M. MADDEN (Minister for Planning) — I am advised there were no other groups that were consulted externally, but in relation to the composition and development of the bill, consultation was done internally.

Mr BARBER (Northern Metropolitan) — It was interesting to hear that the VCAT case was in October. We have now pretty much determined that the legislation was meant to be introduced in the lower house this week anyway. The government has now decided it must pass the upper house this week, and yet we have just been told that at no stage during any of that process was time made available to discuss it with the Transport Workers Union, the taxidrivers association or, if I heard the minister correctly, anybody else.

I have one final question or group of questions, depending on how the minister goes. It relates to clause 10, headed 'Qualifications for accreditation', which is set out on page 8 and amends section 167(1), and states in part:

> (1) The Director may require an applicant for driver accreditation to do all or any of the following —

…

(c) to pass tests specified by the Director including tests relating to —

(i) the applicant's fitness to drive a vehicle; or

(ii) the applicant's medical condition.

I have a two-part question, if the minister can juggle both parts at the same time. Is proposed section 167(1)(c)(ii), which deals with an applicant's medical condition, in the current act? If it is, can the minister tell me what are the sorts of tests specified by the director on a regular basis in relation to the medical conditions of applicants?

Hon. J. M. MADDEN (Minister for Planning) — Can Mr Barber refer me to the details of the lines he is referring to again?

Mr BARBER (Northern Metropolitan) — It is in clause 10 on page 8 of the bill. At line 14 proposed section 167(1)(c)(ii) refers to 'the applicant's medical condition'. Is that a new requirement? Is that a new ability of the director to require applicants to submit to tests in relation to their medical condition?

Hon. J. M. MADDEN (Minister for Planning) — I am advised that that is there already.

Mr BARBER (Northern Metropolitan) — Is it just in this bill because of renumbering or because things have been moved around? Can the minister tell me then what are the sorts of tests a director regularly specifies that applicants must go through in relation to a medical condition?

Hon. J. M. MADDEN (Minister for Planning) — I sort of understand the track the member is wanting to go down, but I ask that he phrase that question a little more clearly. There are all sorts of medical conditions that are tested — —

Mr BARBER (Northern Metropolitan) — That is what I am asking. What does the director ask for now?

Hon. J. M. MADDEN (Minister for Planning) — Specifically or generically?

Mr BARBER (Northern Metropolitan) — Specifically. What sorts of medical tests does the director routinely require of applicants? The minister has told me he already has the power to do it under the act. What sorts of things does he ask about?

Hon. J. M. MADDEN (Minister for Planning) — I am advised that initially it is predominantly an eyesight test. Other tests are relative to what might be revealed by the applicant on their application form — if they refer to any medical condition.

Mr BARBER (Northern Metropolitan) — They do not relate to physical health and certainly not mental health. You do not routinely test or ask about people's mental status. Are they asked whether they are depressed and on medication? Are they asked whether they have schizophrenia and take medication?

Hon. J. M. MADDEN (Minister for Planning) — Can I just clarify Mr Barber's question. Who is asking?

Mr BARBER (Northern Metropolitan) — The director.

Hon. J. M. MADDEN (Minister for Planning) — I am advised that before you can apply you have to have a medical check. You have to undertake a full health check. It is really about what comes out of that health check that might require further information. In some ways it is very much reliant on the practitioner who does the initial check and what is noted from that in the paperwork that proceeds from that.

Clause agreed to; clauses 2 to 18 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

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

That the bill be now read a third time.

In doing so, I wish to thank the members of the chamber and the advisers for their respective contributions.

Motion agreed to.

Read third time.

BUSINESS OF THE HOUSE

Adjournment

Mr LENDERS (Treasurer) — I move:

That the Council, at its rising, adjourn until a Tuesday at 3.00 p.m. to be nominated by the President which shall be notified in writing to each member of the Council.

I will speak very briefly to this motion. It is an unusual motion; normally we do set a date and time. There are two issues about this that are unusual. Firstly, the

Auditor-General has advised that it is difficult for him to table reports out of session if the house has a definitive time for it to resume. Normally we publish a schedule to say the house will resume in early February. This motion leaves the date to the discretion of the President so that the Auditor-General can table reports.

Secondly, the motion is unusual because it specifies the time of 3.00 p.m. To be absolutely transparent it is because it is the government's intention that when the Parliament resumes the Legislative Assembly will have, as it did last year, a statement of government intentions, and assuming the President calls the resumption on the same day as the Speaker, members of this house can then attend, as they could last year, for the statement of legislative intent.

I will not promote the arguments for either of these propositions. I think it stands for itself that the Auditor-General should be able to table reports; that is unequivocal. In relation to the second reason we had the argument last year, and without re-prosecuting the argument, that is the proposition. If this motion is carried in this form, then that is what can happen. If someone moves an amendment to have the house resume at a day and time, then clearly there would be no option to attend the Assembly for the statement of government intentions. I think there are two simple propositions in this motion, and that is the reason I have moved it.

Mr BARBER (Northern Metropolitan) — The Greens understand the proposition that the Leader of the Government has put forward. We support the business of turning up for the statement of government intentions, as we did this year. With regard to the Auditor-General's tabling of reports, I have discussed that with him. I offered to go around to his house on Boxing Day and get my briefing there if it was really necessary, and he said he would oblige if there were such reports, but I do not think that is going to be strictly necessary. We certainly support this motion.

Mr D. DAVIS (Southern Metropolitan) — The opposition has its doubts about the importance and contribution that the statement of government intentions makes. We think this is a pompous occasion on which the Premier seeks to strut and display himself. Many of the aspects on that list of government intentions have indeed not been met. Let us be frank: the climate change bill was in that statement of government intentions this year — and that is just in my portfolio area. I do not want to take up the time of the house at this hour of the night — —

Ms Lovell interjected.

Mr D. DAVIS — Yes, rooming houses — I could go on. The statement of government intentions has been a hollow document and, as I have said, largely an opportunity for the Premier to puff himself up, as is very much part of his personality.

At the same time I take up the point Mr Barber has made about the tabling of Auditor-General's reports. I have no difficulty with the Auditor-General's view. Personally I am in favour, and the opposition has traditionally been in favour, of reports being tabled during Parliament. We believe that is a preferable way to do it. Given the hour and the length of the sitting this week, I do not believe it is necessary to have an argument about this, but we do register the fact that we think the government is pushing the envelope. Nonetheless on this occasion we will not oppose it.

Motion agreed to.

Business interrupted pursuant to standing orders.

ADJOURNMENT

The ACTING PRESIDENT (Mr Pakula) — Order! The question is:

That the house do now adjourn.

V/Line: Kyabram ticketing

Ms LOVELL (Northern Victoria) — The matter I wish to raise is for the attention of the Minister for Public Transport regarding the redemption of senior and pensioner travel vouchers on Kyabram V/Line bus services. My request to the minister is for her to ensure that senior and pensioner vouchers can be redeemed by passengers as they board Kyabram V/Line bus services, as an interim measure, whilst V/Line continues to try to engage a ticketing agent in Kyabram.

Victorian seniors card holders receive two off-peak travel vouchers from V/Line each year, and pension card holders also receive one free economy class, return-trip voucher each year for travel on V/Line services. Kyabram has been without a V/Line ticketing agency since 31 May this year. V/Line has combated this situation by allowing travellers boarding V/Line bus services in Kyabram to ring the V/Line booking number to book their ticket and then pay when they get on board the bus. Unfortunately the senior and pensioner vouchers are not able to be redeemed when boarding V/Line services in Kyabram.

In effect this means seniors and pensioners wanting to redeem their vouchers must make their way to the nearest manned ticketing agency. The closest V/Line ticketing agencies are in Merrigum, a 30-minute return trip, and Girgarre, a 42-minute return trip. For many seniors and pensioners, making their way to the nearest ticketing agency to redeem their vouchers is not only inconvenient, it is not even possible. Therefore I request the minister ensures senior and pensioner vouchers can be redeemed by passengers as they board Kyabram V/Line bus services as an interim measure whilst V/Line continues to try to engage a ticketing agent in Kyabram.

John Valves Pty Ltd: workers entitlements

Mr KAVANAGH (Western Victoria) — My adjournment matter is for the Acting Minister for Industry and Trade and relates to the closure of John Valves in Ballarat. Former workers at John Valves have told me that although payments for salary sacrifice, superannuation and even for maintenance were deducted from their wages, at least some of those payments were never forwarded to the appropriate funds. I ask the minister to investigate and, if these claims are correct, take action to see that these workers are expeditiously compensated from the proceeds of the liquidation without having to take legal action. I also ask that he take action to prevent such a situation happening again.

Gaming: licences

Mr O'DONOHUE (Eastern Victoria) — I raise a matter this evening for the attention of the Minister for Gaming, Tony Robinson, and it concerns the allocation of gaming machine licences post-2012. There appears to be a great deal of uncertainty in the community about the position for clubs and community groups post-2012 and their ability to retain their gaming machines. These gaming machines are critical to the viability of many of these clubs. Clubs such as the Bairnsdale Club, the Pakenham Racing Club, the Orbost Club, the Monbulk Bowling Club, the Cardinia Club, the Maffra Community Sports Club, the Lakes Entrance Bowls Club and the Pakenham Sports Club have all made representations to me about the importance of the gaming machines to their financial viability.

Indeed the Pakenham Sports Club, in a meeting with me, has described the benefits it has been able to distribute to the local community, such as assisting with the construction of the Beaconsfield community centre in O'Neill Road, assisting with the junior footy club, putting lights on the footy club oval, and a range of other activities. The Monbulk Bowling Club similarly has described to me the benefits it distributes to the local community. It is a focal point for social life in Monbulk. Without the electronic gaming machines, those clubs would struggle to remain viable and would struggle to make the distributions to other community groups as they currently do.

This is not just an issue for post-2012; this uncertainty is affecting investment plans now — for example, Monbulk Bowling Club has plans to further renovate its club, but those plans have been put on hold as a result of the uncertainty that exists about its future income streams. There is no need for this uncertainty. The government has created an unnecessary issue that is affecting the community sector heavily.

The action I seek from the minister is to resolve this problem as soon as possible. This is not an issue for next year or the year after; it is affecting investment and clarity now for these clubs. I ask the minister to deliver certainty to those clubs and to make sure that whatever decision is made about the allocation of licences post-2012, community-based clubs should be given access to electronic gaming machines so that they can continue to serve their communities in the fantastic fashion that they currently do.

Water: Tasmanian pipeline

Mrs COOTE (Southern Metropolitan) — My adjournment matter this evening is for the attention of the Minister for Water, Tim Holding. Kenneth Davidson from the *Age* newspaper has been running a long campaign on transferring water that is in plentiful supply in Tasmania across Bass Strait to Victoria's water storage facilities. He wrote an excellent extensive article on 1 December in the *Age*. The proposed process would take water from Tasmania's lakes, managed by Hydro Tasmania, and let the water gravity-fall in a pipeline across Bass Strait into Melbourne's water grid or alternatively into the Murray-Darling system. There is already power infrastructure across Bass Strait between Tasmania and Victoria, so there is a precedent for this, and this water would be far cheaper than the proposed desalination plant. There has been denial by the Victorian government that this proposal has merit, and it has been said that Tasmania does not want us to have its water, which is currently running out to sea.

This week there has been a vigorous water debate in the federal Parliament on water and on this issue. Senator Steve Fielding from the Family First Party actually visited Hydro Tasmania and asked it if they would be happy to send their water to Victoria. The answer — surprise, surprise — was yes, it would be happy. According to Senator Fielding's findings from

Hydro Tasmania, the cost of doing this would be $2.5 billion for the plant and $40 million per year for operational costs. This is to be compared to the hugely expensive desalination plant, which is $3.1 billion in plant costs and $100 million in operating costs. There seems to be a conspiracy by the government about hiding the benefits of this scheme to drought-affected Victorians The action I seek is for the minister to conduct an extensive feasibility study into the viability of providing water to Victoria from Tasmania and, in the interests of open and accountable government, distributing the results to all Victorians as a matter of urgency.

Torquay: police station site

Mr KOCH (Western Victoria) — My matter is for the attention of the Treasurer and concerns government policy on the disposal of surplus Crown land and buildings. The land and property group of the Department of Treasury and Finance has responsibility for managing the sale of surplus government property. Government policy requires surplus land or buildings to be offered for sale at the valuer-general's assessed market value, firstly, to other government agencies, and then to local government municipalities before the property is offered for public sale.

Since the opening of the new multimillion-dollar police station at Torquay on 26 October 2007, the old police station located at 18 Price Street has remained unoccupied. The Department of Justice has declared the premises surplus to police needs and has instructed the land and property group to sell the property, which is expected to be sold in early 2009. I understand that no other government agency has expressed interest in the old police station and that it has not been offered to the Surf Coast shire for community use, although expressions of interest have been sought.

The Torquay and District Historical Society wants the old police station retained for the benefit of community users and has been seeking approval since before the opening of the new police station to use part of the premises as a repository for the storage and display of local history artefacts. The society is a small and active group of local residents who are passionate about preserving their local history and have amassed a large collection of photographs, documents, maps and memorabilia of the district's early history, but due to the high cost of coastal properties it is not possible for this non-profit community group to buy the building without government assistance. The site of the old police station was originally owned by the Torquay Improvement Association and was sold some 50 years ago to the state government at a very reasonable price so that a police station could be built to service the Torquay community.

It is the community's wish to retain the site for community use and for the old police station to become part of the cultural and recreational hub of Torquay. However, despite a concerted effort from the Torquay community to retain the building for community use, requests have been denied by a government that is only interested in capitalising on the high value of this coastal land. My request is for the Treasurer to reserve the old Torquay police station for community use and offer this surplus government property to the Surf Coast shire for community uses.

Planning: Bruces Creek

Ms TIERNEY (Western Victoria) — My adjournment matter is for the Minister for Planning, Justin Madden. It is in relation to the Creating Better Places program and an application for funding by the Golden Plains Shire Council for the Bruces Creek open space corridor project.

I had the opportunity of having a tour of the area several months ago with members of the shire. They were able to show me firsthand exactly what this project is about. Essentially it is a development that will eventually join both parts of Bannockburn. As we know, Bannockburn is one of the fastest growing towns in one of the fastest growing shires in Victoria. This development will create open spaces. There are a number of other sporting facilities and a number of other projects that we have got under way in that area.

My adjournment matter is simply to ask the minister to seriously consider the funding of the Bruces Creek open space corridor project from the Creating Better Places program as it will have enormous benefits to the Golden Plains shire.

Mr Koch interjected.

Ms TIERNEY — You have got the wrong one, Mr Koch. We see this as a fundamental starting block to a whole range of other things that we have got under way in the area.

WorkCover: audiology claims

Mr RICH-PHILLIPS (South Eastern Metropolitan) — I wish to raise a matter for the attention of the Minister for Finance, WorkCover and the Transport Accident Commission. It goes to the issue of audiological services provided through the Victorian WorkCover Authority.

At the beginning of this year the VWA proposed a new structure for the funding of audiological services, which led to a considerable outcry from the audiologists and the threat of the withdrawal of the services, given the unworkable nature of the proposed structure that was being put in place. In February the VWA took a step back from that proposal and reconsidered its position, and it undertook consultations with the sector to come up with a better structured proposal.

However, the new proposal went to tender at the end of this year and is to come into effect early next year. The level of fees that has been set by the VWA have been described by the Audiological Society of Australia as financially unviable. The level of fees that has been set under this new tender arrangement is of great concern to the people providing audiological services to the VWA, particularly in relation to the fact that VWA in future will only pay wholesale prices for hearing aids with a separate fitting fee to be paid to the provider.

The providers have advised that the fee that has been set for either a binaural or monaural fitting will be insufficient to cover the costs associated with the fitting. Equally, the $250 management fee that is proposed to cover VWA hearing clients is also regarded by the industry as too low to cover the costs.

We have reached a situation where the professionals in the audiology area are threatening to withdraw the services or not provide services to the VWA as a consequence of this new fee regime that is being proposed. Allied to that have been complaints about the manner in which the tender process has been undertaken to strike a panel of audiology providers, with allegations that documents have not been provided to bidders and that bidders have, as a consequence, submitted uncompliant bids because they have not been provided with all the relevant information by the VWA.

There are a number of issues surrounding this latest proposal for the provision of hearing services through the VWA. What I now seek from the minister for finance is his engagement in the process. Clearly the provision of hearing services for WorkCover patients is critical, and the minister needs to be involved to ensure that this matter is resolved.

Moreland: elections

Mr FINN (Western Metropolitan) — In raising my adjournment matter this evening might I wish members a happy Christmas and a very safe Christmas as well.

I wish to raise a matter this evening for the Minister for Local Government. It concerns a letter that I have received today from the former mayor of the City of Moreland, Cr Joe Caputo, who was mayor until last Saturday when he lost his seat. The letter is dated 28 November 2008, and it is addressed to a Mr C. Donnelly, who happens to be the state president of the Australian Labor Party, Victorian branch, 360 King Street, West Melbourne, Victoria, 3003. It begins:

> Dummy candidates in Moreland City Council elections
>
> At council's meeting on 12 November, the motion below, moved by Cr Jo Connellan and seconded by Cr John Kavanagh was carried.
>
> That council write to the state president of the Victorian ALP, Mr Charlie Donnelly, with copies to all local parliamentary members (upper and lower house, all parties) expressing council's regret:
>
> (a) that the conduct of the current Moreland council election has been overshadowed by the use of stooges by supported ALP candidates, which has seriously undermined the integrity of the democratic process; and
>
> (b) that the ALP offered many more candidates than available positions, and did not indicate to the electorate any preference order.
>
> In accordance with resolution (CRJC13), I so advise.

I am sure the President would understand and I am sure the minister would understand that it is absolutely important that we maintain the integrity of elections, that we maintain the public faith in the democratic process that sees councillors elected, that sees members of this house elected. It is important that political parties are not seen to be sullying the waters, as it were, as it would seem the Moreland council is suggesting the ALP is doing on this occasion. I should point out that Mr Caputo is a member of the ALP, so he would probably have a better knowledge than most of the shenanigans to which he referred.

I ask the Minister for Local Government to conduct a full, independent inquiry into this matter. I believe this is only scratching the surface; perhaps he might also like to look at the goings-on in Brimbank up until the weekend. However, my main request of the minister is for a full inquiry into the allegations made in this letter by former councillor Caputo in his role as mayor of the City of Moreland and to make the findings of that inquiry public at his earliest convenience.

The PRESIDENT — Order! I make it clear that Mr Finn is only raising one matter, and that concerns Moreland, not Brimbank.

Kyneton hospital: obstetric services

Mrs PETROVICH (Northern Victoria) — My adjournment matter is for the Minister for Health. I raise some serious concerns with regard to obstetric services at Kyneton hospital. The hospital is a relatively new facility — it opened in 2003 — and although it does not have an emergency department it provides a number of valuable services to the Macedon Ranges community, the most notable of which is its obstetric service. This gives many mums and families the opportunity to have their babies locally, giving them the reassurance of proximity to family with the added benefit of causing less stress to fathers and to other children. Last year 170 babies were born at the hospital.

If this service is restricted or taken away, mums will have to travel to Bendigo or Melbourne to have their babies, and each of these options involves 50 minutes travelling time. Kyneton hospital has a history of providing excellent service in relation to obstetrics, and it recently won an award for its midwifery model. The great shame of the reduction in services is that it places stress on midwives and also on the overburdened ambulance services.

A meeting between hospital staff and administration in relation to this matter was recently cancelled without notice, and to my knowledge it has not been rescheduled. People have the right to know, and information should be provided. If this service is to be cut, the community and staff need to be told about that. I would hope the chief executive officer and all members of the board would be fully briefed on any proposal that would have an impact on the core business of Kyneton hospital, which is obstetric services, and that the local community that utilises those services would have the opportunity to gain an understanding of what will happen.

The action I seek from the minister is that he disclose to the community of Macedon Ranges and the staff of Kyneton hospital the status of the report on obstetric services and that as a matter of urgency he provide reassurances that there will not be a downgrading of obstetric services at the hospital.

Rail: level crossing safety

Mr DRUM (Northern Victoria) — My adjournment matter is for Minister for Public Transport, and it follows the release of a paper reporting that up to 93 per cent of Victoria's rail crossings are not up to the standards set by the government itself. This claim was made in a paper given at a road safety conference in September by the railway crossing safety manager of the Department of Transport, Terry Spicer. His comments were reported in the media recently. I checked the reported comments against the paper Mr Spicer presented, and they are accurate. I was surprised and stunned to read what he said.

Mr Spicer stated in his paper that there are hundreds of railway crossings where the rail and road signs and road markings do not comply with the 1987 rail safety standards, let alone the 1993 standards or the 2007 standards that improved upon them. Victoria has 200, 300 or 400 railway crossings that do not stack up to the 1987 standards, let alone the 2007 standards that are in place now. Mr Spicer went on to point out that railway crossings are only brought up to the latest standards when a major upgrade is approved. Unfortunately this government only approves a major upgrade when there is a major tragedy, as we saw with the Kerang accident last year.

My request is that the minister acknowledge Mr Spicer's paper and his recommendations and follow up by making sure every rail crossing in the state complies with the most recent safety standards. That is a very strong directive for the minister to be given by one of her own department's chiefs.

The Christmas and holiday period is upon us. We know the amount of traffic on Victoria's roads will increase as holiday-makers do what they do best — using the roads — and this will increase the risk of rail accidents. If literally hundreds of rail crossings continue to be unprotected because of the government's inability to act, there will be tragedies on our roads in the future.

The action I request of the minister is that she take on board Mr Spicer's recommendations and ensure Victoria's rail crossings are brought up to standard.

Mrs Coote — On a point of order, President, I wish everybody in the chamber, and indeed in Parliament House, a very happy and safe Christmas. I thank all staff — Hansard staff, the clerks, catering staff, gardening staff and everyone else for the enormous amount of work they do to keep this place going. I wish a happy and safe Christmas to everyone.

The PRESIDENT — Order! I am not clear whether that is a point of order. I will get back to the member on that next year.

Responses

Mr LENDERS (Treasurer) — Thank you, President. I echo Mrs Coote's comments. At the risk of our all being up if I say 'Further to the point of order', I think she speaks well for us all.

There were 10 matters raised in the adjournment debate tonight, and I will comment on two of them. Mr Kavanagh raised an issue with me as Acting Minister for Industry and Trade regarding the workforce at John Valves, the access of its members to entitlements and what the state government could do to ensure that employees receive their maximum entitlements in the awful circumstances following the liquidation of the company. While this issue is probably one for the Minister for Industrial Relations, I will certainly get back to Mr Kavanagh on what the state jurisdiction can do. Many of these areas fall under the commonwealth jurisdiction, but it is an area that Rural Development Victoria has been working on with the company and the workforce for some period of time. As Acting Minister for Industry and Trade I will get back to Mr Kavanagh with a general government response, and my colleague Mr Hulls, the Minister for Industrial Relations, will respond to what relates to his area.

Mr Koch raised an issue with me as Treasurer. I will refer that to the Minister for Finance, WorkCover and the Transport Accident Commission. The government property Mr Koch referred to is in the minister's jurisdiction, but it is certainly in the same department. I will refer that issue and tonight's other eight adjournment items to the relevant ministers for their response.

I wish everybody a very happy festive season. President, as I conclude and the Clerk points me to the door, as a last gesture for the evening and in an enormous spirit of goodwill, I gave Mr Philip Davis a response today to an adjournment matter he raised last night. There is also a response to one for Ms Broad from earlier this year being tabled tonight.

The PRESIDENT — Order! Before I adjourn not only for the night but for the year, I place on the record my thanks to the house for its cooperation and work during the course of this year. I wish all members and staff, including Hansard, a merry Christmas and a happy New Year. Have a safe break, and we hope to see you all next year. The house now stands adjourned.

House adjourned 10.26 p.m.