The Governor
Professor DAVID de KRETSER, AC

The Lieutenant-Governor
The Honourable Justice MARILYN WARREN, AC

The ministry

Premier, Minister for Veterans’ Affairs and Minister for Multicultural Affairs .................................................. The Hon. J. M. Brumby, MP

Deputy Premier, Attorney-General and Minister for Racing .......... The Hon. R. J. Hulls, MP

Treasurer, Minister for Information and Communication Technology, and Minister for Financial Services ......................... The Hon. J. Lenders, MLC

Minister for Regional and Rural Development, and Minister for Skills and Workforce Participation ................................. The Hon. J. M. Allan, MP

Minister for Health ................................................. The Hon. D. M. Andrews, MP

Minister for Community Development and Minister for Energy and Resources ..................................................... The Hon. P. Batchelor, MP

Minister for Police and Emergency Services, and Minister for Corrections .............................................................. The Hon. R. G. Cameron, MP

Minister for Agriculture and Minister for Small Business .......... The Hon. J. Helper, MP

Minister for Finance, WorkCover and the Transport Accident Commission, Minister for Water and Minister for Tourism and Major Events .................................................. The Hon. T. J. Holding, MP

Minister for Environment and Climate Change, and Minister for Innovation ............................................................... The Hon. G. W. Jennings, MLC

Minister for Public Transport and Minister for the Arts ............... The Hon. L. J. Kosky, MP

Minister for Planning .................................................. The Hon. J. M. Madden, MLC

Minister for Sport, Recreation and Youth Affairs, and Minister Assisting the Premier on Multicultural Affairs .................... The Hon. J. A. Merlino, MP

Minister for Children and Early Childhood Development, and Minister for Women’s Affairs .......................................... The Hon. M. V. Morand, MP

Minister for Mental Health, Minister for Community Services and Minister for Senior Victorians ................................. The Hon. L. M. Neville, MP

Minister for Industry and Trade, and Minister for Industrial Relations. ... The Hon. M. P. Pakula, MLC

Minister for Roads and Ports, and Minister for Major Projects ......... The Hon. T. H. Pallas, MP

Minister for Education .................................................. The Hon. B. J. Pike, MP

Minister for Gaming, Minister for Consumer Affairs and Minister Assisting the Premier on Veterans’ Affairs .................... The Hon. A. G. Robinson, MP

Minister for 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 Train Services — Mr Atkinson, Mr Barber, Mr Drum, Ms Huppert, Mr Leane, Mr O’Donohue and Mr Viney.

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

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

Joint committees

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

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

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

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

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

Environment and Natural Resources Committee — (Council): 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 and Mr Scheffer. (Assembly): Ms Kairouz, 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 and Mr Scheffer. (Assembly): Mr Brooks, Mr Clark, Mr Donnellan, Mr Foley and Mrs Victoria.

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

Public Accounts and Estimates Committee — (Council): Mr Dalla-Riva, Ms Huppert, Ms Pennicuik and Mr Rich-Phillips. (Assembly): Ms 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 Tilley, 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 North.

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 Eideh, Mr Elasmar, Mr Finn, Mr Leane, Ms Pennicuik, Mrs Peulich, Ms Pulford, Mr Somyurek and Mr Vogels

**Leader of the Government:**  
Mr JOHN LENDERS

**Deputy Leader of the Government:**  
Mr GAVIN JENNINGS

**Leader of the Opposition:**  
Mr DAVID DAVIS

**Deputy Leader of the Opposition:**  
Ms WENDY LOVELL

**Leader of The Nationals:**  
Mr PETER HALL

**Deputy Leader of The Nationals:**  
Mr DAMIAN DRUM

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

† Appointed 3 February 2009
‡ Resigned 9 January 2009
FRIDAY, 27 NOVEMBER 2009

PAPER ............................................................................5757

STANDING ORDERS COMMITTEE

Reporting date ...........................................................5757

PARKS AND CROWN LAND LEGISLATION AMENDMENT (EAST GIPPSLAND) BILL

Statement of compatibility........................................5757
Second reading..........................................................5758

TRANSPORT LEGISLATION AMENDMENT (HOON BOATING AND OTHER AMENDMENTS) BILL

Statement of compatibility........................................5759
Second reading..........................................................5764

PLANNING AND ENVIRONMENT AMENDMENT (GROWTH AREAS INFRASTRUCTURE CONTRIBUTION) BILL

Statement of compatibility........................................5768
Second reading..........................................................5769

FIRE SERVICES FUNDING (FEASIBILITY STUDY) BILL

Statement of compatibility........................................5774
Second reading..........................................................5776

EDUCATION AND TRAINING REFORM AMENDMENT (OVERSEAS STUDENTS) BILL

Statement of compatibility........................................5777
Second reading..........................................................5779

SUMMARY OFFENCES AND CONTROL OF WEAPONS ACTS AMENDMENT BILL

Statement of compatibility........................................5781
Second reading..........................................................5788

SERIOUS SEX OFFENDERS (DETENTION AND SUPERVISION) BILL

Statement of compatibility........................................5790
Second reading..........................................................5797

LAND (REVOCATION OF RESERVATIONS AND OTHER MATTERS) BILL

Second reading..........................................................5800
Committee.................................................................5809
Third reading............................................................5817

QUESTIONS WITHOUT NOTICE

Victorian Funds Management Corporation:

governance ...............................................................5817
Government: regulatory burden ................................5817
VicForests: sawlog exports ........................................5818
Climate change: government initiatives .........................5818
Children: protection ...................................................5819
Climate change: carbon pollution reduction scheme ............5819
Planning: West Maddingley .........................................5820
Desalination plant: water pricing ................................5820, 5821
Victorian government business offices: appointments ..........5821

STATE TAXATION ACTS FURTHER AMENDMENT BILL

Second reading..........................................................5821
Third reading............................................................5824

VALUATION OF LAND AMENDMENT BILL

Second reading..........................................................5824
Friday, 27 November 2009

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

PAPER

Laid on table by Clerk:

Subordinate Legislation Act 1994 — Minister’s exemption certificate under section 9(6) in respect of Statutory Rule No. 140.

STANDING ORDERS COMMITTEE

Reporting date

Mr DALLA-RIVA (Eastern Metropolitan) — By leave, I move:

That the resolution of the Council of 10 September 2008, as amended on 13 November 2008, 31 March 2009, 30 July 2009 and 13 October 2009, requiring the Standing Orders Committee to inquire into and report by 30 November 2009 on the establishment of new standing committees for the Legislative Council, be further amended so as to now require the committee to present its report by 11 March 2010.

Motion agreed to.

PARKS AND CROWN LAND LEGISLATION AMENDMENT (EAST GIPPSLAND) BILL

Statement of compatibility

For Mr JENNINGS (Minister for Environment and Climate Change), Hon. M. P. Pakula tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Parks and Crown Land Legislation Amendment (East Gippsland) Bill 2009.

In my opinion, the Parks and Crown Land Legislation Amendment (East Gippsland) Bill 2009, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill will:

- create new park and reserve areas in East Gippsland and elsewhere under the National Parks Act 1975 and the Crown Land (Reserves) Act 1978;
- insert transitional and other provisions in the National Parks Act 1975 and the Crown Land (Reserves) Act 1978 associated with the creation of the new park and reserve areas;
- deem the new reserves under the Crown Land (Reserves) Act 1978 to be ‘restricted Crown land’ under the Mineral Resources (Sustainable Development) Act 1990;
- repeal redundant or spent provisions in, and make other miscellaneous amendments to, the National Parks Act 1975 and the Crown Land (Reserves) Act 1978.

Human rights issues

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

Section 12 — freedom of movement

Section 12 of the charter provides for the right for every person to move freely within Victoria and to enter and leave it and to have the freedom to choose where to live. It includes the freedom from physical barriers and procedural impediments.

It may be perceived that the creation of new park areas may limit the ability of a person to move freely within those areas. However, the bill does not create any restrictions on a person moving freely within the parks and reserves or within Victoria.

It may also be perceived that, because certain areas of land cease to be roads by virtue of clauses 5, 7(2) and 8(2) of the proposed schedule One AAA of the National Parks Act 1975 (inserted by clause 11 of the bill) and clause 3(d) of the proposed second schedule of the Crown Land (Reserves) Act 1978 (inserted by clause 21 of the bill), those provisions may limit access and the ability to move freely. However, those provisions simply change the status of the crown land. They do not create any restriction on persons moving freely in those areas of public land.

Therefore, the bill does not limit or restrict the scope of the rights under section 12 of the charter.

Section 19 — cultural rights

Section 19 provides for the right for Aboriginal persons to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

The bill does not deprive any Aboriginal person of a relationship with the subject land and is not intended to affect existing native title rights and interests. Therefore, there is no limitation or restriction of the cultural rights of Aboriginal persons in section 19 of the charter.

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.

In relation to the new park areas under the National Parks Act 1975, to the extent (if any) that an apiary licence or tour
operator licence constitutes some form of property right, clauses 2 and 3 of the proposed schedule One AAA of the National Parks Act 1975 (inserted by clause 11) provides for these to be saved.

Clause 3(c) of the proposed second schedule of the Crown Land (Reserves) Act 1978 (inserted by clause 21) provides, in relation to the new reserve areas under that act, that when the reserves are created, the land forming the reserves is deemed to be freed and discharged from all trusts, limitations, reservations, restrictions, encumbrances, estates and interests.

In relation to the new reserve areas, to the extent (if any) that various licences, permits and other authorities constitute some form of property right, clause 2 of the proposed second schedule of the Crown Land (Reserves) Act 1978 (inserted by clause 21) provides for these to be saved.

Therefore, there is no limitation or restriction of the right protected under section 20 of the charter.

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

It is not necessary to consider section 7(2) of the charter as all the human rights relevant to the bill are not limited by the proposed amendments.

Conclusion

I consider the bill is compatible with the Charter of Human Rights and Responsibilities because it does not limit or restrict any rights under the charter.

Gavin Jennings, MLC
Minister for Environment and Climate Change

Second reading

Ordered that second-reading speech be incorporated on motion of Hon. M. P. PAKULA (Minister for Industry and Trade).

Hon. M. P. PAKULA (Minister for Industry and Trade) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Parks and Crown Land Legislation Amendment (East Gippsland) Bill 2009 will add significant areas to the state’s parks and reserves system in East Gippsland and elsewhere. The bill fulfils key election commitments relating to the protection of forests in East Gippsland with no net loss of resources to the timber industry. It complements the government’s actions to protect areas of the river red gum forests of northern Victoria in the parks and reserves system.

Expanding the parks and reserves system in East Gippsland

The national parks of East Gippsland are a special part of Victoria’s park system. Snowy River and Errinundra national parks contain some of the most magnificent old growth forest and rainforest in the state, while Croajingolong National Park is renowned for its unspoiled coastal environments and wilderness coast.

The bill will amend the National Parks Act 1975 and the Crown Land (Reserves) Act 1978 to permanently protect an additional area of more than 45,000 hectares of East Gippsland’s forests. In particular, the bill will:

- add areas to Croajingolong, Errinundra and Snowy River national parks and create Tara Range Park under the National Parks Act; and
- create 12 new or expanded nature conservation reserves under the Crown Land (Reserves) Act.

Importantly, the new park and reserve areas have been designed to ensure that there is no net loss of resource for the timber industry and, consequently, no loss of jobs.

Included in the new park and reserve areas will be:

- significant areas of old growth forest, including the substantial areas of rainforest, old growth forest and threatened species habitat of the Goolengook block south of the existing Errinundra National Park;
- seven icon areas containing rainforest sites of significance, threatened species habitat and areas of mature forest; and
- a substantial link between Errinundra and Snowy River national parks, including areas of old growth forest.

The Mount Stewart Nature Conservation Reserve will also include significant native grassland values, including several significant species.

Tara Range Park will be established under schedule three to the National Parks Act and will include old growth forests of the Tara Range and the lower Snowy River. Deer hunting by stalking will be permitted to continue in this area.

The link between Errinundra and Snowy River national parks, together with the other additions to those parks and Tara Range Park, will create a continuous expanse of park across the Victorian Alps and into East Gippsland of more than 860,000 hectares.

In recognition of the substantial increase in the permanent reserve system, the informal reserve system in East Gippsland including special protection zones will be reviewed and amended as appropriate, ensuring that Victoria’s conservation commitments continue to be met.

Enhancing the parks system elsewhere

In addition to the East Gippsland park and reserve areas, the bill will add approximately 2400 hectares to eight other parks across the state: the Alpine, Brisbane Ranges, Grampians, Greater Bendigo, Great Otway and St Arnaud Range national parks, Lederderg State Park and the Otway Forest Park.

The largest additions are to the Alpine and Brisbane Ranges national parks. An area of 825 hectares at Mount Typo near the Wabonga Plateau will be added to the Alpine National Park, and an area of some 1185 hectares will be added to Brisbane Ranges National Park. This addition includes the catchment of the disused Lower Stony Creek Reservoir, which is surplus to the requirements of Barwon Water and contains significant vegetation and heritage features as well as a reference area. The bill will enable Barwon Water to
continue to control and manage the water-related infrastructure, such as the dam wall.

The additions to the Grampians, Greater Bendigo and St Arnaud Range national parks comprise areas with high conservation values and result from land purchases, or acquisitions arising from native vegetation clearance offsets elsewhere. There are also additions to the Great Otway National Park and the Otway Forest Park.

A small area will be added to Lederderg State Park, and an area of 0.7 hectares, which includes part of a house that straddles the current park boundary, will be excised. The National Parks Advisory Council supports the proposed excision.

Part of the boundary of Discovery Bay Marine National Park is currently defined as a fixed distance (500 metres) from the high-water mark. To provide greater certainty as to its location, the bill will now define this section of the boundary using coordinates.

The bill will also re reserve Aireys Inlet Recreation Reserve as a natural features reserve. The reserve will remain available for a range of passive recreational activities, and the Surf Coast Shire will continue as the committee of management.

Miscellaneous amendments

The bill will repeal several redundant or spent provisions in the National Parks Act and the Crown Land (Reserves) Act, and will update definitions in the National Parks Act relating to Wannon Water.

The bill will also amend the Mineral Resources (Sustainable Development) Act 1990 to specify the new reserves under the Crown Land (Reserves) Act as restricted Crown land.

Conclusion

The new park and reserve areas to be created by this bill will significantly enhance the state’s parks and reserves system, particularly in East Gippsland. It achieves this while maintaining access to timber resources to ensure a sustainable timber industry in that region.

I commend the bill to the house.

Debate adjourned on motion of Mr D. DAVIS (Southern Metropolitan).

Debate adjourned until Friday, 4 December.

TRANSPORT LEGISLATION AMENDMENT (HOON BOATING AND OTHER AMENDMENTS) BILL

Statement of compatibility

Hon. M. P. PAKULA (Minister for Industry and Trade) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

continue to control and manage the water-related infrastructure, such as the dam wall.

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Transport Legislation Amendment (Hoon Boating and Other Amendments) Bill 2009.

In my opinion the Transport Legislation Amendment (Hoon Boating and Other Amendments) Bill 2009, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of the bill

The bill contains:

- amendments to the Marine Act 1988, modelled on part 6A of the Road Safety Act 1986, aimed at addressing the problem of recreational vessel ‘hoon’ behaviour, including powers of seizure, impoundment, immobilisation, forfeiture and disposal of vessels involved in the commission of the offence of dangerous operation of a vessel under section 22 of the Marine Act 1988;

- amendments to the Crimes Act 1958 extending the offences in sections 318 and 319 of culpable driving causing death and dangerous driving causing death or serious injury to operation of a vessel;

- a further amendment to the Marine Act 1988 providing that systematic or persistent offenders against relevant maritime laws can be prohibited from being a director, secretary or officer concerned in the management of a body corporate involved in managing infrastructure relating to the operation, storage, mooring, berthing or placement of a vessel in the state, or operating vessels in the state;

- amendments to the Port Services Act 1995 to close gaps in the regulation of hazardous activities at the port of Melbourne and to give the Port of Melbourne Corporation certain enforcement powers to compel port users to comply with safety, security and environmental management requirements specific to the port, to deal effectively with unattended or abandoned property, and to give the corporation a limited set of powers to set conditions and regulate the provision of towage services;

- minor amendments to the Accident Towing Services Act 2007 (commenced on 1 January 2009) to address certain gaps that have been identified in the act and to ensure that it operates to meet its purposes;

- amendments to the Road Safety Act 1986 to allow VicRoads to disclose and use information that may be considered to be of a personal nature and commercially sensitive (i) to transport regulators and the Port of Melbourne Corporation to enable these bodies to undertake their statutory functions; (ii) to government departments and agencies to assist with verification of information in a driver licence or learner permit that is produced as evidence of a person’s identity; and (iii) for emergency response and management purposes; creating additional exemptions from the bus driver fatigue management scheme in the Road Safety Act 1986; and providing more flexible sanctions in respect of misconduct by suppliers of alcohol interlocks;
a further amendment to the Road Safety Act 1986 to confirm that the ‘hoon’ motor vehicle impoundment regime in part 6A applies to excessive speeding in a heavy vehicle;

amendments to the Road Management Act 2004 to provide VicRoads with express power to store vehicles which have been removed after being unlawfully parked on a freeway, and to recover the reasonable costs of removing abandoned property and other obstructions; amendments to support the government’s directions for an integrated and sustainable transport system in relation to roads and network-wide coordination;

an amendment to the Melbourne City Link Act 1995 to repeal a redundant provision;

amendments to the objects and functions of VicRoads, including transfer of responsibility for the EastLink project from the Southern and Eastern Integrated Transport Authority to VicRoads.

Human rights issues

Section 13(a) — privacy

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

Requirement that trainee tow-truck drivers carry permit and state name and address

Clause 33 amends the Accident Towing Services Act 2007 so as to require holders of tow-truck trainee permits driving or accompanying the driver of a tow truck to carry their permit (in circumstances where the act requires trainees to have such a permit) and to produce them on request to an authorised officer, member of the police, or the owner of an accident-damaged motor vehicle that is being, or is about to be, towed by the holder of the permit. It also requires tow-truck drivers who accompany a trainee while he or she is driving a tow truck to carry their certificate of accreditation and to produce it when asked to do so. Clause 34 requires trainee tow-truck drivers to state their name and address to an inspector for the purposes of determining compliance with the act, regulations or a service standard. These provisions may engage a person’s right to privacy because they require the disclosure of information of a personal nature. However, in my opinion, the right is not limited because any interference is lawful and not arbitrary. It is specifically authorised by the provisions in question, the information required and the persons to whom it must be disclosed are clearly specified, and disclosure is directly related to the effective monitoring of compliance and enforcement of the regulatory scheme governing towing services.

Port safety officers’ powers of entry, search and seizure relating to hazardous port activities

Clause 15 creates a new part VIIA to the Transport Act 1983. Divisions 2 and 3 contain port safety officers’ powers of entry and search of vessels and premises with and without consent, as well as powers to seize evidence relating to alleged contraventions of hazardous port activity regulatory provisions. Hazardous port activities encompass ship-to-ship transfers of dry or liquid cargoes, and welding or any other spark-producing activities, and are regulated by operational protocols, safety guidelines and other relevant directions. The powers of entry and search clearly engage the right not to have one’s privacy unlawfully or arbitrarily interfered with. In my opinion, the right is not limited, however, as the interference is neither arbitrary nor unlawful for the reasons set out below.

New sections 230P to 230U of the Transport Act 1983 clearly specify the circumstances in which the powers are available. The powers are only available for the important purpose of determining compliance with provisions controlling hazardous port activities, which are activities potentially causing a safety, security or environmental risk. Entry to premises is only available if a port safety officer believes on reasonable grounds that the entry is necessary because a person has contravened a hazardous port activity provision. There are also a range of safeguards in the legislation. The powers must not be used in respect of any part of the premises that is used for residential purposes, and the power of entry without consent can only be used when the premises are open for business. A number of provisions also seek to ensure the accountability and transparency of the process, requiring officers to identify themselves and to notify individuals of the purpose of the search and (where relevant) their right to refuse consent, and, in the case of a search conducted without consent, to notify individuals of the exact nature and extent of all searches and seizures undertaken. Finally, the provisions in division 4 provide detailed guidance regarding the use, retention, access and return of seized items, including a right of access to seized items (unless impracticable) and a three-month limit on retention that can only be extended by application to a Magistrates Court.

‘Hoon’ boating powers: warrant to enter premises or places

As part of the new powers addressed at dangerous ‘hoon’ boating behaviour and further to the various sanctions provided to the police and the courts, clause 5 creates a new part 7A of the Marine Act 1988 which in division 4 provides for the issue by a magistrate, on the application of a member of the police force, of a search and seizure warrant in respect of recreational vessels reasonably suspected to have been dangerously operated in contravention of the offence in section 22 of the Marine Act 1988. Such a warrant authorises police officers to enter premises or places, and use reasonable force to break into structures on premises or places, specified in the warrant in search of the vessel. These provisions engage the right of a person not to have their privacy or home unlawfully interfered with. However, in my opinion, the right is not limited as any interference is lawful and is not arbitrary for the following reasons.

Division 4 specifies in detail the circumstances in which a warrant can be granted by a magistrate (that the vessel is subject to a court order requiring it be surrendered and it has not been surrendered, or that a member of the police is empowered to seize the recreational vessel under the act), and provides a range of safeguards against arbitrariness. In particular, the applicant must believe on reasonable grounds that the recreational vessel sought is, or may be within the next 72 hours, at a specified premises or place and the magistrate must be satisfied of this; the information relied upon in support of the application for the warrant must be under oath; the warrant must state the purpose for the issue of the warrant, contain a description of the vessel authorised for seizure and give the address or description of the premises or place in respect of which the warrant is issued; a copy of the warrant must be provided to occupiers; and a detailed report
must be provided to the registrar of the Magistrates Court setting out whether and how the warrant was executed.

Reinstatement of the offence of excessive heavy vehicle speeding as a relevant offence for the purposes of the ‘hoon’ vehicle impoundment scheme

Clause 19 provides that an offence against section 65B of the Road Safety Act 1986 (prohibiting drivers of heavy vehicles from exceeding a speed limit by 35 km per hour or more) is a relevant offence under section 84C of the act when the vehicle is driven at 45 km per hour or more over the applicable speed limit or, if the applicable speed limit is 110 km per hour, at a speed of 145 km per hour or more. This amendment will restore the position that existed prior to the recent amendment of road rule 20 (which took effect on the commencement of the road safety road rules on 9 November 2009) in which such excessive speeding by a heavy vehicle was a ‘relevant offence’ for the purposes of the vehicle impoundment regime. The amendment removed excessive heavy vehicle speeding from the scope of road rule 20 and placed the offence in the act where it incurs a higher penalty. However, an unintended consequence of this amendment is that excessive heavy vehicle speeding no longer falls within the definition of a ‘relevant offence’. This situation will be rectified by the bill.

A driver of a motor vehicle who commits this offence will be subject to the scheme for impoundment, immobilisation and forfeiture under part 6A of the Road Safety Act 1986, which is substantially similar to the hoon boating provisions to be inserted into the Marine Act 1988 by the bill. Part 6A also provides for the issue of a search and seizure warrant to that I have just considered. Accordingly, clause 19, by extending the application of division 4, engages the right to privacy. However, for the reasons I have just given in respect of the ‘hoon’ boating provisions, I am of the view that clause 19 is neither an unlawful nor an arbitrary interference with an individual’s right to privacy and therefore does not limit the right.

Disclosure of personal information by VicRoads in certain additional circumstances

Clauses 20 and 21 engage the right to privacy by extending the circumstances in which information of a personal nature or commercially sensitive information held by VicRoads (such as a person’s name, address, date of birth, photograph and driver licence and registration information) may be disclosed. Such disclosure may be to:

(i) public transport regulators, to ensure the effective performance of a function or exercise of a power of the regulator in question (such as the prevention, investigation and prosecution of commercial offences);

(ii) to the Port of Melbourne Corporation to ascertain the ownership of abandoned or unattended vehicles in the port;

(iii) government departments or agencies (specified by notice published in the Government Gazette) in order to verify information in a driver licence or learner permit produced as evidence of identity to the government department or agency so as to prevent identity fraud; and

(iv) agencies or organisations involved in managing exceptional circumstances or in providing services to individuals involved in those circumstances if the minister makes a declaration published in the Government Gazette that exceptional circumstances exist that endanger, or threaten to endanger, the life, health or safety of any person or destroy or damage any property or the environment (such as natural disasters, fires, explosions, accidents, actual or threatened unlawful acts and disruptions to essential services).

The use or disclosure of information in these circumstances does not, in my view, limit the right to privacy because the interference is prescribed by law and is not arbitrary.

(i)–(iii) Disclosure of information to agencies

The release of information is, in each case, related and limited to the important purposes of the disclosure, and the bodies to which the information can be released are clearly specified. Importantly, it is intended that confidentiality agreements (which are dealt with under section 92(4) of the Road Safety Act 1986) must be entered into with any body to which information will be disclosed and this agreement will govern the use and any further disclosure of the information. It is a criminal offence to breach the terms of such an agreement.

(iv) Disclosure and use of information in emergencies

The disclosure and use of information of a personal nature for the purposes of responding to and managing exceptional circumstances will be limited by the need for the minister to formally declare by notice published in the Government Gazette that such circumstances exist and that it is appropriate to disclose and use information that would otherwise be protected from disclosure. The permitted purposes for which information can be disclosed and used are specifically limited to those directly related to the state’s response to the declared exceptional circumstances. It will also be mandatory for VicRoads to enter into a confidentiality agreement under section 92(4) with any agency or organisation to which information may be disclosed for the purposes of dealing with the exceptional circumstances.

Section 12 — freedom of movement

Section 12 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.

Port safety officers’ power to secure an area in order to undertake a search

Clause 15 creates a new section 230V in the Transport Act 1983 permitting a port safety officer to take all reasonable steps to secure the perimeter of any area of land entered pursuant to the entry and search powers in the act for a period they consider reasonable, if he or she believes on reasonable grounds it is necessary to do so for the purpose of ascertaining whether a relevant offence has been committed, or in order to preserve evidence of a contravention.

This provision engages the right in section 12, but in my view the limitations on the right are demonstrably justified under section 7(2) of the charter.
The right to freedom of movement is not regarded as an absolute right in international law and can be subject to reasonable limitations.

The power to exclude persons from a site is essential to port safety officers' function of investigating whether relevant offences have been committed and ensuring prosecution where this has occurred by preserving evidence relating to the commission of the offence.

The limitation imposed is directly and rationally connected to its purpose.

In my opinion, there are no less restrictive means available to achieve this purpose. It is relevant to note that the restriction on entry will only continue for as long as is required to undertake the necessary search or to preserve evidence.

Section 25(2)(k) and section 24(1) — self-incrimination and fair trial

Section 25(2)(k) provides that every person charged with a criminal offence is entitled not to be compelled to testify against himself or herself or to confess guilt. Section 24(1) provides 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.

Port safety officers' coercive questioning powers

Clause 15 creates new sections 230ZC to ZE in the Transport Act 1983 containing a requirement to assist port safety officers, when they are exercising powers of entry and search of vessels and premises to determine compliance with the hazardous port activity provisions, by providing information (orally or in writing), producing documents, or giving other reasonable assistance. It is an offence to fail to comply with such a request and the common-law privilege against self-incrimination is removed, replaced by a full (direct use and derivative use) immunity in respect of the admission of incriminating evidence in subsequent criminal proceedings or in any other action, proceeding or process that may make the person liable to a penalty.

Compelling an individual to assist an investigation regarding his or her compliance with the regulatory regime may engage the self-incrimination and fair trial rights. However, in my view, the complete bar against subsequent use of incriminating evidence in section 230ZE ensures that the fair trial rights in question are not limited. It ensures that there is no possibility that an individual would be compelled to assist in his or her own conviction for a relevant offence and further ensures that there is no adversarial relationship between the individual and the state when the individual is required to assist the port safety officer so as to attract the application of the self-incrimination right.

'Hoont' boating powers to impound, immobilise, forfeit and dispose of recreational vessels used in the commission of the offence of dangerous operation

The new part 7A to the Marine Act 1988, inserted by clause 5, provides police powers and court orders for the forfeiture and disposal of recreational vessels in certain circumstances, including following convictions for the offence of dangerous operation of a vessel under section 22 of the Marine Act 1988. To the extent that these provisions will operate to remove individuals' proprietary rights, the fair trial right in section 24(1) of the charter may be engaged. However, in my opinion, the right is not limited.

Section 62R provides for a forfeiture order requiring the surrender of a recreational vessel, which can then be sold by the Chief Commissioner of Police pursuant to section 62ZR. Section 62Z provides for the hearing of an application for a forfeiture order before the court with jurisdiction to hear and determine the relevant offence to which the application relates (namely, dangerous operation of a vessel under section 22 of the Marine Act 1988). This hearing satisfies the fair hearing requirements of section 24(1). Similarly, a power of disposal is provided to the Chief Commissioner of Police under section 62ZQ in the case of impounded or immobilised recreational vessels (and items) uncollected or not released two months or more after the date on which the vessel first became available for collection. However, the Chief Commissioner of Police must apply to the court for a disposal order in respect of the recreational vessel. Affected parties receive notification and a hearing under sections 62ZU and 62ZW. Additionally, when impoundment or immobilisation orders are made (pursuant to the process before a court in section 62Z), it is additionally required that the Chief Commissioner of Police notify the operator and the registered owner of the vessel that the vessel is liable to be disposed of if not collected or released within two months. In my view, this process also satisfies the requirements of section 24(1).

Extension of 'hoon' motor vehicle powers to the commission of heavy vehicle speeding offence

As I noted above, clause 19 extends the class of relevant offences that the 'hoon' motor vehicle scheme in part 6A of the Road Safety Act 1986 applies to, so as to include the offence in section 65B of the Road Safety Act 1986. The scheme in part 6A includes substantially similar police powers and court orders for the forfeiture and disposal of motor vehicles to those I have just considered. To the extent that these provisions also operate to remove individuals' proprietary rights, the fair trial right in section 24(1) of the charter may likewise be engaged. However, in my opinion, the right is not limited because the scheme in part 6A provides the same rights to be notified and to be heard at a hearing prior to the making of a forfeiture or disposal order and therefore satisfies the requirements of section 24(1) of the charter.
Section 26 — right not to be punished twice

Section 26 provides a person must not be punished more than once for an offence in respect of which he or she has already been finally convicted in accordance with law.

Immobilisation, impoundment and forfeiture orders under the hoon motor vehicle and recreational vessel provisions potentially raise an issue in respect of the right not to be punished twice since they may be considered to be penal in effect, and can only be made once a vessel operator has been found guilty of the relevant offence of dangerous operating under section 22 of the Marine Act 1988 or, by clause 19, the heavy vehicle speeding offence in section 65B of the Road Safety Act 1986 and where the individual has either one or two previous convictions (depending on the order applied for) for relevant offences committed in the previous three years before the commission of the latest relevant offence.

However, the right not to be punished twice is not engaged until a person is ‘finally’ punished, meaning that all possible penal consequences of the relevant offence have been exhausted. In my view, since an application for an immobilisation, impoundment or forfeiture order under both the ‘hoon’ boating and motor vehicle schemes can only be made within 28 days of sentencing for the latest relevant offence, it is properly regarded as part of final punishment directly consequent on conviction for the relevant offence and accordingly section 26 is not limited.

Section 20 — property rights

Section 20 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 the law when the deprivation occurs under powers conferred by legislation which is formulated precisely and will not operate in an arbitrary manner.

Port of Melbourne Corporation and port safety officers’ powers

In my opinion, clause 12 of the bill engages the property right. This clause inserts new sections 88Q to 88T into the Port Services Act 1995 permitting the Port of Melbourne Corporation to remove abandoned property from the port of Melbourne water or lands in certain circumstances and power to dispose of the thing by gift, sale or destruction. In my view, this does not limit the right because the circumstances in which the property can be exercised are clearly formulated and constrained by law, and a number of safeguards against arbitrary use are provided, including obligations to make reasonable inquiries to establish the identity of the owner and notify the owner in various ways, and provision for an application to the Magistrates Court for an order for payment of compensation.

Clause 15 creates a new section 230U in the Port Services Act 1995 which empowers port inspectors to seize anything found at a premises during a search that the port officer believes on reasonable grounds to be connected with a contravention of a hazardous port activity provision. In my view, this provision likewise engages but does not limit the right in section 20 because the circumstances in which property may be seized on entry of premises are clearly specified and safeguards against arbitrary use are provided. These safeguards include the provision of copies of documents as soon as practicable after seizure, provision of access to the thing while it is in the possession, or under the control, of the port officer (unless not practicable), and a limit (subject to extension by a Magistrates Court) of a three-month period during which the thing can be retained.

‘Hoon’ boating powers to seize, impound, immobilise, forfeit and dispose of recreational vessels used in the commission of the offence of dangerous operation

The property right is engaged by a number of clauses in the amendments to the Marine Act 1988 where individuals are deprived of their recreational vessel by the police powers and court orders of seizure, surrender, impoundment, immobilisation, forfeiture and disposal. However, in my view the right is not limited by these provisions, because the circumstances in which the powers in the bill may be applied are clearly articulated in the bill, and a range of safeguards against their arbitrary employment are provided.

In particular, the police powers in new section 62D of the Marine Act 1988 inserted by clause 5 may only be exercised on reasonable suspicion that the vessel has been involved in the commission of the relevant offence (of dangerous operation of a vessel contrary to section 22 of the Marine Act 1988); under section 62E 10 days written notice is required unless seizure is made within 48 hours of the alleged offence; under section 62A as soon as reasonably practicable after the exercise of impoundment or immobilisation powers in section 62G a notice must be given to the operator, registered person, possessor or hire owner providing relevant details of the action taken and reasons for it; pursuant to section 62K the decision to exercise the powers under section 62G must be reviewed by a senior police officer; under section 62M a person whose interests are affected by one of the police powers may apply at any time to the Magistrates Court to seek an order that the vessel be released; under section 62O the vessel must be released to an individual after the designated period (48 hours) if payment of designated costs is made; and pursuant to section 62P the Crown must repay the boat operator’s costs if the operator is found not guilty or charges are not proceeded with.

Pursuant to section 62T court orders for impoundment, immobilisation and forfeiture can only be made after notice of the application is given to all potentially affected persons; under section 62Z any person served with notice must be heard (and anyone whose interests may be substantially affected may be heard) at the hearing; pursuant to section 62Z(2) the order must not be made if the registered owner or operator can prove to the court’s satisfaction that the relevant offence was committed without their knowledge or consent; by section 62ZA a party whose interests are substantially affected may be heard) at the hearing; under section 62E 10 days written notice is required unless seizure is made within 48 hours of the alleged offence; under section 62A as soon as reasonably practicable after the exercise of impoundment or immobilisation powers in section 62G a notice must be given to the operator, registered person, possessor or hire owner providing relevant details of the action taken and reasons for it; pursuant to section 62K the decision to exercise the powers under section 62G must be reviewed by a senior police officer; under section 62M a person whose interests are affected by one of the police powers may apply at any time to the Magistrates Court to seek an order that the vessel be released; under section 62O the vessel must be released to an individual after the designated period (48 hours) if payment of designated costs is made; and pursuant to section 62P the Crown must repay the boat operator’s costs if the operator is found not guilty or charges are not proceeded with.

Pursuant to section 62T court orders for impoundment, immobilisation and forfeiture can only be made after notice of the application is given to all potentially affected persons; under section 62Z any person served with notice must be heard (and anyone whose interests may be substantially affected may be heard) at the hearing; pursuant to section 62Z(2) the order must not be made if the registered owner or operator can prove to the court’s satisfaction that the relevant offence was committed without their knowledge or consent; by section 62ZA a party whose interests are substantially affected may be heard) at the hearing; under section 62E 10 days written notice is required unless seizure is made within 48 hours of the alleged offence; under section 62A as soon as reasonably practicable after the exercise of impoundment or immobilisation powers in section 62G a notice must be given to the operator, registered person, possessor or hire owner providing relevant details of the action taken and reasons for it; pursuant to section 62K the decision to exercise the powers under section 62G must be reviewed by a senior police officer; under section 62M a person whose interests are affected by one of the police powers may apply at any time to the Magistrates Court to seek an order that the vessel be released; under section 62O the vessel must be released to an individual after the designated period (48 hours) if payment of designated costs is made; and pursuant to section 62P the Crown must repay the boat operator’s costs if the operator is found not guilty or charges are not proceeded with.
Extension of ‘hoon’ motor vehicle powers to seize, impound, immobilise, forfeit and dispose of heavy vehicles used in the commission of heavy vehicle speeding offence

As I have previously noted, clause 19 provides that an offence against section 65B of the Road Safety Act 1986 is a ‘relevant offence’ for the purposes of the vehicle impoundment scheme under part 6A of the act. A driver who commits a relevant offence may be subject to the police powers and court orders of seizure, surrender, impoundment, immobilisation, forfeiture and disposal in part 6A of the Road Safety Act 1986 and accordingly clause 19 engages the property right. However, in my view the right is not limited, because the provisions in part 6A are substantially similar to those in the hoon boating provisions, which as I have just discussed, clearly articulate the circumstances in which the powers may be used and provide a range of safeguards against their arbitrary employment.

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(a), 25(2)(k), 24(1) and 20 of the charter. The provisions of the bill that limit human rights under section 12 of the charter are reasonable and proportionate.

Martin Pakula, MLC
Minister for Industry and Trade
Minister for Industrial Relations

Second reading

Ordered that second-reading speech be incorporated on motion of Hon. M. P. PAKULA (Minister for Industry and Trade).

Hon. M. P. PAKULA (Minister for Industry and Trade) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

This bill is another policy-driven initiative by the Brumby government to support better transport outcomes across Victoria.

The bill makes important changes to existing ports, marine and road regulatory schemes to promote transport integration and sustainability across the state. It also makes a range of miscellaneous, minor or machinery changes necessary to improve existing transport regulation schemes.

Transport policy and legislation review

Policy and legislation review in transport in Victoria is proceeding on two levels.

At the first level, major renewal is under way across the transport portfolios through the government’s transport legislation review. This project is the most active and ambitious review of its type in the country and it is generating an entire new legislative framework for the state along best practice lines.

Important areas which have been reformed already include:

- rail safety regulation (through the Rail Safety Act 2006);
- public transport and marine safety transport investigations (the Transport Legislation (Safety Investigations) Act 2006);
- towing industry regulation (the Accident Towing Services Act 2007);
- bus safety regulation (the Bus Safety Act 2009); and
- approval and delivery powers for major transport projects (the Major Transport Projects Facilitation Act 2009).

These reforms, and transport policy and regulation generally, will be coordinated even more closely under the government’s transport integration bill initiative, which will shortly introduce a new overarching framework for transport regulation and management right across the portfolio.

As part of this work, the government is driving first principles reviews of safety regulation in relation to both our roads and our waterways. A new marine safety bill is in development to replace the current Marine Act 1988. An extensive policy review and stakeholder consultation program has been conducted throughout 2009, working towards introduction of the legislation next year. The government has also commenced a review of road safety regulation and a major new statute will be developed in that important area.

At the second level, we are continuing to introduce discrete reforms where required outside of the major review work and generally on shorter time lines.

This bill is part of the second level of reform. It introduces a number of priority reforms and makes a range of business-as-usual changes to legislative settings.

Growing safety risks on Victoria’s waterways

The bill introduces two reforms that are considered urgent to assist in dealing with growing safety risks on Victoria’s waterways.

Recreational boating is enjoyed in various forms by hundreds of thousands of Victorians and makes an important contribution to the state’s highly valued quality of life. The opportunity to participate in this popular pastime needs to be supported and encouraged.

At the same time, it must be acknowledged that the recreational boating environment in Victoria is changing rapidly.

A number of trends are coinciding to heighten the risk of injury and death on the water:

- The number of registered recreational vessels is increasing each year.
- The number of high-powered vessels — particularly personal watercraft (PWCs) or jet skis (as they are commonly known) — is growing very quickly and increasing as a percentage of total registered vessels.
- The recreational boating fleet is expanding at the same time that our inland waterways have been contracting...
The government wants to ensure that the majority of vessels operating in less space.

In October this year, following a recent audit of the registration database, the total number of registered vessels in Victoria was 159 724. Of these, 10 509 were PWCs. In just three years, the number of PWCs had risen from 4.5 per cent to 6.6 per cent of the total recreational fleet.

As well as growing in number, PWCs and other high-speed, extreme performance vessels — including wake boats and ski-boats — are becoming more and more powerful.

Some exhibitors at this year’s Melbourne Boat Show marketed their latest models with phrases such as ‘built for aggressive performance’, ‘raw power’ and ‘handling fit for a fighter jet’.

While other manufacturers use more restrained terminology, it is clear that motorised recreational vessels will continue to increase in power and performance.

It is equally clear that these high-speed vessels often find themselves in the hands of operators who have little boating experience and are not imbued with a responsible boating safety culture.

These issues are being considered as part of the current review of the Marine Act 1988.

A major discussion paper, Improving Marine Safety in Victoria, was released by the Department of Transport in July 2009 for public comment. More than 400 submissions were received.

The review is due to be completed when a new marine safety bill is presented to the Parliament next year.

**Hoon boating scheme**

The hoon boating scheme proposed in this bill is a key plank of the government’s response to growing safety risks on the water.

As foreshadowed in a separate discussion paper on the specific subject of recreational boating hoon laws, also published for public comment in July 2009, the hoon boating scheme has been progressed ahead of the conclusion of the review. The aim is to ensure that stronger powers and sanctions are available to deal with this emerging problem during the coming holiday boating season.

Modelled on the successful hoon driving laws introduced through amendments to the Road Safety Act in 2005, the hoon boating scheme provides new powers and stronger sanctions to deal with dangerous and antisocial behaviour in the marine environment.

The aim is not to label all owners and operators of high-speed vessels as hoon. Nor is it to stop people having fun on the water.

Rather, the bill is designed to send a strong message that PWCs and other high-powered recreational vessels must be operated responsibly and safely, well away from the shore and other water users.

The government wants to ensure that the majority of responsible boaters are able to enjoy their pastime free of the public antipathy and potential consequences that flow from the dangerous and antisocial behaviour of a small minority. If such behaviour were allowed to escalate without adequate powers and sanctions in place, an even tougher regulatory response may become necessary — potentially involving restrictions that would impact adversely on law-abiding boaters.

Injuries on the water have risen significantly over recent years.

Over the five years to 2007–08 hospital-treated injuries from recreational boating increased by more than 70 per cent to approximately 900 per year. Hospital admissions with recreational boating injuries grew even faster, doubling to around 300 per year — indicating that injuries are becoming more severe.

Well over half of these injuries resulted from high-speed water sports.

Concerns about the worsening safety risk posed by hoon behaviour on the water have been expressed by water police, waterway managers, many recreational boaters and the wider Victorian community.

Responses to the discussion paper overwhelmingly reinforced these concerns, with 93 per cent of those who commented on the issue agreeing that ‘impoundment provisions similar to the hoon laws on the roads should apply to certain types of dangerous conduct on the water’.

‘Hooning’ on the water can be described, in a general sense, as persistent or systematic antisocial behaviour that impacts on safety due to its close proximity to other people or vessels.

For the purposes of the new scheme, the hoon powers and sanctions are triggered by any offence relating to dangerous operation of a vessel, as specified in section 22 of the Marine Act.

The central objective of the scheme is to make it easier for police to order offenders — those observed to be operating a vessel in a dangerous manner — immediately off the water.

The bill empowers police or authorised officers to place an embargo notice on a vessel, ordering that it not be operated to the vessel and can only be removed by a police officer or other authorised person.

The bill also empowers police and authorised officers to order a person off the water for up to 24 hours.

Subject to the passage of the bill, the government intends to bring these powers into force quickly so that they will be available for the coming summer boating season.

The bill also provides powers to seize vessels, seek surrender of vessels and impound vessels. These are significant powers and are only to be used in serious circumstances by specially trained police officers.

Vessels may be impounded for a period up to 48 hours for a first offence, and up to three months for second or third offences (based on a court order).

Where vessels are involved in a subsequent offence, a court may order forfeiture.
It is intended that the powers to seize, seek surrender and impound vessels will come into force on 1 September 2011 — that is, in time for the 2011–12 boating season.

This phased introduction of the scheme allows adequate time for police to resolve implementation and enforcement issues related to the impoundment provisions, learning from the experiences of the coming holiday boating season and a full boating season in 2010–11.

In the meantime, it sends a clear message to recreational boaters that deliberate antisocial and dangerous behaviour, while currently confined to a small minority, will not be tolerated and must be curbed before it escalates into a wider problem.

The hoon boating laws proposed in this bill are the first in Australia.

The scheme is an early initiative from the current comprehensive review of Victoria’s marine laws and demonstrates that the Brumby government is leading the way in water safety regulation.

The bill ensures that police will have stronger powers and sanctions to deal with the minority of recreational boaters who deliberately put people’s safety at risk.

Culpable and dangerous operation of a vessel

A second plank of the government’s response to growing safety risks on Victoria’s waterways is to increase the range of criminal sanctions available where operation of a marine vessel causes death or serious injury.

At present the Crimes Act offences of culpable driving causing death and serious injury apply to the driving of motor vehicles.

The bill amends sections 318 and 319 of the Crimes Act to extend the application of these offences to the operation of marine vessels.

This will close a significant gap in the current hierarchy of sanctions.

Where dangerous operation of a vessel results in death, the only serious fatality-related offence that may apply is manslaughter. This carries a maximum penalty of 20 years imprisonment.

There is a large gap to the most serious Marine Act offence applicable in these circumstances — dangerous operation of a vessel. This carries a maximum penalty of two years imprisonment, aligning it to the Road Safety Act offence of dangerous driving.

These amendments mean that the same hierarchy of offences and penalties that apply when road deaths or serious injuries are caused by culpable or dangerous driving will apply when the dangerous operation of a vessel causes death or serious injury on the water.

Culpable operation of a vessel causing death will carry a maximum penalty of 20 years imprisonment.

Dangerous operation of a vessel causing death will carry a maximum penalty of 10 years imprisonment, while dangerous operation of a vessel causing serious injury will be punishable by up to 5 years imprisonment.

It is important to clarify that these offences focus on individual criminal responsibility. The bill specifically provides that the person who is in charge of the vessel involved in a fatality will not be guilty of the new offences merely by virtue of their position. For the master of a commercial vessel to be guilty of the offences, for example, there would need to be evidence of some specific conduct or omission by the master personally. However, more than one person may be individually criminally liable in relation to the same fatal incident where each person substantially contributed to the dangerous operation of the vessel.

Typically the operator of a vessel is the person who steers or navigates the vessel. However, as a number of people may be involved in operating a large vessel, it also includes a person who directs or gives instructions to another person who is ‘physically’ steering or navigating the vessel.

Navigating a vessel encompasses not only setting the direction for a vessel but starting the engine or operating the throttle, and it applies whether or not the vessel is in motion (except when it is ashore).

Death and serious injury in the marine environment is a relatively infrequent occurrence compared with the roads.

The amendments recognise, however, that the moral culpability of a person who causes the death or serious injury of another by culpable or dangerous operation of a marine vessel cannot be distinguished from that of a person who causes the death or serious injury of another by culpable or dangerous driving.

Importantly, these new indictable offences will act as a powerful deterrent to dangerous behaviour on our waterways.

As mentioned, we are seeing a rapid increase in the number of hospital presentations with recreational boating injuries — as well as an apparent increase in the severity of these injuries. The motorised boating sector, particularly newer forms of high-speed boating, is responsible for a disproportionate share of the rising injury rate.

While the recreational boating fatality rate is relatively stable at an average of approximately eight per year — and most fatalities continue to be associated with vessel disablements in the bays and open waters — there is concern that the increasing number and severity of recreational boating injuries could be an early warning of higher fatality risks.

The offences of culpable driving and dangerous driving causing death or serious injury are well understood by Victorian motorists.

In submissions on the Department of Transport’s July 2009 discussion paper the option of aligning treatment of road fatalities and marine fatalities received 97 per cent support.

These new offences will complement the hoon boating scheme by increasing the deterrent effect of marine laws at a time when risk factors for fatalities and serious injuries are growing.

We do not want to see tragic fatal incidents — such as the death of 18-year-old Casey Hardman in a high-speed crash on
Lake Eildon last December — become more frequent on the state’s waterways.

Ports measures

The Brumby government continues to take action to provide for a prosperous future for all Victorians.

The government’s channel deepening project was a major nation-building project which created new jobs, boosted our economy and will help build a bright future for our state.

Channel deepening is expected to generate more than $2 billion to the national economy over the next 30 years.

The government takes great pride in the timely delivery of this major infrastructure improvement at the port of Melbourne, along with the fact that the project was developed and managed in a way that minimised impact on the environment. The environmental conditions placed on the project were the toughest ever seen in Australia.

With ships getting bigger, the benefits of channel deepening are immediate. It allows ships to carry more cargo into the port. By increasing the depth of the channels we have expanded the allowable draught and generated additional cargo-carrying potential.

Attention has now turned to the operational aspects of the port. In particular, as larger ships start to come in and out of the port, current towage services will be inadequate for some larger vessels.

The bill amends the Port Services Act to better enable the Port of Melbourne Corporation to make sufficient provision for the adequacy, security and quality of essential port services such as towage. Accordingly, the bill gives the corporation a limited set of powers to set conditions for the provision of towage services. This addresses gaps in the corporation’s current powers and will help ensure that the port always has adequate towage services available.

The bill also makes some important adjustments to the Port Services Act relating to control of hazardous activities at the port of Melbourne.

The Port of Melbourne Corporation has identified some safety and other risks associated with bunkering or ship-to-ship transfers of dry and liquid cargoes, and also hot works in the port. These activities are currently regulated by a range of measures including directions of the harbour master, guidelines and protocols, along with a mix of environment and occupational health and safety legislation.

It is proposed to strengthen these arrangements by providing new heads of power in the act. This will enable regulations to be made to deal with these risks, including a requirement to notify the Port of Melbourne Corporation when a person intends to conduct a hazardous activity in the port.

The corporation has also found that its current powers relating to unattended or abandoned property are insufficient. Accordingly, new provisions are being introduced into the Port Services Act to ensure that the corporation is able to appropriately manage these activities.

Further, it is important that the Port of Melbourne Corporation has sufficient power to enforce these provisions as well as other relevant legislative provisions affecting the safety and efficiency of port operations.

The bill makes provision for the appointment of port safety officers. The officers are conferred with power to enforce the Port Services Act, relevant regulations and other instruments to ensure compliance with safety and other standards throughout the port precinct.

Roads measures

The bill also makes a number of amendments to improve road safety in Victoria.

The Road Safety Act 1986 is amended to:

exempt persons acting for emergency services from complying with fatigue management provisions when returning from attending an emergency;

exempt drivers of buses from complying with fatigue management provisions when replacing rail services or assisting in an emergency;

provide a broader range of sanctions for inappropriate behaviour by persons approved to supply alcohol interlocks; and

enable VicRoads to disclose information for emergency response and management purposes and to verify information provided to other government departments and agencies as evidence of an individual’s identity.

The EastLink Project Act 2004 and the Southern and Eastern Integrated Transport Authority Act 2003 are amended to transfer responsibilities for the EastLink infrastructure.

EastLink opened to traffic on 29 June 2008, well ahead of schedule, and is now fully operational. The bill transfers the state’s responsibility for managing EastLink from the Southern and Eastern Integrated Transport Authority (now known as the Linking Melbourne Authority) to VicRoads.

It is now appropriate for EastLink to be managed by VicRoads as part of the road network. The transfer makes good sense, as VicRoads is responsible for the management of the CityLink project and it will enable the two projects to be managed consistently.

At the same time, the transfer will allow the Linking Melbourne Authority to focus on the delivery of other road transport-related projects that have been allocated to it.

General

The bill also makes a number of minor, miscellaneous or machinery changes aimed at improving the operation of the schemes contained in the Transport Act 1983, the Accident Towing Services Act 2007, the Marine Act 1988, the Major Transport Projects Facilitation Act 2009 and the Road Management Act 2004. It also makes some technical amendments to the Melbourne City Link Act 1995.

I commend the bill to the house.

Debate adjourned on motion of Mr KOCH (Western Victoria).

Debate adjourned until Friday, 4 December.
PLANNING AND ENVIRONMENT AMENDMENT (GROWTH AREAS INFRASTRUCTURE CONTRIBUTION) BILL

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Planning and Environment Amendment (Growth Areas Infrastructure Contribution) Bill 2009.

In my opinion, the Planning and Environment Amendment (Growth Areas Infrastructure Contribution) Bill 2009, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of the bill

The purpose of the Planning and Environment Amendment (Growth Areas Infrastructure Contribution) Bill 2009 is to amend the Planning and Environment Act 1987 and six related acts to introduce a new growth areas infrastructure contribution (GAIC) scheme for the levying and collection of monetary contributions in certain growth areas for the provision of state infrastructure and associated costs in those areas.

This scheme will establish a simpler, fairer and more flexible system for funding the state infrastructure needed by new communities in growth areas.

The bill gives effect to the government’s announced intention to introduce a state infrastructure contribution, as outlined in Melbourne @ 5 Million (December 2008).

Specifically, the bill:

- proposes to introduce a GAIC for the provision of state infrastructure and associated costs at a set rate on specified land in existing and future growth areas, which is triggered in a specified set of circumstances (such as on the subdivision of the land or certain land transactions), which will apply retrospectively from December 2008;
- establishes the legislative framework for the amount, payment, management and disbursement of the GAIC.

Human rights issue

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

Section 20 — property rights

Section 20 establishes a right not to be deprived of property other than in accordance with law. The requirement that deprivations only occur in accordance with law imports a requirement that the law not be arbitrary. It means that the law must be accessible to the public generally and the class of persons who are likely to be affected by the law in particular. The law must also be formulated with sufficient precision to guide those who apply it.

The term ‘property’ is not defined in the charter but includes both real and personal property and any right or interest regarded as property under Victorian law. It can also include less formal rights in relation to property. The term ‘deprived’ includes situations where a regulation has the effect of substantially depriving a property owner of the ability to use his or her property, including deriving profits from it.

Clause 9 of the bill establishes the legislative framework for the GAIC scheme for the specific purpose of levying contributions towards state-provided infrastructure in certain growth areas. The operation of this scheme is clearly defined and appropriately circumscribed in the bill. It applies only to specific areas of land within clearly defined boundaries; the events that trigger a GAIC liability and the amounts that must be paid are clearly specified; and the circumstances and procedures for granting exemptions or reducing the GAIC liability are defined.

In clause 9, proposed section 201RC defines which land within a growth area is subject to the GAIC; proposed section 201RA sets out the events that trigger the requirement for the GAIC to be paid, while proposed section 201RB sets out excluded events and proposed sections 201RF and 201RG set out excluded subdivisions of land and building work; proposed sections 201S–201SD set out the circumstances and procedures for reductions of the GAIC liability; proposed section 201SG defines the amount to be paid and the method by which this amount is indexed; proposed section 201SE sets out when a GAIC trigger event occurs while proposed section 201SF sets out who is liable to pay the GAIC; proposed section 201SM sets out the capacity, power and procedure for granting exemptions or reductions of the GAIC liability; and proposed sections 201TS–201VC set out the requirements for collection, administration and expenditure of the GAIC.

The government’s intention to impose the GAIC was publicly announced in Melbourne 2030 — A Planning Update — Melbourne @ 5 Million in December 2008. This announcement included that the GAIC would be applied to trigger events from the date of the announcement. Public notices regarding the government’s intention to impose the GAIC were also placed in the major newspapers at this time. A further public announcement applying to additional land to be included in the Melbourne West investigation area was made in May 2009. In addition to these public announcements and notices, the Growth Areas Authority wrote to all registered proprietors of affected land notifying them of the proposed GAIC and its intended application.

Since this time there has been a policy refinement in who would be liable to pay the GAIC, with the general principle now being that the liability to pay the GAIC sits with the person who is the owner of the land immediately after the
liability arises. In instances of dutiable transactions relating to land, the overarching change is that the person who would be taken to be the transferee (under the Duties Act 2000) for these transactions is the person now liable to pay the GAIC. For transfers of land, it is the purchaser who is liable to pay instead of the vendor. The drafting of the proposed legislation is clear as to who will be liable to pay the GAIC. The bill, under clause 15, also provides for amendments to the Sale of Land Act 1962 to require the vendor statement under a contract of sale of affected land to include a warning about the potential liability of a purchaser to pay any applicable GAIC, as well as to attach to the statement specified certificates or notices regarding the GAIC liability in respect of the land.

Clause 18 of the bill includes transitional provisions for circumstances of the application of the GAIC to contracts of sale entered into between 1 December 2008 and 1 December 2009. These transitional provisions make accommodation for instances where contracts of sale have anticipated that the vendor would be liable to pay the GAIC. While under the proposed legislation the purchaser will be liable to pay the GAIC in such circumstances, provision has been made for the purchaser to deduct from the purchase price the amount of the GAIC they are liable to pay. This will have the effect of the purchaser not suffering a loss as a result of their liability to pay the GAIC where the contract for the sale of the land otherwise anticipated the vendor bearing the liability.

The bill also provides greater certainty, flexibility and fairness for the purchaser liable to pay the GAIC by allowing the purchaser to elect to defer payment of the GAIC to the next trigger event — subsequent dutiable transaction, the issue of a statement of compliance relating to a plan of subdivision or the making of a building permit application.

The bill sets out that the new provisions are to come into effect on a day or days to be proclaimed, rather than immediately after the bill is passed by Parliament. This will enable further public information regarding the GAIC and its application to be provided. It is intended that the government will write to all affected landowners about these changes as well as provide public notices in the media.

To the extent that these parts of the bill engage section 20 of the charter, they do not limit it. The imposition of the GAIC is not arbitrary because it is precisely formulated and not only accessible to the public but the government has taken proactive steps to inform the general public and in particular the class of people who are likely to be affected by the GAIC. Therefore, the legislative provisions in relation to the GAIC do not limit section 20 of the charter.

Second reading

Ordered that second-reading speech, except for statement under section 85(5) of the Constitution Act, be incorporated on motion of Hon. M. P. PAKULA (Minister for Industry and Trade).

Hon. M. P. PAKULA (Minister for Industrial Relations) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

This bill implements the government’s announcement on 2 December 2008 in Melbourne 2030 — A Planning Update — Melbourne @ 5 Million, that improved arrangements will be put in place to fund the provision of new state-funded infrastructure in growth areas.

Melbourne’s population is growing strongly, and the government’s Melbourne @ 5 Million planning framework outlines that while more than 300 000 homes can be developed in the existing suburbs of Melbourne, more than 280 000 new homes will be still needed in the growth areas.

The governor of the Reserve Bank of Australia, Glenn Stevens, in an address he made at the 2009 Economic and Social Outlook Conference on 5 November, noted that the rate of population growth at present is the highest since the 1960s. He then went on to comment, and I quote:

It follows that the demand for additional dwellings, among other things, is likely to remain strong. Corresponding effects will flow on to urban infrastructure requirements and so on. So the question of whether enough is being done to make the supply side of the housing sector more responsive to these demands will remain on the agenda.

The Victorian government is already meeting this challenge in a strategic and comprehensive manner.

Melbourne 2030 is a widely recognised leader in urban strategy. It encourages intensification of development within the established and serviced suburbs through infill development and increased density at major activity centres. It also recognises the need to build new communities in defined growth areas. This was reinforced by A Plan for Melbourne’s Growth Areas in November 2005 and Melbourne @ 5 Million. The government is expanding the urban growth boundary to help meet this growth and maintain housing affordability. Early provision of high quality infrastructure is part of the government’s commitment to developing sustainable new communities in growth areas, not dormitory suburbs of the past.

The government, through its Delivering Melbourne’s Newest Sustainable Communities program, is planning to ensure adequate land supply is brought onto the market to meet projected demand for housing over the next 20 years or so. The expansion of the urban growth boundary to provide more urban land for the growth of Melbourne is a key element of this planning.

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

The bill engages but does not limit the section 20 property right and 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 raises human rights issues but does not limit human rights.

Justin Madden, MLC
Minister for Planning
The development of new communities requires a very substantial state government investment in infrastructure and services, including public transport services, arterial roads, major open space, environmental improvements and major community facilities. The expansion of the urban growth boundary will be supported by the introduction of the growth areas infrastructure contribution, or ‘GAIC’ for short. Funds raised by the GAIC will be used to provide vital infrastructure and oversee development in the growth areas.

The GAIC is the way we can pay for the new roads, public transport, schools and other things people need in a community. The contribution will enable this important infrastructure to be delivered earlier in the development of new communities.

Land that is brought within the urban growth boundary, and which is zoned and developed for urban purposes increases significantly in value. This value increase reflects the fact that the land will be developed in the future and the expectation that it will be serviced with key infrastructure and services necessary to support new, vibrant urban communities.

While the government will continue to meet the majority of the costs of state infrastructure, it is also important that the substantial windfall gains that result from changes to the urban growth boundary and land being rezoned for urban development contribute fairly to offset the financial impact of the additional infrastructure service provision.

The government’s commitment in A Plan for Melbourne’s Growth Areas in 2005 to obtaining contributions towards state infrastructure was based on the existing development contributions plan system. While the existing system does allow state agencies to levy for infrastructure items, it does not provide a simple, equitable and viable mechanism for the levying of contributions towards the provision of state infrastructure in growth areas. It also does not enable a contribution to be imposed when land is sold, so that contributions are collected from the value uplift resulting from land being zoned for urban development. Charging the GAIC at the point of sale enables access to the land value increase.

The GAIC model will ensure that the benefits of land being earmarked for urban development are balanced by requiring the people reaping those benefits to make a fair contribution towards the provision of state infrastructure necessary to support new development in growth areas. This will help ensure Melbourne continues to grow as a well-planned and sustainable city.

The bill will apply the GAIC at a rate of $80 000 per hectare for all land currently within the existing urban growth boundary that has been brought within that boundary since November 2005 and is zoned for urban development, and $95 000 per hectare for land that is brought into the urban growth boundary in the future. Each of these contribution amounts will be indexed over time with an appropriate construction index to be determined by the Treasurer.

The growth areas infrastructure contribution is to be a once-only charge, payable on the first ‘GAIC event’ to occur in relation to particular land. GAIC events relate to dutiable transactions relating to land, such as a sale or transfer of land, the issuing of a statement of compliance for a plan of subdivision of land, or the making of an application for a building permit for development. There are a range of exclusions to the general circumstances of the GAIC events set out in the bill. For example, an application for a building permit for a single dwelling and for building work less than $1 million are excluded matters.

Application of the GAIC will be subject to transitional provisions retrospectively imposing the GAIC liability to trigger events from the date of the announcement of the charge in Melbourne @ 5 Million in December 2008, and a subsequent announcement on 19 May 2009. The retrospective application of the GAIC is to apply in relation to land brought within the urban growth boundary from November 2005 to December 2006, and to land within an investigation area brought within the urban growth boundary and rezoned to an urban growth zone from the relevant announcement date up until one year after the commencement of these new provisions. The retrospective application of the GAIC was announced in Melbourne @ 5 Million and will ensure that the objective of obtaining contributions towards infrastructure cannot be undermined by speculation in property that could arise if there were no retrospective provisions.

Incorporated into the bill are a range of circumstances where there is no liability to pay a GAIC. This demonstrates that the government has designed the GAIC with a high degree of fairness, ensuring it covers a broad range of exclusions and exemptions as well as catering for potential hardship circumstances.

In addition, the bill provides flexibility around the payment of the GAIC by enabling persons who are liable to pay a GAIC to defer the payment as well as providing for the GAIC to be paid in stages in particular circumstances.

The new provisions are to operate in conjunction with the Taxation Administration Act 1997 to enable the commissioner of state revenue to be responsible for collecting the GAIC on behalf of the government.

GAIC funds will be fully accounted for and will be paid into the Consolidated Fund. The GAIC funds will be equally directed into two individual trust funds — the Growth Areas Infrastructure Fund and the Building New Communities Fund. The trust funds will be administered by the Department of Planning and Community Development, which will forward the funds to the Growth Areas Authority to administer the individual payments and projects in line with the state government’s infrastructure investment priorities.

Both accounts are to be used to provide state-funded infrastructure, however the Building New Communities Fund is to focus on projects supporting economic and community infrastructure and be allocated following consideration of applications submitted by local councils and others.

That is the overall picture. I would like to turn now to some specific provisions of the bill, and in doing so, expand on a number of features of the proposal, including exceptions to the general principles to take account of special situations which may arise.

The bill is divided into four parts. Part 1 deals with preliminary matters, including the arrangements for proclamation. It is the government’s intention to have the new provisions fully operational as early as practicable, and the proposed changes to the UGB will not have effect until this bill becomes law. There is a need for the development industry and the community to have certainty, and the
government therefore expects the Parliament will finalise the bill before Christmas.

Part 2 of the bill details the amendments to the Planning and Environment Act 1987.

Clause 3 of the bill inserts a new definition of the term ‘urban growth boundary’ which will allow an urban growth boundary to be specified in any planning scheme, rather than just metropolitan fringe planning schemes. The ability to apply the urban growth boundary as a planning tool elsewhere in the state is consistent with the government’s policy as set out in Melbourne 2030. However, the ability to apply an urban growth boundary as a planning tool elsewhere in Victoria will not lead to the imposition of the GAIC in such areas as the GAIC can only be applied to councils listed as growth areas councils in section 46AP of the Planning and Environment Act.

The designation of a council as a growth areas council under this section would require an amendment to the act. In addition, another precondition for imposing the GAIC is that the ‘contribution area’ is within a declared growth area. This means that unless any land to be brought within the urban growth boundary is also declared as a growth area under the provisions of the Planning and Environment Act, the GAIC cannot be imposed.

Clause 5 amends section 46AP of the Planning and Environment Act to include Mitchell Shire Council in the list of growth areas councils, as was announced in Melbourne @ 5 Million. I make the point, however, that only that part of the Shire of Mitchell that is to be included within the urban growth boundary is also declared as a growth area under the provisions of the Planning and Environment Act, the GAIC cannot be imposed.

Clauses 7 and 8 of the bill deal with the interaction of the GAIC with the development contributions plans system under the Planning and Environment Act. The effect of these amendments will be to exclude the making of further development contributions plans to provide for state infrastructure in areas where the growth areas infrastructure contribution applies.

These restrictions on the use of development contributions plans will not affect their use in levying for contributions towards either local or state infrastructure in other circumstances. Nor will they limit the powers of state agencies, as referral authorities under the Planning and Environment Act 1987, from imposing conditions on proposed developments for a contribution towards works to connect to or upgrade state infrastructure networks where required by that development.

Clause 9 is the main clause inserting the new part 9B into the Planning and Environment Act 1987 to implement the new system for the growth areas infrastructure contribution, or GAIC, for state-funded infrastructure.

Proposed section 201RA defines the GAIC events that trigger the liability to pay a contribution. These events are the issuing of a statement of compliance for a plan of subdivision, making an application for a building permit to carry out building work and dutiable transactions relating to land, such as transferring or purchasing land. A series of excluded events that do not trigger a liability to pay a contribution are set out in the bill. The excluded events also apply to circumstances where actions in relation to an event have occurred prior to the announcement of the GAIC or land coming within a contribution area. Such circumstances include where a planning permit had been issued for either the subdivision of the land or for building work to be undertaken, or where a binding contract relating to a dutiable transaction or a significant acquisition of interest was entered into before the relevant day. This is to ensure fairness in the application of the GAIC.

Division 1 also addresses excluded subdivisions and building work for the purposes of this new part of the act. These exclusions essentially ensure that minor matters do not trigger a liability to pay the GAIC. Some of the matters that are excluded include a subdivision to create a lot not exceeding 2 hectares for the purpose of excising an existing dwelling on the land, the demolition of a building, the construction of a single dwelling, the repair or reconstruction of an existing building and building work with a value of less than the specified threshold amount, which for the 2009–10 financial year is $1 million.

Division 2 addresses the imposition of the GAIC on the happening of the first GAIC event. It also provides that where a person liable to pay the contribution is exempted from that liability, under provisions set out in other proposed sections, the GAIC is imposed in respect of the next GAIC event that occurs in relation to the land. It also confirms that a GAIC may be imposed only once in respect of any land. There are also circumstances where the GAIC is payable in stages. Examples are provided within the bill to explain how this provision applies.

Proposed section 201SA sets out circumstances in which a GAIC liability is not imposed. The circumstances are specified because they are matters that would not normally lead to a demand for the provision of urban infrastructure. Such circumstances include where the land is 0.41 hectares or less in area, which is approximately the area of the old 1-acre lot, as well as lots between 0.41 and 2.03 hectares in area on which there is a habitable dwelling.

The bill includes retrospective provisions defining when the liability to pay a GAIC arises where a GAIC event occurs between when the state infrastructure contribution was announced and the commencement of these provisions. The Growth Areas Authority has written to all registered proprietors of land affected by these transitional arrangements so there will be no surprise in these provisions to any landowners in the affected areas; any actions taken since the announcement dates will have been taken in the knowledge of these proposed arrangements.

A person who is liable to pay a GAIC in respect of a dutiable transaction relating to land has the option to defer the payment of that contribution. The opportunity to defer the payment of the GAIC provides greater certainty, flexibility and fairness for purchasers and dispels many of the concerns raised about when the GAIC is payable. When a GAIC event occurs, such as the purchase of land, the liability is registered on the title, but the buyer can, within 90 days, elect to defer the payment until the land is again sold or developed.

The bill also provides for the staged payment of a GAIC. Consultations with development industry bodies have indicated that it is important for the possibility of staged payments to be provided for. This will enable developers to match their GAIC liability against cash flow for very large developments. The staged payment of a GAIC will apply to
circumstances where the liability to pay the GAIC is triggered by the subdivision of land or an application for building works and is subject to the minister’s approval.

The deferred and staged payments will both be subject to the payment of interest. The interest calculation method is modelled on the interest provisions in the Taxation Administration Act 1997. This means an annual ‘market’ rate is calculated and a ‘premium’ rate is then added. The Treasurer will set the premium component at a rate which ensures the interest payable is broadly equivalent to commercial lending rates and also reflects the risks and costs to the government of making the deferral facility available. The premium rate will be reviewed as required.

A series of exemptions and reductions from GAIC liability are dealt with in division 3. Generally, where an exemption from GAIC liability applies the GAIC liability will arise at the next GAIC event, in the circumstance of a reduction in the GAIC liability, the payment of the reduced amount satisfies the GAIC liability and no further liability applies.

The bill also provides an exemption from paying a GAIC in respect of a dutiable transaction relating to land that is made for no consideration. The term ‘consideration’ in this context has the same meaning as defined in section 32A of the Duties Act 2000. An example of a dutiable transaction made for no consideration is where a person transfers the title on a property to his or her spouse and there is no consideration for this change.

Exemptions from paying a GAIC, if an exemption from paying duty on certain types of transactions, applies based on various sections of the Duties Act to define the relevant circumstances for which the GAIC exemption would apply. These circumstances include transfers of title in the instance of the breakdown of a marriage or domestic relationship and a transfer from a deceased estate.

The bill also includes a provision for the Governor in Council, on the recommendation of the minister, to grant a reduction or exemption of a GAIC liability where it is considered that exceptional circumstances exist. While by their nature ‘exceptional circumstances’ are generally unforeseen, such circumstances might include unintended consequences of the legislation that result in undue commercial hardship or inequity. A reduction may reduce the GAIC liability in whole or in part, while an exemption defers the liability to the next GAIC event affecting the land.

Proposed section 201TF sets out the provisions for a reduction of a GAIC liability, either in whole or in part, in the circumstances of there being an agreement in relation to the provision of state infrastructure. The provisions limit the periods within which agreements eligible for consideration for a reduction of GAIC liability may be entered into, and as such constrain the use of these agreements on an ongoing basis.

A Growth Areas Infrastructure Hardship Relief Board is established by the bill to grant relief from the liability to pay a GAIC. These provisions are to deal with circumstances of financial hardship arising from the imposition of the GAIC.

The board may decide to reduce the GAIC liability, either wholly or in part, exempt a person from the whole of their GAIC liability or refuse the application to grant relief. Where the board grants a reduction of the liability, the payment of the reduced amount satisfies the GAIC liability and no further liability applies. Where an exemption from GAIC liability is granted the GAIC liability will arise on the occurrence of the next GAIC event.

Proposed division 5 sets out arrangements for the establishment of the growth areas funds, and their application. Although coming at the end of the proposed new part of the Planning and Environment Act, this is the main purpose of the GAIC system — to provide funding for state infrastructure in growth areas.

There are to be two funds — the Growth Areas Infrastructure Fund and the Building New Communities Fund. Fifty per cent of the GAIC moneys must be paid into each fund.

The infrastructure fund is to be used to provide financial assistance for capital works for wholly or partly state-funded infrastructure for the benefit of any growth area, the acquisition of land and other infrastructure necessary for the operation or maintenance of such infrastructure and for the payment of any recurrent costs resulting from the bringing forward of a new public transport service in a growth area for a maximum period of five years after the commencement of that service.

The Building New Communities Fund is to be used for any of the matters for which the infrastructure fund may be used, with the exception of the payment of any recurrent costs resulting from the bringing forward of a new public transport service in a growth area. The Building New Communities Fund may also be used for the costs and expenses of the Growth Areas Authority incurred in exercising or performing its functions, powers and duties under the Act.

Requirements for the Department of Planning and Community Development and the Growth Areas Authority to report on the income and expenditure details of the infrastructure fund and the Building New Communities Fund, and on the operation of the GAIC scheme, are clearly set out in the bill.

The remaining clauses of the bill provide for new regulation-making powers relating to the administration of the GAIC, such as the prescribing of fees for GAIC certificates and for matters relating to a function or duty exercised by the registrar of titles in relation to this new part of the Act.

There are also transitional provisions which enable fixing a lower GAIC amount payable for the 2009–10 financial year, if considered appropriate.

A new schedule 1 is being inserted at the end of the Planning and Environment Act 1987 relating to the growth areas infrastructure contribution. This schedule provides for the definition of the ‘investigation areas’, the indexation of the threshold amount for excluded building work and the formula for adjustment of the GAIC amount. For the information of the house, I will lodge a set of the relevant maps defining the investigation areas with the parliamentary library today.

Part 3 of the bill makes complementary amendments to other acts. This includes amendments to the Sale of Land Act 1962. The intention of these amendments is to provide protection for an intending purchaser of land in a contribution area where there is a GAIC notice on the title for the land. This will enable the purchaser and vendor to negotiate the sale price with knowledge of whether or not the GAIC will apply to the land upon its disposition.
The bill concludes with Part 4, which provides for repealing of this amending legislation on 1 October 2011 by which time the legislative amendments it has made will have come into operation and its effect spent.

Finally, I draw members attention to clause 31 as this bill proposes to limit the jurisdiction of the Supreme Court. Accordingly I provide the following statement:

Section 85(5) of the Constitution Act

Hon. M. P. PAKULA — I wish to make a statement under section 85(5) of the Constitution Act 1975 of the reasons for altering or varying that section by this bill.

Clause 31 of the bill inserts a new subsection (5) into section 135 of the Taxation Administration Act 1997 to provide that it is the intention of sections 5, 12(4), 18(1), 96(2) and 100(4) of the Taxation Administration Act 1997, as those sections apply after the commencement of clause 31, to alter or vary section 85 of the Constitution Act 1975. These provisions preclude the Supreme Court and the Victorian Civil and Administrative Tribunal from entertaining proceedings of a kind to which these sections apply, except as provided by those sections.

A central purpose of this bill is to bring the growth areas infrastructure contribution under the Taxation Administration Act 1997.

This bill provides that for the purposes of the Taxation Administration Act 1997, Part 9B of the Planning and Environment Act 1987 and any regulations made under that act for the purposes of that part is a ‘taxation law’. Part 9B of the Planning and Environment Act 1987 introduces a growth areas infrastructure contribution for the provision of state infrastructure in certain growth areas land.

Section 5 of the Taxation Administration Act 1997 defines the meaning of non-reviewable in relation to the Taxation Administration Act 1997 which now also applies to the growth areas infrastructure contribution. ‘Non-reviewable’ is referred to in sections 12(4) and 100(4) of the Taxation Administration Act 1997.

The reasons for limiting the jurisdiction of the Supreme Court in relation to a compromise assessment under section 12 of the Taxation Administration Act 1997 are that agreement has been reached between the commissioner and the taxpayer on the taxpayer’s liability, and the purpose of the section would not be achieved if the decision were reviewable, and this provision now applies to the growth areas infrastructure contribution.

Section 18 of the Taxation Administration Act 1997 establishes a procedure, the adherence to which is a condition precedent to taking any further action for recovering refunds. The purpose of the provisions is to give the commissioner the opportunity to consider a refund application before any collateral legal action can be taken. The purpose of these provisions would not be achieved if the commissioner’s actions were subject to judicial review. This provision will apply to the growth areas infrastructure contribution under this bill.

Division 1 of part 10 of the Taxation Administration Act 1997 establishes an exclusive code for dealing with objections, and this division will also apply to the growth areas infrastructure contribution under this bill. This code establishes the rights of objectors in a statutory framework and precludes any collateral actions for judicial review of the commissioner’s assessment or decision of a type referred to in section 96(1) of the Taxation Administration Act 1997. The objections and appeals provisions of part 10 of the Taxation Administration Act 1997 establish that review of assessments is only to be undertaken in accordance with an exclusive code identified in that part. The purpose of these provisions would not be achieved if any question concerning an assessment or decision referred to in section 96(1) was subject to judicial review except such judicial review as provided by division 2, part 10 of the Taxation Administration Act 1997.

A power is provided to the commissioner under section 100 of the Taxation Administration Act 1997 which provides the commissioner with discretion to allow an objection to be lodged even though out of time. This decision is non-reviewable to ensure the efficient administration of the act and to enable outstanding issues relating to assessments to be concluded expeditiously. This provision will apply to the growth areas infrastructure contribution under this bill.

I commend the bill to the house.

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

Debate adjourned until Friday, 4 December.
FIRE SERVICES FUNDING (FEASIBILITY STUDY) BILL

Statement of compatibility

For Mr LENDERS (Treasurer), Hon. M. P. Pakula tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities (the charter), I make this statement of compatibility with respect to the Fire Services Funding (Feasibility Study) Bill 2009.

In my opinion, the Fire Services Funding (Feasibility Study) Bill 2009, as introduced to the Legislative Council, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The purpose of the Fire Services Funding (Feasibility Study) Bill is to amend the Taxation Administration Act 1997 (TAA) to allow the commissioner to conduct feasibility studies.

The bill will also amend the TAA to:

- require a person to provide information to the commissioner for the purposes of a feasibility study; and
- prohibit the use and disclosure of information obtained for the purposes of a feasibility study except for purposes clearly related to a feasibility study.

Human rights issues

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

Right to privacy

The right to privacy is protected by section 13 of the charter. In accordance with this right, a person must not have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. This means that a person’s privacy may not be interfered with where it is not permitted by law, or where it is neither certain or appropriately circumscribed. Likewise, a person’s privacy may not be interfered with in an unreasonable manner or in a way which fails to accord with the provisions, aims and objectives of the charter.

To the extent that clause 116B of the bill requires a person to provide information to the commissioner for the purpose of a feasibility study, it engages the right to privacy. However, clause 116B does not limit that right as any interference with the right to privacy is neither arbitrary nor unlawful.

The interference is not arbitrary because this information will be used for the sole purpose of conducting feasibility studies to ensure the government has the best possible advice for making tax policy and can produce laws which best meet the needs of all Victorians. One of the key elements of effective tax design is having access to information which is complete, accurate and up to date on which to base policy decisions. Where this information is not available through other means, the government may need to seek this information from the public or private sector. Having access to this information will ensure that the government can design taxes and entitlements which benefit all Victorians and ensure the state functions effectively.

The exercise of this power is also subject to strict safeguards aimed at protecting the privacy of the information collected. Clause 116C provides that the information can only be used for the purposes of a feasibility study and clauses 116E and 116G prohibit the disclosure of that information, except in clearly defined circumstances which are related to a feasibility study. Clause 116B(4) provides that the commissioner cannot exercise the power unless he determines there is no other reasonable means of obtaining the information required for a feasibility study. The Information Privacy Act 2000 will also apply to the collection and handling of this information. In accordance with that act the information will be destroyed or permanently de-identified when it is no longer needed for the purposes of a feasibility study.

In these circumstances the power to require a person to provide information for the purposes of a feasibility study is not arbitrary, and the interference is not unlawful, because it is permitted by law. Therefore, the right to privacy is not limited by clause 116B of the bill.

Clause 116E of the bill amends the TAA to permit disclosure of information obtained for the purpose of a feasibility study in certain clearly defined circumstances related to the conduct of a feasibility study. In each instance disclosure may engage the right to privacy, but does not limit that right because the disclosures permitted are neither unlawful nor arbitrary.

Clause 116E(a) of the bill permits disclosure to any person employed or engaged in the administration or enforcement of a taxation law or another law under the general administration of the commissioner, if the disclosure is for the purposes of the conduct of a feasibility study. Feasibility studies will be conducted by delegates of the commissioner who are persons employed or engaged in the administration or enforcement of a taxation law, or other laws the commissioner administers. Permitting disclosure to those persons is not arbitrary, because it allows them to communicate with each other for the purposes of that study.

Clause 116E(b) of the bill permits disclosure to the Treasurer or a person employed in the Department of Treasury and Finance (DTF) if the disclosure is for a purpose related to the conduct of a feasibility study. While the commissioner is responsible for administering the taxation laws, including conducting feasibility studies, DTF has primary responsibility for advising the Treasurer on tax policy and the design of tax law. DTF will participate in feasibility studies to the extent that they examine and analyse information collected by the commissioner in order to develop and evaluate tax policies and proposals. Accordingly, permitting disclosure to the Treasurer and DTF for this limited purpose is necessary for a feasibility study to operate effectively and is not arbitrary in the circumstances.

Clause 116E(c) of the bill permits disclosure where the person to whom the information relates consents to the disclosure. Disclosure in these circumstances is not arbitrary because the individual has ultimate control over whether or not his or her information is disclosed.

Clause 116F of the bill permits the commissioner or the Treasurer to disclose information obtained in relation to the conduct of a feasibility study where it is unlikely to identify a
particular person. This is necessary to allow information of a
general nature to be disclosed, ensuring the commissioner and
Treasurer can remain transparent and accountable in relation
to the conduct of a feasibility study. For example, this may
include briefing external stakeholders or making public the
findings of any feasibility study. The requirement that the
information disclosed must be of a general nature protects the
privacy of individuals and is not arbitrary.

Clause 116G(a) of the bill permits a person who obtains
information relating to a feasibility study to disclose that
information to any other person where the commissioner
consents to the disclosure and the disclosure is for the purpose
of the conduct of a feasibility study or relates to the conduct
of a feasibility study. This ensures that the persons conducting
a feasibility study can on-disclose information for the limited
purpose of a feasibility study. This clause ensures that persons
conducting a feasibility study can make all the disclosures
required to conduct a feasibility study effectively, but is
appropriately circumscribed because the commissioner must
provide consent before any on-disclosure is made. In these
circumstances the clause is not arbitrary.

Clause 116G(b) of the bill permits a person who obtains
information relating to a feasibility study which was initially
obtained with the consent of the person to whom it relates to
disclose that information with the consent of the
commissioner and with the consent of the relevant individual.
In these circumstances disclosure is not arbitrary because the
individual is given control over whether or not his or her
information is disclosed.

In each case these disclosures are not unlawful because they
will be permitted by law and limited to disclosure for
expressly defined purposes.

Freedom of expression

Section 15(2) of the charter protects the right to freedom of
expression. This is the freedom to seek, receive and impart
information and ideas of all kinds, within or outside
of Victoria, and in any variety of forms. Freedom of
expression is also the freedom from being compelled to say
certain things or provide certain information.

Clause 116B of the bill limits the right to freedom of
expression as it compels a person to provide information to
the commissioner for the purposes of a feasibility study.

Clause 116E and clause 116G also limit the freedom of
expression because they prohibit a person from disclosing
certain types of information. Clause 116E prohibits the
disclosure of information obtained in respect of a feasibility
study, except where expressly authorised. Clause 116G
prohibits a person who obtains information as a result of an
authorised disclosure from disclosing that information to
others.

However, in each case the limitations are reasonable
limitations for the reasons set out below.

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

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

The purpose of clause 116B, which requires a person to
provide information to the commissioner for the purposes of a
feasibility study, is to ensure that the government can design
taxation laws which best meet the needs of Victorians. Sound
taxation laws are critical to the effective functioning of the
state because they raise revenue to fund the government’s
social and economic programs, and provide entitlements to
those who need them through various concessions and
exemptions.

The purpose of clauses 116D and 116G is to ensure that an
individual’s right to privacy is protected by restricting the
disclosure of information that has been obtained by the
commissioner for the purposes of a feasibility study. This is
important because the commissioner has an overarching right
to safeguard an individual’s right to privacy.

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

Clause 116B only requires a person to provide information to
the commissioner, but only for the purposes of a feasibility
study.

Clauses 116D and 116G of the bill limit the right to freedom
of expression by restricting the disclosure of information
obtained for the purpose of a feasibility study, unless that
disclosure is expressly permitted by the bill. The limitation
only applies to persons who have obtained information for the
purposes of a feasibility study, or authorised recipients of that
information under the bill. The information to which the
restriction relates is limited to information obtained for the
purposes of a feasibility study conducted by the
commissioner and does not apply to other information a
person may seek to impart. The bill also provides a number of
circumstances where disclosure is permitted, and clause 116F
provides for certain disclosures which are of a general nature.
Accordingly, the nature and extent of the limitation is
confined.

(c) What is the relationship between the limitation and
the purpose?

The limitation contained in clause 116B is directly related to
the purpose, which is to ensure that the government has the
information required to design effective and efficient tax laws
which accurately reflect current social and economic
conditions. The limit is also proportionate to the purpose
because, although the clause is couched in mandatory terms,
there is no civil or criminal penalty imposed for failure to
comply with the requirement to provide information to
the commissioner for the purpose of a feasibility study.

There is a direct relationship between the limitation imposed
by clauses 116D and 116G and the purpose of those clauses.
Section 15(3)(a) of the charter provides that freedom of
expression may be subject to lawful restrictions reasonably
necessary to respect the rights of other persons including the
right to privacy. There is a direct relationship between the
limitation imposed by clauses 116D and 116G and their
purpose, which is to protect the privacy of information
obtained for the purpose of a feasibility study.

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

In some circumstances it may be possible to obtain the
information required for a feasibility study by less restrictive
means — for example, where that information is available
from a public source or where a person is willing to volunteer
the required information. In these circumstances
clause 116B(4) provides that the commissioner is not
permitted to exercise the power unless he or she determines that there is no other reasonable means of obtaining that information. The commissioner cannot exercise the power where there is a less restrictive means available to obtain the information required for a feasibility study.

No other means are considered reasonably available to achieve the purpose of clauses 116D and 116G.

(e) Conclusion

Clause 116B is reasonable and necessary so that the government has complete, up-to-date and accurate information on which to base tax design decisions.

The limitation of freedom of expression by virtue of clauses 116D and 116G is reasonable and necessary to ensure private information obtained for the purposes of a feasibility study conducted by the commissioner is adequately protected in accordance with the charter and the Information Privacy Act 2000. In this case it is necessary to balance the right of freedom of expression of those persons employed or engaged in the feasibility study with an individual’s right to privacy.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because, even though it does limit a human right, this limitation is reasonable.

John Lenders, MP
Treasurer

Second reading

Ordered that second-reading speech be incorporated on motion of Hon. M. P. PAKULA (Minister for Industry and Trade).

Hon. M. P. PAKULA (Minister for Industry and Trade) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The purpose of the Fire Services Funding (Feasibility Study) Bill 2009 is to establish a framework to facilitate the conduct of a feasibility study in relation to alternative mechanisms for funding fire services in Victoria.

The bushfires which devastated this state earlier this year brought to the fore the vexed question of how fire services in Victoria ought to be funded. Under the current model, insurance companies make annual statutory contributions to the budgets of the Metropolitan Fire and Emergency Services Board (MFESB) and the Country Fire Authority (CFA), and approximately three-quarters of their budgets comes from these contributions. The remainder of the fire services budget is made up from local councils in the metropolitan area, and the state government.

Insurance companies recover the cost of their contributions from their policy-holders by attaching a fire services levy to insurance premiums, although they are under no statutory obligation to recover these costs in this way.

Following the 2009 Victorian bushfires (the bushfires) several questions have been raised on the funding of the fire services through the current insurance-based model. The bushfires have understandably led to a call on both government and the insurers to pay for the increased ongoing cost from bolstering preventive and protective fire services. In particular, some suggest that the impost on the insured is too high and has become a disincentive for property owners to adequately insure.

Whilst there are statutory provisions allowing the MFESB and the CFA to directly charge non-insured property owners for fire services, it may not be appropriate for the CFA to issue notices for call-out charges to non-insured property owners in the case of catastrophic fires such as Black Saturday. Nonetheless, millions of dollars worth of fire services were provided during the fire season to uninsured properties.

It is difficult to ascertain the quantum of non-insurance and underinsurance in our community. Evidence suggests that non-insurance varies from as little as 4 per cent to almost 30 per cent of all properties in Victoria. Whether the current insurance-based funding arrangements are in fact inequitable can only be determined by assessing whether those who are facing comparable fire risks are making similar contributions to the cost of fire services.

The government has recently released a green paper entitled Fire Services and the Non-insured. The purpose of this green paper is to facilitate community discussion on the best way to fund Victoria’s fire services and to determine whether an alternative model would deliver adequate funding in a more equitable way.

The green paper outlines the government’s intention to gather information and conduct a study to develop a greater understanding of the current levels of insurance throughout Victoria. The study will also consider the effects of the current fire services funding arrangements and assess whether options may improve the equity around fire services funding. The study will start by collecting data from insurance companies in relation to a number of selected municipalities to make a preliminary assessment of the levels of non-insurance and underinsurance.

The State Revenue Office will assist in the study by gathering and collating relevant data. The State Revenue Office and Department of Treasury and Finance will then jointly undertake an analysis of options and alternatives.

Currently the statutory role of the commissioner for state revenue is to administer the taxation laws. In order for him to participate in a feasibility study into a tax, duty, levy or impost, and undertake an analysis of alternatives, a new statutory function will be conferred on him.

The bill will allow the commissioner to collect information for the purposes of a study and disclose that information to officers within the Department of Treasury and Finance for the purposes of the study. The bill ensures appropriate privacy and confidentiality safeguards are in place so the information collected is used only for the purposes of the study.

Appropriate prohibitions regarding the use and disclosure of the information are provided so that details of the study cannot be further disclosed in a manner that identifies individuals. A penalty of 100 penalty units can be imposed on
any person who discloses information outside of these strictly defined parameters.

This government is committed to learning from all aspects of the Victorian bushfires. This bill establishes a framework that will help the government learn more about the levels of insurance in Victoria, and inform any decisions about how to fund fire services in the future in a way that is equitable and fair for the whole of our community.

I commend the bill to the house.

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

Debate adjourned until Friday, 4 December.

EDUCATION AND TRAINING REFORM AMENDMENT (OVERSEAS STUDENTS) BILL

Statement of compatibility

For Mr LENDERS (Treasurer), Hon. M. P. Pakula tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities (the charter), I make this statement of compatibility with respect to the Education and Training Reform Amendment (Overseas Students) Bill 2009 (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 purpose of the bill is to amend the Education and Training Reform Act 2006 (the act) to provide for:

- an expedited process to take action against providers who have been approved under part 4.5 of the act to provide a specified course to students from overseas; and
- the public disclosure of information about the cancellation or suspension of the registration, approval or authorisation of persons and bodies under division 3, 4 or 5 of part 4.3 or part 4.5 of the act.

The bill seeks to provide additional protection for students of education and training organisations, especially overseas students.

It will do this, firstly, by adding to the powers of the Victorian Registration and Qualifications Authority (VRQA) the ability to provide information about providers (other than schools) whose registration, approval or authorisation to deliver courses to overseas students has been suspended or cancelled. This will include the names and positions of the provider’s owners, directors, partners, high managerial agents and principal executive officer (as the case requires), and the grounds for the suspension or cancellation. It will also enable the VRQA to notify students of a provider (other than a school) where action has been taken against the provider that may affect its delivery of services to students.

Secondly, the bill will empower the VRQA to act more quickly in certain serious situations against poor-quality education and training providers (other than schools or universities) who deliver training to overseas students. In cases of “exceptional circumstances”, the VRQA will be required to give at least three working days notice of its intention to suspend a provider’s approval, and at least seven days notice of its intention to cancel the approval, rather than the current 28 day notice period.

The bill strikes the right balance between the rights of training providers and students, particularly students’ entitlement to an education which meets the standards against which the provider is registered to deliver. The bill seeks to maintain the high quality of education offered in Victoria, thus promoting the right to education recognised by article 26 of the Universal Declaration of Human Rights and article 13 of the International Covenant on Economic, Social and Cultural Rights.

Human rights issues

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

The bill potentially engages two of the human rights protected by the charter:

Section 13: Right to Privacy and Reputation

Section 13 provides that:

A person has the right —

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

(b) not to have his or her reputation unlawfully attacked.

Clause 3 of the bill amends section 4.2.2(1)(h) of the act to list as a function of the VRQA ensuring the public availability of meaningful and accurate information about persons or bodies, except schools, whose registration, approval or authorisation (under division 3, 4 or 5 of part 4.3 or under part 4.5) has been cancelled or suspended, and the reasons for this. This may also include the names and positions of the owners, directors, partners, high managerial agents and principal executive officer (as the case requires) of those providers.

Clause 4 of the bill inserts a new section 4.2.9, to empower the VRQA to direct an education and training organisation (as defined) to notify students enrolled by it of action taken against the organisation that may affect its delivery of services, or to publish this information itself.

The publication of the name of and specified action taken against an entity that is not a natural person does not engage the charter. However, the disclosure of the names of individuals — persons registered as the provider or the principal executive officer or directors etc. of those entities — potentially engages section 13.
The right to privacy in section 13(a) is only limited if the interference with privacy is ‘unlawful’ or ‘arbitrary’. ‘Unlawful’ means that no interference with privacy can take place except if the law permits it. The United Nations Human Rights Committee has said that a law which authorises any interference with privacy must be precise and circumscribed. In order to avoid being characterised as ‘arbitrary’ any interference must be in accordance with the provisions, aims and objectives of the charter and should be reasonable and justifiable in the particular circumstances.

One of the key principles enshrined in section 1.2.1(c) of the act is that ‘information concerning the performance of education and training providers should be publicly available’.

An existing function of the VRQA is to provide meaningful and accurate information to the public about training providers. The VRQA already has the power to provide such information about registered providers, and it is a targeted and reasonable amendment of this power, to clarify that this function also extends to those providers who have once been registered (approved or authorised), but whose registration (approval or authorisation) has been cancelled.

The aim of empowering the VRQA to publish this information is to provide as much information as possible to students, in order for them to make an informed choice of education and training provider. The bill recognises and supports the right of students to make informed choices about the most appropriate registered provider that can meet their educational needs. Accurate information about providers is essential to this. Where a provider has a proven record of operating in a way that does not meet the act’s registration or approval standards it is reasonable for students, and the public more generally, to have access to this information. This includes information about specified persons within such organisations, given a number of persons in the private vocational education and training sector who have had action taken against them by the VRQA have been involved with and/or have subsequently sought to establish other training organisations.

Section 15 of the charter provides that every person has the right to freedom of expression which includes the freedom to seek, receive and impart information. The right of privacy of individuals about whom the VRQA seeks to publish information must be balanced against the right to freedom of expression, that is, the right of the general public and especially international students to receive information about providers who have failed to meet regulatory standards. A closure of their training provider has very serious implications for overseas students, as it may impact on their capacity to lawfully remain in and study in Australia.

Therefore clauses 3 and 4 do not limit the right to privacy because the proposed powers for the VRQA do not unlawfully or arbitrarily interfere with the right to privacy:

- the information to be published by the VRQA must be both meaningful and accurate;
- the capacity to publish the information is limited to circumstances where the provider’s registration, approval or authorisation has been suspended or cancelled;
- the type of information is limited to the names and positions of individuals who are the registered provider or are in specified positions of authority with the provider which has operated in breach of the legislated standards;
- the publication of such information will be in accordance with the information privacy principle, specifically principle 2.1(f) of the Information Privacy Act 2000;
- the objective of protecting overseas students from the operations of unscrupulous training providers is consistent with charter objectives, in particular section 15 of the charter, and will assist in preventing poor-quality operators from jurisdiction shopping.

**Section 24: Right to a fair hearing**

Section 24 provides that:

1. 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.

2. despite subsection (1), a court or tribunal may exclude members of media organisations or other persons or the general public from all or part of a hearing if permitted to do so by a law other than this charter.

3. all judgements or decisions made by a court or tribunal in a criminal or civil proceeding must be made public unless the best interests of a child otherwise requires or a law other than this charter otherwise permits.

Clause 5 of the bill amends section 4.5.4 of the act by, amongst other things, providing that the 28 day notice period in section 4.5.4(6) does not apply where the institution (other than a school or university) has ceased trading or conducting operations, has become bankrupt or a winding up order has been made against it (if a body corporate).

Clause 6 of the bill reduces the notice period that the VRQA is required to give before it may take action to suspend or cancel a provider’s approval to deliver courses to overseas students, in ‘exceptional circumstances’.

Section 24(1) of the charter guarantees the right to a fair and public hearing in relation to a ‘civil proceeding’. In the case of Kracke v. Mental Health Review Board [2009] VCAT 646 (Kracke) Justice Bell held that the expression ‘civil proceeding’ covers some administrative as well as judicial proceedings.

However, Justice Bell recognised in Kracke that not all administrative decision-making processes are afforded the full protection of the right to fair trial. His Honour held that ‘[w]hether a person or body exercising an administrative jurisdiction is doing so in a civil proceeding must be assessed on a case-by-case basis.’ This conclusion was based on the case law in relation to the right to a fair trial in other jurisdictions.

In communication no. 83/1998 (Kolanowski v. Poland) the United Nations Human Rights Committee (the committee) concluded that not every administrative decision is subject to
the guarantees provided by the right to a fair trial, article 14 of the International Covenant on Civil and Political Rights.

In general comment 32 on article 14 (23 August 2007), the committee expressed the view that the right would not apply where domestic law does not grant any entitlement to the person concerned. In the context of the present bill training providers engage voluntarily in strictly regulated activities and agree to be subject to the requirements of state and commonwealth legislation.

Furthermore, it is important to look at the totality of the decision-making process to determine whether it complies with section 24 of the charter. In this case, one must consider not only the decision-making processes followed by the VRQA but also the right of review at the Victorian Civil and Administrative Tribunal (VCAT).

I consider that the decision-making process covered by this bill does not limit section 24 of the charter for the following reasons:

Education providers who disagree with the decision of the VRQA have the right to seek a review by VCAT of the decision to cancel or suspend. VCAT is a tribunal for the purposes of the charter and its proceedings are fully compliant with section 24 of the charter.

The reduction in time frames in ‘exceptional circumstances’ is directed to where the risk to overseas students is greatest. The bill defines ‘exceptional circumstances’ to include matters such as serious breaches of occupational health and safety laws, where the provider has notified the VRQA or its students that it intends shortly to cease operations, or where it is necessary to take urgent action because of significant non-compliance with requirements.

The reduced time frames are expressed as minima, and therefore it will be open to the VRQA to allow a longer period of time for a provider to make submissions, in appropriate circumstances.

The VRQA’s action will follow a review (usually an audit) of the provider’s operations during which any serious allegations or issues would be expected to be raised. Therefore, the training provider would in most cases have been aware for some time that the VRQA is about to form the view that ‘exceptional circumstances’ exist to justify suspending or cancelling the provider’s approval to deliver training to overseas students.

If the usual 28-day period were to apply, this would severely limit the ability of the VRQA to take urgent action against providers whose operations are jeopardising the training needs of students.

Apart from the circumstances described in the bill, in all other cases the provider will continue to have 28 days in which to make a submission.

The reduced notice periods represent a reasonable balance between the rights of the overseas students and the rights of the training provider.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because although the bill engages the rights to privacy and to a fair hearing, it does not limit these rights.

Martin Pakula
Minister for Industry and Trade

Second reading

Ordered that second-reading speech be incorporated on motion of Hon. M. P. PAKULA (Minister for Industry and Trade).

Hon. M. P. PAKULA (Minister for Industry and Trade) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Brumby government recognises the importance of the international education industry to Victoria’s future, economically, socially and culturally.

We welcome students from more than 150 countries and we are proud of the fact that in 2009 over 160 000 students from overseas chose to study and live in Victoria. Melbourne has more overseas students per capita than any other city in the world, other than London.

Overseas students add to the rich, diverse multicultural place that Victoria is and we are committed to continuing to build our reputation as a safe, welcoming and high quality international study destination.

In many ways international education provides the foundation for the way nations will do business together in the future. It provides invaluable and lasting business, research, diplomatic and personal connections, not only enriching both Victorian students and international students, but also enriching Victoria and the countries from which they come.

The shared experiences and the personal connections will enable us to have richer, deeper and more meaningful relationships between nations in the future which will provide greater economic benefits and closer ties across the full bilateral relationships.

In 2008, in recognition of the importance of international education and of the issues that overseas students face, the Brumby government established the Overseas Student Experience Taskforce to examine and advise on what could be done across five areas of particular relevance to overseas students — accommodation, employment, safety, social inclusion and information provision.

In September of this year the Premier and I released a $14 million action plan Thinking Global — Victoria’s Action Plan for International Education. The action plan aims to ensure that overseas students are well supported and continue to have a positive, rewarding and high-quality educational experience while studying and living in Victoria. The action plan addresses all of the recommendations made by the Overseas Student Experience Taskforce.

The vast majority of overseas students report having a positive experience while living and studying in Victoria. Indeed, many choose to live in Australia after completing
their studies and recommend the experience to their family and friends.

However, it is an unfortunate fact that some international students have not received the high-quality educational experience they expect and deserve.

There are, regrettably, some poor quality education and training providers and some that are seeking to take advantage of these students. For example, some individuals and organisations have entered the training market, with the intention of maximising profits rather than maximising quality.

This is unacceptable. In the education and training system, the interests of students must come first. We need to make sure that all providers are meeting registration standards and are capable of delivering high-quality education and training. This will not only protect the wellbeing of students, but also the reputation and value of qualifications awarded by Victorian providers.

For this reason, earlier this year I asked the Victorian Registration and Qualifications Authority (the VRQA) to conduct a program of audits on a number of education providers assessed as operating in a high-risk environment. Audits conducted to date have shown that there are some providers that are not operating to the required standard and action is being taken against them.

Poor quality education and training providers are damaging to students, damaging to the industry and damaging to Victoria’s reputation as a destination of choice for international students and will not be tolerated.

The regulation of training for international students is a shared responsibility of the commonwealth and state and territory governments. While the VRQA approves providers to deliver courses to overseas students in Victoria, it is the commonwealth that formally registers them under the Education Services for Overseas Students (ESOS) Act 2000 (the ESOS act) and so has the power to suspend or cancel that registration.

In the context of being a national issue, I took a set of proposals to the June meeting of the relevant ministerial council which resolved that all jurisdictions together would take united action to address the problems that have arisen in this space.

To that end, it is critical that we put in place the right mechanisms to stop poor quality education and training providers from delivering to overseas students in Victoria. The VRQA must also have sufficient powers to inform the public, notably students, about action taken against substandard providers.

The Education and Training Reform Amendment (Overseas Students) Bill 2009 addresses these issues.

This important bill aims to improve the quality of education and training provision and complements the government’s actions to protect overseas students’ physical security.

The bill amends the Education and Training Reform Act 2006 (the act) to strengthen the powers and functions of the VRQA in two critical ways.

Firstly, the bill strengthens the powers of the VRQA to inform students and the public about substandard training providers, in respect of both Australian and international students.

The bill will empower the VRQA to provide information about providers whose registration has been suspended or cancelled, or whose approval to deliver courses to overseas students has been suspended or cancelled. This will include the discretion to publish the names and positions of the provider’s owners, directors, partners, high managerial agents and principal executive officer (as the case requires), and the grounds for the suspension or cancellation. It will also enable the VRQA to notify students of a training provider where action has been taken against the provider that may affect its delivery of services to students, or direct a provider to do so.

One of the key principles enshrined in section 1.2.1(c) of the act is that ‘information concerning the performance of education and training providers should be publicly available’.

Following this principle, an existing function of the VRQA is to provide meaningful and accurate information to the public about training providers. The VRQA already has the power to provide such information about registered providers, and this bill clarifies that this function also extends to those providers who have once been registered, but whose registration or approval has been cancelled.

The bill recognises and supports the right of students to make informed choices about the most appropriate registered provider that can meet their educational needs. Where a provider has a proven record of operating in a way that does not meet the act’s registration or approval standards, it is reasonable for students, and the public more generally, to have access to meaningful information about this. Meaningful information may include the names of specified persons within such organisations, given a number of persons in the private vocational education and training sector who have had action taken against them by the VRQA are involved with other training organisations.

Secondly, the bill will enable the VRQA to act more quickly to suspend or cancel a provider’s approval to deliver courses to overseas students.

Currently, the act requires the VRQA, following a review of a provider’s operations, to give 28 days notice of its intention to take action against the provider. The VRQA must then consider any submission from the provider before deciding whether or not to suspend, cancel or impose conditions on its approval to deliver courses.

In practice, this results in long delays before the VRQA is able to suspend or cancel the provider’s approval and is not tenable in situations where the problems with the provider are of a critical nature.

The bill therefore allows the VRQA to respond more quickly, in ‘exceptional circumstances’.

The bill includes a non-exhaustive definition of ‘exceptional circumstances’, to include matters such as serious breaches of occupational health and safety laws, where the provider has notified the VRQA or its students that it intends shortly to cease operations, or where it is necessary to take urgent action because of significant non-compliance with minimum standards.
In exceptional circumstances, the VRQA will be required to give at least three (3) working days notice of its intention to suspend a provider’s approval to deliver courses to overseas students, and at least seven (7) days notice of its intention to cancel the approval.

The bill does not affect the obligation on the VRQA to conduct a review before it can issue a notice of intended action, and it must consider any submissions made by the provider before it takes action against it.

Unlike the standard 28-day notice period, these time limits are expressed as minima. This makes it clear that the VRQA may give a provider more than the minimum notice period, in appropriate circumstances, before it proposes to suspend or cancel the provider’s approval.

The different time limits are appropriate because of the different effects of suspension or cancellation of an approval by the VRQA on a provider’s registration under the ESOS act —

where the VRQA suspends an approval, while the provider can continue to deliver to existing overseas students who have commenced their course, they are prohibited from recruiting or enrolling new overseas students;

where the VRQA has cancelled a provider’s approval, this triggers the cancellation of the provider’s registration under the ESOS act. This means that the provider can no longer deliver any courses, and that appropriate consumer protection arrangements are triggered. This generally allows the provider’s students to access consumer protection arrangements and be relocated to another suitable training provider.

Therefore, the prompt closure of a provider may assist overseas students as it will enable them to more swiftly access those protection arrangements and secure an alternative training place or refund. The capacity to secure an alternative training place through one element of the consumer protection arrangements, that is the Tuition Assurance Scheme, is very important as it is likely to impact upon the students’ ability to remain lawfully in Australia.

It is important to note that these reduced time periods only apply where it is necessary to use the exceptional circumstances provision to take quick action against a provider.

The bill also provides that the 28-day notice period does not apply where an institution has ceased trading, has become bankrupt or a winding up order has been made against them. Similar provisions exist in the ESOS act, which allow the commonwealth to automatically cancel a provider’s registration so that international students can then access consumer protection arrangements.

With the exception of some minor tidying up of existing provisions in part 4.5, the amendments in the bill do not apply to schools.

This bill is one of a number of responses this government is taking to address matters within the international education sector. Many of these issues are common across Australia. Therefore, my department and I will continue to work with the commonwealth government and the other states and territories to quickly and effectively address issues affecting overseas students.

My department is also conducting a wider review of the registration and quality assurance provisions of the act, to ensure that the VRQA is adequately equipped to register and otherwise deal with providers of training to domestic students. Following the outcome of that review, I may present further amendments to the act in 2010.

This bill is an important first step to further safeguard the provision of high quality education to overseas students in Victoria.

I commend the bill to the house.

Debate adjourned on motion of Mr HALI (Eastern Victoria).

Debate adjourned until Friday, 4 December.

SUMMARY OFFENCES AND CONTROL OF WEAPONS ACTS AMENDMENT BILL

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Summary Offences and Control of Weapons Acts Amendment Bill 2009 (the bill). In my opinion, the bill, as introduced in the Legislative Council, is partially compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

1. Overview of bill

The bill amends the Summary Offences Act 1996 to enhance police powers to tackle violence and disorder. It confers on police a new power to direct people to move on from an area if they are, or are likely to become, involved in a breach of the peace or threat to public safety.

The bill also creates a new offence of disorderly conduct, empowers the police to arrest and lodge in safe custody a person who is found drunk and disorderly in a public place, and expands the list of offences for which infringement notices can be issued.

The bill amends the Control of Weapons Act 1990 to clarify and strengthen the existing power to search a person for weapons on reasonable suspicion that the person is carrying a weapon in a public place. It also provides the police with a new power to search persons for weapons in public places within temporarily designated areas. This new power is not premised on the police first forming a reasonable suspicion that the person to be searched is carrying a weapon. The bill regulates in detail the way in which the new search powers are to be exercised (and includes special protections as to the
circumstances in which, and manner in which, strip searches can be conducted).

2. Human rights issues

The amendments to both acts raise a number of issues in terms of compatibility with the charter. In this statement, I deal first with the issues raised in respect of the Summary Offences Act 1966 because that conforms with the structure of the bill. In my view, however, the most significant charter issues arise in relation to the amendments to the Control of Weapons Act 1990.

Summary Offences Act 1996 — new police powers to move on

Clause 3 of the bill inserts new division 1A into part I of the Summary Offences Act 1996 to provide police with a move-on power. This power permits a member of the police to give a direction to a person or a group of persons to leave a public place or a part of a public place if the member suspects on reasonable grounds that the person or group of persons is breaching the peace or likely to breach the peace; that the person is endangering or likely to endanger the safety of any other persons; or that the person’s behaviour is likely to cause injury to a person or damage property, or otherwise constitute a risk to public safety.

Section 12 — freedom of movement

Section 12 of the charter provides that every person lawfully within Victoria has the right to move freely within Victoria. As clause 3 allows police to compel a person to leave a public place and creates an offence for failure to comply, the right to freedom of movement is limited. However, I consider this limitation to be reasonable and justifiable under section 7(2) of the charter for the following reasons.

(a) the nature of the right being limited

It is generally recognised that the right to freedom of movement can be subject to restrictions. For example, the International Covenant on Civil and Political Rights expressly recognises that the right may be subject to restrictions that are necessary for the protection of national security, public order, public health or morals or the rights and freedoms of others.

(b) the importance of the purpose of the limitation

The purpose of the power to issue a move-on direction is to reduce violence and disorder. It is aimed at protecting public order and the rights and freedoms of others, including the rights to life, to security and to enjoyment of one’s property. These are important objectives that are sufficient to justify limiting a charter right.

(c) the nature and extent of the limitation

The direction can only be made to members of the public reasonably suspected of breaching the peace, endangering safety or damaging property, or where there is a likelihood of one of those things occurring. The definition of “breach of the peace” is settled at common law and contemplates situations where harm is done or likely to be done to a person or their property or where a person is in fear of being harmed through an assault, an affray, a riot, unlawful assembly or other disturbance.

Once a direction is given, the person or group of persons will be compelled to leave the place for a period of time not exceeding 24 hours. Anyone who fails or refuses to leave that place or part of that place is guilty of an offence carrying a maximum penalty of 5 units (the current value of a penalty unit being $116.82). The offence will also be enforceable by infringement notice with a penalty of two units.

(d) the relationship between the limitation and its purpose

The move-on power provides police with a pre-emptive tool to diffuse dangerous situations and to ensure the peaceful enjoyment of public spaces by the citizenry. In this way, there is a clear and rational connection between the limitation on the right to freedom of movement and the purpose of the provision.

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

Clause 3 is carefully tailored. The move-on power is only triggered if there is a reasonable suspicion of a breach of the peace, threat to safety, or threat of injury or damage (or of a likelihood of one of these things occurring) and is in effect for a limited period of time. Additionally, subclause (5) specifies that the power does not apply in relation to a person who is: picketing a place of employment; demonstrating or protesting about a particular issue; or speaking, bearing or otherwise identifying with a banner, placard or sign or otherwise behaving in a way that is apparently intended to publicise the person’s view about a particular issue. This means that activities with a high expressive content will generally be exempted from interference.

In the light of these limits on its operation, clause 3 restricts the right to freedom of movement no more than reasonably necessary to achieve the legislative purpose.

Section 15 — freedom of expression

For similar reasons, clause 3 does not breach section 15 of the charter. The exemption in subclause (5) for picketing, political demonstrations or protests and other attempts to publicise a viewpoint ensures that most behaviour with a high expressive content cannot be targeted. I accept that it is possible that some conduct targeted by clause 3 may nevertheless have an expressive content and thus engage the right to freedom of expression in section 15(2) of the charter. However, section 15(3) provides that the right to freedom of expression brings with it special duties and responsibilities and may be subject to lawful restrictions that are reasonably necessary to respect the rights and reputation of other persons or for the protection of national security, public order, public health or public morality. Accordingly, a provision such as this one that is carefully tailored to respond to behaviour that gives rise to a reasonable suspicion of a disruption or impending disruption to public order does not breach section 15.

Section 16(1) — peaceful assembly

Section 16(1) of the charter provides that every person has the right of peaceful assembly. The right of peaceful assembly encompasses the right to privately and publicly gather or associate with others to attain a particular end and the right to organise and to participate in public demonstrations and marches. As is apparent from the terms of the right itself, it only protects participation in activities that are intended to be
peaceful. Assemblies that are not peaceful or that lose their peacefulness through the use or threat of force do not fall within the protective scope of right. In my view, because the move-on power is targeted at breaches or anticipated breaches of public order, the right to peaceful assembly is not engaged.

Summary Offences Act 1996 — new offence of disorderly conduct

Clause 6 of the bill inserts new section 17A into the Summary Offences Act 1996, which creates the offence of behaving in a disorderly manner in a public place. The offence carries a maximum penalty of five units, and can also be enforced through infringement notices carrying 2 penalty units.

Section 15 — freedom of expression

As disorderly conduct can have an expressive component, clause 6 clearly engages section 15(2) of the charter. It is well recognised that the right to freedom of expression protects the expression of ideas that offend, shock or disturb and covers behaviour that is irritating, contentious, heretical, unwelcome or provocative — provided, at least, that it does not tend to provoke violence.

As has already been noted, however, section 15(3) of the charter provides that the right to freedom of expression can be subject to lawful restrictions that are reasonably necessary to respect the rights and reputation of other persons or for the protection of national security, public order, public health or public morality. The offence of behaving in a disorderly manner places limits on acceptable behaviour in public places in order to serve the legitimate purpose of protecting public order and the rights of others to the peaceful enjoyment of public spaces. The right to freedom of expression means that those limits should be generous ones that do not, for example, restrict a person’s behaviour simply because it offends or annoys others. However, the language in which the offence of behaving in a ‘disorderly manner’ is cast is malleable, allowing for it to be interpreted and applied narrowly so as to ensure consistency with the human rights framework. So, for example, the New Zealand Supreme Court recently considered the meaning of the equivalent New Zealand offence in the light of the right to freedom of expression found in the New Zealand Bill of Rights Act 1990 (Brooker v. Police [2007] 3 NZLR 91). Each member of the court formulated, in slightly different language, a test that he or she considered sufficient to protect the right — for example, behaviour that is ‘seriously disruptive of public order’, that creates a ‘clear danger of disruption rising far above mere annoyance’ or that causes ‘anxiety or disturbance at a level which is beyond what a reasonable citizen should be expected to bear’. It is to be expected that the Victorian police and, if necessary, the judiciary will likewise interpret and apply the new offence in a manner that is consistent with section 15(3) of the charter and that does not penalise behaviour simply because it annoys others.

Accordingly, I conclude that clause 6 does not breach section 15 of the charter.

Section 16(1) — peaceful assembly

In the majority of circumstances in which the new offence of behaving in a disorderly manner applies, the right to freedom of peaceful assembly in section 16 of the charter will not even be engaged. This will be either because the particular assembly is not ‘peaceful’ or because the people who are assembled have not come together for a common purpose (which is generally thought to be a precondition of the right of peaceful assembly).

It is possible, though, that there will be some cases in which the offence of disorderly conduct will nevertheless limit the right of peaceful assembly. That is because the concept of ‘disorderly’ is probably not synonymous with lacking ‘peacefulness’. Its ambit is somewhat wider and may include behaviour that causes a high degree of anxiety or disturbance but that is not violent.

I consider, though, that any limit on the right of peaceful assembly is justified under section 7(2) of the charter for the following reasons.

(a) the nature of the right being limited

The nature of the right to freedom of peaceful assembly has already been outlined.

(b) the importance of the purpose of the limitation

The purpose of the limitation is to protect public order and the rights of others to use and enjoy public spaces. This is an important objective — though it is to be expected that any interference with the rights of others would need to reach a threshold of seriousness before it could be sufficient to justify limiting the right to freedom of peaceful assembly. As discussed above, the language in which the offence is cast is sufficiently malleable to allow the courts to ensure that an appropriate threshold is adopted, and there is case law from other jurisdictions to guide the Victorian courts in doing so.

(c) the nature and extent of the limitation

The measure will only limit a small category of behaviour coming under the rubric of ‘peaceful assembly’, that is, behaviour that is peaceful but nevertheless disorderly.

(d) the relationship between the limitation and its purpose

An offence of behaving in a disorderly manner will clearly assist in protecting public order and the rights of others to the peaceful enjoyment of public spaces.

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

There is no obvious less-restrictive means available for providing the police with a general power to respond to behaviour that causes a high degree of anxiety or disruption to other citizens. Offences concerning disorderly conduct are found in a number of other common-law jurisdictions. As discussed above, the malleability of the language in which the offence is cast ensures that it can be interpreted in a manner that intrudes no more than is necessary on protected rights, and there is guidance from other jurisdictions such as New Zealand as to how to do so.

Summary Offences Act 1966 — offences of drunk in a public place and drunk and disorderly

Section 13 of the Summary Offences Act 1966 makes it an offence to be found ‘drunk in a public place’ and section 14 makes it an offence to be found ‘drunk and disorderly in a public place’. As the law currently stands, a person who contravenes section 13 may be arrested and lodged in safe custody. Clause 5(1) of the bill amends section 14 to similarly
empower police to arrest and lodge in safe custody a person who contravenes section 14.

In practical terms, this amendment does not empower the police to do anything that they cannot already do. This is because any person who has contravened section 14 will also have contravened section 13 (and therefore already be eligible to be arrested and lodged in safe custody for that offence). The amendment will provide consistency between the two provisions. Nevertheless, as the amendment to section 14 provides the police with an additional power, I consider the charter issues raised by the provision briefly below.

Section 21 — liberty and security

Clause 5(1) engages the liberty rights found in section 21 of the charter and, most pertinently, the right not to be ‘arbitrarily’ arrested or detained (section 21(2)). The prohibition on ‘arbitrary’ interference has sometimes been said to require that a lawful interference must be reasonable or proportionate in all the circumstances; and has also been said to incorporate elements of inappropriateness, injustice and lack of predictability (United Nations Human Rights Committee, general comment 16, paragraph 4; Toonen v. Australia (communication no. 488/1992); Van Alphen v. The Netherlands (communication no. 305/1988)).

In my view, the power to arrest a person who is found drunk and disorderly in a public place and lodge them in safe custody is not arbitrary. It is for the legitimate purpose of protecting the safety of both the person themselves and others in the community by placing them in a safe environment until they have sobered up. Implicitly, it must be exercised for this purpose, and the person must not be detained for longer than is reasonably necessary for this purpose. A parliamentary report into public drunkenness in 2001 noted that the time taken depends on the level of intoxication but is usually for a period of four hours. The Victoria Police manual also contains detailed guidance for police about protecting the safety and welfare of persons who are drunk while in custody.

In deciding that this power is not arbitrary, I have also taken into account the fact that section 16 of the Summary Offences Act 1966 creates an offence of, while drunk, behaving ‘in a riotous or disorderly manner in a public place’. That offence attracts the more serious penalty of 10 units or imprisonment for two months. Further, the police have the power available to them (under section 458 of the Crimes Act 1958) to arrest a person for an offence against section 16. Such an arrest would not have the protective purpose of an arrest for lodgement in safe custody under section 14. Accordingly, in many cases, it will be in the interests of the drunk person for the police to have this less serious intervention available to them.

Section 15 — freedom of expression

Clause 5(1) also engages the right to freedom of expression in section 15 of the charter. That is because, as discussed above, ‘disorderly’ behaviour can have an expressive content. Clause 5(1) creates a detriment for a person who is found ‘drunk and disorderly’ by empowering the person’s arrest and lodgement in safe custody. Additionally, the bill increases the penalty units for the offence from 1 to 5 units (clause 5(2)). However, it also makes provision for the offence to be dealt with by infringement notice with a maximum penalty of 2 units (clauses 7 and 8).

I have already concluded above that the more serious new offence of behaving in a disorderly manner (new section 17A) is compatible with the right to freedom of expression. It follows that clause 5(1) is also compatible. As just mentioned, it provides police with a significantly less intrusive power for dealing with disorderly conduct than arresting and charging the individual with an offence against section 16.

Control of Weapons Act 1990 — new search powers

Part 3 of the bill amends the Control of Weapons Act 1990 to enhance the powers available to police officers to search for weapons in public places.

As currently enacted, section 10 of the Control of Weapons Act 1990 empowers police officers to search members of the public without a warrant where they suspect, on reasonable grounds, that the person is carrying a ‘prohibited weapon’, a ‘controlled weapon’ or a ‘dangerous article’. Clause 9 of the bill amends section 10 in order to address efficacy problems that have arisen due to uncertainty over whether police officers are empowered to seize a suspicious object if it is concealed beneath clothing (and therefore cannot be positively identified or recovered as a result of a pat-down search) or if the officer is unsure which of the three categories of weapon the article falls into. As amended by clause 9, section 10 empowers a police officer to conduct a search if he or she reasonably suspects that the person is carrying a ‘weapon’ (defined as an object falling into any one of the above categories) and to seize any object that he or she reasonably believes to be a weapon. This means that it is no longer necessary for the police officer to positively identify which category of weapon the object falls into. Additionally, the amended section 10 (read together with new schedule 1 to be introduced by clause 13 of the bill) empowers police, where necessary in order to uncover a suspicious article, to proceed beyond a pat-down search or search of a person’s outer clothing to a strip search.

Clause 12 extends the police’s search powers by empowering the police to stop and search persons and vehicles in public places that fall within areas that have been temporarily designated. This new search power is not premised on the police having first formed a reasonable suspicion that the person is carrying a weapon but is premised, instead, on there being a likelihood of weapons-related violence occurring in the designated area.

New sections 10D–10F (as inserted by clause 12) empower a senior police officer (ranked inspector or above) to declare an area to be a designated area for a maximum period of 12 hours. There are two forms of designation — ‘planned designations’ and ‘unplanned designations’. Planned designations may be made where there has already been more than one incident of weapons-related violence or disorder in the proposed area over the last 12 months, or where weapons-related violence or disorder has been associated with a particular event or celebration on previous occasions (section 10D). Additionally, the officer making the designation must be satisfied that there is a likelihood that such violence will recur. Unplanned designations are to deal with the situation where the police receive intelligence that an incident involving weapons-related violence has occurred or is about to occur. An unplanned designation can be made where the officer is satisfied that it is likely that violence or disorder involving weapons will occur in the area and that it is necessary to designate the area for the purposes of enabling...
the police force to exercise search powers to prevent or deter the occurrence of that violence or disorder (section 10E).

New sections 10G–10L authorise the police, in public places that fall within a designated area, to stop and search for weapons; persons and things in their possession or control (section 10G), and also vehicles (section 10H). The police are empowered to seize any item detected during the search that they reasonably suspect is a weapon (section 10J).

Clause 13 inserts new schedule 1, which provides detailed instructions to police on the manner in which searches of the person under sections 10 and 10G are to be conducted. In the case of searches within designated areas under section 10G, police are to begin with a search using an electronic metal detection device (schedule 1, clause 3) and to progress to a pat-down search, search of outer clothing and close examination of the person’s belongings only if, as a result of the initial search, the member considers that the person may be concealing a weapon (schedule 1, clauses 4 and 5). In the case of a search on reasonable suspicion under section 10, the member may proceed immediately to a pat-down search, search of outer clothing or search of belongings without being required to first utilise an electronic metal detection device.

In either case, however, the police can only proceed to a ‘strip search’ if, having conducted the less intrusive search, they form a reasonable suspicion that the person has a weapon concealed on them; and they believe on reasonable grounds that it is necessary to conduct a strip search for the purposes of the search and that the seriousness and urgency of the circumstances require the strip search to be carried out (schedule 1, clause 7). The power to ‘strip search’ enables the police to move beyond a search of outer clothing and to take the minimum measures necessary to recover a suspicious object that appears to be concealed underneath the person’s clothing. Consistent with the principle of minimal intrusion reflected throughout the bill (for example at schedule 1, clause 9(4) and (14)) it is highly unlikely that, in the majority of cases, this phase of the search will require the person being searched to remove all of their clothing. Schedule 1 also provides extensive protections with respect to the conduct of all searches, which I outline further below.

New section 10K (as inserted by clause 12) requires individuals who are subject to a strip search to disclose their identity.

New section 10L (as inserted by clause 12) makes it an offence for a person, without reasonable excuse, to obstruct or hinder the police in the exercise of their search powers or to fail to comply with a relevant direction.

Section 13 — the right to privacy

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

In considering whether the new search powers breach section 13(a), the first question is whether the amendments empower the police to interfere with a person’s privacy. If so, then the second question is whether that interference is ‘unlawful’ or ‘arbitrary’.

The concept of ‘privacy’ defies precise definition but at its most basic, is concerned with notions of personal autonomy and dignity. It has been said that the right to privacy contains several spheres, including ‘spatial, personal and informational’ spheres, and that it includes the right of the individual to determine for himself or herself when, how and to what extent he or she will release personal information about himself or herself (R v. Dyment [1988] 55 DLR (4th) 503 at 520; R v. Duarte [1990] 65 DLR (4th) 240 at 252).

It is clear that, in general terms, a search of a person is an intrusion on a person’s privacy. However, it is also clear from the case law in other jurisdictions that intrusions on privacy must pass a threshold of seriousness before the privacy right can be said to be engaged. Trivial intrusions will not amount to an interference with privacy for the purposes of section 13(a). It is possible that the power to conduct an initial search of a person solely by use of an electronic metal detection device under new schedule 1, clause 3 does not amount to a sufficiently serious intrusion to engage the section 13(a) right. In R (Gillan & Anor) v. Commissioner of Police of the Metropolitan & Anor [2006] 2 AC 307, the House of Lords went further and held that a power to conduct pat-down searches and to search bags within designated areas did not engage the right in article 8 of the European Convention on Human Rights to respect for ‘private life’. Bearing in mind the different language of the European convention (‘private life’ rather than ‘privacy’) and the special context in which the Gillan case arose (it concerned a counter-terrorism measure), the safer conclusion, in my view, is that the power in schedule 1, clauses 4 and 5 to conduct pat-down searches and to search outer clothing and belongings does amount to an interference with the right to privacy in terms of section 13(a) of the charter. This is consistent with the weight of authority from other jurisdictions. Given that conclusion, it is unnecessary to decide whether an electronic metal detection device search, without more, engages the section 13(a) right.

Undoubtedly, the power to conduct ‘strip searches’ (schedule 1, clause 7) and the power to search vehicles (new section 10H) amount to interferences with the right to privacy.

The key question, therefore, is whether the interferences with privacy authorised under any of these provisions can be said to be ‘unlawful’ or ‘arbitrary’ for the purposes of section 13(a). A ‘lawful’ interference is one that is authorised by a positive law that is adequately accessible and formulated with sufficient precision to enable a person to regulate his or her conduct by it ([1979] 2 EHRR 245). The bill provides detailed guidance as to the circumstances in which the new search powers will be exercised and the manner of their exercise so there is no question of the resulting interferences with privacy being ‘unlawful’ in this sense.

The meaning of ‘arbitrary’ has been touched on above. The prohibition on ‘arbitrariness’ has been said to require that a lawful interference must be reasonable or proportionate in all the circumstances; and has also been said to incorporate elements of inappropriateness, injustice and lack of predictability. I give separate consideration below to two situations contemplated by the new search powers. First, I consider the powers that are being given to police to search persons and vehicles in public places within the designated areas, even if the police have not formed a reasonable suspicion that the person or vehicle is carrying a weapon. Secondly, I consider separately the power that is being given to police to ‘strip search’ individuals. This power only arises if a police officer has formed a reasonable suspicion that the person is carrying a weapon.
The power to search without suspicion within the designated areas

I accept that the power given to police officers by clause 12 of the bill to search persons and vehicles in designated areas even though the police officer has not formed a suspicion on reasonable grounds that the person or vehicle is carrying a weapon is an unusual one that warrants careful scrutiny in order to determine its level of consistency with charter values. There are two significant reasons to proceed with introducing random stop and search powers in designated areas, as provided for in the bill. Firstly, the detection of and prevention of weapons-related offending poses significant challenges for Victoria Police and the new search powers will provide a valuable tool for them in trying to meet those challenges. Secondly, the legislation has been carefully tailored to ensure that it provides significant safeguards whilst providing the police with an effective tool to meet those challenges.

The bill provides the police with a tool to assist them in meeting the challenges faced by patterns of offending in particular areas by enabling them to target particular geographical hot spots through the designation process. The bill also enables the police to target particular events (such as New Year’s Eve and the evening of the AFL final) which draw particularly large crowds onto the streets and therefore pose special policing challenges.

Having regard to the unusual and intrusive nature of the new search powers, the legislation has been carefully tailored to limit the reach and impact of the power to search without suspicion and to protect against inappropriate use. For example, the legislation includes the following features:

- designations can only be made in the limited circumstances set out in new sections 10D(1) and E(1) as already outlined. Those circumstances link the grounds for making a designation to the patterns of weapons-related offending just discussed and to a likelihood of weapons-related violence occurring;
- the designations must be geographically limited to an area that is no larger than is reasonably necessary to effectively respond to the particular threat (new sections 10D(2) and 10E(3));
- each designation only operates for a limited time. In addition to the maximum durations of 12 hours, the period of operation of a designation must be for no longer than is reasonably necessary to enable the police to respond effectively to the particular threat (new sections 10D(3) and 10E(4));
- in the case of planned designations, notice of the designation must be given to the public through the Government Gazette and through daily newspapers (new section 10D(4) and (5)). This will enable at least some members of the public to moderate their expectations and to avoid travelling through the designated areas if they are sufficiently concerned about the impact on them of the search power;
- in accordance with schedule 1, any search of a person under section 10G must be graduated, commencing with the least intrusive form of search available, that is, a search by the use of a metal detection device and only proceeding to a pat-down search and search of outer clothing if, as a result of the initial search, the member considers that the person may be concealing a weapon;
- new section 10I provides written and oral notice requirements that apply once any person or vehicle is detained for the purposes of a search. They ensure that the person is informed of the reason for and authority for the search and, if they wish to know it, the identity of the police officer.

The government intends to proceed with this legislation notwithstanding the conclusion that it is incompatible with section 13(a) of the charter. There is considerable concern in the community about the pattern of weapons-related offending with which this legislation is concerned. I am unwilling to reduce further the operational scope of the legislative response to that threat. In particular, the government is very concerned that the carriage and use of weapons by people in public places should be prevented, or at the very least, deterred.

As I am entitled to do, I make this statement indicating that the legislation is partially incompatible with the charter to the extent that it provides powers for police to randomly search persons and vehicles in public places within the designated areas, even if the police have not formed a reasonable suspicion that the person or vehicle is carrying a weapon. The government intends to proceed with the legislation in its current form.

The power to strip search

I have given separate consideration to whether the more serious interference with privacy arising from the provisions in the bill that empower the police to ‘strip search’ individuals is arbitrary in terms of section 13(a). The bill provides for this power to be exercised in one of two circumstances. First, as amended, section 10 of the Control of Weapons Act 1990, read together with new schedule 1, makes clear that the section 10 power to search on reasonable suspicion may, in certain circumstances, include the power to strip search. That power is not limited to designated areas. Secondly, section 10G, read together with schedule 1, makes clear that the power to search in designated areas can also, in certain circumstances, include a power to strip search.

A strip search is one of the most serious forms of invasion of privacy and I accept that such a power requires a correspondingly high level of justification. I am satisfied that high level of justification is present in both the above circumstances because the power is contingent on two preconditions. First, it is only available if a police officer, having conducted a less intrusive search, has formed a suspicion on reasonable grounds that the person has a weapon concealed on his or her person (section 10 and schedule 1, clause 7). I am satisfied that the standard of reasonable suspicion is sufficient. That is because of the serious and immediate public safety concerns that arise where the suspicion is that the person is carrying a weapon in a public place.

Secondly, a number of provisions in the bill ensure that a strip search can only be conducted if less intrusive measures will be insufficient to meet the exigencies of the situation. For example, new section 10G(3) provides that a police officer must conduct the least invasive search that is practicable in the circumstances, and schedule 1, clause 7 provides that a police officer can only conduct a strip search if it is necessary
for the purposes of the search and if the seriousness and urgency of the circumstances require it.

I am satisfied that a strip search conducted on the grounds of reasonable suspicion and in accordance with the necessity principle just articulated would not be arbitrary per se. However, the experience in other jurisdictions indicates that such a search might nevertheless be rendered arbitrary if it were not conducted in a manner that maximised, as far as possible, the dignity of the individual. The bill contains a general stipulation that the search must be conducted in a manner that preserves the dignity and self-respect of the person being searched (schedule 1, clause 9(5)). Additionally, the bill contains substantially more specific protections designed to maximise individual dignity:

- police must conduct the least invasive kind of search that is reasonably necessary and the search must not involve the removal of more clothes than is reasonably necessary (schedule 1, clause 9(4) and (14)). It is likely that in some cases, the ‘strip search’ may entail an intrusion as minimal as the person being asked to lift their shirt to reveal a concealed object;
- before the search begins, the police officer must inform the individual of his or her identity and of the reason for and authority for the search (schedule 1, clause 8(1)). He or she must inform the person whether the person will need to remove clothing during the search and, if so, why; and must also ask the person to cooperate (schedule 1, clause 9(2) and (3));
- police must conduct the strip search as expeditiously as possible and must use as little force as possible (schedule 1, clause 9(7) and (8));
- the search must be conducted in a private area and in a way that provides reasonable privacy for the person being searched (schedule 1, clause 9(6)). It must be conducted by someone of the same sex as the person being searched. It must not be conducted in the presence or view of a person of the opposite sex, nor in the presence or view of any person whose presence is not necessary for the purposes of safety (schedule 1, clause 9(9)–(11)). It must involve no more visual inspection than is reasonably necessary (schedule 1, clause 9(15)). It is anticipated that the police will conduct the strip searches in mobile police vehicles which will be kept nearby for that purpose;
- searches of the genital area or breasts must not be conducted unless the police officer suspects on reasonable grounds that it is necessary to do so; and searches of body cavities are absolutely prohibited (schedule 1, clause 9(12) and (13));
- special protections apply to persons with impaired intellectual functioning (schedule 1, clause 12). The situation of children is discussed separately below.

In the light of all of these factors, I conclude that the power provided for in the bill to strip search individuals where there is a reasonable suspicion that they are concealing a weapon does not amount to an arbitrary interference on a person’s privacy in terms of section 13(a) of the charter.

Section 21 — liberty and security

Section 21(1) of the charter provides that every person has the right to liberty and security, and section 21(2) provides that a person must not be subjected to arbitrary arrest or detention.

Clause 9 of the bill inserts into section 10 a power for a member of the police to detain a person for so long as is reasonably necessary to conduct a search under that section (new section 10G). Additionally, the power to search within designated areas in new section 10G includes the power to detain a person for so long as is reasonably necessary to conduct a search under that section.

Case law from other jurisdictions diverges markedly as to whether a ‘detention’ occurs in fact. Until the Victorian courts develop an approach to this question, the safe assumption is that whenever the police make clear to an individual, either vocally or through their actions, that the individual is not free to go, the person is detained.

I have concluded above that the search powers contained in section 10 (as amended) and new section 10G do not amount to arbitrary interferences with liberty. For those powers to be effective, police must be able to place whatever restraints on the liberty of individuals are necessary in order to ensure that they receive cooperation for the duration of the search. That is probably, in any event, implicit in the grant of a power to search a person. The new powers to detain in sections 10(6) and 10G(4) are strictly limited to what is reasonably necessary to conduct the search. In my view, therefore, those sections are not incompatible with the section 21(2) right not to be subjected to arbitrary detention.

New section 10I contains notice requirements that ensure that any person who is detained is informed of the reason for the search in compliance with section 21(4) of the charter — the right of persons who are detained to be informed of the reason for the detention.

Section 20 — property rights

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

The bill allows for seizure of a person’s property where the police reasonably suspect that the person is carrying a weapon in a public place. There are two provisions in the legislation to guard against any permanent interference with property where no offence has been committed.

First, new section 10J stipulates that, if a member of the police seizes an item and then determines after examination that it is not a weapon, the member must return the item to the person from whom it was seized. Secondly, the existing forfeiture regime in section 9 will apply. It ensures that where a weapon has been seized in relation to an offence under the act, it must be returned to the person if proceedings for that offence are not commenced within three months or if a decision is made not to bring proceedings. I would expect that the words ‘in relation to an offence’ will be interpreted liberally to ensure that any person who has an item seized under sections 10G or H will be entitled to reclaim that item if no proceedings are commenced against them.

In my view, there is no inconsistency with section 20 of the charter.
Section 17(2) — children’s rights

I have already determined that sections 10G and 10H of the Control of Weapons Act 1990 are incompatible with the charter in relation to section 13(a). Similarly, I have determined that they are incompatible with section 17(2).

However, the government believes this legislation is important for preventative and deterrent reasons, including the protection of children.

Section 25(1) — the presumption of innocence

Section 25(1) of the charter provides that any person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law. This means that it is the responsibility of the prosecution to prove each element of the offence to the standard of beyond reasonable doubt.

The bill contains four offence provisions which allow a defendant to escape liability if he or she has a ‘reasonable excuse’. Specifically, a person commits an offence if, ‘without reasonable excuse’, he or she:

- contravenes a direction given by a police officer to move on from an area under new section 6 of the Summary Offences Act 1966 (clause 3);
- fails or refuses to comply with a request to disclose his or her identity under new section 10K of the Control of Weapons Act 1990 (clause 12);
- in response to such a request to disclose his or her identity, gives a name that is false in a material particular or is an address other than the person’s full and correct address;
- obstructs or hinders the police in the exercise of their search and seizure powers under section 10 and new sections 10G, 10H and 10J of the Control of Weapons Act 1990 or fails to comply with a direction given by a member of the police to accompany the member to a place for the purposes of a strip search under schedule 1 (new section 10L, inserted by clause 12).

Pursuant to section 130 of the Magistrates’ Court Act 1989, the effect of these provisions is to require the accused to prove absence of lawful excuse beyond reasonable doubt.

Further, the prosecution would have the burden of proving absence of lawful excuse beyond reasonable doubt. This would be consistent with the principle that the burden must always remain with the prosecution to prove each element of the offence to the standard of beyond reasonable doubt. The onus reverts to the prosecution to establish a lawful excuse. If the defendant discharges this evidential burden, the onus reverts to the prosecution to disprove the existence of facts that, if they existed, would prove absence of lawful excuse beyond reasonable doubt.

In each case, the lawful excuse will be a matter that is peculiarly within the knowledge of the defendant. The evidential burden removes the need for the prosecution to conduct the impossible exercise of eliminating a potentially infinite number of possible excuses by requiring the defendant to put in issue the precise excuse that he or she wishes to rely on. All the defendant must do is to provide sufficient evidence to cloak the excuse with an air of reality (for example, by taking the stand and giving his or her side of the story), but the burden remains with the Crown to disprove its existence to the ordinary criminal standard.

Conclusion

I consider that the majority of the bill is compatible with the charter because, to the extent that some provisions may limit human rights, those limitations are reasonable and demonstrably justified in a free and democratic society.

However, I consider that the bill is incompatible with the charter to the extent that it limits rights under sections 13(a) and 17(2) in providing powers for police to randomly search persons (including children) and vehicles in public places within designated areas, even if the police have not formed a reasonable suspicion that the person or vehicle is carrying a weapon. The government intends to proceed with the legislation in its current form as there is considerable concern in the community about the pattern of weapons-related offending with which this legislation is concerned.

Justin Madden, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated on motion of Hon. M. P. PAKULA (Minister for Industry and Trade).

Hon. M. P. PAKULA (Minister for Industry and Trade) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

As part of its commitment to tackling the growing incidence of drunkenness, disorderly behaviour and violence involving the carrying and use of weapons in the Victorian community, the government is introducing the Summary Offences and Control of Weapons Acts Amendment Bill 2009. The bill will amend the Summary Offences Act 1966 and the Control of Weapons Act 1990 to give police stronger powers to combat violence and antisocial behaviour.

This bill was foreshadowed by the Premier on 9 August 2009, when he announced that the government will fund 120 additional full-time police officers on the street to help make the Victorian public safer. The Premier announced the government would introduce the following new police powers:

- tougher random search powers for weapons in designated areas;
- a power for police to direct people to move on from a certain area where there is a fear there will be a breach of the peace;
- a new offence of disorderly conduct; and
- for the new offence of disorderly conduct, and for existing offences of drunk and disorderly and drunk, there will be on the spot penalties with a fine of $234.

Drunk and drunk and disorderly offences enforceable by infringement notice

The bill amends the section 13 offence in the Summary Offences Act 1966 of drunk in a public place to carry a
maximum penalty of 4 penalty units, which is enforceable by means of an infringement notice with a penalty of two penalty units. For the section 14 offence of drunk and disorderly, the bill specifies a maximum penalty of five penalty units, with an infringement amount of 2 penalty units.

The amendments form part of a specific package of reforms aimed at addressing the problems of violence, the carrying and use of weapons and public disorder, at least some of which is alcohol related. There are strong and justifiable public interest grounds for enabling drunk and drunk and disorderly offences to be enforceable by means of infringement notices. The new infringement penalties should act as a deterrent, punish the offender and be a suitable justice system denunciation of public drunkenness behaviour.

I am advised that the chief commissioner will issue instructions that will apply to operational members in the use of the power to issue infringement notices. This will be especially important as the power will apply to circumstances where notices may be given to drunken or drunken and disorderly persons who have not been arrested and detained as well as to persons who are detained. The chief commissioner’s instructions will direct that members should only issue infringements for these offences to drunken persons who have been detained in police custody or who have been escorted home by police.

The legislation will not preclude infringement notices being given on multiple separate occasions to the one person, should they continue to reoffend. Police will establish guidelines to assist operational members in determining when it is appropriate to issue court proceedings, instead of an infringement notice.

Detention power for offence of drunk and disorderly

Section 13 of the Summary Offences Act 1966 explicitly enables Victoria Police to arrest a person found drunk in a public place and to lodge the person in safe custody. An explicit power to detain is not currently included in section 14 for the offence of drunk and disorderly. A percentage of the annual attendances for arrest/drank (drunk in a public place) are cases where drunkenness is accompanied by disorderly behaviour. However, at present, to secure the safe custody of an intoxicated person, even where their behaviour may also be disorderly, police will generally arrest and detain the person under the section 13 drunk in a public place offence. The bill therefore inserts into section 14 the same arrest and detention power that is used in section 13.

A new offence of disorderly conduct

The bill inserts a new offence of disorderly conduct into the Summary Offences Act 1966. The new section 17A offence of disorderly conduct provides that any person who behaves in a disorderly manner in a public place is guilty of an offence. The maximum financial penalty for this offence is 5 penalty units, with an infringement penalty of 2 penalty units. The penalty is consistent with the proposed amended penalty for the offence of drunk and disorderly. The existing definition of “public place” under the act applies to this offence.

Move-on powers

The government has made a commitment to give police the power to direct people to move on from a certain area where there is a fear there will be a breach of the peace. The introduction of this new power will bring Victoria into line with every other jurisdiction in Australia. All jurisdictions have given their police forces the power to issue enforceable directions to individuals and groups, in public places, to move away or disperse from an area.

A move-on power is a pre-emptive tool designed to diffuse a situation and to ensure the peaceful enjoyment of public spaces by the citizenry. Police, in all states and territories, have long endeavoured to maintain public order through informal and unenforceable requests to persons in public places to refrain from engaging in certain activities or to move away from an area. Having regard to the increase in disorder and related behaviours in public places in Victoria, especially in the CBD and entertainment areas, it is now appropriate to give Victoria Police enhanced powers to ensure that members of the public can peacefully enjoy these spaces.

The bill inserts a move-on power into the Summary Offences Act 1966. This gives police the power to direct a person, or a group of persons, in a public place to leave the public place, or a part of the public place (as ‘public place’ is already defined in the act), for a period of up to 24 hours if the officer suspects on reasonable grounds that:

- the person, or the group of persons, is breaching the peace or is likely to breach the peace; or
- the person is endangering or is likely to endanger the safety of any other person; or
- the person’s behaviour is likely to cause injury to a person or damage property or is, otherwise, a risk to public safety.

The bill makes it an offence to contravene a direction without reasonable excuse, which carries a maximum penalty of 5 penalty units with an infringement penalty of 2 penalty units.

The bill contains exclusions so that the move-on power may not be exercised where a person, whether or not in the company of other people, is:

- picketing a place of employment; or
- demonstrating or protesting about a particular issue; or
- speaking, bearing or otherwise identifying with a banner, placard or sign or otherwise behaving in a way that is apparently intended to publicise the person’s view about a particular issue.

Enhanced police powers to search for weapons

The government is committed to reduction and deterrence of violence involving the carrying and use of weapons in the community. Therefore, the government is of the view that it is appropriate to provide Victoria Police with additional powers to search for weapons when it is believed that violence or disorder involving prohibited weapons, controlled weapons or dangerous articles has taken place, or will take place, in an area. These new powers will enable Victoria Police to act to
address the risk that violence or disorder involving weapons will occur or recur.

The bill establishes two grounds for conducting searches for weapons in a public place without warrant. Firstly, there will remain the existing power under section 10 of the Control of Weapons Act to search a person in a public place, without warrant, on a reasonable suspicion that the person is carrying a weapon. Secondly, the bill creates a new power under new section 10G to search any person, without warrant, in a designated area.

The bill provides that police will only be able to exercise the new power to search any person without warrant in public places which are in an area specifically designated for the purposes of this search power under the Control of Weapons Act 1990. ‘Public place’ will be defined in the same way that it is already defined in the Summary Offences Act 1966.

It is proposed that an area may be designated in either of two ways. Firstly, a planned designation may be made with public notice. The chief commissioner must designate an area and publish a notice, including a map and a description of the designated area, in a newspaper generally circulating in the state of Victoria, and if the area is in rural Victoria and the designated area, in a newspaper generally circulating in the state of Victoria, and if the area is in rural Victoria and the designated area, in a newspaper generally circulating within it, in that daily newspaper. A notice to the same effect must also be published in the Government Gazette. In both cases, the publication must occur no less than seven days prior to the designation taking effect.

Secondly, there may an unplanned urgent designation of an area that will not require publication in a newspaper and may take effect immediately.

The power to designate an area (planned or unplanned) may be exercised by a member of the police force at the level of inspector or higher. A planned designation will take effect from the date and time stipulated in the publication and will remain in force for no longer than 12 hours. The duration of an unplanned designation will be no longer than 12 hours from the time that the inspector (or higher) makes the designation.

To make a planned designation of an area, the inspector (or higher) must believe that violence or disorder involving prohibited weapons, controlled weapons or dangerous articles has taken place in the area and there is a risk that such violence or disorder may recur.

To make an unplanned designation of an area, the inspector (or higher) must believe that it is likely that violence or disorder involving prohibited weapons, controlled weapons or dangerous articles will take place in the area. The police member must also believe that it is necessary to designate the area for the purposes of police exercising search powers to prevent or deter the occurrence of such violence or disorder.

Where an area has been the subject of a planned designation, no further planned designation of that area may take effect until after the expiry of 10 days after the previous planned designation has ceased to be in force.

In the case of an unplanned designation of an area, it is likely that the urgency of the designation will arise from information/intelligence obtained by police of the possibility of some incident at a particular place. This will enable police to act quickly to establish an unplanned designation of an area. It will not be practicable in such circumstances for police to provide clear identification of the area as being designated for the benefit of members of the public. The clear identification of an area’s designation would also risk the potential for persons who might be illegally carrying weapons to avoid the ‘designated area’ and thereby avoid the search process.

Information, including a notice, will be provided to all persons who police search in a designated area. The information provided will include details of the designated area, the time over which the designation applies, together with an explanation of the powers.

The bill contains detailed provisions regarding the manner in which searches for weapons by police are to be undertaken.

I appreciate that there will be a range of views about human rights when a random search takes place. In particular, there are likely to be a range of views regarding the ability of police to conduct random searches of adults and children for weapons using the new powers. I have considered the human rights engaged by the bill in detail in my statement of compatibility and reiterate that the government is extremely concerned that the carriage and use of weapons, particularly by children, should be deterred and prevented to the greatest extent possible. Therefore, although the bill is partially incompatible with the charter, the government is of the view that it is necessary and appropriate to provide police with these powers to address the community’s concerns regarding weapons-related offending.

I commend the bill to the house.

Debate adjourned for Mr Dalla-Riva (Eastern Metropolitan) on motion of Ms Lovell.

Debate adjourned until Friday, 4 December.

SERIOUS SEX OFFENDERS (DETENTION AND SUPERVISION) BILL

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities, I make this statement of compatibility with respect to the Serious Sex Offenders (Detention and Supervision) Bill 2009 (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 and charter of compatibility

Purpose of the bill

The main purpose of the bill is to enhance community safety by requiring offenders who have served custodial sentences for serious sex offences and who pose an unacceptable risk of
harm to the community to be subject to either a supervision or detention order. The secondary purpose of the bill is also to facilitate the treatment and rehabilitation of such offenders so as to reduce their risk of harm to the community.

**Legislative context**

This bill will repeal the current Serious Sex Offenders Monitoring Act 2005 and replace the scheme which operated under that act with a new detention and supervision scheme. This new scheme will create two types of orders to better protect the community and to tailor the level of protection to the level of risk presented by the offender.

**Key features of the bill**

The bill establishes a two-tier scheme, with one tier for the post-sentence detention of high-risk sex offenders and a second tier providing supervision for high-risk offenders who can safely be supervised in the community. A court will be able to impose on an eligible offender in respect of whom an application has been made:

- a detention order — for offenders who cannot safely be supervised in the community; or
- a supervision order — for offenders who can safely be supervised in the community but who require post-sentence supervision. These offenders may, in appropriate cases, be directed to reside at a residential facility in the community or other accommodation in the community.

The new scheme is not punitive in nature, but ensures that the orders effect the minimum level of limitation upon rights necessary to ensure community safety. It is a civil scheme rather than a criminal scheme and it effects prevention, protection and rehabilitation, rather than punishment.

In order to achieve these purposes, the bill establishes a scheme whereby the secretary to the Department of Justice (the secretary) can apply to the Supreme Court or the County Court for a detention order. The secondary purpose of the bill is also to facilitate the treatment and rehabilitation of such offenders so as to reduce their risk of harm to the community.

**Overall assessment of compatibility**

In my view, the bill is compatible with the charter for the following reasons:

- the bill contains transparent, accessible and predictable criteria governing the imposition of any limitations upon rights;
- a court cannot impose a detention or supervision order unless such an order is necessary to prevent an unacceptable risk of further offending;
- the court must be satisfied, by acceptable, cogent evidence, and to a high degree of probability, that the evidence is of sufficient weight to justify the making of an order;
- the court has a discretion, notwithstanding the satisfaction of this test, as to whether or not to make any order;
- if the court decides to make a supervision order, then the court has a discretion to impose suggested or discretionary conditions, again subject to satisfaction of the relevant tests;
- the suggested or discretionary conditions imposed by a court on an offender must be appropriately tailored, in that the conditions must be reasonably related to the gravity of the risk of the offender reoffending, and must constitute the minimum interference with the offender’s liberty, privacy or freedom of movement to ensure the purposes of the conditions;
- if the Adult Parole Board of Victoria is authorised by the court to give directions to an offender in relation to the operation of any condition, the board will also aim to ensure that its directions are reasonably related to the gravity of the risk of the offender reoffending, and constitute the minimum interference with the offender’s liberty, privacy or freedom of movement to ensure the purposes of the conditions;

provide substantial safeguards against any arbitrariness and ensure that limitations upon rights are proportionate to the risk of reoffending.

**Engagement of charter rights**

The key rights limited by the new scheme under the bill, and the imposition of detention and supervision orders under the scheme, are the right to liberty (section 21 of the charter), the right to privacy (section 13 of the charter) and the right to freedom of movement (section 12 of the charter).

Other rights which are also engaged by the bill are the right not to be subjected to medical treatment without consent in section 10(c) of the charter, the right to freedom of association in section 16 of the charter, the right to a fair trial (section 24) and the right to humane treatment when deprived of liberty (section 22).

In my view, the criminal process rights (section 25), the right to be protected against a retrospective penalty (section 27) and the right not to be punished more than once (section 26) are not engaged by the provisions of the bill, as the scheme is protective and not punitive. This will also be discussed further below.
both detention and supervision orders are subject to mandatory reviews at defined intervals by the court that made the order; an offender may seek court review in respect of both the court’s order and the conditions imposed; and an offender is given an opportunity to be heard and may appeal any orders made.

In my view, these safeguards adequately protect an offender’s right to liberty, privacy and freedom of movement and ensure that limitations upon these rights in each case are appropriately limited to what is necessary to achieve the stated purposes. These rights and the other rights engaged by the bill are considered in further detail below.

Human rights issues

Right to liberty (section 21)

This right relevantly provides that:

1. every person has the right to liberty and security;
2. a person must not be subject to arbitrary arrest or detention;
3. a person must not be deprived of his or her liberty except on grounds, and in accordance with procedures, established by law.

Detention orders obviously engage the right to liberty and a condition requiring an offender to reside in a residential facility under a supervision or interim order may, in particular, be contrary to the range of conditions imposed, also engage the right to liberty.

The right in section 21 requires that any interference with liberty must be in accordance with procedures established by law. The bill meets this requirement as it contains accessible and appropriately stated legislative tests.

There must be sufficient access to courts in relation to decisions which amount to detention, in order to ensure that the detention is not arbitrary. Further, the Human Rights Committee has said that in order to avoid a characterisation of ‘arbitrary’ detention, it should not continue beyond the period which a state party can provide appropriate justification.1 As stated above, under the bill both detention and supervision orders are subject to mandatory reviews. Additionally, an offender can seek leave to apply for a review of a detention or supervision order. These requirements ensure that orders will not continue beyond the period for which there is appropriate justification, and that appropriate procedures are available to ensure that the question of the continuing justification for the order is brought back to the court if circumstances change during the period of the order.

Further, the liberty right requires that a determination by the court leading to detention must be attended by safeguards to preclude arbitrariness. The bill contains a number of such safeguards. Further, in my view, the fact that any conditions and authorised directions issued to an offender must constitute the minimum interference with the offender’s liberty, privacy or freedom of movement necessary to reduce the risk the offender presents to the community, and must be reasonably related to the gravity of risk, are important safeguards preventing arbitrariness.

For these reasons, in my view any restriction on liberty which occurs as a result of the imposition of a supervision or detention order will not be arbitrary.

Interim orders

Part 4 enables interim detention or supervision orders to be imposed where an application for a detention or supervision order has been lodged with the court and, inter alia:

- it appears to the court that the documentation supporting the application would, if proved, justify the making of a supervision order; and
- it would be in the public interest to make the order having regard to the main purpose of the bill and the reasons why the applications will not be determined before the expiry of the offender’s custodial sentence.

Interim orders can include the same restrictions on an offender’s freedom of movement as final orders.

In my view, interim orders are not arbitrary given the detailed factors the court must consider under clauses 53 and 54 of the bill and the fact that they cannot exceed four months (unless the court making the order considers that exceptional circumstances exist).

Right to privacy (section 13)

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

Under international law and within Europe and the United Kingdom, the right to privacy has been interpreted as applying to a vast array of circumstances which affect both family life and a person's personal integrity and identity.

Limitation of the right to privacy arises only where there is firstly an interference with the right, and secondly that interference is either unlawful or arbitrary. The United Nations Human Rights Committee has said in general comment 16 that the term 'unlawful' as applied in the ICCPR means that no interference can take place except in cases envisaged by the law; and that in order to avoid a characterisation as 'arbitrary' the law itself 'must comply with the provisions, aims and objectives of the [ICCPR]'. Further, it is said that even interferences provided by law should be 'reasonable in the particular circumstances'.2

There are a number of clauses in the bill which permit an interference with offenders' privacy. In particular:

- clause 107 (and 108(2)), which states that the secretary may direct an offender to attend a specified medical

---


2 General comment no. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (art. 17): 08/04/88.
expert for an examination for the purposes of making an application under the bill;

clause 84 provides that the court to which an application is made may order an offender to attend for a personal examination by a medical expert or any other person for the purpose of enabling the person to make a report or give evidence;

part 3 of the bill, under which an offender may be subject to a detention order, and thus be committed to detention in a prison for the period of the order (clause 42) — although this is dealt with in detail in relation to the liberty right;

division 3 of part 2, which sets out the various core, suggested and other discretionary conditions of a supervision order (or interim order) permits conditions to be made that interfere with offenders’ privacy. In particular, the suggested conditions can relate to treatment or rehabilitation programs that the offender must attend, types of employment in which the offender must not engage, and electronic and other forms of monitoring;

part 4 of the bill, which allows for the imposition of interim detention and supervision orders, which may interfere with an offender’s privacy for the same reasons as detention and supervision orders;

part 12 imposes restrictions on an offender’s ability to obtain a change of name through the registrar of births, deaths and marriages;

division 3 and division 4 of part 10 include provisions dealing with the management of offenders on supervision orders, and enable, for instance, search and seizure powers to be exercised in certain circumstances (including in relation to visitors) in relation to where offenders are residing;

part 13 governs the restriction and sharing of personal and health information about the offender with ‘relevant persons’ and other persons who have responsibilities under the scheme of the bill or who may be associated with the offender;

clause 4 of schedule 3 amends the Surveillance Devices Act 1999 so that the installation, use or maintenance of a tracking device in accordance with a supervision order does not breach the Surveillance Devices Act 1999.

**Detention, supervision and interim orders — parts 2, 3 and 4 of the bill**

I have already discussed the compatibility of detention orders and the condition on a supervision order requiring an offender to reside in a residential facility in relation to the liberty right. I have also set out above the safeguards in the scheme in relation to the process by which detention and supervision orders are made and the evidence required by the court to justify the decision.

In this section, I want to draw attention to the conditions on a supervision order that can interfere with an offender’s privacy, particularly those that relate to treatment or rehabilitation programs that the offender must attend, types of employment in which the offender must not engage, electronic and other forms of monitoring, and persons with whom the offender must not have contact.

In my view, the ability to impose these kinds of conditions is compatible with an offender’s right to privacy because the conditions are made at the discretion of the court and must be tailored to the offender’s risk of reoffending, in the sense of constituting the minimum interference with the offender’s privacy. This is set out in clause 15(6) of the bill. Further, part 5 of the bill provides for reviews of conditions, which can be initiated by the offender with leave, and part 7 provides for appeals by offenders relating to conditions. This oversight by the court is a very important safeguard in ensuring that the interferences with privacy will not be arbitrary and will be no more than is necessary to achieve the legislative purpose.

**Search and seizure — part 10 of the bill**

Clause 142 provides that an officer in charge of a residential facility may give an order, if the officer reasonably believes that the order is necessary, to search a residential facility, a supervision officer, offender or other person in the residential facility, or require a person wishing to enter a residential facility to submit to search and examination of the person and anything in the person’s possession or control.

The officer must believe that the search is reasonably necessary for the good order of the residential facility, for the safety and welfare of offenders or of staff of the facility or of visitors to the facility, or because the search is necessary to monitor an offender’s compliance with a supervision order or interim supervision order or where the officer reasonably suspects the offender of behaviour or conduct associated with an increased risk of reoffending.

Similarly, clause 143 allows for a supervision officer to seize anything found in a residential facility for similar reasons to those needed to justify a search.

While clause 142 does interfere with the privacy of persons who are subject to a search under this clause, the interference will not be arbitrary for the following reasons: the officer must reasonably believe that the search is necessary; the circumstances in which a search can occur are clearly specified in the legislation and tailored to ensure the power is not applied arbitrarily; the nature of the search is proportionate to the aim in being restricted to a garment or pat-down search; and finally, in relation to an offender’s correspondence, the provision excludes the power to read letters in a range of important circumstances.

I also draw to Parliament’s attention the more minimal search and seizure powers in relation to the management of offenders at other locations in clauses 152 and 153. In my view, these provisions are also compatible with the privacy rights of the offender and I rely to the extent relevant, on my reasoning above.

**Change of name — part 12 of the bill**

Part 12 interferes with an offender’s personal autonomy by placing restrictions upon an offender’s ability to change his or her name. However, the interference is not unlawful or arbitrary, as it is a reasonable restriction (given the importance of the adult parole board effectively supervising offenders) and the restrictions will only occur in a clear and predictable manner in accordance with the provisions of part 12.
Information sharing — part 13 of the bill

Part 13 also imposes appropriate restrictions on the sharing of information, including that the information can only be divulged or communicated if the person disclosing the information believes on reasonable grounds that it is necessary to do so to enable a person to carry out a function under the bill, or any other act, including specified acts. The inclusion of these safeguards ensures that any information exchanges under the scheme will not be arbitrary.

Right to freedom of movement (section 12)

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 they live.

An offender’s right to freedom of movement will be limited by the imposition of detention, supervision and interim orders under parts 2, 3 and 4 of the act.

A detention order imposed under part 3 restricts where a person can go by requiring them to be detained in a prison.

A supervision order imposed under part 2 will have core conditions attached to it under clause 16 which limit section 12 of the charter, such as the condition that an offender attend any place as directed by the adult parole board. Further, a court may also choose to attach suggested conditions to an order, such as a condition in relation to where an offender may reside, times at which the offender must be at home, and places or areas that the offender must not visit which also limits an offender’s right to freedom of movement.

However, I consider that the limitations to an offender’s right to freedom of movement under section 12 of the charter are reasonably justified under section 7(2) of the charter, having regard to the following factors:

The nature of the right being limited

The right to freedom of movement is not an ‘absolute right’. Under international law the right has been characterised as one that has inherent limitations. Subsection (3) of article 12 of the ICCPR (the equivalent right) relevantly provides:

The [rights to liberty and freedom of movement] shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the present covenant.

This wording acknowledges the fact that a restriction on freedom of movement is sometimes a rational solution to the problem presented by, for instance, threats to public health and safety.

The importance of the purpose of the limitation

The purpose of imposing orders generally under the scheme, including detention orders, is to enhance the protection of the community by reducing the risk of relevant offending to an acceptable level.

The purposes of the conditions of supervision orders is to reduce to an acceptable level the risk of reoffending by serious sex offenders including through the promotion of the rehabilitation and treatment of offenders; and to provide for the reasonable concerns of the victims of the offenders in regards to their own safety and welfare.

These are important and legitimate purposes, safeguarding the rights of others.

The nature and extent of the limitation

The extent of the limitation of the right in relation to the imposition of detention orders is severe and for this reason, is better dealt with in relation to the liberty right as set out above.

The nature of the restrictions on freedom of movement can include suggested conditions on supervision orders as to where an offender may reside, times at which the offender must be at home, and places or areas that the offender must not visit.

In imposing these conditions, the court must ensure they constitute the minimum interference with the offender’s freedom of movement that is necessary in the circumstances to ensure the purposes of the conditions, and is reasonably related to the gravity of the risk of the offender reoffending.

The relationship between the limitation and its purpose

The above provisions ensure that any limitation of the offender’s freedom of movement will be proportionate to the purpose of the limitation.

Any less restrictive means reasonably available to achieve its purpose

Any restrictions to an offender’s freedom of movement will represent the minimum interference necessary to give effect to the protective and preventative purpose of the scheme. Accordingly, no less restrictive means are reasonably available.

Right not to be subjected to medical treatment without consent (section 10(c))

Section 10(c) of the charter relevantly provides that a person must not be ‘subjected to medical or scientific experimentation or treatment without his or her full, free and informed consent’.

Clause 17 includes a suggested condition of ‘treatment or rehabilitation programs or activities that the offender must attend and participate in’. This could include ‘medical’ treatment.

To the extent that a person is required to be subjected to medical treatment without his or her consent, that person’s right under section 10(c) is limited. I consider that the limitation is reasonably justified under section 7(2) of the charter, having regard to the following factors:

The nature of the right being limited

The purpose of this right is to protect people from medical or scientific treatment without their full, free and informed consent. It is directed at such experimentation or treatment of any kind, even that which is beneficial to the individual. The
right expresses the fundamental value of the personal dignity and integrity of the individual, the autonomy of the individual, as well as the authority of people to make decisions in matters that affect themselves and the importance of such decisions being full, free and informed.

**The importance of the purpose of the limitation**

If a court were to impose a condition upon an offender that he or she be subject to medical treatment without his or her consent, the court would do so on the basis that such an order was necessary for the purpose of protecting the community by reducing the risk of the offender committing a relevant offence.

Accordingly, the purpose of the limitation to section 10(c) is legitimate and important.

**The nature and extent of the limitation**

If a court were to impose a condition upon an offender that he or she is subject to medical treatment without his or her consent, an offender would be required to undergo treatment against his or her will, which would compromise the personal autonomy of the offender. This could constitute a relatively severe limitation to an offender’s human rights.

However, the severity of the limitation is lessened as a result of clause 160(2) of the bill, which provides that it is not a breach of a supervision order if an offender fails to comply with a condition relating to medical treatment. Thus, there is no sanction for non-compliance with this condition. In *R(H) v. Mental Health Review Tribunal* [2007] EWHC 884 Admin, the English High Court found that a condition of release from detention that the patient shall comply with a medication regime was not unlawful because there was no sanction for non-compliance.

**The relationship between the limitation and its purpose**

As discussed above, a court would only impose such a condition if such a condition were necessary to reduce the risk of reoffending by the offender and was reasonably related to the gravity of risk of reoffending presented by the offender. Consequently, the limitation is closely linked to the purpose of reducing the risk that an offender poses to the community.

Any less-restrictive means available to achieve the purpose of the limitation

No less-restrictive means are reasonably available, given that the court will only impose such a condition if it is necessary to reduce the risk of reoffending and it is reasonably related to the gravity of risk of reoffending. Further, the court has discretion as to whether or not to impose this suggested condition.

**Right to freedom of association (section 16)**

The right to freedom of association is potentially engaged by the following suggested conditions of a supervision order, namely conditions that relate to:

- community activities in which the offender must not engage; and
- classes of person with whom the offender must not have contact.

The compatibility of those conditions with the right is set out below.

**The nature of the right**

Whereas the right to privacy in section 13 of the charter encompasses a right to individual identity and personal development as well as to establish and develop meaningful social relationships, the right to freedom of association in section 16 is arguably more targeted at protecting the freedom of persons to formally join together in groups to pursue common interests and goals. Some examples of such groups include political parties, non-government organisations, professional or sporting clubs, trade unions and corporations.

Although in New Zealand, the right has been interpreted as going further to encompass the right of an individual to associate with another individual, New Zealand’s Bill of Rights Act does not contain a right to privacy or autonomy like section 13 of the charter. The authors Butler and Butler argue that ‘in other human rights systems a narrow view of the ambit of free association is acceptable since the right to associate with other individuals in an informal, disorganised way would be likely to be protected by a right to privacy or autonomy’ (at paragraph 15.7.2). Consistently with this, the scope of the right to freedom of association in article 11 of the European Convention presupposes a voluntary grouping for a common goal (see for example, *Anderson v. United Kingdom* [1998] EHRR CD 172 and *McFeeley v. United Kingdom* (1980) 20 DR 44).

Accordingly, a number of suggested conditions on supervision orders have been analysed against the privacy right instead of the right to freedom of association.

**The importance of the purpose of the limitation**

As with the right to freedom of movement, the limitation is imposed for the important purpose of community protection.

**The nature and extent of the limitation**

The suggested conditions might prevent the offender from joining certain groups or engaging in certain community activities, for example because they involve children.

**The relationship between the limitation and its purpose**

The conditions must be the minimum necessary to achieve the legislative purposes and must be reasonably related to the gravity of the risk of reoffending.

Any less-restrictive means reasonably available to achieve its purpose

As set out above, given the relevant legislative tests which ensure that conditions are appropriately tailored and related to the gravity of risk of reoffending, I believe the limitation is within the range of reasonable solutions to the risk posed.

**Right to a fair trial (section 24)**

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.
Applications for supervision orders and detention orders (and reviews and appeals) will be heard by a competent, independent and impartial court. Additionally, various safeguards apply throughout the bill to ensure fairness in the procedures adopted as regards imposition, review, appeals and in the implementation of the orders.

**Exclusion of evidence**

Clause 81 provides that the court may exclude evidence from disclosure under this part if the court is satisfied that it is in the public interest not to disclose it to the offender; the material cannot be suitably redacted or communicated to the offender in a way that would not prejudice the public interest; and the making of the order in the circumstances would not lead to significant unfairness to the offender.

As the power to exclude evidence can only occur in circumstances where it is in the public interest to do so and it would not lead to significant unfairness to the offender, in my view this power does not prejudice an offender’s right to a fair trial.

**Attendance of offender at hearing**

Clause 85(2) provides that if an offender acts in a way that makes the hearing in the offender’s presence impracticable, the court may order that the offender be removed and the hearing continue in his or her absence. This clause is the equivalent to section 18P(4) of the Sentencing Act 1991 which provides that if an offender acts in a way that makes a hearing in the offender’s presence impracticable, the court may order that the offender be removed and the hearing continue in his or her absence.

The right in section 24 of the charter requires a party to be given a reasonable opportunity to be heard. However, the United Nations Human Rights Committee has said that if there are exceptional circumstances and it is in the interests of justice, even criminal trials (which this is not) may be held in the absence of the accused (in absentia) but there should nevertheless be a strict observance of the rights of the defence. Clause 85(3) establishes safeguards in relation to proceedings where the offender is absent, namely, the court may only proceed if it is satisfied that:

(a) doing so will not prejudice the offender’s interests; and

(b) the interests of justice require that the hearing should proceed even in the absence of the offender.

Having regard to the above, clause 85 does not limit the right to a fair hearing in section 24(1) of the charter.

**Victim submissions**

Clause 95 provides that victim submissions are not to be released to the offender without consent, but introduces a procedure whereby victims are given the option to consent, amend or withdraw their submission if the court determines that release of the submission is essential in the interests of fairness and justice. If consent is not forthcoming and the submission is not amended or withdrawn, the submission may nonetheless be considered by the court. In these circumstances, the following safeguards apply:

the court will have the discretion to take reasonable steps to disclose to the offender or the offender’s legal representative the substance of the victim submission to the offender as long as this will not lead to the identification of the victim; and

the court may reduce the weight which it otherwise would have given to the submission.

Having regard to the above, clause 95 does not limit the right to a fair hearing in section 24(1) of the charter.

**Right to humane treatment when deprived of liberty (section 22)**

Section 22(2) provides that a person detained without charge must be segregated from persons who have been convicted of offences, except where reasonably necessary.

Clause 42 provides that the effect of a detention order made under part 3 is to commit the offender to detention in a prison for the period of the order. This results in offenders who are subject to detention orders being detained in prison. However, clause 115(2) provides that an offender in custody in a prison must not be accommodated or detained in the same area or unit of the prison as persons who have been imprisoned for the purpose of serving custodial sentences.

There are exceptions to this, which I believe fall within the scope of the right because they are reasonably necessary. These exceptions are for the purposes of rehabilitation; the safety and welfare of the offender or security and good order of the prison; or at the offender’s election.

Accordinvly, as offenders will not be detained with convicted persons except where reasonably necessary, the right in section 22(2) of the charter is not limited.

**Criminal process rights (section 25), the right not to be punished more than once (section 26) and the right to be protected against a retrospective penalty (section 27) — not engaged**

It is important to highlight that the detention and supervision scheme is civil rather than criminal. Its purposes and effects are geared toward prevention, protection and rehabilitation rather than the punishment of the offender. Further, the scheme is based on the risk of reoffending, rather than the fact of a person having been convicted, or on any particular event that may have taken place in the past. Whilst a conviction may be a ‘trigger’ for eligibility, whether an order is imposed is based on an assessment of future risk.

Accordingly, in my view the new scheme does not engage the criminal process rights (under section 25 of the charter), or the rights to be protected against a retrospective penalty or double jeopardy (under sections 27 and 26 respectively of the charter).

In considering this issue, I have relied on the jurisprudence of the High Court of Australia and in particular, the decision of Fardon v. Attorney-General for the State of Queensland (2004) 223 CLR 575, which dealt with relevant human rights issues in the context of the post-sentence management of high-risk sex offenders. A number of judges addressed whether the relevant law in Queensland was punitive or protective in nature. Callinan and Heydon JJ considered that:

The act … is intended to protect the community from predatory sexual offenders. It is a protective law authorising involuntary detention in the interests of
public safety. Its proper characterisation is as a protective rather than a punitive enactment.

Furthermore, Gummow J said:

It is accepted that the common-law value expressed by the term ‘double jeopardy’ applies not only to determination of guilt or innocence, but also to the quantification of punishment. However, the making of a continued detention order with effect after expiry of the term for which the appellant was sentenced in 1989 did not punish him twice, or increase his punishment for the offences of which he had been convicted. The act operated by reference to the appellant’s status deriving from that conviction, but then set up its own normative structure.

I have also had regard to the jurisprudence of the United Nations Human Rights Committee, and the courts in Canada, the United Kingdom, Europe and the United States, where schemes for supervision and/or detention of high-risk sex offenders have been considered. Whilst each scheme is to be assessed on its own merits, the approach taken by the High Court of Australia in its characterisation of whether a scheme is punitive is consistent with the courts in other jurisdictions. It should be acknowledged that the judgement of the New Zealand Court of Appeal in Belcher v. Chief Executive of the Department of Corrections [2006] NZCA 262 takes a different approach and reaches a different result from these courts, where schemes have been considered under human rights instruments. But in my view, the approach of the High Court of Australia is the most persuasive in considering the post-sentence management of high-risk sex offenders in this jurisdiction.

Justin Madden, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated on motion of Hon. M. P. PAKULA (Minister for Industry and Trade).

Hon. M. P. PAKULA (Minister for Industry and Trade) — I move:

That the bill be now read a second time:

Incorporated speech as follows:

There are few crimes in society that cause such pervasive and enduring harm to individuals and to families, as those which fall into the category of serious sexual offences. Sexual crime causes not only obvious physical damage, but it often inflicts lifelong damage to victims’ emotional wellbeing and their ability to conduct meaningful relationships. Most often, the most vulnerable in our community — children and women — are the targets of these terrible crimes. The community as a whole is also scarred by the knowledge of such criminal acts damaging our sense of safety — something we can legitimately expect in a civilised society — and our ability to place our trust in others. Sexual offending is therefore something for which this government has zero tolerance.

It should be remembered that although the numbers of serious sexual offenders who chronically re-offend are not high when compared to other areas of recidivism — such as drug offences — the nature and gravity of these types of crimes requires that where the government is aware of the risks posed by certain individuals, all possible steps should be taken to reduce those risks and to prevent such enduring harm.

Since 2005, the Serious Sex Offenders Monitoring Act 2005 (‘the monitoring act’) has provided a vital measure of protection for the community against known sexual predators, by enabling the courts to impose on them extended supervision orders for up to fifteen years, with regular court reviews.

In many of the cases we have seen so far, it is clear that without extended supervision, further crimes would have been committed. Many of these offenders have little insight into or control of their offending, or empathy for their victims, and it is foreseeable in these cases that they will go on to offend again, in the absence of adequate supervision. While reoffending by individuals when in the community cannot be totally prevented, this scheme will contain their risks.

Protection against sexual offending, especially where children may be harmed is not something that should be left to community members; nor should offenders who have demonstrated a real proclivity toward sexual offending be entitled to unqualified liberty, whereby they are entrusted to regulate their own behaviour. Not where they have proven incapable of doing so in the past, where their moral compass is so clearly damaged, and where so much is at stake for our community.

Overview

With the Serious Sex Offenders (Detention and Supervision) Bill 2009, the government has now strengthened and improved upon the existing extended supervision scheme of the monitoring act, which it replaces.

It does this by including several new features, such as the element of continued detention and the ability for courts to direct offenders to reside at a residential facility; and by providing greater transparency and accountability in the management of serious sex offenders.

The main purpose of the bill is to enhance the protection of the community by requiring offenders who have served custodial sentences for certain sexual offences and who present an unacceptable risk of harm to the community to be subject to ongoing detention or supervision. It is also the purpose of the bill to facilitate the treatment and rehabilitation of such offenders.

The bill establishes that an offender is eligible for a supervision order or detention order application where they commit a sexual offence committed against a child or adult victim. ‘Serious sexual offences’ are those which are also listed in the schedule to the Sentencing Act 1991.

The bill also establishes that offenders currently subject to an extended supervision order or interim supervision order under the monitoring act are eligible offenders. These offenders will be subject to orders under the monitoring act until they are brought before the court upon their scheduled review or as a review or renewal application is made, or on an appeal. At this time, the offender will be subject to the new detention and supervision scheme, and all that it entails.
Supervision orders

As with the monitoring act, post-sentence supervision orders can be imposed on offenders by the sentencing court for up to 15 years, with court reviews every three years; or with the court’s leave on the application of the offender or the secretary to the Department of Justice, who is the applicant for such orders; or at any other juncture the court so orders.

However, as a mark of distinction from the monitoring act, this bill provides that the court that makes the supervision order is also responsible for controlling the conditions of the order. This ensures that to the extent that offenders’ rights are limited by supervision order conditions, these are subject to the control and supervision of courts and the attendant court processes which afford offenders natural justice.

In addition to ‘core’ or mandatory supervision order conditions, such as the requirement that offenders do not leave the state of Victoria without permission, ‘suggested conditions’ include conditions relating to where offenders may live; the hours they must be at home; the persons or classes of persons with whom they must have no contact; and treatment and rehabilitation programs in which they must participate.

The court may also impose any other condition it sees as appropriate in order to manage the specific risks posed by an offender; to promote the offender’s rehabilitation and treatment; or to provide for the reasonable concerns of the victims of the offender.

If an offender breaches a supervision order condition without reasonable excuse, then the bill provides that this is an offence, punishable by imprisonment. Breaches of supervision order conditions can also be managed by way of reviews of conditions or an application for a detention order, where it appears that the supervision order is not sufficient to manage and contain the risk of reoffending.

In addition to an arrest power in respect of this offence, Victoria Police will also have a holding power under the bill, to detain offenders for up to 10 hours where there are reasonable grounds to suspect that a breach of a supervision order condition is imminent, such as where an offender is found checking in at an airport.

Management of offenders on supervision orders — residential facility

As noted, under the conditions made by the court, offenders may be directed to reside in the community at a specialised residential facility for sex offenders, if no other suitable accommodation is available.

The purpose of a residential facility is to provide for the supervision and case management of offenders; the safe accommodation of offenders; the protection of the community; and support to offenders to assist them in complying with conditions of supervision orders.

If directed to reside at a residential facility, offenders will be free to come and go from the facility or to receive visitors at the facility, subject to the particular conditions of their supervision order; and any restrictions necessary to ensure the good order and safety of the residential facility and the safety of any person at the facility.

The commissioner for corrections will be responsible for the management and good order of a residential facility and will be responsible for giving effect to the courts’ conditions in respect of each offender, including providing the offender with any necessary treatment or rehabilitation services.

Offenders at a residential facility will be subject to the directions of supervision officers. The bill makes it clear that all offenders, whether residing at a residential facility or at other accommodation in the community, may be subject to search and seizure powers where there is a reasonable belief that an offender has breached conditions of their supervision order; or is about to commit a further sexual offence; or where other safety concerns arise in respect of a residential facility.

Role of APB

Under this scheme, the court also has the discretion to authorise the adult parole board to give directions to an offender subject to a supervision order or interim supervision order. This builds on the strong expertise the board already has in directing offenders under the existing monitoring act.

In emergency situations, the adult parole board will also be empowered to direct offenders in a manner that is inconsistent with, or not covered by, the conditions set by the court. This will enable the scheme to be responsive to changing circumstances, such as where an offender’s court-ordered accommodation suddenly becomes unavailable; or where an offender is at risk of committing a further sexual offence. The board will then advise the secretary, who will be required to report to the court or apply to the court for review of the offender’s conditions to enable the changes in the offender’s management to continue if deemed appropriate by the court.

Another new feature of the bill, in contrast to the monitoring act, is the ability for the offender or the Secretary of the Department of Justice to apply to the court to review supervision order conditions. Again, this will enable the scheme to be responsive to changing circumstances while it will also ensure that there is accountability to the court in respect of the way in which supervision order conditions are administered.

The test for orders

While the test for extended supervision in the monitoring act turned upon a definition of the likelihood of an offender reoffending, this bill introduces a new, qualitative, ‘unacceptable risk test’ for both supervision orders and detention orders. This invites courts to consider not only the risk of sexual reoffending of the particular offender; but also the nature and gravity of the offences the offender may commit in the future. In making its assessment, the court will have regard to clinical assessment reports and any other relevant report or matters presented.

Clinical assessments of offenders are based on a combination of actuarial risk assessment — which looks at the statistical probability of reoffending — and empirically guided clinical judgement on the part of the clinical expert — which takes into account an individual’s circumstances. The ultimate assessment necessarily accommodates any dynamic factors that might increase or decrease an offender’s risk level, and as such, a precise mathematical estimate of likelihood of reoffending is not generally possible. However, the clinical assessment in and of itself is not determinative of the ‘unacceptable risk’ test.
The test for the imposition of a supervision or detention order is ultimately a matter for judicial determination, taking into account a range of relevant matters. The judicial officer must be satisfied by acceptable, cogent evidence, and to a high degree of probability, that the evidence is of sufficient weight to justify the decision. The standard of a high degree of probability would not require the court to be satisfied beyond reasonable doubt which is the criminal standard, given this is a civil scheme. A similar test, with analogous evidentiary provisions, is also utilised in the Queensland continued detention legislation, which was upheld by the High Court in Fardon v. Attorney-General for the State of Queensland [2004] HCA 46.

The bill also makes clear that the test for supervision and detention does not require that the offender is ‘more likely than not’ to commit another sexual offence. In some cases the gravity and nature of that possible offending and its impacts on the community and possible future victims may satisfy the judicial officer that even a small likelihood of reoffending is an unacceptable risk and is sufficient to warrant the imposition of a detention order or supervision order.

Detention orders

As noted, the bill introduces the new additional feature of continued detention for serious sexual offenders — a measure of community protection already utilised in other jurisdictions such as Queensland, New South Wales and Western Australia.

In particular, the bill enables the Director of Public Prosecutions to apply to the Supreme Court to impose a continued detention order of up to three years for serious sex offenders effectively where their risk of sexual reoffending would still be ‘unacceptable’ if they were subject to a supervision order. Applications are made at the discretion of the director on the recommendation of the Secretary of the Department of Justice.

A continued detention order will mean that the offender in question is detained in prison. Where possible, the offender is housed in separate accommodation from prisoners serving a sentence while being provided with the opportunity to engage with ongoing rehabilitation and treatment programs. This recognises their status as an unconvicted prisoner. Continued detention orders can be renewed indefinitely; however, they are subject to annual reviews by the Supreme Court or on the application of an offender or at any other juncture ordered by the court.

Restriction and sharing of information

The court relies on information contained in clinical assessment reports in determining whether a supervision or detention order should be made. These reports contain very detailed information on the past sexual offending of the individual, their victims and the factors contributing to the offending behaviour. To protect victims and other persons (other than the offender) and ensure the high quality necessary for such assessments, the bill provides for the protection of this sensitive information. Under the monitoring act, the court on all but one matter, has ordered that these reports were protected from publication.

Separate to this, an offender who seeks to have their identity or whereabouts suppressed must apply to the court which may make an order if satisfied that it is in the public interest to do so.

In making decisions in respect of the suppression of publication of information, the court must have regard to whether the publication would endanger the safety of any person; the interests of any victims of the offender; and whether the publication enhances or compromises the purposes of the bill.

The protection of the community; and management of offenders subject to detention or supervision orders requires the input and expertise of a range of government services to ensure the best opportunity for treatment and rehabilitation and to best manage the risk they present. The bill includes provisions to facilitate appropriate information sharing between government agencies tasked with responsibilities for offenders. It is intended that the broad powers are exercised flexibly, so that concerns about the privacy of individuals does not override the core purpose of this bill, which is the protection of the community.

Safeguards

The bill includes several procedural safeguards, including a right to review of orders and conditions of supervision order conditions; restrictions on information sharing under the scheme; and the requirement that all orders made under the scheme are proportionate to the risk that the offender presents.

The scheme also ensures that offenders are provided with treatment, specialist case management and intensive support to address their offending behaviour.

When developing legislation in the area of community protection the human rights of victims and of community members are at the forefront of the government’s thinking. These rights include the right to liberty, the right to life, equality, freedom of movement, protection of families and children and protection from torture and cruel, inhuman or degrading treatment.

The offenders’ human rights must also be considered and the government is mindful of comments made by the courts and other stakeholders in relation to the Monitoring Act, which concern the impact of extended supervision orders on offenders and what is at stake for offenders if they are subject to such orders once they have completed a sentence of imprisonment.

While it is acknowledged that extended supervision orders have an impact on the liberty of offenders subject to such orders, the human rights of any member of the community cannot be considered in isolation. It is the government’s view that a curtailment of offenders’ liberty in the form of supervision orders or detention orders is a reasonable limitation of their right to liberty, where they have demonstrated serious sexual offending and continue to present a real, ongoing risk of harm to the community that cannot sensibly be ignored.

In this regard we are confident that this bill strikes the right balance between the rights of community members and the rights of offenders.

This legislation is the necessary measure of protection we need against serious sex offenders, no more, no less.

I commend the bill to the house.
Debate adjourned for Mr DALLA-RIVA (Eastern Metropolitan) on motion of Ms Lovell.

Debate adjourned until Friday, 4 December.

LAND (REVOCATION OF RESERVATIONS AND OTHER MATTERS) BILL

Second reading

Debate resumed from 15 October; motion of Hon J. M. MADDEN (Minister for Planning).

Mr D. DAVIS (Southern Metropolitan) — I am pleased to rise to make a contribution to debate on the Land (Revocation of Reservations and Other Matters) Bill 2009. This is one of those land revocation bills that are brought to the chamber with reasonable regularity and that changes the arrangements over parts of Crown land. This bill specifically changes the arrangements for the Montefiore Homes Community Residence at 619 St Kilda Road to permit the sale of the land to Jewish Care for the development of aged-care and community services.

The bill revokes the permanent reservation in respect of the Altona Memorial Park cemetery to enable the construction of a roundabout at the intersection of Dohertys Road and Gordonluck Avenue. It also deals with matters relating to the Whitten Oval, Caulfield Racecourse and Kardinia Park, which will affect the Geelong Football Club arrangements.

It is important to make a number of points about these matters. Generally we do not have problems with land revocation bills, because they often tidy up small matters surrounding a minor change. However, on some issues greater questions need to be dealt with. In this case there are genuine questions about the revocation of land at Yarra Bend Park, at Whitten Oval and the land at Caulfield Racecourse.

Yarra Bend Park is a great park. I live very close to it and have used it for many decades. That it exists at all is a remarkable testament to the work that people in Melbourne did in the early years to create a huge swath of parkland so close to the city. However, there are strong concerns about moving responsibility for that land to Parks Victoria. Frankly I was always attracted to the fact there was a separate Yarra Bend Park Trust. Whilst I accept there is a need for a capital injection, which the government will assist with on this occasion, it is not absolutely clear to me why that could not have been done as part of the Yarra Bend Park Trust administration. It seemed to me that the longstanding arrangement with the Yarra Bend Park Trust gave greater say and greater leverage to local councils and the local community, and that is a much stronger position. Opposition members have some concerns about how Parks Victoria will manage this important piece of land. We welcome the additional funds that will come forward, but it is unclear why the funds could not have been added to the equation via the existing Yarra Bend Park Trust.

On the subject of the revocation of land at the Whitten Oval, there are a number of questions about the social housing the federal and state governments propose to build on that site, and there are some questions about the permanency of the arrangements. I understand Ms Pennicuik will bring forward an amendment — or maybe it is under Ms Hartland’s name — for Western Oval Reserve to be made permanent rather than temporary. There is some genuine argument to be had on that issue.

There are also genuine issues surrounding the revocation of land at Caulfield Racecourse. I chaired the Select Committee on Public Land Development of which Ms Pennicuik, Mr Kavanagh and Mr O’Donohue were also members, as were other members of this chamber. The committee spent a good deal of time examining the Melbourne Racing Club’s development proposals for Caulfield. I urge members to look at the public land committee’s report so they can better understand this issue.

Having looked into the history of the original trust deed for Caulfield Racecourse, it is very clear that the original trust deed has not been fully honoured by the way the Melbourne Racing Club has undertaken its activities. Personally I do not believe the structure of the committee of management, with an arrangement for the Melbourne Racing Club to manage the day-to-day activities on the site, has delivered everything that could have been delivered on that site. In no way do I diminish the importance of racing — it is a very important industry and an important part of our community which I strongly support — but I believe the racing club and the trust could have done more to honour the original trust deed and could have done more to ensure that the community was involved more closely.

It is a significant chunk of land, and we know Stonnington and Glen Eira do not have as many open spaces as they should. This land could have been opened up and used much more for public activity, and it still could be. The high-intensity development proposed by the Melbourne Racing Club raises some genuine questions from the community’s perspective. I am very respectful of those views. I urge the racing
 Opposition will not oppose this bill. One of the difficulties with the legislation is that a number of the aspects I have discussed have been shackled together. We do not necessarily seek to greatly delay the passage of the bill, or to give the government an excuse not to proceed with the bill. As I understand it amendments will be proposed by Ms Pennicuik and Ms Hartland — one on the Whitten Oval and one concerning Caulfield. I now have a copy of those proposed amendments in my possession. Our current position is that it is likely we will not support those amendments, but I am not diminishing the intention of the amendments because they are motivated by the desire to achieve a better outcome. The concern is that if there were to be debate on those amendments, the bill and its passage may be delayed by the government indefinitely. I am not talking about a short-term delay of a day, a week or even a month, but the government may not proceed if the bill was tampered with in that way.

There has been correspondence between the Melbourne Racing Club and the opposition. The racing club supports the government’s bill. I note that Glen Eira City Council and others in the local community are strongly opposed to the swap that is part of this bill. My view is that the swap is not as strong a deal as could have been achieved.

Another important point to be made with respect to this bill relates to Yarra Bend. Whilst on an official level there is support from the local councils, at a deeper level there is concern about the long-term management of Yarra Bend Park by Parks Victoria. Parks Victoria is an important body, but it is a body that does not always live up to its promises. I have less than full confidence that Yarra Park will be better managed by Parks Victoria than it has been by the Yarra Bend Park Trust, which has, over those many decades, protected and enhanced that huge and important swathe of public land which is so close to the city.

I turn now to the Montefiore Homes Community Residence. It is important to put on the record the very strong support of the opposition for the revocation of reservation there. This will lead to a good outcome. The Jewish community homes group is a very strong group and will do excellent works, so this is an important step and we wholeheartedly support that arrangement.

In relation to the Whitten Oval I have been in contact with the Maribyrnong City Council, and it is worth putting on the record the concerns of that council through its mayor, Michael Clarke, and the chief executive officer, with whom I also met. They indicate concerns around the net loss of open space and the creation of a major structural barrier, which will act to further ring fence the oval as a privileged site and act as a physical and psychological barrier. They are talking about the changes that are proposed in tandem with this bill to reverse the permeability of sight lines between the site and the proposed Bunbury Village development and to reduce the planned walkability in the neighbourhood away from major traffic areas.

The government has to think very carefully about a number of the social housing steps that it is taking at the moment. It needs to make sure that social housing is placed in positions and in densities that will enable the achievement of the objectives of that social housing rather than clustering it so that people are split from the community in a way which will not necessarily lead to the best outcomes.

Ms Hartland (Western Metropolitan) — This bill revokes a number of reserves in different parts of Melbourne. I will be moving an amendment in relation to the Whitten Oval reserve, and my colleague Ms Pennicuik will be moving an amendment in relation to the Caulfield Racecourse. These amendments will require some detailed explanation. But I will start with a few comments on the Altona cemetery and the J. R. Parsons Reserve, which are also in my electorate.

The bill proposes to slice off a few bits of the Altona cemetery reserve and give them to VicRoads to allow for some truck works. I am not opposed to the revocation, but I would like to say that I think it has been very poorly handled and that the attitude that public reserves are no more than future road reserves is not good enough. No alternative was examined to see whether the roadworks could be carried out without slicing up the cemetery reserve.

One of the roadworks is to allow better access for trucks to a street on the opposite side of the cemetery — that is, the south side, the cemetery being on the north side. I would have thought that alternatives could have been sought and should have been sought on the south side of the road.
I will not oppose the amendment because the cemetery trust has given its consent, but I would like to point out that the Altona Memorial Park Trust would like compensation to be paid for the land lost, as is its right. However, I am advised that the compensation, if granted, is likely to be no more than restitution for damage caused by the roadworks. And that is not compensation; that is restitution for damage to land the trust retains. I think the government should find an area of equivalent size and reserve it for the public, perhaps as a small children’s playground, as we do not have enough of those in the western suburbs.

The J. R. Parsons Reserve is in Sunshine, and the legislation proposes to remove a few metres in the corner near the railway line to make way for a priority bus lane. Sporting groups at J. R. Parsons Reserve include a tennis club, athletics club, footy club and cricket club, and I have contacted some of them. They agree that the parcel of land being revoked does not impact on their activities, so I will not oppose this section of the bill.

But I will say that the government should have done the right thing and actually contacted these groups, because I think public consultation is important. I understand that at the first briefing we had on this matter we were told there were no clubs using the reserve. It only took us about half an hour to find them.

I will now move to the Whitten Oval issue. I have thought very carefully about how to respond to the section of the bill that relates to the Whitten Oval. On the one hand, we have a number of detailed proposals for how the Bulldogs will use the reserve, but these proposals might change, and the only concrete plan before us today is this legislation. The legislation revokes the permanent reservation over Whitten Oval and turns it into a temporary reserve. I seek to circulate an amendment, the effect of which would be to retain Whitten Oval as a permanent reserve.

**Greens amendment circulated by Ms HARTLAND (Western Metropolitan Region) pursuant to standing orders.**

**Ms HARTLAND** — If left unamended, the bill will change the Whitten Oval from a permanent reserve to a temporary reserve. A permanent reserve can be revoked only by Parliament. A temporary reserve can be revoked at the stroke of a pen. There is no reason to take away the permanent nature of this reserve.

The land was permanently reserved for public purposes in 1878 and 90 years later, in 1968, Parliament narrowed the scope to recreation purposes, but it retained the land as a permanent reserve. The bill before us today reserves the land for recreation, social and community purposes. I do not oppose that change, because it is in keeping with the original 1878 reservation, which was for very broad public purposes, but it should stay as a permanent reserve.

This bill sacks Maribyrnong City Council as the committee of management. The government has set out that the Maribyrnong council supports this move. I think that is putting a slightly rosy glow on the situation. What Maribyrnong council members actually said was that they wanted to resign because they were being treated with contempt by the minister. Maribyrnong City Council wants its planning controls back, and I agree that the minister should give the planning controls over the Whitten Oval back to the council.

When the minister took control of the Whitten Oval project it was because of one issue, the John Gent stand. The proposed development has now expanded to include a raft of new and very radically different proposals, some of which are for commercial developments on public land. There has been no consultation about any of these new ideas, because the Maribyrnong council has been stripped of all its consultation powers and the minister does not wish to consult with the community. It is wrong for the minister to continue making decisions about the project without giving the residents the benefit of public consultation. I am a local resident — I live about a 10-minute walk from this site — and I have views on what development there should be. I know other people in the community do also. However, this should not be about what the minister or I think of the Bulldogs plans. There needs to be a proper public consultation, and it should be undertaken by the City of Maribyrnong as the planning authority.

The Bulldogs have widely publicised their plans for the reserve in the local media, but unfortunately they have forgotten or neglected to organise a meeting with local residents. The Bulldogs have written to me in the last week asking if I would like to meet with them. I would be happy to do that as soon as they have called the first public consultation meeting so that they can tell the local community, my neighbourhood, their plans for the site.

The most controversial aspect of the plan is the inclusion of social housing, including supported housing, which would accommodate people who need support to avoid homelessness. There would also be low-cost social housing. I was surprised when I heard the plan. I generally would oppose a reserve being used
for housing. It creates an undesirable precedent, and Greens policy opposes development on public land. However, this is a very particular reserve. It is not a local park or a nature reserve. The footy club is proposing to give up its exclusive use of an area which is currently not open to the public. The proposal is backed by a well-respected housing advocacy group that would supply the support needs of people who are at the margins of society. The proposal as a whole may mean that the oval is better used by more members of the public from diverse backgrounds. But without detailed planning work and consultation with the community, how can I make an informed judgement? If the Bulldogs can get some income from social housing, that might not be a bad idea. It is certainly better than making money from pokies, which bring such heartache to families in my community and can be the cause of homelessness.

I and the Greens support public and supported accommodation and accommodation for people on low incomes. I know that my stance on social housing is not shared by everybody. Some people, unfortunately including some members of this chamber, think social housing residents have two heads. But I do not; I lived in public housing accommodation for 17 years. I have also worked in a high-rise office of the Office of Housing. People who live in public housing do not have two heads; they are not monsters and they are not deviants.

But even those who have a good record of support of social housing, like Maribyrnong City Council, oppose social housing in that spot for planning reasons. Other housing and welfare organisations, for which I have a high regard, have also spoken to me about this site. I believe they have raised valid concerns. Of the local residents who have written to me, some have been supportive of the project and some have been against it, but all of them are concerned about the lack of consultation and then having to learn about it through the local media or from a letter from council — but not from the Western Bulldogs football club or the minister. It is particularly important that the minister take note of these concerns because he has taken over planning control and should carry out that consultation.

The proposal includes visiting support staff and a 24-hour staff presence for the supported accommodation section. The site is walking distance from Footscray; it is very close to the West Footscray station and to my local shopping strip on Barkly Street. That area is a really great place to live. It is close to public transport, including a train and bus service, both of which I use regularly. My neighbourhood is perfect for social housing. I do not mind if someone lives in a social housing property next door to me, but I do not think the decision on this project should be made by me, the minister or anyone in this Parliament without consultation between the Western Bulldogs, the relevant authorities and local residents.

Finally, public land needs to be treated carefully, retained in public hands and used in a way that gains a maximum benefit for the public. It should never be locked up for the exclusive use of corporations, be they woodchipping giants in the central highlands or East Gippsland, be they the Melbourne Racing Corporation or the Western Bulldogs on Whitten Oval reserve.
Ms BROAD (Northern Victoria) — I rise to speak in support of the Land (Revocation of Reservations and Other Matters) Bill. The purpose of this bill is to facilitate a range of changes to the status of land in the Crown land portfolio and to Crown land legislation. In some cases the bill revokes permanent reservations and Crown grants made under the Crown Land Reserves Act 1978, which can be removed only by legislation. In other cases, it removes or amends legislation and changes management and leasing arrangements for Crown land sites.

Because permanent reservations were historically common, bills of this type are regularly needed to remove them as part of the government’s policy to rationalise surplus Crown land or to enable projects on Crown land that are supported by government to proceed.

The bill revokes the permanent reservation and restricted Crown grant over the land occupied by the Montefiore Homes Community Residence in St Kilda; revokes the permanent reservation over two parcels of land in the Altona Memorial Park Cemetery Reserve; facilitates duplication of Dohertys Road by VicRoads; revokes the permanent reservation over a parcel of Crown land on the J. R. Parsons Reserve in Sunshine to enable construction of a bus lane by VicRoads; revokes the permanent reservation over a parcel of Crown land at the Seaford caravan park near Kananook Creek reserve to enable a land exchange with a parcel of private land; repeals the Kew and Heidelberg Lands Act 1933 and the Kew and Heidelberg Lands Act 1958 and dissolves the Yarra Bend Park Trust to allow for the transfer of responsibility for the Yarra Bend Park reserve to Parks Victoria; revokes the permanent reservation over a section of the fence perimeter of the Melbourne Zoo which has encroached onto the Royal Park reserve; revokes the permanent reservation over the Crown land at the Tabaret car park site at Caulfield Racecourse to enable an exchange of freehold land with the Melbourne Racing Club and facilitate a commercial mixed-use development in the Phoenix precinct; repeals the Footscray (Recreation Ground) Lands Act 1968 and the Footscray (Western Oval Reserve) Lands Act 1981; revokes the permanent reservation over the David Spurling or Whitten Oval reserve; removes the Maribyrnong City Council’s committee of management and temporarily re-reserves the land to facilitate its overall redevelopment; and finally amends the Geelong (Kardinia Park) Land Act 1950 to allow the Greater Geelong City Council to grant licences as well as leases over the Kardinia Park reserve.

The amendments made by this bill will facilitate a number of government-supported projects, including large-scale redevelopment at Caulfield, Kardinia Oval and the Western Oval, which will have wide-ranging social and economic outcomes for local communities. These large-scale redevelopments will also be subject to processes which go well beyond what is provided for in this bill.

In conclusion, the bill will further improve the long-term leasing and management arrangements of numerous Crown land sites, it updates and removes redundant legislation and will ensure that the government’s Crown land portfolio is accurately reflected. I commend the bill to the house.

Ms PENNICUIK (Southern Metropolitan) — It is great to see that the minister on duty is so engaged in the proceedings here on the land revocation bill!

My colleague Ms Hartland has talked about some aspects of the bill before us, the Land (Revocation of Reservations and Other Matters) Bill 2009, which deals with a bunch of revocations of reserves on public land and Crown land at Yarra Bend, Caulfield, Royal Park, Western Oval and Kananook Creek.

I initially had some concerns about the Kananook Creek issue, but on consultation with the Friends of Kananook Creek, I was reassured that they were quite relaxed about the proposal in the bill regarding the land at Kananook Creek in Seaford.

What I wish to talk about today is part 4 of the bill, which concerns a land swap at Caulfield Racecourse. Just so people understand, schedule 6 of the bill proposes to give to the Melbourne Racing Club, which has the day-to-day running of the racecourse — and I will return to that issue later in my contribution — a parcel of land of 5865 square metres. It is valuable land right next to the Caulfield railway station, across the road from the entrance to the Caulfield Racecourse and very close to Monash University. In exchange the Melbourne Racing Club has offered 954 square metres of land on the western side of the racecourse right opposite a busy intersection. It is a piece of land Caulfield Racecourse does not want and has no use for, so it is quite happy to give it away. That land is about one-sixth of the size of the parcel of land the club is to receive, is of much lesser value commercially and of no value to the club in its business. It is happy to give that land to the community and to be given by the government a very valuable piece of Crown land at the northern end of the racecourse, as described. That is the situation with the land swap proposed under the bill.

Caulfield Racecourse is in my electorate. It is about 3 kilometres from where I live, and I am very familiar
with the site, as I am sure is Ms Huppert, who is seated in the chamber.

Mrs Coote — And me.

Ms PENNICUIK — And Mrs Coote as well, but I know Ms Huppert also does not live far away.

Hon. M. P. Pakula — And me, for other reasons.

Ms PENNICUIK — And Mr Pakula, who lives in my electorate but represents another one. But I do not think Mr Pakula lives that close to Caulfield Racecourse.

Hon. M. P. Pakula — No, it is one of my recreation centres.

Ms PENNICUIK — This issue was considered by the Select Committee on Public Land Development and was the subject of chapter 5.3 of its final report. Before I go into the particulars of what was written in the final report about this issue with Caulfield Racecourse, I will say that in general the select committee found there was a lot of disquiet in the community regarding the commercial development, alienation and use of public land — Crown land — for commercial purposes. It found that all around Victoria — in metropolitan Melbourne, in regional centres such as Bendigo and in places like Port Campbell — there was a lot of community disquiet about government policy on public land and either its sale to developers or its alienation from the community and use for commercial gain by private entities. That is a big issue around Victoria, and the Caulfield Racecourse issue is a classic case of that.

The original Crown grant in 1879 provided that what is known as the Caulfield Racecourse, which is on about 50 hectares of land in the city of Glen Eira — and the city of Glen Eira has a dearth of public open space; it has one of the lowest per resident ratios of public open space in Greater Melbourne — should be a site for a racecourse and for a public recreation ground and public park at Caulfield. But the situation is that the Caulfield Racecourse is run by the Melbourne Racing Club (MRC) as a racecourse. There is very little, if any, public access to the racecourse, even though only 20 race meetings are held there each year. For the rest of the time the public is alienated from the park pretty well every morning due to horse training at the racecourse. There has been a long campaign by the community and the council to open up the Caulfield Racecourse for the uses it should be made available for under the Crown deed, yet it has never been so used.

I would like to read a little bit from the final report so that people understand the background to this issue. As I mentioned, the Crown deed outlines that those uses — as a racecourse, public recreation ground and public park at Caulfield — are meant to be even. The three uses of the Caulfield Racecourse are meant to be equal uses. The site is not meant to be predominantly a racecourse, with the other two uses fitting in where they can. They are meant to be equal uses — and there has been legal advice on this. That has never been the case, and it is very far from the case now. That was noted in the final report of the select committee’s inquiry into the Caulfield Racecourse issue. The report states:

The City of Glen Eira, in evidence to the committee, highlighted concerns that the master plan and current use of the Racecourse Reserve does not adequately provide for a public recreation reserve or public park which are the original, legally prescribed purposes of the reserve.

One of the issues at the heart of this matter is that the original deed set up a 15-member trust to oversee the Crown grant. That included six members of the Melbourne Racing Club, six members appointed by the minister and three from the local council. They are charged with overseeing those three equal uses of this piece of public land. However, the Minister for Planning has tended to appoint to the trust people with a racing background. Not only do we have six members appointed by the Melbourne Racing Club but we also have another six members appointed by the minister, most of whom have a racing background. The three members from the Glen Eira council tend to be overshadowed by this group, and in the past they have had a lot of trouble even having their appointments validated by the minister.

The report states, and I agree:

The committee questioned the Melbourne Racing Club over existing use of the site during a public hearing on 13 February 2008. The committee … expressed unanimous concern over the extent to which the MRC is committed to ensure the Caulfield Racecourse Reserve is able to be used by the public on non-race days as a recreational reserve and public park.

It goes on to say:

… six of the 15 trustees are nominees of the MRC, several of the state government nominees have a background in racing, and the day-to-day management of the reserve has been delegated to the MRC by the trustees …

Not only do the trustees not carry out their purpose under the grant, they have actually delegated the day-to-day running of the land to the Melbourne Racing Club. Obviously the Melbourne Racing Club, which is a commercial entity, is going to run this public land for its own benefit. The report continues:

… the committee was concerned that evidence from the trustees themselves illustrates the complete lack of
appreciation for the original purposes of the reserve as a public park and the responsibility to uphold that purpose with equal status as horseracing.

I am sure members will forgive me for quoting my words from the inquiry’s proceedings, but I think this goes to the nub of the matter. I said to Mr Reynolds:

So there is a fair bit of racing experience on the board of trustees?

Mr Reynolds said:

I think if it is mainly used as a racecourse, that is probably a good thing.

I said:

It is mainly used as a racecourse. That is the problem, isn’t it?

Mr Reynolds replied:

It has got to be unless you want the horses to gallop all over people.

I said:

I think that is the issue I was trying to point to. The community’s view is that racing has the majority of the focus — by a long way — and public use has by far the minority.

I quote this because it just goes to show that the trustees have no awareness or commitment to anything but furthering the interests of racing. They are not even aware of their responsibilities under the deed.

Evidence detailed to the committee also indicates that the practice of the trustees is to meet once a year in March. How can they fulfil their duties for this large piece of public land when they meet only once a year? Their meetings are not open to the public, the minutes of their meetings are not made public and nor is there any public release of financial statements.

The trustees of the Caulfield Racecourse public park and recreation ground are completely a law unto themselves; they are unaccountable, and no government has attempted to make them behave in line with contemporary governance. They basically do what they like, and they are not fulfilling the job that is assigned to them as trustees of this large area of public land. As the inquiry found, the proceedings of their meetings are completely secret, and the financial statements are also completely secret. It is not acceptable in this day and age for trustees of a large parcel of Crown land in Melbourne to run a secret operation.

The issue is very serious, because the Melbourne Racing Club, by delegation from the trustees, has run this piece of land, which is meant to be a public park and recreation ground as well as a racing club, just for racing. It has made gazillions of dollars out of it over the last decades, but no-one knows exactly how much it has made — it is probably gazillions, but it is all a secret. Now that there is a Tabaret on site, millions more dollars will go into the coffers of the Melbourne Racing Club from profits it is making out of land owned by the public. No-one knows how much has ever been made, how much is being made now or what the club does with it.

It has bought some bits of land and added it to the racecourse. It is prepared to give the community a non-valueable piece of land, which it does not want — it is very big of it! — in exchange for the very valuable triangle of Crown land bounded by Station Street and Normanby Road in Caulfield. I am totally opposed to this prospect.

As I said, what is happening here is that the Melbourne Racing Club has over decades made gazillions of dollars. The community and the council have tried to get it to fulfil its obligations under the deed — to open up the racecourse to the public, to put in some amenities for the public using the funds that it has raised from the land, but it has done nothing. A communiqué was signed with the council a year ago. The Melbourne Racing Club agreed, at some undefined time in the future, to remove training facilities from the site and return the area that houses stables and the training facilities to the council for public use — but this was to be at some unspecified time in the future.

The club had undertaken to open up access to the site and to increase signage around the site to make sure that members of the public knew this area was a public park and recreation ground that belonged to them. But I made it my business two weeks ago to go right around the perimeter of that site and onto the site, and there is nothing there to tell the public that this is its land. Everything is about racing: there is a meeting on 6 December, and people are invited to come and have a look at racing. On the small gate you can get in through, which is adjacent to this crappy bit of land that the Melbourne Racing Club wants to give to the community, there is a tiny sign telling members of the public — if you can get right up to the gate, you can read it — at what times they are allowed on their own land.

The Melbourne Racing Club has no interest in allowing public access and fulfilling the deed. In the committee stage I will move an amendment to completely remove part 4 of the bill, which contains the provisions dealing with the land swap at Caulfield Racecourse. I am happy
to have that amendment and the other amendments circulated.

**Greens amendments circulated by Ms PENNICUIK (Southern Metropolitan).**

Ms PENNICUIK — I would like to just go to the recommendations of the Select Committee on Public Land Development regarding this site.

Recommendation 5.8 states:

That the government investigate:

- the history, membership structure, responsibilities and current arrangement of the Caulfield Racecourse Reserve Board of Trustees, particularly in relation to its duty to uphold not just horseracing, but all the purposes of the reserve in the original grant —

that has not happened —

- the purpose to which money raised by horseracing has been used —

no-one knows, except to further the interests of the Melbourne Racing Club —

- ways in which the government can ensure that the board of trustees operates in an open and transparent manner and in accordance with the terms of the grant.

That has not been done.

Recommendation 5.9 states:

That the master plan for the Caulfield Racecourse Reserve redevelopment be the subject of wide public consultation incorporating the municipalities of Glen Eira —

- Stonnington and Port Phillip.

That has not happened.

Recommendation 5.10 states:

That the Minister for Planning strongly consider appointing community members and/or people with park and recreation expertise as nominees of the state government to the Caulfield Racecourse Reserve Board of Trustees to provide a balanced representation of interests and expertise.

That has not been done. I have personally spoken to the planning minister and asked him not to appoint any more people who have racing backgrounds as state government representatives on this board of trustees, because the Melbourne Racing Club already has six appointees under the deed. That has not been done.

Recommendation 5.11 states:

That the day-to-day management of the Caulfield Racecourse Reserve, by delegation from the trustees to the Melbourne Racing Club, be reconsidered.

I would say it should be revoked. This has not been done.

Recommendation 5.12 states:

That the Melbourne Racing Club’s recent report relating to the Caulfield Racecourse Reserve fencing boundaries be publicly released.

That has not been done.

The fencing remains particularly on the east side along Queens Avenue. The whole of the racecourse is bounded by a large green tin fence, which I understand was put up during the war years for particular purposes. There is no reason for it to be there now, and it only serves to completely alienate the course. The committee heard evidence about the ridiculous suggestion that the fence had to stay there because if it was not there, the horses would be too scared to run around the track. I have never heard anything so silly. Horses run around tracks in Sydney, Adelaide and Brisbane that are really close to busy roads. Under no circumstances could Queens Avenue, Caulfield, be called a really busy road. It may perhaps be busy at certain times in peak hours, but it is not very busy on a Saturday afternoon when the races are on.

Recommendation 5.13 states:

That the Caulfield Racecourse Reserve trustees direct a substantial amount from the profits made by the Melbourne Racing Club over many decades to the provision of public park and recreational facilities, including promotion of the public use of these facilities as recompense to the community.

Nothing has happened in that regard either. In fact, on a recent visit to the Caulfield Racecourse one and a half weeks ago the only new work I saw occurring in the centre of the racecourse public park and recreation ground was a new tower for people to be able to view the racing, and a few repairs had been made to the rails around which the horses run when they are training. I cannot see what public park benefit there is in those improvements.

Recommendation 5.14 states:

That the government support the joint communiqué between the Melbourne Racing Club and the Glen Eira City Council to the Caulfield Racecourse Reserve trustees, bearing in mind that further public consultation is needed with respect to the future use of public open space within the centre of the Caulfield Racecourse Reserve.
I do not think the government has even engaged in that process. It certainly has not consulted with the Glen Eira City Council. I have spoken with the mayor and other councillors, all of whom are completely opposed to this. They are very concerned about the continuing lack of any community or public benefit from this huge area of Crown land.

My amendment would completely remove part 4 of the bill, because it is unfair and it has no public benefit. This is about the state government giving over this parcel of land to the Melbourne Racing Club, which makes millions of dollars from it. I am sure everybody in the chamber, apart from Ms Hartland, Mr Barber and me, have Melbourne Racing Club passes and get free access to race meetings. Everybody is conflicted, and that is why we do not accept the passes from the club.

Mr Vogels — The Victorian Racing Club.

Ms PENNICUIK — Victorian Racing Club, thank you, Mr Vogels. But the point is that the racing industry has a lot of power, and it is obviously throwing it around in respect of this piece of land.

Apart from the complete unfairness of it all, my real objection and the reason I would like this part removed from the bill at this stage is because there will be no incentive. Once the Melbourne Racing Club has this piece of land handed over to it there will be no incentive for it to do what it should be doing, which is to provide the amenity in the middle of the racecourse for public passive recreation and to remove the training facility and the stables so the southern part of the racecourse can be joined with Glen Huntly Park to enable much more public access. There will be no incentive for it to do anything.

The club has, if the minister will excuse the pun, a poor track record. It has poor form in this regard. Even though it has signed a communiqué with the local council, it has shown no interest in or commitment to doing what it has said in writing it will do. It is 14 months down the track and zilch — zip — has happened in that regard. The only improvements it has made in the middle of the Caulfield racetrack are racing improvements.

Part 4 of the bill should be removed, and the government, in consultation with the local council, should consult with the trustees. It is the trustees who have the legal responsibility, not the Melbourne Racing Club. It was delegated to the club by the trustees in a very bad decision that should be revoked. The trustees should be made to become more active. There should be community and park representatives on the Caulfield Racecourse Reserve Trust, and state government appointees with racing backgrounds should be kicked off so that representation is more balanced.

The government should negotiate with the trustees about fulfilling their legal responsibility under the deed, which they have never done. Once we have seen stables and training facilities removed, the inside of the park improved and access to the community made very obvious — once all these things are done — I would be quite happy to think about this valuable piece of Crown land being sold to the Melbourne Racing Club using the money it has raised from commercial activities on Crown land. The club should also give to the community the piece of land dealt with in this bill — the strange little triangle next to the roundabout on Glen Eira Road — and the piece of land that is now a stables and training area. That is the least we could expect before it is given such a prize. Under the bill the club will be given a piece of valuable Crown land for doing nothing. It has done nothing, but it will still be rewarded.

I find that pretty obnoxious. That is why I will be moving the amendments to remove part 4 from the bill. Once there has been a show of good faith from the trustees and we see real action on the grounds, then maybe we could come to some arrangement regarding that land and other land for the public benefit.

It is worth mentioning the Glen Eira City Council. Everybody in this chamber would have received an email from Cr Helen Whiteside, the mayor of the City of Glen Eira. I quote from the email:

At the ordinary meeting on Wednesday, 4 November, council carried the following resolution in relation to a proposed land swap at the Caulfield Racecourse, which is contained in a bill which is before the Legislative Council. A brief outline of council’s position is attached:

1. that council confirms its opposition to the proposed exchange of Crown land for the freehold land at the Caulfield Racecourse on the grounds that the benefits flow to a future property developer rather than to the community;

2. that inasmuch as the freehold land has minimal value to council as a public park, council proposes that the state government sell the Crown land to the Melbourne Racing Club at commercial value;

3. that council put this view, together with supporting documentation, to all members of the Legislative Council without delay;

4. that council seeks the support of the Municipal Association of Victoria at its forthcoming conference; and
5. that council seeks the support of other geographically affected councils to make similar representation to members of the Legislative Council.

Accordingly on 10 November the City of Stonnington, which is an adjoining council — and many residents of Stonnington live in close proximity to Caulfield Racecourse, which can be reached simply by crossing Dandenong Road — on behalf of the mayor and councillors of the City of Stonnington sent letters to everybody in this house. The letters state:

Council, at its meeting last night, gave consideration to the proposed land swap at the Caulfield Racecourse, which is contained in a bill which is before the Legislative Council. Council expressed concern about the proposed exchange of Crown land for the freehold land at the racecourse as it believes that the benefits would flow to a future property developer rather than to the community. It subsequently resolved to support the City of Glen Eira in opposing the proposal and passed the following resolution:

That Stonnington council expresses its opposition to the proposed exchange of Crown land for the freehold land at the Caulfield Racecourse on the grounds that the benefits flow to a future property developer rather than to the community.

That inasmuch as the freehold land has minimal value to the community as a public park, Stonnington council proposes that the state government sell the Crown land to the Melbourne Racing Club at commercial value …

Members would note that both of these resolutions refer to the freehold land that is owned by the Melbourne Racing Club, which is the land it wants to swap for the very valuable piece of land. That freehold land, I would remind everyone here, has been bought by the Melbourne Racing Club from funds it has raised over the decades from racing and Tabaret activities on the public land. This was a question raised in the public land inquiry, and it is my view that that land already belongs to the community. The club may have purchased it, but it has purchased it with funds it has raised from the use of the public land, and none of those funds have ever gone back into public use.

The City of Glen Eira would have sent everybody its background material Getting the Balance Right — Caulfield Racecourse, which outlines what it is asking of the Melbourne Racing Club with regard to this land, such as the training of horses to be relocated, the land on Neerim Road to be incorporated into the Glen Huntly Park and the area around the lake to be beautified as passive open space and made easily accessible. None of this has happened. There is no sign of it ever happening.

In 2006 the council wrote to the chairman of trustees asking for the things I have mentioned, including the signage, and stating:

The Caulfield Racecourse and public park should have all the facilities which would normally be provided in public parks (for example, playground, barbecue, drinking fountain, public toilet, garden beds et cetera).

None of that is happening. The Melbourne Racing Club has shown no inclination to do any of that. During the public land inquiry the Secretary of the Department of Sustainability and Environment insisted that local councils and communities are always consulted when the government proposes to sell a piece of public land or give away a piece of public land. The Glen Eira council tells me it has not been consulted, and this is a classic case of that not happening.

That is why I will be moving my amendment to remove part 4 of this bill. What is happening here is a travesty, and it is an example of why the community of Victoria is so concerned, as was pointed out in the final report of the public land inquiry, about what is happening to their public land.

Motion agreed to.

Read second time.

Committed.

Committee

Clauses 1 to 16 agreed to.

Clause 17

The DEPUTY PRESIDENT — Order! I invite Ms Pennicuik to deal with her amendment no. 1, which asks the committee to vote against the part heading preceding clause 17. Although this is a relatively minor amendment in itself, it is in my view a test for all the remaining amendments proposed by Ms Pennicuik, which are amendments 2 to 28 — in other words, Ms Pennicuik’s amendment 1 will test her substantive amendments.

Ms PENNICUIK (Southern Metropolitan) — I invite the committee to vote against the part heading preceding clause 17, as shown in my amendment 1. Proposed amendments 2, 3, 4 and 5 seek the omission of clauses 17, 18, 19 and 20 — that is, in effect, part 4 of the bill, which relates to the Caulfield Racecourse land swap. Schedules 6 and 7 of the bill, which also relate to the Caulfield land swap, would be omitted by later amendments.
Members would have heard what I had to say regarding the background to this issue: the inquiry of the Select Committee on Public Land Development and the ongoing and longstanding concerns of the community and the City of Glen Eira regarding the complete alienation of this Crown land, which is meant to be used as a public park and recreational ground in addition to a racecourse but is basically just being run as a racecourse.

Accordingly, the reason I am moving the amendment is that I think it is premature for the government to be pressing ahead with the allocation or swapping of this parcel of land just north of the racecourse, which is Crown land, and giving that to the Melbourne Racing Club for a multistorey development, from which the club will make even more money, in exchange for a very small parcel of land on the east side.

The racing club obviously does not want that land ‘use to it, and Glen Eira council has said it is not much use to it either. That parcel of land is a lot smaller and, I would say, valued at a lot less, although I understand no complete valuation of the land has been done, so the community does not know what the value of each piece of land is.

I have had some discussions with the minister, and I have made my concerns known to him. As I said in the second-reading debate, and as I have said to the minister, apart from all the background and the unfairness of it all and the very sorry history of the way the trustees and the Melbourne Racing Club have run this land, my main objection is that once it is done, and they have actually been given the land for basically doing nothing, there will be no incentive for them to remove the training and the stables and make that area fit for public passage and recreation or for them to remove the training and the stables and allow that part of the land adjacent to Glen Huntly Park to be used for public access and public recreation, as it has undertaken to do with Glen Eira council but has not done and has shown no inclination to do. My very strong concern is that giving this to the Melbourne Racing Club when it has done nothing and has shown no inclination to do anything will leave the government and the council with no leverage.

My question to the minister is: how will the state government ensure that the trustees of the Melbourne Racing Club — in my view it is the trustees who have the legal responsibility even if they have delegated it wrongly — actually fulfil their legal responsibility and the commitments they have already made to the community and the City of Glen Eira but have not carried out so far?

Mr Jennings (Minister for Environment and Climate Change) — I thank Ms Pennicuik for her concern about this very important public policy matter, and I am very happy to respond to her question. The government will not be agreeing to her amendments, but in terms of addressing some of the substantive public policy issues I am very happy to account for those.

In last night’s debate I gave a bit of a whack to the Liberal Party for being all over the shop in relation to a piece of legislation, but I am going to leave it alone today because from my perspective I am being assaulted from the left and the right by the Greens today with the two effective amendments that we are dealing with.

An honourable member — I wouldn’t go that far.

Mr Jennings — I feel that way. Just as a bit of foundation building of the story I will say that I appreciate being in the company of people who understand and are well grounded in their ideology and who understand their political philosophy. But sometimes in public policy we cannot allow ourselves to be driven by that blinkered view alone and become ideological in our approach to public policy matters.

There is a danger with some of the arguments Ms Pennicuik has put on the public record today that her response is somewhat ideological.

I know that the sport of racing is referred to as the sport of kings; I understand that. And it sounds dangerously as if there are a whole variety of ideological issues wrapped up with the fact that this parcel of public land has been put for the purpose of racing — —

Mr Barber — There is one big one — accountability.

Mr Jennings — No, accountability is fine. I am very happy to account. I just do not want us to bundle up too many arguments around whether we are supporting racing, whether we think racing has a community benefit or whether we think it is a popular sport or an elite sport. In my personal experience a very significant working-class man in my life was completely obsessed with racing, so in terms of the community’s engagement with and appreciation of racing we should not start from the premise that it is an elite activity.

Ms Pennicuik — I haven’t mentioned that!

Mr Jennings — I think in a whole variety of ways that has been conveyed through the contributions to the debate.
Ultimately in relation to the issue of trying to provide confidence that this important piece of public reserve will be managed for the wellbeing of the community and in terms of the value and the attribution of that value to a broader community, that is a point well made and a point that needs to be accounted for in this debate. I accept that. I also note that there might be some lingering concerns about the way in which this public reserve may be opened up to the community. In terms of my responsibilities as the Minister for Environment and Climate Change who deals with the land element, I wanted to be satisfied that the net benefit of this would derive a community benefit and that there would be the potential once and for all to make sure that the community is aware this is a public reserve and not, as it may have been perceived for decades, a private space. I accept that point; I accept the need for us to be able to demonstrate that.

My formal response to Ms Pennicuik’s question in relation to these matters is to try to provide the committee with a variety of reassurances. The first reassurance concerns the nature of the land exchange that will occur subject to this bill. The Crown land and the freehold parcels involved in the proposed exchange will be subject to a valuation process by the valuer-general and the Melbourne Racing Club’s valuers. The valuation is subject to approval by the Government Land Monitor, and use of the appropriate probity standards will ensure that the government is not disadvantaged by the exchange. The land exchange will not occur unless the approval of the valuer-general and of the land monitor is gained. That establishes that in fact there will be a proper evaluation of the land parcels and there will be a commercial settlement for the difference in the value of the land parcels that will be exchanged. That is the first reassurance.

Secondly, following the passage of this legislation and agreement about the valuations, my department and the Melbourne Racing Club will enter into negotiation of the terms and conditions of the exchange. This exchange will be concluded in the form of a legally binding document which will be signed by me and the Melbourne Racing Club. An important element of this agreement will be that the Crown grant over the land to be transferred to the MRC will not be issued until the transfer of land to be acquired by the Crown is registered with the titles office and the Crown is satisfied that all conditions of the exchange agreement, which I will outline in a minute, particularly those relating to the landscaping of the park, have been met.

Those conditions that will be included in the legally binding agreement will be drawn up by the Victorian Government Solicitors Office and will include the following: Crown land parcel no. 1 will be fully landscaped by the MRC at its own cost to the satisfaction of my department on its transfer to the Crown; parcel no. 2 will be transferred to the Crown as part of the exchange process; and the Department of Sustainability and Environment will issue the MRC with a limited tenure over that parcel to allow the MRC to continue to use this site for track planning purposes. As part of that tenure the MRC will be required to pay rent to DSE based on a market rent valuation by the valuer-general. This rental revenue will be available for the ongoing maintenance and development of the park or other Crown public land within the Glen Eira area. Landscaping works on this parcel must be completed by the MRC at its cost and to DSE’s satisfaction before the expiry date of the tenure. It is important to understand that the cost to the MRC of landscaping the park will be separate to and in addition to the valuation of the land parcels.

Running through the cumulative reasons for that, there certainly will be a valuation in terms of the commercial values of the parcels of land that are going to be exchanged; there will be a net transaction to the Crown of the residual difference between the value of those properties, and beyond that the transfer will not take place until the MRC takes responsibility for the appropriate development, landscaping and redevelopment of the land parcel in question to make it a public space and ultimately to provide an entry point to ensure that the community understands that the centre of the racecourse will be a public space available on an ongoing basis for a broader community benefit, something which has not been perceived by the broader community for decades. That is something that I am supportive of; it was a hallmark of why I got with this program to support the exchange occurring, beyond the benefit that would occur through the potential for appropriately sensitive housing development and the commercialisation and community benefit that may derive from the economic activity that would be associated with a housing development in close proximity to a popular and important railway station, the Caulfield railway station. They are the cumulative reasons I and the rest of the government support this proposal and will not accept the amendment.

Mr Barber — You could call it the Sue Pennicuik Memorial Park

Mr Dalla-Riva — She’s not dead yet.

Ms PENNICUIK (Southern Metropolitan) — I think I am still walking and breathing, thanks, Mr Barber.
I want to address the minister’s first point, which was about horseracing and that somehow I was coming from an ideological position against horseracing. I certainly have an ideological position, as people well know, against jumps racing, and I am not fond of horseracing, but my argument was not based on that.

It was based on the alienation of that Crown land by the Melbourne Racing Club for its own commercial purposes. I would be just as opposed if it were another commercial entity that had alienated that land and was using it for its own commercial purposes; just happens to be the Melbourne Racing Club. So I think that was a misrepresentation of what I was saying.

I do understand, and the minister and I have discussed this, that the current situation is a result of decades of alienation of that space. What I am objecting to under this bill is what I see as the further alienation of the land and that the continuing alienation of the land by the Melbourne Racing Club, with its delegated responsibility from the trustees of the reserve, is being rewarded. That is the crux of my problem with the whole issue.

On behalf of the community of Glen Eira, I very much appreciate what the minister has put on the record. He is saying that there will not be any financial loss to the Crown. He is saying — and I am repeating what I have heard, so he can correct me if I am wrong — that there will not be any actual transfer of land until the works in the centre of the park to make that a public park are complete and until the community understands by way of signage and other access points that that is the case, and that this will all be done at the cost of the Melbourne Racing Club. The club will also have to pay rent for the area it uses for training.

My question is: is the government going to require the Melbourne Racing Club to remove training facilities and the stable areas in some designated time period, as the Melbourne Racing Club has indicated to the community and the Glen Eira council that it will?

**Mr Jennings** (Minister for Environment and Climate Change) — I thank Ms Pennicuik for her response to some of the propositions that I put to her, because I think we are now in a better space collectively in understanding public policy considerations. I think her articulation of her public policy concerns in response to my proposition has meant that we are on much more solid ground in understanding what we are trying to achieve here. I confirm that she accurately put to me the technical matters of the transfer as I had outlined them.

In terms of the ongoing involvement of the community in the management of what we hope will be a very popular public parkland space within the middle of the reserve, there will be an opportunity available for discussions between the MRC, the trust, the government and the local council about the way in which this public space may be managed in the future. We would hope that it may become a desirable opportunity for the local council to manage that space if they so choose. That opportunity is available, and it is something that we will want to pursue with them in the future, perhaps once a bit of the dust has settled.

On the question of land parcel no. 2 as it relates to the ongoing availability of training facilities, which I have indicated will have a limited tenure in the arrangements reached between the state and the racing club, the government is very happy to facilitate and support the relocation of training activities from this site. Indeed I believe all parties in the equation ultimately believe that this is something that should occur.

I hope a timetable will be established for the relocation of the training facilities. There will probably be some argument about the logistics involved in that and the speed with which that occurs, but I think it is a coalescing of an agreement and that establishing a timetable and enabling that to occur is something worth supporting. It is certainly something that the government, through its various arms of responsibility, would be happy to assist with.

**Mr D. Davis** (Southern Metropolitan) — My comments are on this clause, the amendment proposed by Ms Pennicuik and the minister’s comments. I start with the simple position that the opposition is not opposing this bill and will not be supporting amendments to it.

What we have just heard in relation to Ms Pennicuik’s proposed amendment to this clause and the minister’s response adds some welcome movement. I, too, took from many of the comments the minister made about the process by which the land swap will occur that there will be a settlement of financial value to ensure that the Crown is not disadvantaged and that before these arrangements proceed a number of other works and arrangements will occur. I hope the council is involved in consultation on a number of those processes. It seems from what the minister said that there will be greater community access through that process and improved works will be undertaken at the expense of the club prior to the swap occurring. To that extent, it is very welcome indeed.
I put on the record, firstly, the opposition’s very strong support for racing but at the same time point out that the opposition understands that public land is a major issue — it is a major issue in Stonnington and it is a major issue in Glen Eira, and the racecourse provides an opportunity under the old trust deed, as Ms Pennicuik, other members of the Select Committee on Public Land Development and I well understand, not only for a racecourse but for public park access as well.

I welcome the steps the government appears prepared to take in this bill, and if I might say so, the non-government members of the public land committee — Ms Pennicuik, Mr Kavanagh, Mr O’Donohue, Mr Hall and I — could take some gentle heart from the fact that a number of the suggestions and recommendations made through that inquiry appear to have been incorporated in the minister’s suggestions. They are very welcome steps indeed.

I know the council’s strong position is that there should be greater public access and that frankly the racing club could do more. The racing club is a very important institution, but it is an institution that can take a few small steps towards working with its local community, bringing its local community into greater proximity and using the public land that it has access to in a way that provides much greater enrichment for the community for recreation and other purposes.

The uses are not mutually exclusive, although obviously they are so on certain days and certain occasions. However, for much of the year an arrangement can be reached where those other public purposes can be advanced with no loss to the purpose of racing, and that seems to be the obvious way forward. Beautification works and the landscaping of the centre would be very welcome additions.

I pay tribute to the other members of the public land committee for the hard work the committee did through that process. In addition, the submitters to that inquiry made very cogent points on a lot of occasions. I welcome the fact that it appears there is some recognition of that by the government and by the racing club. The details needed to be pursued and monitored but I accept the minister’s bona fides in ensuring these things are dealt with.

Ms Pennicuik (Southern Metropolitan) — Regarding the promised removal of the training facilities at the stables at some stage, as I understand it in the agreement between the council and the Melbourne Racing Club the land which is south of the racecourse abutting Neerim Road would be hatched and merged with Glen Huntly Park. Is that the intention of the government, or has it not gone to that level of detail?

Mr Jennings (Minister for Environment and Climate Change) — It is interesting that this question does not necessarily involve the elements of this piece of legislation, but given that we are talking about a contiguous parcel of land and it does abut the areas in question, I can understand why it has been brought into this conversation.

I have sought advice to, in the first instance, clarify that this land is not subject to the legislation, so let us not be under any misapprehension about that. But beyond that, my memory tells me — and to my memory I have not been able to receive additional advice — that the parcels of land in question are subject to a pre-existing agreement between the club and the council about the return of these parcels of land to the council when activities at the training facilities are concluded.

Ms Pennicuik (Southern Metropolitan) — That is correct — that the land on Neerim Road currently used as stables be incorporated into Glen Huntly Park as additional public open space. This is shown at area E on the documentation I forwarded to the minister yesterday. My question is: will that be part of the agreement the minister is talking about? Even though it is not part of this bill, it is part of the agreement that the council has with the MRC. Will that be part of the agreement the ministers has been referring to?

Mr Jennings (Minister for Environment and Climate Change) — The answer to that question is no, because at this point in time the City of Glen Eira is not party to that agreement. The parties to the agreement in relation to the configuration of the parcels of land are the state of Victoria and the MRC.

If subsequently we can add to that level of agreement with the City of Glen Eira wanting to be a full party in deciding how the accumulated parcels of land are used, that could be a subsequent agreement that could be joined to the agreement I have described. That could occur, but it would not happen in the first instance, because in the first instance this agreement about the land parcels in question is between the state and the MRC. There is a pre-existing agreement between the club and the City of Glen Eira, as I understand it, around the parcels that are now brought into question. Ultimately they can all be brought into one level of understanding and an incorporated agreement, but at this time I would not envisage the Glen Eira council being party to this first agreement that describes the outcomes of this piece of legislation.
Ms PENNICUIK (Southern Metropolitan) — I understand that, but I raise it because it is an agreement between the Melbourne Racing Club and the Glen Eira council but the Melbourne Racing Club is, let us say, dragging its feet in that area. As indicated, that training area and stables will be moved at some point in the mists of time. The area is completely alienated from the public by the stables and training. People cannot get anywhere onto the racecourse from that particular area. What I am concerned about is the use of the whole site above what is in this bill. That is why I am going to that.

The council entered into this agreement because until this point the state government has neglected to intervene in this issue on behalf of the community. I am very appreciative of the time the minister has taken to listen to me on the issues about the alienation of public lands that I have raised and that are of concern to the community and to us. I am very appreciative of that, and I am appreciative of what the minister has put on the record today during the committee stage of the bill with regard to what the government will commit to do.

I have one more question. The minister is talking about an agreement with the MRC. I know that is the agreement under the bill, but the other concern I have raised through the debate and with him in discussion — and with Minister Madden, who is just leaving the chamber — is about the trustees. From my point of view, the trustees have the legal responsibility, not the MRC. That has been delegated to the club wrongly. This whole situation has just been perpetuated by the delegation of the running of that area of Crown land to the Melbourne Racing Club. The trustees have then pretty well abrogated their responsibility under the deed. I ask the minister whether the government has any intention of doing something about this very unhappy situation?

Mr JENNINGS (Minister for Environment and Climate Change) — I would like, in my life as a minister, to remove all unhappiness — that would be my hope. As for the opportunity of doing so in this instance, I am very happy to reflect on it and see what can be done.

Ms PENNICUIK (Southern Metropolitan) — I am very disappointed that the opposition has indicated that it will not support my amendment. Given that I served on the Select Committee on Public Land Development with the Leader of the Opposition, I know he is well aware of the issues, and he represents Southern Metropolitan Region as I do, so he should understand the concerns of the community. I am very disappointed in that respect.

I indicate to the committee that I will proceed with my amendment notwithstanding the assurances the minister has given today regarding the financial arrangements for the swap and the commitments, which will be legally enforced, to hold the Melbourne Racing Club to account. I believe in principle it is not good form to be going ahead with this proposal before any good faith has been shown by the Melbourne Racing Club in relation to the commitment it has already made to the council and the community but has done nothing about. I do not agree with rewarding the club for doing nothing. I have to say that I do not trust it; I trust the minister, but I do not trust the Melbourne Racing Club.

I will proceed with my amendment but I appreciate the work the minister has done and how he has responded to the concerns I have raised with him. I believe him when he says what the government will do, which will be of great benefit to the community and will be a breakthrough on an issue that has been going on for years and years. I commend the minister for his assurances in that regard.

The DEPUTY PRESIDENT — Order!

Amendment 1 moved by Ms Pennicuik is a test for more substantive amendments proposed to be moved subsequently. Her amendment proposes to delete a part heading. Whilst it is fairly inconsequential in itself, this tests her more substantial subsequent amendments. Ms Pennicuik has invited the committee to vote against the part heading preceding clause 17. The question is:

That the part heading preceding clause 17 stand part of the bill.

Committee divided on part heading:

Ayes, 33
Atkinson, Mr
Broad, Ms
Dalla-Riva, Mr
Darveniza, Ms
Davis, Mr D.
Davis, Mr P.
Drum, Mr
Eideh, Mr
Elasmor, Mr
Guy, Mr
Hall, Mr (Teller)
Huppert, Ms
Jennings, Mr
Koch, Mr
Kronberg, Mrs
Leane, Mr
Lenders, Mr

Noes, 4
Barber, Mr (Teller)
Hartland, Ms

Mr PENNICUIK (Southern Metropolitan) — I would like, in my life as a minister, to remove all unhappiness — that would be my hope. As for the opportunity of doing so in this instance, I am very happy to reflect on it and see what can be done.

Ms PENNICUIK (Southern Metropolitan) — I am very disappointed that the opposition has indicated that it will not support my amendment. Given that I served on the Select Committee on Public Land Development with the Leader of the Opposition, I know he is well aware of the issues, and he represents Southern Metropolitan Region as I do, so he should understand the concerns of the community. I am very disappointed in that respect.
Part heading agreed to.

Clause agreed to: clauses 18 to 26 agreed to.

Clause 27

Ms HARTLAND (Western Metropolitan) — I move:

Clause 27, line 30, omit “temporarily” and insert “permanently”.

The amendment is very straightforward. It is about making sure that this reserve stays as a permanent reservation rather than becoming a temporary reserve. My concerns about this are not ideologically driven. The problem I have is that we are talking about a football club and that I do not engage with football clubs. I understand the huge benefit of football in this state. I go to a number of under-12 games, and on occasion I have been the person who hands out the trophies, which I absolutely enjoy, so this is not ideologically driven.

Any piece of public land should have proper controls. I am concerned that if this becomes a temporary reserve, then at any time plans for the reserve can be made without consultation with the council, which no longer has planning control, and without consultation with the community, which is what is happening at the moment. People are only finding out about the plans the Western Bulldogs Football Club is putting forward for this site by reading the newspapers. I want to see some control and some oversight on this site, and I think that can only be achieved if the site remains a permanent reserve.

Mr D. DAVIS (Southern Metropolitan) — I appreciate the points Ms Hartland has made. I reiterate that the opposition will not oppose the bill and will not support the amendments. There is some merit in what Ms Hartland is proposing. On this occasion we cannot support the amendment, but I make the point strongly that the government’s approach on this site has not been satisfactory. The consultation process has not been satisfactory and the vision for that site needs to be sharpened.

Mr JENNINGS (Minister for Environment and Climate Change) — The government will not accept the amendment. I will outline the reasons why. I allege that the Greens have assaulted me from the left and from the right today. In effect this amendment constitutes an assault from the right. It is a conservative approach to the use of public land and the way in which we can derive broader public benefit. The government’s motivation is to make sure that it maintains the public benefit of this reserve. We are unswerving in our determination to ensure that there is a public benefit derived from this public reserve.

The mechanism in the bill potentially enables a development that would be inhibited by a permanent reservation, or potentially be prevented from occurring by a permanent reservation. That is to see, whether by design or by agreement within the local community, if by the delivery of a social housing outcome we can add to the cumulative public benefit of this public reserve. The nature of the reservation is such that the government believes it would be inhibited by a permanent reservation of the type sought by this amendment, as distinct from a temporary one. We interpret the effect of Ms Hartland’s intervention as being conservative, because it would inhibit that potential social benefit from occurring.

Ms Hartland’s bona fides for supporting social housing in this chamber are reasonable under normal circumstances. She has been seen to be a proponent of social housing on many occasions in this chamber, and she would like to be seen to be facilitating social housing. The unintended consequence of this amendment is that she would perhaps be perceived in a different way.

Ms HARTLAND (Western Metropolitan) — I advise the minister that is certainly not what I am trying to achieve. I have gone on the record about my support for public housing, having grown up in a housing commission house in Morwell and having worked in housing commission high-rise buildings. I have found highly offensive certain comments made in this chamber over the last few weeks where people who live in public housing have been described as being somehow second class, degenerate or whatever, and being people you would not want living next door. I make my support for public housing absolutely clear.

My concern about this reserve is that the community is not going to be consulted. The council has been taken out of the equation and the only way people will find out about what is going on is either when the building is commenced or through the newspapers, so I think there need to be some controls over this site.

This is why I have moved this amendment. Perhaps the minister can somehow assure me that suddenly there is going to be a change in the way the Minister for Planning deals with this site in terms of consultation with the community or that he will allow the council to have the planning control back. What is the mechanism he is going to use to make sure the community is involved — and I am talking about the community I
live in, as I live 10 minutes away from the site? I would like to be involved in this consultation. How is that going to happen?

Mr JENNINGS (Minister for Environment and Climate Change) — This morning’s debate has been a good one from my vantage point, because it has provided an opportunity to tease out some of the issues. The two examples that are the subject of amendments today are the two examples in the bill that I have spent most time with, because perhaps they are the most challenging ones in trying to find the appropriate mixture of public policy settings, what the legislation does and what it is seeking to achieve.

There is one thing that unites both of these developments: the councils in both municipalities have gone out of their way to take themselves outside of the process. That is quite extraordinary. Both councils have gone out of their way to remove themselves from participating in decision making. In this case, in relation to Maribyrnong, the council sent me a letter in which it asked to be removed from being the committee of management for the site. The council chose to take itself out of the equation.

Now Ms Hartland is seeking on their behalf to get them back in the game. That is the paradox of what she is putting to me. So the government is concerned to try to provide for the appropriate balance of delivery of social housing in this municipality: to try to make sure that the development is sensitive and that there is a net public benefit from the cumulation of the services that will be developed on this site, and the potential for a social housing element to be part of this is what we are trying to achieve.

The Minister for Planning would be very happy to work in a collaborative manner with local government and the local community in driving those outcomes. In fact he has been on the public record very recently — in the last 24 hours from memory; he spent almost one of those hours outlining to the chamber his commitment to try to work through the eye of the needle to ensure that social housing developments can be approved and in such a way that garners community support. Certainly that is something that I will be very keen to try to facilitate and support, as he will be. If the City of Maribyrnong wants to bring itself back into the game, then that is a positive move.

Mrs PEULICH (South Eastern Metropolitan) — I want to speak very quickly on this issue of process. I am interested in the minister’s response, especially as it applies to social housing, not because anyone is against social housing but because there is a lack of clarity about the process. Perhaps the minister could emphasise the need for the Minister for Planning to clarify what the process is.

Often the reason why councils withdraw from that process is the lack of clarity about who is the responsible statutory authority and who ultimately makes the decision or wears the flak if it is a bad one. I think that is the reason. I do not think communities or council should be condemned for it. Perhaps the minister could comment on the need for and understanding of clarity for the process for social housing projects?

Mr JENNINGS (Minister for Environment and Climate Change) — Chair, I think Mrs Peulich would appreciate that the question I have been asked is related, but it is related in almost a — —

Mrs Peulich — They do overlap.

Mr JENNINGS — They do overlap, but not immediately and directly. I know my colleague the Minister for Planning is subject to quite a degree of scrutiny around these matters, both inside and outside the chamber. He engages through his responsibilities and through the planning regime with the way in which that is dealt with. Probably it would be better for that to be dealt with through those normal courses rather than through the committee stage of this bill.

Going back to the premise of the involvement of the council with this parcel of land, my substantial point in relation to the proposition that the council should be the appropriate body to have control over the management of this parcel of land is that the council chose not to. That was my point.

The DEPUTY PRESIDENT — Order! I am happy to take a question from Ms Hartland, but I would indicate that any member of the committee can make a comment. If the Minister for Planning wishes to respond to the issue raised by Mrs Peulich, that is obviously possible within the committee.

Ms HARTLAND (Western Metropolitan) — The other issue I am concerned about is the fact that because this is a temporary reserve the land could be sold off. We are aware that there are a number of government plans in the area for quite massive road tunnels et cetera, and the land is quite close to what is perceived as being what will become the entry. Will its being a temporary reserve not make it much easier for this land to be sold for other purposes?

Mr JENNINGS (Minister for Environment and Climate Change) — I would not want us to go off on a
I thank all members for the extraordinary goodwill that was demonstrated during the committee stage of this bill this morning.

Motion agreed to.

Read third time.

Business interrupted pursuant to standing orders.

QUESTIONS WITHOUT NOTICE

Victorian Funds Management Corporation: governance

Mr RICH-PHILLIPS (South Eastern Metropolitan) — My question is to the Treasurer. Will the Treasurer confirm if the chairman of the Victorian Funds Management Corporation is now resident in Victoria?

Mr LENDERS (Treasurer) — I thank Mr Rich-Phillips for his question, and I will take the answer on notice.

Supplementary question

Mr RICH-PHILLIPS (South Eastern Metropolitan) — The opposition has previously expressed concerns about the corporate governance of the Victorian Funds Management Corporation due to the chief executive and chief investment officer roles having been occupied by the same person. In response the Treasurer has sought to assure this house that corporate governance at the VFMC is adequate due to the strong oversight provided by the new chairman, John Fraser. Can the Treasurer assure the house that Mr Fraser has not been exercising this strong oversight from his base 17 000 kilometres away in London?

Mr LENDERS (Treasurer) — I have taken on notice Mr Rich-Phillips’s question on the residence. As he well knows, the current chair of the VFMC undertook that he would come to Australia — he has a home in Brighton. I also suggest to Mr Rich-Phillips, as the shadow Minister for Information and Communication Technology, that he should broaden his horizons as to how modern organisations work.

Government: regulatory burden

Mr SOMYUREK (South Eastern Metropolitan) — My question is to the Treasurer. The Treasurer has previously announced that the government has a task of reducing the regulatory burden by 5 per cent per annum. Given the scepticism about introducing a material mandate and reduced targets, not unlike a cap-and-trade system, has the target been achieved?
Questions Without Notice

Mr LENDERS (Treasurer) — Yes.

VicForests: sawlog exports

Mr HALL (Eastern Victoria) — My question without notice is to the Treasurer and regards VicForests' efforts to gain an exemption from log export restrictions for surplus salvage logs during 2009–10. As VicForests reports to the Treasurer, and as its financial performance for 2009–10 will be significantly influenced by its ability to find markets for fire-salvaged timber, what action will the Treasurer take to support VicForests in its efforts to export logs that are surplus to domestic market needs?

Mr LENDERS (Treasurer) — I thank Mr Hall for his question. As Mr Hall well knows, following the bushfires there has been a special salvage effort by VicForests in native forests where the burnt areas are, and that is a matter on which I will seek advice from VicForests and report back to the house.

Supplementary question

Mr HALL (Eastern Victoria) — I appreciate that the Treasurer will report back to us. I ask by way of supplementary question: does the Treasurer support in principle the export of logs when there are special circumstances that have produced resource excess to domestic market needs, as has been the case with the recent fires?

Mr LENDERS (Treasurer) — Some of those areas are outside the policy area of my portfolio. I will get back to Mr Hall after discussions with colleagues. It is more appropriately an issue for another minister, but I will get back to him after that discussion.

Climate change: government initiatives

Mr TEE (Eastern Metropolitan) — My question is to the Minister for Environment and Climate Change. After the Brumby Labor government showed national leadership on climate change policy by establishing the Garnaut review, by being the first state to set a renewable energy target of 10 per cent and by the announcement this week of the Climate Communities program, can the minister confirm that in the coming year the government will announce the land and biodiversity white paper, the climate change white paper and the climate change bill?

Mr JENNINGS (Minister for Environment and Climate Change) — I thank Mr Tee. Yes.

Children: protection

Mr D. DAVIS (Southern Metropolitan) — My question is for the Minister for Environment and Climate Change as the minister representing the Minister for Community Services. I refer to revelations about the child protection scandal in this state revealed in the Ombudsman’s report tabled yesterday, where the government failed to comply with its statutory obligation to complete best-interest case plans for children on protection orders, and I ask: how many times in the last two years has the government breached the act and failed to provide a case plan for the protection of abused children on court orders?

Mr JENNINGS (Minister for Environment and Climate Change) — I specifically do not know the answer to that question because, as the member well knows, this is the responsibility of my colleague the Minister for Community Services. But I do know that the government has responded fulsomely to the Ombudsman’s report. The minister and the Attorney-General made a number of statements yesterday and reminded the community about the $77 million allocated recently and the increasing staff profile — the 200 additional staff who will be available to child protection services to undertake this important work.

Ongoing reforms will be introduced in terms of the work practices of that staff. A reflection will be undertaken by a task force to provide the two ministers in question with advice on appropriate reforms of the operations of the Children’s Court to try to remove any barriers to the speedy and appropriate consideration of matters before the Children’s Court to deal with cases of abuse. It will examine the way the workload can be dealt with in a more satisfactory fashion to ensure that there are no delays because of the way our services and access to justice are configured and to try to provide for greater confidence.

Earlier this year there was a report by the child safety commissioner, Bernie Geary, on a number of reforms in terms of early intervention programs, and the Minister for Community Services has agreed that those recommendations will be complied with. Additional resources have been allocated to support staff to achieve those outcomes.

The government takes these matters extremely seriously, and that is the way it will respond to the Ombudsman’s report. My ministerial colleagues will leave no stone unturned in trying to ensure that we can provide a greater degree of support to families under stress, in particular to respond to the needs of children.
who have suffered abuse, and to take actions that will add to the early intervention and prevention services to try to stop these issues from occurring in the future.

In the coming months my ministerial colleagues will report on a regular basis to the Parliament and the people about the way those reviews and reforms will be implemented. I anticipate that the government will continue to be vigilant until we have greater confidence that the matters identified in the Ombudsman’s report have been addressed and overcome to provide greater confidence and security for our children into the future.

_Mr D. Davis_ (Southern Metropolitan) — I thank the minister for his response and note that he will take the specific detail on notice and come back to us. But in doing that I ask him to pay heed to this: is it not a fact that thousands of abused children who have been found to be in need of protection by the court and who legally should have a plan within six weeks for their future wellbeing, placement and access arrangements do not have plans? This is a failure of the government to comply with the law and a failure of the government to act, unfortunately tragically, in the best interests of the children.

_An honourable member_ — Was there a question in there?

_Mr D. Davis_ — Is it not a fact?

_Mr Jennings_ (Minister for Environment and Climate Change) — I think it is important for anybody who might read _Hansard_ in the future to understand that there was an important report issued by the Ombudsman in relation to these matters, and it is on the public record. It outlines a number of facts which the government is responding to and responding to in accordance with my substantive answer.

_Climate change: carbon pollution reduction scheme_

_Mr Leane_ (Eastern Metropolitan) — My question is also to Gavin Jennings and pertains to his role as Minister for Environment and Climate Change. Does the Brumby Labor government continue to support the commonwealth on the carbon pollution reduction scheme, and is Victoria prepared to play its role in the transformation to a lower carbon economy and participate in an international collaboration of subnational governments in Copenhagen in December?

_Mr Jennings_ (Minister for Environment and Climate Change) — An unqualified yes is the answer to the question from Mr Leane.

_Children: protection_

_Mr D. Davis_ (Southern Metropolitan) — My question is for the minister representing the Minister for Community Services. I refer to revelations about the child protection scandal in this state revealed in the Ombudsman’s report tabled yesterday, and particularly case study 6, which reveals that the government was aware that a mother was subjecting a child to physical abuse, malnutrition and neglect, but it failed to take appropriate action until after the child was hospitalised, and I ask: how many children have been hospitalised due to the neglect of the government?

_Mr Jennings_ (Minister for Environment and Climate Change) — It is unfortunate that Mr Davis couches his questions in such a provocative fashion that invites a political response. I will not respond in a political way to the question, apart from recognising that it is incumbent upon our government to provide child protection services.

We are determined to provide child protection services. It is a great tragedy when any child in our community is subjected to abuse. Whether it occurs in the household or in the community, it is a tragedy. We have an obligation to try to provide support and care through the structure of our services and to make the way in which we support families more resilient into the future. We take urgent and appropriate action if we find that children have been subject to abuse. That is our obligation. It is something the government is measured by and will continue to be measured by, quite appropriately.

As I previously outlined to the house in the substantive answer to Mr Davis’s first question on this matter in this question time, the government is responding to the Ombudsman’s recommendations. It will not be complacent in responding to those issues. It has not been complacent in relation to the issue of additional resources and support for our staff to make sure that we provide a better quality of care into the future. We have already embarked upon that journey, and we will continue that journey and that commitment to our children and to the community more broadly.

_Supplementary question_

_Mr D. Davis_ (Southern Metropolitan) — I thank the minister for his response, but I hope he comes back to the house at some point with the number of children
who have been hospitalised due to the government’s neglect. The Ombudsman’s report identified that the number of unallocated cases in June 2009 was 2197, or 22.6 per cent of all cases. The department confirmed yesterday that five months later the number of unallocated cases remains at the same level. Why is it that the government has not brought down the number of unallocated cases, instead leaving neglected and abused children without the care and support they need?

Mr JENNINGS (Minister for Environment and Climate Change) — On two occasions I have tried to address the spirit, intent and concern that underpins Mr Davis’s question without necessarily dealing with the numbers or individual cases that may be involved here. This is not an issue the government takes lightly or without due regard. We are particularly concerned about these matters. The relative standing between the Victorian system and other jurisdictions is not the most relevant issue in any shape or form. The instance of any child who is abused in any family or any part of this community warrants our urgent and immediate attention.

If you look in relative terms at the system, you will see that the system in Victoria is recognised in the Ombudsman’s report as having the right policy settings and the best foundations of programmatic support in relation to the balance between early intervention and family resilience programs. On the policy footings and the program integration, the structure of the way we provide child protection services is seen to be a model worthy of support and recognition. It has national and international standing as a framework worthy of maintaining.

That is not to say there are no individual pressures or strains relating to resource allocation and the capability of people who work within the system. The government has increased the resources that are available within the system. We are trying to find ways to support the training and the capability of people who work within the system so that we can deliver better outcomes. Our aim is to deliver outcomes that support children, and that will continue to be our aim. We will not rest on our current level of capability, because our current capability clearly warrants further attention.

Planning: West Maddingley

Ms TIERNEY (Western Victoria) — My question is to the Minister for Planning, Justin Madden. In planning ahead to accommodate the significant growth in Bacchus Marsh, has the minister created a residential growth precinct that will lead to 1400 homes in West Maddingley?

Hon. J. M. MADDEN (Minister for Planning) — I thank the member for her interest in this matter. I can confirm that and say yes.

Desalination plant: water pricing

Mr BARBER (Northern Metropolitan) — My question is for the Treasurer, Mr Lenders, and it relates to the Victorian desalination plant, which is a project on which the Treasurer has answered questions in question time on many occasions and where the Treasurer has informed us of the benefits of the plant. My question relates to what was meant to be the benefit of the plant, which is the actual water itself. A document released yesterday entitled Partnerships Victoria Project Summary — Victorian Desalination Project, prepared by the capital projects division of the Department of Sustainability and Environment in conjunction with the Department of Treasury and Finance, informs us at page 10 that:

The $5.72 million NPC —

net present cost —

represents a cost of $1.37 per kilolitre, in June 2009 dollars, on the assumption that the plant operates to produce its required capacity of 150 gigalitres per annum for 27.75 years.

I gather that the $1.37 per kilolitre amount may have just been a mathematically derived figure. Can the Treasurer explain what it means in terms of the price of water? What figure represents the price of supplying that water to Melbourne Water, and what implications does that then have for the retail price of water, because the $1.37 per kilolitre figure seems to imply something like the retail price of water, but clearly that cannot be the arrangement contemplated here?

Mr LENDERS (Treasurer) — I thank Mr Barber for his question. While the question is probably more appropriate for the Minister for Water, it is certainly one that I will get an answer on for him. I will take the specific details on notice, because it is quite a technical item.

In general terms I will say to Mr Barber that, firstly, the desalination plant was put in place to convert sea water into fresh water in order to deal with what, because of climate change and a reduction in stream flows, will be a chronic shortage of water if we do not act. Obviously there is a debate out there on all of these matters, but this government’s action plan on water is that the desalination plant will provide up to one-third of the water required for Melbourne and this part of
Victoria — and South Gippsland and West Gippsland are also part of that. The plant is designed to get water to Melbourne. Yes, the price of that water is more expensive than water would be coming through the north–south pipeline out of the Goulburn system, but that in itself is an issue of choice made by the government: sea water to fresh water. Reliable water is the project.

In regard to the actual pricing mechanism, clearly AquaSure will bill Melbourne Water, which will bill the three Melbourne retailers, the South Gippsland and West Gippsland water authorities and others. I will take on notice the question of how the pricing cascades through and get back to Mr Barber.

**Supplementary question**

**Mr BARBER** (Northern Metropolitan) — I do not think it is argumentative for me to say that when I make a major purchase I generally like to know what I am getting. We have been waiting a long, long time to find out the price of desalinated water. I appreciate the minister taking on notice this not insignificant detail. My supplementary question is that we do not know from this calculation the mixture of fixed and variable costs that would feed into the ultimate figure. The assumption is that the plant runs at 150 gigalitres, although it is clear from elsewhere in the document that the government has the option to take lesser amounts. Could the minister also provide me with an estimate of what would happen to that $1.37 per kilolitre price under the different scenarios of 50, 100 and 150 gigalitres of production that are indicated elsewhere in this document?

**Mr LENDERS** (Treasurer) — I will take on notice Mr Barber’s supplementary question and ask the Minister for Water to come back to him on what detail is available, but I would reiterate my point that, firstly, without the desalination plant that will convert 150 gigalitres of salt water into fresh water, there is a gaping hole in any strategy to deal with central Victoria’s shortage of water because of climate change. Let us get the fundamental absolutely right.

This side of politics has a policy to act, and not just wish and hope for rain, like the opposition; we have a policy that actually turns salt water into fresh water. The issues of how one pays and the costs are absolutely legitimate questions that Mr Barber has raised. But Mr Barber well knows it is quite an elaborate interaction that involves the commercial contract, the Essential Services Commission’s pricing regime and the cascading through Melbourne Water to the other water retailers.

But, as I said, I will take the question on notice for the attention of my colleague the Minister for Water, who will respond. But what we cannot forget is that this is a cornerstone of an action strategy to address climate change, and that is sorely lacking on the other side of the chamber.

**Victorian government business offices: appointments**

**Ms MIKAKOS** (Northern Metropolitan) — My question is directed to the Minister for Industry and Trade. Can the minister inform the house whether all the vacant Victorian government business office commissioner positions have been filled?

**Hon. M. P. PAKULA** (Minister for Industry and Trade) — I thank Ms Mikakos for her question. I can tell her the answer is yes. Furthermore I can advise the house that Victoria’s newly appointed agent-general for London is Ms Sally Capp; the newly appointed commissioner for Bangalore is Mr Geoffrey Conaghan; and the newly appointed commissioner for Shanghai is Mr Patrick Stringer. I wish them all the very best of luck in their very important roles on behalf of the state of Victoria.

**STATE TAXATION ACTS FURTHER AMENDMENT BILL**

*Second reading*

Debate resumed from 12 November; motion of Hon. M. P. PAKULA (Minister for Industry and Trade).

**Mr RICH-PHILLIPS** (South Eastern Metropolitan) — I rise to make a brief contribution on the State Taxation Acts Further Amendment Bill 2009. The purpose of this bill is to make a range of amendments across taxation legislation, most notably to the First Home Owner Grant Act 2000, the Land Tax Act 2005, the Payroll Tax Act 2007, and to repeal the Taxation (Reciprocal Powers) Act 1987.

As can be seen from the list of acts that it amends, the bill makes a number of disparate amendments to the taxation regime in Victoria. The first one I will touch on is amendments to the way in which the first home owner grant will operate from 1 January 2010. The bill amends the First Home Owner Grant Act 2000 to impose a cap on the value of properties that will be eligible to have the first home owner grant paid against them. That cap will be $750 000, applicable from 1 January next year.
I understand this figure of $750 000 arises out of an intergovernmental agreement based on setting a cap in the region of 1.4 times the median house price for the respective capital city. It is at odds with the previously announced cap of $600 000 that the Victorian government had spoken about. I understand the shadow Treasurer in the other place, the member for Scoresby, Mr Wells, spoke at some length about the fact that the cap had been announced at $600 000, but that the government is now legislating for a $750 000 cap.

It is important to note that the coalition believes this figure of $750 000 is more appropriate. We had previously raised concerns about the impact of a $600 000 cap in the event that farming properties in particular were being considered as first home purchases. We were concerned for those people in country areas who were seeking to purchase a farming property as their first home. It is our view that the $600 000 cap would make it difficult for them to receive the grant, and the $750 000 cap is therefore seen as a more reasonable level up to which the grant will be payable.

The second amendment the bill makes is to the Land Tax Act 2005. Primarily it clarifies the provision of land tax exemptions around Crown land. The amendment arises from a 2008 Supreme Court ruling in TT-Line Company Pty Ltd v. Commissioner of State Revenue, which arose with respect to whether a party leasing land from the Crown was exempt from land tax where a third party interposed between the Crown and the party leasing the land. As a consequence of that case this bill seeks to clarify the wording with respect to leases of Crown land to change the reference — the current reference is a ‘lease from the Crown’ — to a ‘lease of Crown land’, which will clarify where the Crown land is leased through an intermediate party such as a committee of management. It does not change the relationship with respect to it being a lease of Crown land. It addresses the issue that arose through the TT-Line case that was determined in the Supreme Court last year.

The bill also makes other changes with respect to land tax. Firstly, it changes the availability of the principal place of residence exemption to limit the availability of that concession where substantial business activity takes place on a property that is being claimed as a principal place of residence. It also changes the liability for land tax where transfers of land occur without valuable consideration, particularly in an agricultural scenario where a farming property may be transferred from parents to children and where there is no valuable consideration; there may be no formal transfer of the land. The bill will amend the Land Tax Act to clarify that when land is transferred in such a way, which may be by gift, the land tax liability will transfer to the new owner — if I can use the term ‘owner’ — except where the State Revenue Office (SRO) determines that the change in ownership is being done by way of some type of tax avoidance mechanism.

The bill also makes a curious change, again with respect to land tax, in placing an onus on landowners to notify the SRO of any errors or omissions with land tax assessments where the land tax payable would be increased. Indeed it provides default tax and penalties for land tax payers who fail to notify the SRO of errors or omissions in land tax assessments. We have a situation where rather than the SRO being responsible for the assessments it produces, it is effectively saying that the taxpayer must also take responsibility for the work of the SRO and correct its mistakes and notify it of its mistakes where they arise.

The third amendment the bill puts in place is to the Payroll Tax Act 2007. Primarily it is about increasing the uniformity of the payroll tax regime across states in circumstances where payroll tax payers are across state borders. Where an employee may be moving and working between different state jurisdictions, the bill puts in place a mechanism to determine that the jurisdiction in which the highest proportion of wages is paid to that employee is the jurisdiction in which the payroll tax with respect to that payroll is payable.

The other change the bill makes is the repeal of the Taxation (Reciprocal Powers) Act 1987 and the insertion into the Taxation Administration Act (TAA) of provisions relating to the capacity for interstate jurisdictions to enter and conduct investigations in Victoria in respect of breaches of taxation legislation in other states. The bill provides the Victorian State Revenue Office with reciprocal powers to conduct similar investigations into taxpayers in other states. Again this is a matter of harmonisation across the states, and it will be done by way of insertion into the TAA and the repeal of the reciprocal powers legislation.

Also in respect of the amendments to the TAA, the bill reinserts into legislation a provision from the previous Land Tax Act 1958 that allows the SRO to serve recovery notices on taxpayers by way of post as part of the enforcement regime. I understand this was a provision in the Land Tax Act 1958 that was not carried forward with the rewrite of the taxation legislation. Its purpose is to prevent defaulting taxpayers from avoiding the physical service of notices by allowing them to be served by post.
In short, the main issue the coalition has with this bill was the disparity between what was announced as a $600 000 cap on the first home owner grant and the actual $750 000 cap for which we are legislating. I note that this amendment bill does nothing to relieve Victorian taxpayers of the taxation burden they face in this state. We saw from the midyear budget update released by the Treasurer yesterday that in the 2009–10 financial year Victorian taxes as a share of gross state product will be higher than the national average and the highest of any major state in Australia. This continues to be of concern to the coalition. This lack of competitiveness on taxation does nothing to enhance Victoria as an investment destination. At a time when we are looking for economic recovery locally and nationally, and when Victoria is looking to benefit from that recovery, we could certainly do with a more competitive state taxation regime.

With those few comments, the coalition does not oppose this legislation. The amendments are largely technical — they go to improving harmonisation across the states — and they will not be opposed by the coalition parties.

**Mr BARBER** (Northern Metropolitan) — I will make some comments on the aspect of the bill that relates to the first home owner grant. We have tweaked that grant three or four times since I have been in this Parliament. In fact one of the very first bills I debated dealt with this issue. What is becoming more and more obvious each time the grant is tweaked is what I said in that very first debate — that is, that the first home owner grant is a thoroughly discredited piece of economic policy. I can only welcome the possibility that the government is at least in some way recognising that by introducing a cap.

Any economist will tell you that if you introduce more money into the market, you get both a supply and a demand response. Since we are in the middle of a huge housing asset price bubble around the world, you would want to be cautious about introducing a policy like this. We know this sort of scheme was introduced simply as a piece of political populism by the Howard government. Labor could not help itself: it instantaneously — one nanosecond later — turned around and said it was wonderful.

On the bigger issue of the housing price bubble, economists might fall into three camps: those who think there is a housing price bubble and we should do something about it, those who think there is a housing price bubble but we should not or cannot do anything about it, and perhaps those who say there is not a housing price bubble.

Nevertheless, there should be, and there should have been over many years, a serious debate in this country about the impact of various taxes, charges and incentives — of which this measure is one — on housing prices. Simplistically one might think that more money in your pocket when you go to buy a house is a good thing for housing affordability, particularly for first home buyers who feel the pain of getting into that market, unlike those who already own a house and who to some extent are benefiting from rising prices even when they seek to change their housing options.

But you just have to think about the situation of a first home buyer at an auction, bidding on a house against someone who has got the first home buyer grant in their pocket. What is going to happen? The vendor is going to collect it, and you have pumped up the price of housing and transferred wealth, if you like, from taxpayers to vendors. I can say that because I was a buyer of a first home during this period. It was a first home for me, not for my wife, and therefore we did not get the first home buyer’s grant, but I am not at all resentful of that. It would have offended my economic principles if I had had to collect it, and I am something of a purist, as I am sure Mr Rich-Phillips might agree; he is smiling at me, anyway.

In that respect I suppose what we are doing here is starting to move towards the end of a particular era of a highly populist policy that was trumpeted by populist politicians, which in the final analysis will clearly be seen to have been of no benefit; possibly it has even harmed a particular public policy objective. I can only hope that we now get to a more sensible debate about housing supply and demand, what the real drivers of that are and what is to be done about them.

**Ms HUPTPERT** (Southern Metropolitan) — I rise to make a few brief comments on the State Taxation Acts Further Amendment Bill. This bill amends the Land Tax Act 2005, the First Home Owner Grant Act 2000, the Payroll Tax Act 2007, the Taxation Administration Act 2007; and it repeals the Taxation (Reciprocal Powers) Act 1987. It follows a consultation process with relevant stakeholders, including the Law Institute of Victoria, the Property Council of Australia, the Taxation Institute of Australia and the Council of Taxpayers Australia. Mr Rich-Phillips gave a summary of some of the main provisions of this bill so I will not repeat everything he said. I wish to concentrate on some of the provisions relating to the Land Tax Act.

As Mr Rich-Phillips noted, the bill introduces a requirement for landowners to notify the commissioner of state revenue of certain errors or omissions in their
land tax assessments. Unlike some other jurisdictions in Australia, this government does not require Victorians to submit a return to the commissioner regarding their land-holdings; rather, the commissioner relies on notices of acquisition lodged by purchasers of properties when they are transferred.

As anyone who has practised in the area of property law will know, it is quite common for errors to be made by transferees or their legal representatives when notices of acquisition are lodged, and in certain circumstances even for the lodgement of notices of acquisition to be omitted. Therefore the only way the commissioner can be made aware of any errors in a notice or in fact any failure to notify of a transfer of land is if the person receiving an assessment notifies the commissioner. The requirement is limited to errors or omissions which are clearly within the knowledge of the taxpayer, and therefore this is a sensible provision.

The other major amendment to the Land Tax Act relates to Crown land. Currently Crown land is exempt from land tax unless it is leased for business purposes. If Crown land is leased for these purposes, the tenant is assessed for land tax as if they were the landowner. However, many parcels of Crown land are administered by statutory authorities, such as VicTrack and Parks Victoria, or committees of management — either councils or trusts. A recent decision of the Supreme Court held that these parcels of Crown land are not subject to the current provisions relating to leases, which creates an anomaly.

The bill provides that Crown land managed by committees of management and statutory authorities will be dealt with in the same manner as other Crown land — that is, it will be subject to land tax if leased for business purposes. Crown land leased for such things as educational or charitable purposes will not be subject to land tax. In addition the bill provides that Crown land leased to retail tenants will not be subject to land tax. This is consistent with the exemption from land tax contained in the Retail Leases Act 2003.

The other provision I wish to highlight relates to implied and constructive trusts. The bill brings the treatment of land tax on properties held by these trusts and their trustees in line with the treatment of other trusts, and this comes into effect from 1 January 2006, being the date on which the general trust provisions commenced.

These are sensible amendments which rectify a number of anomalies in the Land Tax Act and other state taxation acts, and I commend the bill to the house.
forward. I also want to put on the record my thanks to the many valuers who have corresponded with my colleagues and many who pointed to a range of concerns. Peter Fitzgerald from the City of Stonnington, Helen Lanyon and Jack Wegman from the City of Boroondara and others have provided enormous assistance in understanding the complexities of this bill. It is a complex bill. The interaction of this valuation process needs to be closely and cautiously worked through with industry. In the end I do not think that has occurred in the way it should have.

In thanking a number of people, I want to put on record the conversations I had with Helen Lanyon, the director of corporate resources at Boroondara council and to make it clear that I deeply value the information and insights she provided. In saying that and making the point about the input of so many councils, councillors and council officers, I also want to put on record my disappointment that the MAV and the Victorian Local Governance Association (VLGA) have not been prepared to come out and make points in support of their councils. It appears there is a disjunction in those organisations. It does not matter how much those individual councils make their points and what arrangements are put in place, the MAV and the VLGA appear to have been reluctant to oppose this bill. In those circumstances the opposition is left with no choice but to not oppose the bill. We will not prevent the passage of the bill, but will place on record those concerns.

There are other sections of the property industry that were particularly concerned. I spent a good deal of time talking to the Property Council of Australia and to a number of developers and others to understand the impact of this bill on them, and I am thankful for the information they provided to me.

I understand the pause this chamber was prepared to allow on the bill. I accept that is only ever done collaboratively with the non-government parties. Our preparedness to hold up the bill for a short period has given the Property Council of Australia the opportunity to negotiate amendments with the government, and I welcome the minister bringing forward those amendments. I appreciate the copy of those amendments that came to me — not necessarily the timing, but certainly the copy — and indicate that the opposition will support the amendments that have been brought forward. It is my understanding that this goes a significant way to assuring the Property Council of Australia of the privacy matters that concerned it.

The government will have significant powers under this bill to reach down and garner information. The valuer-general will be able to scoop out information and in some cases pass it to the taxation commissioner. I hope there is not a broader intent behind this bill tying in with the Henry review of taxation that is occurring federally at the moment. Ken Henry, the secretary of the federal Treasury, is reviewing taxation and has actively mooted the idea of a federal takeover of land tax and the standardisation of land tax across the country, including a significant broadening of the land tax base. It would concern me if the state government were quickly acquiescing to that and using the provisions in this bill to seek out details that would assist Mr Henry in his quest to take more taxation from Australians. I put that on the record because that has been put to me very directly by a number of people who are well informed at a national level.

The amendments to sections 7D and 7E will be an improvement. The de-identification of data and more security on privacy arrangements will be an advantage for tenants and land-holders, and the valuer-general will not be in a position to have that information made public in a way that would be unhelpful.

The concerns of councils centre in part on the timing of many of these processes. These are legitimate points, and I am disappointed that the government has not been prepared of its own accord to work with councils, notwithstanding the weakness of the Municipal Association of Victoria in not being prepared to work with councils to deal with those issues. The rate-setting process and the budgeting process will be impacted on directly by the time lines in this bill. It is important that those points are on the record, and the response of councils to these proposals shows there is great concern among them.

The valuing profession will not necessarily be advantaged by the proposals. I understand the concerns of a number of valuers about the broader tendering arrangements that may result; there are legitimate concerns around that. I note that the government has appeared here too to be unprepared to work with the valuers to come to a better conclusion. In the circumstances, given the failure of certain major organisations to clearly state they oppose the bill, the opposition is left with the position that it can only not oppose the bill and indicate that it will closely monitor the implementation of this bill and the processes behind it.

There is plenty of reason for concern, as I have said, about the use of this legislation as a base for additional taxation. We know the state government has broadened the tax base in Victoria with 26 new or extended taxes. We know the Treasurer is always on the hunt for
additional approaches to revenues. This provision of greater information may offer him the ability to do that. I would be concerned if this process were used to mount new taxation arrangements. With those comments I indicate we will not oppose the bill.

Mr BARBER (Northern Metropolitan) — It is the second-last sitting week, and the only positive thing I can say about that is that there is only one more opportunity for the government to deliver a gross insult onto the head of the local government sector; there have been so many of them in legislation and other executive actions this year. In my office I have a long list, which I did not have time to get before this bill was brought on, but I have detailed them in many speeches this year.

A few years back, before I was elected but around that time, there was quite a bit of excitement in the local government sector about an emerging idea for an intergovernmental agreement between federal, state and local government that was going to give local government some status, financial security and the ability to start delivering on its promise of improved services and infrastructure, which local government is in the business of.

I was encouraged by that; the Australian Local Government Association and its state counterparts were encouraged by that; discussion papers, some of them quite weighty, were ordered up by the Howard government and they led to some steps; Prime Minister Kevin Rudd attended the inaugural meeting of the Australian Council of Local Government last year — it was certainly pretty important to have the Prime Minister at an event like that; and yet that political momentum has been stalled.

This year in Victoria, at least, there has been a constant undermining and chipping away of the local councillors’ confidence that their state government sees them as a partner. ‘Partnership’ was the word that was being thrown around. It is an easy word to use, but incredibly hard road to walk, as anybody who has ever tried any kind of partnership — business, personal or political — would know.

I do not get the sense that there is anybody around the cabinet table who is a champion of local government to the extent that they would point to or query each coming government initiative and say, ‘How does this relate to our overall political philosophy about how we will, as a state government, relate to local government?’.

Local government certainly sees itself as an entity. It sees itself as cohesive.

Mr Jennings — It’s just not true. Cohesive?

Mr BARBER — Minister Jennings is attempting to throw me off, President, but that is only encouraging me to expand on my argument and keep going for a bit longer.

Mr Jennings — The MAV supported what we started on but deserted the field.

Mr BARBER — I have attended Municipal Association of Victoria conferences, and there is no doubt that there are votes on a number of motions at those conferences and that many of them go down, which the minister may think demonstrates a lack of cohesion amongst local government. What I think it demonstrates is an incredible diversity of local government. Local government represents communities that all have their own needs and differences around particular problems, but pushing that diversity under the carpet and pretending it does not exist does not take any of us forward.

That is why local government, in its diversity, is cohesive around the aims that it is trying to achieve. It is trying to be responsive. Minister Jennings’s government spends a lot of time and effort attempting to set up mechanisms whereby it can be responsive. Local government rarely has to do that, because responsiveness is built into its structure and form — quite simply, every councillor has their mobile phone number published on the council website.

Local government is diverse; it is cohesive. It always puts its hand up to deliver on a new challenge, and in relation to bushfires we have to say that that cohesion has been automatic. I think local government just wants a bit of status so it can plan for its future, not expecting the rug to be pulled from underneath it. The metaphorical rug this year has included planning schemes and planning powers; it has included, in a quite worrying development, the cancellation of a local government by-law, which was made in good faith and was stripped away when the state government changed its policy settings; and here we are with this bill, talking about a pretty important function for any government — the collection of necessary revenues.

Late last year a discussion paper was published under the title The Future Direction of Rating Authority Valuations in Victoria. It was met with absolute outrage by local councils across the board because the proposition was that their taxing power, absolutely essential to any government, be stripped away from them.

Sitting suspended 1.00 p.m. to 2.03 p.m.
Mr BARBER — The rating authority valuations initiative consultation that the government undertook included a ham-fisted grab for control of the council taxation process by making it extraordinarily difficult for local councils to opt out of having the evaluation exercise done for them by the valuer.

I received many representations from local councils about that specific issue, which I am gratified to see did not make it into the final bill. I am gratified that the government listened to those submissions from local councils, but I am still disturbed that the idea was put up in the first place. The government says it was about consultation, but there might be some consultation needed on the consultation if an arm of government can propose something so at odds with what I believe should be the philosophy of the state government, which is to treat local government as a partner.

Following on from that issue being resolved, I have continued to receive correspondence from valuers in the local government sector who have concerns about a particular issue — that is, the requirement to obtain what is known as a ‘generally true and correct certificate’ of a valuation prepared by the council from the valuer-general.

The people who wrote to me included the city valuers from Yarra, Darebin, Mornington Peninsula, Whittlesea, Stonnington, Banyule, Manningham, Bass Coast, Macedon Ranges, Mildura, Whitehorse and Greater Bendigo. They said:

Contrary to all advice given by the valuer-general Victoria during the consultation process, the new legislation seeks to make attaining generally true and correct certificates mandatory before adopting the general revaluation and issuing the annual rate notice. This represents a major departure from what was advised during the briefings and the entire consultation process!

They give a time line of the typical exercise carried out by a local council trying to complete its valuation and of course adopt its budget, which is the name of the game. It is: completion of general valuation, which is some time up to 30 April in any given year, as per valuation best practice; sign-off is obtained from valuer-general by 1 July, two months as per the legislation; the minister issues the ‘generally true and correct’ certificate by 8 July, allowing, say, one week; the final preparation of budget by 15 July, again allowing, say, another week; advertising the budget by 16 July, and it has to be on exhibition for 28 days as per the Local Government Act; consider and hear budget submissions, which was a process my council took quite seriously, and the contribution of the rate valuation and the rates themselves to that could be an important issue; and adopt the budget by 28 August.

By statute the budget has to be passed by 31 August, so members can see the tense time line for a local government trying to put together its budget and provide some certainty around projects and services for its community for the following year, and now there is this step in the middle of the minister issuing a ‘generally true and correct’ certificate. This would no doubt leave these councils in some fear as to any possible slip-ups. This bill gives the minister unfettered power to withhold that certificate until the government is satisfied.

A number of local councils have written to me backing up the findings of that discussion paper, including the shires of Colac Otway and Bass Coast and the mayor of Boroondara.

In the committee stage of this bill, which we will now be participating in due to the government’s proposing its own amendment, I hope the minister will provide local governments and me with some greater confidence on the timely handling of this procedure so that local governments, local councillors and their communities will not be left in a hole.

Some issues have also been raised around the privacy aspects associated with the bank of data created from valuations. I became aware of this when the Property Council of Australia approached my office. This jumbo industry group putting in a call to little old me is a notable event in itself. We asked how it was getting on with its good buddies in the government and the Liberal Party. Clearly there had been some sort of falling out with the opposition over I know not what, because these high movers of industry are so far above my head I would not be privy to what is going on there. They were fairly desperate for some sort of delay to be created.

Mr Jennings — You’ve been out to lunch every day since.

Mr BARBER — I am not on their speed dial; I am pretty sure there would be plenty of cabinet ministers and opposition spokespeople who would be on speed dial with the senior people down at the property council, but until now it has not been the Greens. They were keen for some sort of delay to the bill so that there could be some further discussions with the government. I said that that seemed fair to me and that I would be happy to support it. It will, of course, need the assistance of the house to have a bill deferred. I do not know what happened further from that.
The next thing I hear is that the government has come to the party and introduced some amendments. On the face of it these amendments deal with the particular concerns that the property council was raising with me. Since I have not had another call from the property council where we could close the loop, I will take the advice of those who are closer to them, such as the Labor and Liberal parties, on whether they believe these amendments are satisfactory and will be supporting the bill on that basis. I look forward to hearing a bit about that in the committee stage of the bill.

Ms HUPPERT (Southern Metropolitan) — I am pleased to make a contribution in support of the Valuation of Land Amendment Bill 2009. This bill represents the culmination of an extensive review and consultation process led by the Department of Sustainability and Environment and the valuer-general, which has, despite comments made previously in the house, included extensive consultation with stakeholders and, in particular, local councils.

Currently councils have responsibility for revaluing all properties within their municipalities every two years and for carrying out supplementary valuations of properties during the intervening years in the event that there is any change in the status of those properties. The valuations procured by councils are then used as the basis for the calculation both of council rates and of land tax by the State Revenue Office, and they are also used by water authorities. These valuations are carried out in accordance with the valuer-general’s statewide valuation best practice specifications. The valuer-general is currently responsible for certifying council valuations to ensure that they are carried out in accordance with these specifications.

In December 2008 the government released the discussion paper The Future Direction of Rating Authority Valuations in Victoria, which set out a proposal to transfer responsibility for all valuations of land to the valuer-general. The release of the discussion paper was followed by a period of robust debate, and I received representations from a number of councils that were concerned at the proposed changes.

As a result of this process the proposal set out in the discussion paper has been amended. The scheme set out in the bill provides that councils have the option to transfer, and subsequently resume, their responsibility for carrying out valuations to the valuer-general, and the valuer-general will become the custodian of all valuation data in Victoria.

The changes set out in the bill are scheduled to come into effect on 1 May 2010 — that is, the new scheme will apply to valuations which will be carried out in 2012. Councils have until 30 September 2010 to nominate the valuer-general as valuation authority. Councils will be required to notify the valuer-general of any change to this by 30 June in the year, which is two years before the year in which valuations are to be carried out, giving both councils and the valuer-general time to make the necessary arrangements.

The cost of returning the valuation will still be met jointly by the state government and each municipality. Currently municipalities pay for the valuations, but 50 per cent of the cost is reimbursed by the State Revenue Office, so this is a continuation of the existing framework.

As I mentioned, the valuer-general will become the custodian of all valuation data in Victoria; however, this does not affect the right of councils to use their own council data for rating purposes. The benefit of this change is that it will provide a single source for accessing statewide valuation data for both public policy and community purposes.

As mentioned by previous speakers, there has been some concern about privacy relating to this data. For this reason the government is to move an amendment which will ensure that the valuer-general cannot make available information that is not releasable — that is, it will be able to release information such as the net annual value of a property, the site value, capital improved value and property description, but there will be no release of any confidential source data or any identification relating to the owners of those properties. In this way the valuation information will be able to be utilised for a wide range of sources but will still protect the privacy of landowners.

One of the concerns raised by councils relates to the time frames for both carrying out and certifying valuations as set out in the bill and the effect this will have on councils being in a position to strike rates by the usual date. This was also raised by previous speakers in their contributions. However, there is nothing in the bill which prohibits councils from using the rating valuation information they have obtained prior to certification by the valuer-general and issuing rate notices prior to certification as well.

If it is taken advantage of by councils this bill will reduce red tape and make high-quality, consistent valuation data and information more readily available to assist in policy development and decision making. Therefore I commend the bill to the house.
Motion agreed to.

Read second time.

Committed.

Committee

Clause 1

Mr JENNINGS (Minister for Environment and Climate Change) — I want to take the opportunity to refer to a number of elements which have been discussed in the second-reading debate and which have led to the committee’s consideration of this bill. It is my intention to pre-empt some questions that might come up during the course of the committee stage.

There was an acknowledgement during the second-reading debate that a lengthy consultation and consideration process has led us to this point. Almost simultaneously the opposition and the Greens criticised the government for embarking upon a consultation process that was elaborate and extensive. They have congratulated the government for the net outcome of it but have criticised the way the government engaged on the way through.

The government gets whacked both ways in relation to undertaking consultation. If there is any lesson I have learnt from the process, it is that I will not be wanting to consult with any local government before or after a local government election. That is certainly a lesson I have learnt, and I am sure those who have worked with me have learnt that lesson too. We have also learnt and now understand that any consultation process needs to be pretty much contained within one election cycle of local government — that is the lesson that we should learn from our experience.

I was being provocative when Mr Barber was indicating that from his vantage point there is huge cohesion within the local government sector and councils speak as one. I did interject at the time, but it is clear from my vantage point and that of the people who have worked with me on this that at various times in our consultation process they did seem to be talking as one in favour of the proposition that the government had put and then subsequently that was not seen to be the case.

In the name of trying to provide greater quality assurance and greater capability across the valuation that is provided that underpins the rates and receipts of local government upon which local government relies and the certainty and the quality of information that is gathered across the system, government members think we can provide a framework in which that could occur in a better way in future. The way we finally adopted that this should be introduced is by councils volunteering to participate in the process of their own free will and in accordance with their capability of establishing those valuations with confidence. We anticipate that over time an increasing number of councils will want to participate in that process willingly, perhaps in a way that is closer to what we had in mind at the beginning of our consultation process rather than the immediate end of it in recent times. In practice we think it will prove to be a very successful method for local government to choose this option and to provide greater confidence not only for the valuations but for the rating systems.

In relation to clause 8 — down the path to which we might be heading in terms of the timing and the construction of the way in which valuations are established, certified and then used in terms of the rating system — Mr Barber, as a former leading figure within the local government movement in his role on a local council, would remember that the dates in question have not changed within the bill in terms of the way in which valuations are gathered and subsequently certified and the process that runs in parallel for the last few months between establishing the valuations and their subsequent certification and the preparation of local government budgets upon which rate revenue will rely. In practice those processes run in parallel, and the government’s view is that that time frame has been recognised as being appropriate for those processes running in parallel. The government wants to make sure that certification occurs, and government members would be very anxious if there were to be any move for local councils to act without due regard to having the certification of the true and correct nature of the valuations provided to them before they conclude their rate determination. It is not only government members who would be concerned about that; we are pretty sure the Auditor-General would also be concerned. We think our bill allows for that to take place in the future.

I turn to the last matter that relates to the amendment I will be moving. I am pleased the property council has seen fit not only to speak to Mr Barber but also to contact all parties in the chamber. The property council certainly had a conversation with the government about the way in which it wants to protect the privacy provisions of property-holders within the auspices of the bill, notwithstanding the fact that the government believes the interlocking nature of this bill and existing law means those privacy provisions would not have led to the proliferation of information.
In the spirit of accepting that there will be a belt-and-braces safeguard and any other safeguard that is required, the government has been prepared to bring forward an amendment to add that belt-and-braces approach to grant the property council its desire, which is to ensure that privacy provisions are protected, and I will be moving that amendment during consideration of clause 10.

The DEPUTY PRESIDENT — Order! I understand there are no other members who want to make contributions on clauses 1 to 7. On that basis, whilst the minister has spoken only to clause 1, I feel that I can put clauses 1 to 7 en bloc.

Clauses 1 to 7 agreed to.

Clause 8

Mr BARBER (Northern Metropolitan) — I thank the minister for his introduction. I am taking it on board that he is quite keen to ascertain a good and solid valuation. In fact I am noting that any valuer who does not comply with a direction will have 5 penalty units thrown at them — of course I am referring to clause 8 and the new section 7 to be substituted. However, after reading this section I do not see a lot of mutual obligation; I simply see a bunch of provisions on the failure to come up with and obtain a certificate for a generally true and correct valuation, and any debates or issues that might fall out of that will become a one-way conversation — according to section 7, unless I am reading it wrong.

Is there any principle or any section here that the minister could point me to that suggests that this is merely an enforcement mechanism whereby local council would have to do it that way or else?

Mr JENNINGS (Minister for Environment and Climate Change) — I thank you, Chair, for not only providing me with some guidance about the best way to approach this but also giving the committee clarity about what I am currently moving. I move:

1. Clause 10, page 13, line 6, after “the valuation record” insert “and that is releasable information”.
2. Clause 10, page 13, line 7, after this line insert —
   “(2) The valuer-general must not make available to the public information in the valuation record that is not releasable information.”.
3. Clause 10, page 13, line 7, omit “section,” and insert “section — ”.
5. Clause 10, page 13, line 9, after this line insert —
   “releasable information means —
   (a) the net annual value, the site value and the capital improved value for each property recorded in the valuation record, where that value has been determined in the relevant valuation specified in section 7C(1);
   (b) a property description for each property recorded in the valuation record.”.

All these amendments relate to the effect of clause 10. They relate to the information that is releasable by the valuer-general and place limits on the information that could be provided from the data that has been collected by the valuer-general. The limits of that information would be for the net annual value, the site value, the capital-improved value and the property description.
There will be no release of any further confidential source data. The interlocking nature of amendments 1 to 6 give effect to that and to the concern that has been expressed by the Property Council of Australia and conveyed to members of opposition parties in the chamber. I believe that, as you have indicated, Chair, not only is that amendment in a form that is acceptable to that stakeholder group and the community but indeed I would be expecting support for it from the members of the committee.

**Mr BARBER** (Northern Metropolitan) — As I said, my discussions with the property council were mainly around the issue of what could be done to delay this bill for some time to allow the minister to have further consultations. However, I received a copy of a letter the minister sent to the property council, which was apparently received on 19 October. It was addressed to Ms Jennifer Cunich, the executive director of the Property Council of Australia. The minister crossed out ‘Dear Ms Cunich’ and put in the word ‘Jennifer’. The letter says:

Thank you for your letter of 8 October 2009 regarding the Valuation of Land Amendment Bill 2009.

I have noted the Property Council of Australia support for the central aspects of the bill but also the concerns you have raised with the specific provisions of the bill relating to the statewide valuation database.

The minister goes on to talk about particular sections of the bill and reiterates that it is the privacy principles contained in the Information Privacy Act which will be the dominant control in terms of what is released. The minister goes on to say that:

The data available will be de-identified data and information on tenancy rents will not be available to the public. Therefore the bill protects the privacy of property owners.

I fully understand the sensitivity and confidentiality of the important property information that property owners provide for the purposes of making general valuations. The government has listened to these concerns and ensured the bill protects the privacy of sensitive property data. Therefore it is not necessary to defer debate of the bill to incorporate amendments as you have suggested.

Bearing in mind that is about all I know of the discussions that have been going on between the minister and Jennifer Cunich of the property council — I was going to say his close friend, but he is at least on a first name basis with Jennifer — what can the minister tell me about how these amendments, containing as they do some further requirements, bridge the gap between the concern that information privacy principles were not enough and the specific matters that he has now limited the dataset to? Can the minister characterise how much of the gap between the concerns and what he is promising here has been delivered?

**Mr JENNINGS** (Minister for Environment and Climate Change) — I am sure the Chair has been intrigued by the nature of the disclosure that Mr Barber has just put on the public record in relation to people who take privacy considerations very seriously. It is quite a remarkable thing that he has put on the public record something that has come from his holding of such a document. I think that is a very interesting thing to start off with.

Let us leave that apparent intrigue aside. It was clearly argued in the piece of correspondence that Mr Barber had in his possession, and had the ability to read from, that I had outlined the government’s concerns about the security of the information that was available and that the interlocking nature of this bill and existing legislation would mean there would not be the broader disclosure of information.

In some ways these amendments may not be required for any purpose other than to reinforce the direct and linear amendments to the bill, which will then add cumulatively to the interlocking nature of this bill and the existing legislation. As I described in my introductory remarks, they will provide a belts-and-braces approach to a concept that we believed was already addressed. But nonetheless, given that there was ongoing concern about this matter, we thought it was better to clarify it, better to put those limits in place, make it explicit and then get broader stakeholder engagement, if not political support, for the amendments that have been put before the committee today.

**Mr D. DAVIS** (Southern Metropolitan) — I am very keen to put on record my support for these amendments, and I welcome the fact the minister has moved them. I will add to the intrigue that has occurred by indicating at one point I did meet with the property council. It took me through its various concerns with the bill, which are many and, I might add, some are in common with those of local government. I made the suggestion to the council that this would require some complex drafting and that in my view the best people to do that were probably those in the department.

I also said we would be prepared, if the non-government parties in this chamber were also prepared, to hold the bill for a period to ensure that the government — the minister and the department — had the opportunity to work through these privacy issues around the database. This was to ensure that tenants and landlords were protected and that data beyond what was
allowed by the privacy act and so forth was put beyond question.

I am thankful for the fact that the non-government parties on this occasion were able to find a mechanism to encourage the government to make these changes. I am pleased too that this solution has been found. In saying that, and in welcoming the minister’s decision, I put on the record that the opposition will wholeheartedly support the amendment.

Mr BARBER (Northern Metropolitan) — I do not think the minister was suggesting for a minute that correspondence between the minister and a major interest group would necessarily be private. If it were a matter of a freedom of information request, yes, the third party would be consulted as to whether the information would be released, but since the third party is the one who sent it to me in this case, the step has been removed.

I am looking for a more specific answer, I suppose. In relation to the dialogue with the property council which was going on — and I agree this would also be a matter of interest to local government, because in some cases its data would be involved — the bill we have in front of us says:

The valuer-general must ensure that, subject to the information privacy principles, any information that forms part of the valuation record is made available to the public.

Under this proposed amendment it will not be ‘any’ material that is in the valuation record; it will be, if I read this right, the net annual value, the site value and the capital improved value for each property and a property description for each property. Could the minister tell me what other information that forms part of the valuation record will be off limits to public release if this amendment is passed?

Mr JENNINGS (Minister for Environment and Climate Change) — I would encourage Mr Barber to have a look at the Valuation of Land Act 1960 and to have a look at sections 3A(1) and (2). They include all the matters that can be gathered that are within the act.

Mr BARBER (Northern Metropolitan) — Also in the minister’s correspondence with Ms Cunich the minister broadly described this data as de-identified, but I see that according to this proposed amendment a property description for each property will be released. Maybe that is still de-identified, but if the property description was — I do not know — ‘Giant Ferris wheel’, which presumably would get a valuation for rating purposes, or ‘Tallest building in Melbourne’, or ‘Electrical substation’ when it just happens to be the only one in the given municipality, would a property description necessarily be completely de-identified?

Mr JENNINGS (Minister for Environment and Climate Change) — I think Mr Barber knows the answer to the question, because he has given some examples which draw attention to themselves. Some degree of forensic analysis would enable certain people to be able to work out what they are on the basis of how many adjectives there are in the description. Let us say that we will try to eliminate adjectives or descriptors apart from the physical characteristics that comprise the property.

Amendments agreed to; amended clause agreed to; clauses 11 to 36 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.

I thank members for their contributions to the debate and committee stages of the bill.

Motion agreed to.

Read third time.

LAND LEGISLATION AMENDMENT BILL

Second reading

Debate resumed from 17 September; motion of Mr JENNINGS (Minister for Environment and Climate Change).

Mr D. DAVIS (Southern Metropolitan) — I am pleased to rise and make a contribution to debate on the Land Legislation Amendment Bill. The opposition will not oppose this long, complex and convoluted bill. I remember the briefing — it went for a very long time — and I thank the minister and the bureaucrats for that briefing.

Let me put it this way: there is no sweeping or overarching principle in this bill, which is its major feature, and also there is no general theme or thrust other than the tidying up of numerous small anomalies through amendments that in some cases are perhaps not
even required but will streamline the functioning of our land registration and transfer arrangements in this state.

The bill amends the Transfer of Land Act; it amends the application of the Surveying Act and the Subdivision Act; it amends the Geographic Place Names Act to appoint a register of geographic place names; and it makes a number of minor amendments to the Forests Act.

The bill expands the definition of ‘court’ in the Transfer of Land Act. It allows the registrar discretion to consolidate parcels of land where a vesting order is made in adverse possession cases; it allows for the recording of lease commencement and expiration dates on the relevant folio; it provides a uniform consistent time period of 30 days for all transactional matters rather than the varying time periods currently provided; it removes the absence from Victoria as a ground for recording a caveat; and it repeals schedule 7 providing for the conditions of the sale of land following the adoption of a new model contract for the sale of land prescribed by estate agents’ regulations.

The Subdivision Act, the Surveying Act and the Geographic Place Names Act are all being amended. The amendment to the Geographic Place Names Act extends the maximum term of appointment of the registrar of geographic names from three to five years. There are miscellaneous amendments made to the Forests Act. The Surveying Act amendments enable the creation of different classes of surveyor, for which different fees may be prescribed, and reform and change the surveying board arrangements prescribing training in professional skills other than in cadastral surveying such as planning and risk management.

The Subdivision Act changes provide the registrar with a discretionary power to refuse to accept a plan of subdivision for lodgement if the street addressing information is not provided, and to confirm that existing common property may not be increased or decreased without the unanimous resolution of the appropriate owners corporation. The bill also provides for a more streamlined process for a total consolidation of land affected by an owners corporation.

There are a number of areas of concern. Certainly surveyors have spoken to me, and I have to confess that I have some sympathy with a few of their concerns. Perhaps there is still not the strength of recognition of surveying that some of us would like to see in this, but on balance among the people I have consulted, and this includes a large number of surveyors — and my colleagues like Denis Napthine, the member for South-West Coast in the Assembly, and others have consulted widely and have fed information back to me concerning the views of surveyors and other industry participants regarding this particular bill — there is no-one who suggests that we should oppose it or seriously amend it, so for that reason that is exactly the position we take.

There do seem to be some concerns about common property areas and some of the changes made there, but even in those cases I was not able to get critical comments or comments that were able to suggest a different way forward. However, I have marked that out as an area where there may be some points to be made.

The issue of master planning around such consolidation and arrangements for development and subdivision is another area where some concerns have been raised. Clause 95 of the bill relates to clause 103, which deals with a master plan — and I am referring here to correspondence from Andrew Reay, the president of the Institute of Surveyors — staged development and subdivision. It appears that this amendment seeks to remove misunderstanding within the sections of the principal act as they are currently written. However, the amendments do not appear to allow additional land to be added to a development at a later stage. Clarifying this matter here will give direction on how to deal with land that may need to be added to a master plan and will simplify the process.

Andrew Reay goes through a number of examples, but that issue might be something on which the minister chooses to provide some clarification at a later point as consideration of the bill nears conclusion. I note the extreme complexity of this bill and certainly do not claim to be an expert in the many intricate and convoluted clauses, and for that reason I have relied on the consultation that has been undertaken by me and my colleagues with surveyors, developers and other industry participants. In the light of no substantive concerns being raised, we will not oppose the bill.

Mr BARBER (Northern Metropolitan) — Like Mr Davis, I have tried and failed to attract any particular controversy in association with this bill, although the statement in the second-reading speech under the amendments to the Forests Act that ‘These amendments will improve the efficiency in managing Victoria’s forests’ did have me sorely tempted to go off for another hour and a half. But to assist the house, I will not do that; I will save that for debate on a forthcoming bill. The Greens will be supporting this one.

Mr SCHEFFER (Eastern Victoria) — I rise to speak in support of the Land Legislation Amendment
Bill. I think it was a little bit unfair and unkind of Mr David Davis to say that the bill lacked any sweeping themes. That is a bit overexacting for what is, after all, just an omnibus bill that makes a range of non-controversial administrative changes to a number of pieces of legislation including the Transfer of Land Act, the Subdivision Act, the Surveying Act, the Geographic Place Names Act and the Forests Act.

The Transfer of Land Act prescribes the system of land registration in Victoria, whereas the Subdivision Act sets out the ways in which land subdivisions and consolidations should occur, including the creation, variation or removal of easements or restrictions. The Subdivision Act also regulates the management of common property and matters relating to owners corporations.

The changes made to the Subdivision Act require people who want to subdivide land to provide the address of the property to be subdivided at the time they lodge the plan of subdivision. I understand this simple step will vastly improve the accuracy of the state’s map base, called Vicmap, which can be used, for example, by emergency services.

The amendments to these acts are consistent with the objectives of the government’s justice statement 2 in relation to the government’s commitment to identifying and implementing reforms that are necessary in the updating of property law.

The Transfer of Land Act will be looked at in more detail and more extensively through the government’s property law review, and we can expect that further changes to the act will come out of that process.

The Surveying Act provides for the annual registration of licensed surveyors. It deals with the way investigations into the professional conduct of surveyors should be conducted and also establishes the Surveyors Registration Board of Victoria. The amendments to this act contained in this bill are of a minor nature and deal with things such as the registration arrangements for the different classes of surveyors. There are also some other changes that will go to improving the way the processes work.

The Geographic Place Names Act covers the registration of place names in Victoria, and the bill gives the minister greater flexibility by extending the maximum term of appointment of a registrar of geographic names from three to five years.

The Forests Act assigns rights and responsibilities in relation to Victoria’s forests to various government agencies, and it confers certain powers on the minister or the secretary as appropriate. The amendments contained in this bill simply clarify that the minister has the authority to grant permits and licences under the act.

I would like to take the opportunity to make some brief remarks about the amendments to the Transfer of Land Act. Part 2 of the bill lists some 72 headings under which amendments are made. Mr Davis has drawn attention to the enormous complexity of those 72 headings. I do not have the competence to refer to all of them, but I just want to single out a few.

The bill amends the act so that all deadlines for transactions are consolidated to 30 days. Currently the act has a number of inconsistent deadlines ranging across 14, 21, 30 and 35 days, which is confusing to people engaged in transferring land. The switch to a uniform 30 days effectively extends most deadlines, so nobody is disadvantaged, and it will make matters easier for individuals who are involved in transactions of this type.

The bill also makes a number of amendments to conveyancing practice. One of these is to clear up a matter relating to deed registration. Currently there is an expectation that the registrar will seal all documents, even though this is inconsistent with modern conveyancing practice, which permits electronic registers. The bill repeals the requirement in section 13 of the act so that the registrar is no longer required to seal all documents.

Clause 24 is concerned with the eligibility requirements of a person who acts as an agent permitted to electronically lodge conveyancing documents. The explanatory memorandum states that clause 24 amends the act to clarify that an eligible person must hold insurance that is acceptable to the registrar and also that the eligible person needs to comply with any other eligibility requirements of the registrar.

By way of background, everyone would appreciate that conveyancing is one of the most fundamental transactions in our legal system. Victoria’s electronic conveyancing system, which was developed by this government, is a world first in online settlement and lodgement systems. It became operational in August 2006 and fully functional in November last year. The system allows for electronic financial property settlement and the electronic payment of duty to the relevant state tax or revenue office. This is a great advantage. This system is beneficial to people because it eliminates the need for paper-based settlements, drawing cheques and having to physically meet on settlement day to exchange documents.
Under the system buyers and sellers hire subscribers to act on their behalf. The subscribers can be solicitors or conveyancers, for example, and they do all the conveyancing online. While the system has been in place for two years, my understanding is that the take-up has been slower than expected because the banks want to see the establishment of a national system. Even though financial institutions in Victoria have not taken up this new conveyancing approach as quickly as we would have hoped, there are successes. The system itself appears to be working well, with some 800 transactions already successfully completed.

The Victorian government has been working with other states for some time to get a national electronic conveyancing system in place. It is expected that in 2010 the Council of Australian Governments will agree on the form of a new legal entity that will be able to operate this new e-conveyancing system. During 2010 the states are also expected to agree on governance arrangements, on uniform business processes and on the necessary legislative changes.

Another difficulty is that the Legal Practitioners Liability Committee has raised some issues regarding the legal framework that underpins e-conveyancing, resulting in the Law Institute of Victoria not recommending the use of the e-conveyancing system to its members. The upshot of all this is that negotiations to resolve the issues over the legal framework are currently suspended until a national framework has been further developed.

The amendments to the Transfer of Land Act contained in the bill require that e-conveyancing subscribers hold insurance of a kind and an amount that is acceptable to the registrar and that has to satisfy the eligibility requirements established by the registrar. The act implies that legal practitioners are eligible to become e-conveyancing subscribers, even if they are not insured. The amendment contained in this bill clarifies this matter.

The bill amends a number of acts in a range of ways, and they all go towards improving the services they regulate. The amendments clarify and simplify a range of matters where they have been overly complex. The government’s view is that they will deliver improved consistency, and we will update legislation where necessary. I commend the bill to the house.
I would like the minister in his reply to go through those steps and explain how that will be dealt with. The Greens would like to see midwives and obstetricians working together for the benefit of the patient; we do not want to see the situation where midwives cannot work because obstetricians will not assist them. We want to see homebirths offered as an option, and arrangements put in place so that a woman can be transferred to hospital if necessary, but that her basic wishes are respected.

The Greens believe this is an important bill. In the last few days we have met with occupational psychologists, who have raised concerns about the bill, and we hope those issues can be resolved in the committee stage of the bill. I will now turn the debate over to the government for it to answer those questions and to see where we go to from here.

Mr Eideh (Western Metropolitan) — I rise to speak on a bill that is yet again proof of the success of having Labor governments across the nation, Labor governments that have a vision for national policies, national regulations, and of course national laws. In this case we have a bill before us today that seeks national consistency for the health professions. It shows that we want a minimum standard common to all states and territories that will lead to only the best people being registered to attend to the health of Australians and of visitors to our shores.

Never before has the Council of Australian Governments worked better than it has done in the past two years. Never before have the people of Australia had such a great opportunity to be safe in the knowledge that we are making laws, in consultation with the other states and territories, that mean consistency and certainty across the entire nation.

As the minister and my colleague who also represents Western Metropolitan Region, Martin Pakula, stated in his address on the legislation, this bill marks a significant milestone in the reform of the Australian health-care system: a single and national registration for all of our medical practitioners, nurses and midwives, osteopaths, podiatrists, physiotherapists, psychologists, chiropractors, dentists, optometrists and pharmacists. The benefits of having such a national registration and accreditation scheme should be obvious to one and all, and is very long overdue.

We need to know that every person who practises in our health-care system meets the highest possible standards. We cannot and will not accept such standards as allegedly led to the terrible deaths in Queensland a few years ago.
profession because the practitioner has an impairment. This is a higher threshold than the threshold required to trigger a notification in relation to conduct, which is simply a ‘risk of harm’.

Where a practitioner has agreed to cease practice or alter practice so that they are no longer a risk to the public — and have not placed the public at risk of substantial harm — the staff member of the health program will not be compelled to report, as the practitioner is not captured by the mandatory reporting provisions under the national law. The national board will develop guidelines for practitioners to ensure that they clearly understand their reporting obligations.

From July 2010 this national scheme will come into place. Two years later, Chinese medical practitioners, Aboriginal and Torres Strait Islander health practitioners, occupational therapists and medical radiation practitioners will join them. But I am also impressed by the requirement for mandatory reporting, and also by the strengthening of the role of community members on the board. I have been advised that both were called for in a university report some 30 years ago.

Peer review or self-determination alone has not worked as successfully as we would have hoped. The changes outlined in the bill will ensure greater protection for the community and are most welcome. I commend the bill to the house.

Mrs PEULICH (South Eastern Metropolitan) — I move:

That the debate be adjourned for one week.

This will enable the government to resolve some issues about organisational psychologists that have already been laid on the table. We would be more than happy for those discussions to occur with a view to resolving the outstanding issues.

Mr VINEY (Eastern Victoria) — The government is opposing the proposition. This is an outrage. The performance of the Leader of the Opposition this week in the way he has treated the agenda of the house is an absolute disgrace. I have to use my words carefully because there are certain words I cannot use in the chamber, but on different occasions he has indicated to people that certain things were or were not occurring that were simply not correct, and in my view he would have understood clearly they were not correct. He has used the forms of the house to attempt to defer debate on four bills. We had agreements on what we were to do. There was one occasion when I had to concede I had made a mistake in an email I had sent, and I was prepared to compromise on those things, but Mr Davis was unprepared to compromise.

We have a clear situation here where since early last week the health practitioners bill has been on the government’s list of matters to be considered in the house. Everyone has understood that. Mr Davis has been given opportunities to have extensive briefings on this matter from the Minister for Health and from the department. He has had those briefings despite the fact that he attempted to suggest he did not have time to have them because we had other things to do. I do not know what he was thinking, but if he thought I was not going to check with the Minister for Health whether that was the situation he was sadly mistaken. The things he told the Minister for Health seemed to be quite different from the things he was telling me and others.

I say to the house that we have put on the record — —

Mrs PEULICH — On a point of order, Acting President, my comments were made merely to assist the government to resolve some outstanding issues involving one of the categories. That was my view.

The ACTING PRESIDENT (Mr Somyurek) — Order! There is no point of order.

Mrs PEULICH — The matters Mr Viney is talking about are irrelevant to what I said.

Mr VINEY — I am speaking on the procedural matter of deferring debate on this bill. What I will say is that the bill has always been on the government’s list of things to be considered this week. We have a Liberal Party that is in turmoil in Canberra and in Victoria because it is unable to manage its own business.

The Leader of the Opposition’s own side is absolutely appalled at the mismanagement and that last night Mr Davis spent 50 minutes talking on this bill. He talked extensively — this is someone who actually appreciates the sound of his own voice. We have had hour after hour of Mr Davis using up the time of the chamber instead of assisting the chamber in the efficient management of a business program. That is why we are here today on a Friday. People should have no misunderstanding about this.

Last night we had four hours of debate to complete five bills. That was eminently doable if people were sensible. The government put on an appropriate number of speakers to make appropriate contributions, but Mr Davis decided to filibuster his way through the night. That is why we are here today. Last night he wanted to defer debate on the bill but did not proceed with that. We have come back and had more debate on
the bill, and now he wants to defer the debate again. He has been all over the shop in the position he has taken not only on the bill but on the legislative program this week. It is absolutely wrong. It is an improper process.

Mr Davis has had ample time to be briefed. The Minister for Health told him that he would brief him at any time he wanted — he could choose the time — and the Liberal Party members on the other side know it. How many members does the Liberal Party have in the house listening to this contribution? There is not a lot of support. Most members opposite have been on strike all day, because they know Mr Davis caused the house to sit today.

Mr Tee interjected.

Mr VINEY — It is an absolute debacle, Mr Tee. We have reached the eleventh hour on this bill, and the Liberal Party is attempting to defer it again. There is no legitimate reason to defer this bill. In fact it was members on Mr Davis’s side who suggested around the Parliament that the reason Mr Davis was trying to defer debate on the four bills was that he was not ready — he was not prepared, he had not done the work. Just as Mr Hannan, then state president of the Liberal Party, said last time Mr Davis was shadow Minister for Health —

Mrs Peulich — On a point of order, Acting President, Mr Viney’s argument is totally irrelevant to this debate on the deferral of the debate on this bill on the grounds I raised. It is not just an indulgence.

The ACTING PRESIDENT (Mr Somyurek) — Order! There is no point of order. I ask Mr Viney to continue but to confine his comments.

Mr VINEY — As we know, Mr Davis is attempting to defer further consideration of the bill because he is not ready — because he does not do the policy work. As members of his own party have said, he is too lazy.

Mr D. DAVIS (Southern Metropolitan) — Mr Viney looked like he was about to pop a rivet. He seems to have lost the plot this week. I know it has been a tough week for him, but I will not be too hard on him.

The truth of the matter is that none of the land bills were on the list for this week, and nor was this health bill. I have certainly been doing the work, as many people —

An honourable member — Yes, it was.

Mr D. DAVIS — No, it was not — the email suggests it was not. That is a fact. Nonetheless, I am happy to have put on the record a number of points about this bill: the fact that the opposition will not oppose it and the fact that there are a number of points on which we want to receive clarification.

I put on record the fact that I was very pleased to be briefed by a number of bureaucrats yesterday and to interact with them and some organisational psychologists who have a number of small issues that need to be dealt with. This deferral of the debate will offer a sensible, practical opportunity for the government to talk further with the organisational psychologists and in doing so potentially reach some sensible conclusion. There is no reason there cannot be a small pause. The opposition has no intention of not passing the bill. We simply want there to be discussions between the government and the organisational psychologists to try to find a sensible conclusion, if possible.

Mr Viney raised a number of silly points that fundamentally missed the purpose of the deferral. We could have deferred debate on the bill last night but it was important to get on the record a number of key points about the bill and indeed to allow others to make contributions. I make the point that the opposition has been very cooperative this week, as have the other non-government parties. Non-government business finished quite early on Wednesday, giving the government a great deal of time to bring forward bills. There was discussion about a number of land bills that members of the opposition wanted to speak on. They are important bills; nobody would argue they are not. Today the smaller bills have gone through with remarkable speed and consistency.

If the government had arranged its legislative load in a sensible way, it would not be in the position it is in. It is entirely the fault of Mr Viney and the government that they have gotten themselves in a knot.

Mr Viney — You spent all of Wednesday on general business.

Mr D. DAVIS — We did not actually; on Wednesday we finished non-government business at about 5 o’clock, and we covered a great deal of ground. The number of speakers was cut back specifically to accommodate the government and ensure that a large number of topics were covered with brevity and succinctness.

Mr Viney should not be silly about these things. This is an important bill that will significantly affect the community and people’s livelihoods, so we need to be cautious and to make sensible, practical decisions. A
one-week deferral of debate on this important piece of legislation will in no way hold up the bill’s overall progress, but it will give the government and the organisational psychologists an opportunity to have a further discussion.

I again put on the record my thanks to the minister and to the bureaucrats with whom we discussed these matters yesterday. However, there are still outstanding issues, and I sincerely hope that the government, the bureaucrats and the organisational psychologists can sensibly work through them and find some conclusions or some solutions that will assist them and the community.

Mr Viney needs to pay attention to what is the key focus here — that is, legislating in a sensible way that protects the community and gets the best results for the community. If a one-week pause assists in that, I think that is a very sensible step.

Ms HARTLAND (Western Metropolitan) — The Greens will not be supporting the adjournment of debate on this bill; our reasons are fairly simple. This could have been dealt with last night. I was not told last night that an adjournment motion on the bill would not be moved then, so I feel like I have been placed in a very awkward position between the two major parties.

I have had a number of briefings from the department. We never intended to vote against this bill; we always believed that we would vote for it. We felt that its passage could be assisted by some extra time. However, I have just spoken to the minister, and I will be meeting with him next week to go through my concerns about the bill’s provisions about midwives.

I have been assured that the minister will give me in writing the assurances that I need to be able to go back to the midwives and explain what is happening. I believe the issues around the occupational psychologists can be dealt with in the transitional bill, so the Greens will not now be voting to have the debate adjourned.

I would suggest that in future, if the Liberal Party says it intends to move for an adjournment, it actually does just that.

Mrs Peulich’s motion negatived.

Mr JENNINGS (Minister for Environment and Climate Change) — Notwithstanding everything that has gone on in the last few minutes it is incumbent upon me to actually conclude some of the matters that have been raised in the second-reading debate to try to provide some degree of closure before we move into the third-reading stage of the bill.

As has been well and truly discussed, this piece of national model legislation, which is trying to establish a degree of national consistency in terms of the accreditation of 10 health professions across Australia, is very important and provides an opportunity for those professions to share quality assurance mechanisms, registration mechanisms, and accreditation and appeals processes that would not only apply consistency across all Australian jurisdictions but would allow for the mobility of people who work within those professions across the nation.

We also understand that in fact this model is intended to be extended to four other health professions by July 2012. It is important to reiterate, given that perhaps sometimes in the debate we lose sight of the value of national systems and what the driving principle is, that public protection is a key feature in terms of the outcomes that health ministers have sought a level of agreement over, in terms of the ways these health professions will be regulated into the future.

Indeed, we believe that as a first organising principle in terms of quality assurance — notwithstanding some questions that have been raised about the confidence level that members in this chamber and the Victorian community might have about the quality of care in other jurisdictions — I think the important aspect is that at no point in time does the scrutiny and involvement of the Victorian health system and the Victorian health minister actually desert the level of quality outcomes and quality care that we would expect to apply in Victoria.

There will be no drive to the lowest common denominator of quality standards associated with this model legislation and regulations. There has been mentioned in the debate the juxtaposition of the sense that the national model legislation framework is being introduced in the Queensland Parliament, and Queensland has unfortunately had some instances of poor medical practice occur in its jurisdiction. I encourage members to separate the notion of the national agreement and the national legislative framework that applies to the law and the regulatory bodies that will roll out in all jurisdictions. The law will cascade down from one jurisdiction to another in an interlocking fashion. The integrity of that model through the Council of Australian Governments process should not be undermined because of particular outcomes in any particular state.
It is important to understand particularly in relation to that matter that the government considers the likelihood of a unilateral decision being made in Queensland is extremely unlikely in the first instance. If it were introduced to the Queensland Parliament, we are confident that all jurisdictions would act accordingly by removing the effective cover of that national model legislation if it had been inappropriately amended in the Queensland jurisdiction. It is the clear understanding and the clear undertaking of all jurisdictions that no amendment will be made to that model legislation unless there is a national agreement of ministers across the country.

On the issue of accreditation standards that both Mr Davis and Ms Hartland have raised, it is important to note that the powers that currently exist in the Minister for Health in Victoria under the Health Professions Registration Act 2005 have been broadened in their application by this legislation and the interlocking nature of accreditation standards across the country. The ministerial council is obliged to account for accreditation standards and must consider the potential impact on quality and safety. Beyond this, the ministerial council is required to publish any directions issued by the agency or the relevant national board.

The issues of mandatory reporting have been introduced to try to provide confidence in the inability of a practitioner to acquit their responsibility. The aim is to be pre-emptive in the application of this. We will try to achieve an outcome where a practitioner voluntarily agrees to cease practice or to alter their practice so that they do not pose a risk to the public. Voluntarily withdrawing from their practice will enable them to receive assistance. The mandatory reporting regime will not require any fellow workers in the health service to place the practitioner on the register if they have voluntarily ceased practice prior to any demonstration of substantial harm to the public. If that harm has occurred, it is mandatory that co-workers in the health-care system report it. There will be interventions by the national board via the guidelines for practitioners to understand the obligations in relation to reporting and, most importantly, to deal with the provisions that account for the appropriate scrutiny and limits placed upon the practice of those who may potentially place the public at risk.

There are issues that relate to specific professions, and in the last few minutes we have had a bit of a flurry about a couple of them, one in relation to midwives and the interlocking nature of the consideration here and in other jurisdictions in terms of the appropriate support and structure for the operations of midwives. Ms Hartland has indicated to the chamber her intention to have discussions with the Minister for Health in the coming days about the way in which she can be provided with some confidence that her issues will be addressed. Obviously this is an important issue that needs to be addressed by the ministerial council so the midwifery profession will have a greater degree of confidence in how home births would be dealt with in relation to public indemnity insurance matters. We hope that will also be addressed appropriately by the commonwealth government.

Mr Davis has been referring to psychologists and the existing provisions of the Psychologists Registration Board of Victoria, and we know that matter has been subjected to a lot of consideration and debate during our recent history in Victoria. It seems to be an area of concern, particularly in relation to the autonomy that they seek to obtain.

In fact we understand there are a variety of subsectors within the professions that need to be accounted for, and we will try to ensure that the different categories of professional activity, engagement and alignment can be catered for, that there is not necessarily an orthodoxy that is implied for any profession, and we think the mechanisms that apply to the interlocking nature between the Psychologists Registration Board of Victoria and how they would articulate into the activities of the national board could account for that diversity.

At the same time we have enhanced confidence in the accreditation and regulatory standards that apply to the field. It is within the wherewithal of the Minister for Health and the people who work in the health department in Victoria to be able to achieve those outcomes, and we would be determined to achieve those regardless of the timing of this piece of legislation. However, from the government’s perspective, the sooner the platform of this legislation can be provided for so that we can get on with that agenda, the better, and that is certainly the intention of the government today.

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1

Ms HARTLAND (Western Metropolitan) — The federal government’s amendments would undermine the clear intent of this legislation in regard to the current
midwifery issues that are before a Senate committee. The clear intention of this legislation is to keep midwives practising until a satisfactory outcome on the issue of insurance is achieved. Could the minister clarify that point?

Mr JENNINGS (Minister for Environment and Climate Change) — I appreciate the committee giving me some time to try to work out the framework so I can answer the question, which possibly might make sense in the broader domain. We see the interlocking nature of what we have provided for in our bill and what is happening at the commonwealth level as being not necessarily mutually exclusive, which is implied in the question.

As a simple starting point of the story, if you consider what the commonwealth is currently considering, which is the provision of midwifery services in prenatal and ante-natal care and insurance cover for that activity, the commonwealth’s actions at this time leave homebirthing care at the time of the birth as an uncovered matter, and that is what we are trying to address with this provision.

If you see it as the continuity of insurance and care arrangements, and the commonwealth deals with the prenatal and ante-natal care, the provisions of this bill effectively cover the birthing period in terms of the availability of insurance regimes or indemnity that would apply under this bill. We acknowledge that there is a need for us to provide a continuity of those arrangements over the length of service and care that a midwife may be providing.

Ms HARTLAND (Western Metropolitan) — I appreciate the answer. I have some other questions as well. In terms of finality, which is another question I raised in my contribution to the second-reading debate, I am particularly concerned that a person who has been charged but not convicted could then have that reflect on their registration, because we have the principle of finality of judgements. Could the minister explain more fully how that would happen? I do not think his answer on this was quite clear. This is something I had spoken about in my speech and on which the minister’s reply was not clear to me.

Mr JENNINGS (Minister for Environment and Climate Change) — About sovereignty?

Ms HARTLAND (Western Metropolitan) — No, this was the issue about the finality of judgements.

Mr JENNINGS (Minister for Environment and Climate Change) — I have a pre-prepared answer to Ms Hartland’s question. National consistency has required a standard definition around criminal history. The safeguards written into the national law provide the requisite balance between public protection and the privacy and rights of the practitioner in relation to criminal history information. The national boards are currently consulting on registration standards for criminal history information. The standard for criminal history information will set out how the boards will assess the relevance of criminal history information. I am satisfied that the application of these standards will provide for appropriate caution to be exercised in relation to criminal history information.

Ms PENNICUIK (Southern Metropolitan) — Does the minister have any idea how long the time frame for that is?

Mr JENNINGS (Minister for Environment and Climate Change) — I am advised that the consultation period for consideration of that matter finished as recently as this week, and it is anticipated that the ministerial council will deal with it early in the new year.

Ms PENNICUIK (Southern Metropolitan) — Will the current provisions in the bill allow for the interplay of that standard, or will this be a transitional provision?

Mr JENNINGS (Minister for Environment and Climate Change) — To answer Ms Pennicuik’s question, I just double-checked what was the common understanding. Until the ministerial council signs off and the provision takes effect after being mandated by this legislation, the new standards will not apply. Until then it will be whatever the prevailing provision is for the state registration system.

Ms HARTLAND (Western Metropolitan) — I want to go back to the issue of midwifery. This is not in a clause but is something I am asking the minister to ask the advisers on my behalf. Minister Andrews has said that he will meet to talk about these issues. I would like a guarantee that, when we do that I will actually have something on the public record that I can give to the midwives associations, so that our discussions can be quite public, people will know what exactly we have been speaking about and it is quite clear. I just want that to be quite transparent.

Mr JENNINGS (Minister for Environment and Climate Change) — I think I have given an undertaking in my summary of the second-reading debate that it is the intention of the health minister to meet with Ms Hartland, just as I have indicated in my response to the second-reading debate and in the committee stage that the government is very happy for us to be clear
about the existing policy considerations, the existing arrangements and how they will need to be addressed to be in harmony with what applies in the state, what applies through the national framework and what would be the outcome of the Commonwealth’s considerations.

We are very happy to try to provide some confidence and certainty about what is to be described, and I anticipate that the Minister for Health will be very happy to convey a description of those matters to you in writing.

Ms Hartland (Western Metropolitan) — I want to go back again to mandatory reporting, which I referred to in my second-reading debate contribution. I was not particularly clear about the government’s intention on how it will deal with mandatory reporting. This part of the bill seems to have been quite confused by a number of organisations; they believe that people will be reported for everything, whereas it is my understanding that people will be reported only for very serious offences such as being intoxicated on the job and so on. Could the minister clarify that?

Mr Jennings (Minister for Environment and Climate Change) — I spoke for quite some time in my response to the second-reading debate but there was a bit of a flurry in the chamber at the time. There was a heightened degree of anxiety in the chamber when I was actually providing the answer, so I will read, as distinct from my contribution before, from something that was prepared earlier:

A report is required under the national law where the practitioner has placed the public at risk of substantial harm in the practice of the profession because the practitioner has an impairment.

Where a practitioner has agreed to cease practice or alter practice so they are no longer a risk to the public, and have not placed the public at risk of substantial harm, the staff member of the health program will not be compelled to report, as the practitioner is not captured by the mandatory reporting provisions under the national law.

The legislation better assists doctors’ health by encouraging practitioners to seek help early, before there is any risk of ‘substantial harm’.

The national board will develop guidelines for practitioners to ensure they understand clearly their reporting obligations.

Where a health practitioner is employed by an insurer they are not compelled to report under the national law as an exemption is provided under section 141, subsection 4 of the schedule to the bill.

Clause agreed to; clauses 2 to 7 agreed to; schedule agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Motion agreed to.

Read third time.

BUSINESS OF THE HOUSE

Adjournment

Mr Lenders (Treasurer) — I move:

That the Council, at its rising, adjourn until Tuesday, 8 December.

Motion agreed to.

ADJOURNMENT

Mr Lenders (Treasurer) — I move:

That the house do now adjourn.

Children: protection

Ms Lovell (Northern Victoria) — The matter I raise is for the attention of the Minister for Community Services. It is regarding the protocol for members of Parliament and their staff when discussing child protection issues with local Department of Human Services (DHS) child protection workers.

My office is often contacted by concerned families including parents who are unfortunately involved with the state’s underresourced child protection system. Until recently DHS staff have been quite willing to speak to me or my staff about child protection cases provided the constituent concerned has given written permission to discuss the particulars of their case.

My office was recently contacted by a distraught mother whose 13-year-old daughter had been repeatedly running away from home, participating in inappropriate behaviour and often placing herself in danger due to choice of companions and location. The mother felt let down by DHS, which had been less than cooperative with her or the local police. She was desperately seeking help to have her daughter returned home or, if that could not be achieved, placed in secure care.

The mother gave written permission for my office to speak with DHS regarding this case, and this was provided to DHS staff in the Hume region, who were initially willing to speak to us about the case. After a
number of conversations with DHS we were advised by a DHS child protection worker that DHS would no longer be able to speak to us about that particular case due to a new protocol that stipulates that all conversations about child protection cases must be directed via the minister’s office.

This was the first I had heard of this so-called protocol. Child protection is a sensitive issue that needs to be resolved in an expedient time frame, and these discussions often enable issues to be resolved on the ground locally, without involving the minister. I have no doubt that this new protocol has been put in place because of the inherent problems with the Victorian child protection system under this minister.

As local members we are interested in assisting families without politicising these sensitive cases. However, by issuing this protocol the minister has chosen to politicise child protection by demanding that MPs can speak with only her office and not with their local child protection department.

My request is for the minister to provide me with a written copy of the Brumby government’s protocol for child protection staff who are contacted by MPs regarding individual child protection cases.

**Rail: peak-hour congestion**

**Ms PENNICUIK** (Southern Metropolitan) — The matter I raise is for the attention of the Minister for Public Transport, Ms Kosky, and it concerns bottlenecks in the public transport system. The transfer of the contract for Melbourne’s train network from Connex to Metro Trains Melbourne will occur before the next sitting of the house.

Melbourne’s train system seems to be designed to funnel large numbers of passengers at peak time into bottlenecks at every opportunity. There are bottlenecks on the trains, and anyone who travels on a train in the morning and evening peak hours will have experienced people trying to get on and off in a very small door space and no-one moving up or down the train. People squash into a very small area around the doorways. I understand that there is one demonstration train on which the doors have been widened and some seating taken away from the doorway to enable better access to and egress from the trains. I am not sure where that train is, but it certainly is not on the Sandringham line, on which I travel.

There are bottlenecks at the entrances to stations where large numbers of people are forced to funnel in through the ticketing turnstiles, where they have to validate their tickets. Every morning and evening large numbers of people line up trying to get through the tiny space to validate their tickets as they try to get in and out of their station. Many of them miss the train while they are trying to make their way through this bottleneck at the turnstiles.

There are bottlenecks at large stations like Richmond, and in particular South Yarra, a station where I often have to change trains because trains on the Sandringham line do not run through the city loop. At South Yarra station people from three lines can be arriving at the entrance to the station or changing platforms to get their connecting train and clashing with people trying to get into the station from the tram that stops right outside — or with people who have walked to the station — and then they are all trying to get through the turnstiles. You have a whole mash of people trying to change platforms and get into the station. At every opportunity the system seems to jam people into bottlenecks.

My request to the minister is that she take action to reduce bottlenecks on the train system and on railway stations across Melbourne to improve the comfort and safety of the travelling public.

**Alcohol: packaging**

**Mrs PEULICH** (South Eastern Metropolitan) — I wish to raise a matter for the Minister for Consumer Affairs. It relates to two possible initiatives I would like her to encourage the Liquor Licensing Commission to investigate to assist in alleviating or reducing antisocial behaviour in licensed venues, in particular problem licensed venues.

The minister may be aware that the voluntary introduction of reusable plastic glasses to serve alcohol in some of these licensed venues has dramatically reduced the instances of alcohol-related antisocial behaviour within these venues. I think some of them have introduced this measure after midnight. It is a good measure to address the potential risk of alcohol-related violence and harm, and I believe it is worthy of our support.

No legislative measure currently provides the option of linking to the licences held by high-risk venues, such as nightclubs, the condition that they use reusable plastic glasses, perhaps after a particular time. This is something worthy of investigation. I have been informed that where there is evidence demonstrating that there is a problem or risk at a particular venue the director of liquor licensing has the power to impose restrictions on the use of glass as a licence condition.
The use of this measure needs to be considered more frequently.

In addition, many of the licensees I have contact with, especially in my discussions about the liquor licensing regime, and other people who have contacted my office have suggested that we encourage the packaging of ready-to-drink (RTD) alcohol, which is currently packaged in glass bottles, in plastic bottles. To tackle antisocial behaviour they have suggested that these RTDs would be better packaged in 600-millilitre plastic bottles. They would be less dangerous and unable to be used as a weapon against a person.

In England at the University of Hertfordshire student union bars and various bars in the Welwyn Hatfield borough, important messages — for example, reminders about drink spiking — are included on bottles. Information about how to get home safely is printed on reusable plastic glasses. This is something that I am sure local venues and hotspots would be prepared to support, given the opportunity, and I ask the minister to provide some leadership by introducing some concrete and practical measures which can be used to reduce the antisocial violence that currently plagues some of these venues.

Given the cost of liquor licences will increase by nearly 500 per cent at some venues, this would be a great time for the minister and the Brumby government to listen to these small businesses and to get behind them. I ask the minister, along with the director of liquor licensing, to consider these measures as a matter of urgency.

**Box Hill: central activities district**

Mr ATKINSON (Eastern Metropolitan) — I wish to raise a matter with the Premier, although the Minister for Planning in this house would also be involved in this issue. I have chosen to refer the matter to the Premier because it is a question that would go across the whole of government and some departments in particular. The matter I raise concerns the suggestion by the City of Whitehorse that a reference group or a panel be established that would consider the opportunities for the City of Whitehorse that a reference group or a panel might be involved in.

The matter I raise concerns the suggestion by the whole of government and some departments in particular. The savage cuts will have a massive impact on the staff. Bear in mind that some of the staff have been employed by the hospital for 10, 20 and in some cases more than 30 years. These people are being moved on with harshness and without a care or thought. They were informed by a leaked email that they were going to be moved on.

It appears in some cases there will be no redundancies. There have not been meaningful discussions with the department. It needs to be understood that this is occurring because Spring Street, the Department of Health and the Minister for Health are cutting hard in these ways. They are winding back the staffing at a

The council has a number of interesting propositions. One that appealed to me was the suggestion that the light rail be extended from Burwood Highway in the south — that is, at Riversdale Road — through Box Hill and possibly on to the Heidelberg railway station near the Austin Hospital. I think there are a number of meritorious proposals here. I seek the Premier’s assistance in convening such a panel.

**Geelong Hospital: staffing**

Mr D. DAVIS (Southern Metropolitan) — My matter is for the urgent attention of the Minister for Health. It concerns Geelong Hospital, part of Barwon Health, where today hundreds of workers have walked off the job. According to reports the workers have voted to strike for 24 hours after 18 employers were made redundant before Christmas.

Earlier this week I referred in this chamber to a leaked email that laid out the savage cuts that the Minister for Health, Daniel Andrews, and Premier John Brumby are implementing at Barwon Health and Geelong Hospital in particular. The savage cuts will have a massive impact on the staff. Bear in mind that some of the staff have been employed by the hospital for 10, 20 and in some cases more than 30 years. These people are being moved on with harshness and without a care or thought. They were informed by a leaked email that they were going to be moved on.

It appears in some cases there will be no redundancies. There have not been meaningful discussions with the department. It needs to be understood that this is occurring because Spring Street, the Department of Health and the Minister for Health are cutting hard in these ways. They are winding back the staffing at a
number of our key hospitals. We have heard this from Southern Health, and I have now heard there are cuts being administered at Northern Health. Now we find through a leaked email that this is being implemented in our major regional hospitals as well.

I think the members of staff should be treated with respect and a measure of dignity. I do not think staff should be made scapegoats for John Brumby’s mismanagement of the health sector, and nor should patients. The performance of Geelong Hospital has been very poor recently. It is failing many of its key measures. Patients are being made to wait for an extraordinary length of time. I had someone contact my office today with a long story that has come out of the emergency department, where they have been impacted very severely.

Hon. J. M. Madden — A long story?

Mr D. DAVIS — Indeed they were told that this was because of the cuts. Do not underestimate the impact these cuts will have on patients as well as staff, Minister. These are cuts that your colleague is implementing.

I want the Minister for Health to get in his car and go to Geelong as quickly as he can. The minister should play a role in settling this problem. He should fix the problem. He should resolve the dispute. The minister must sit down with the workers and management at Barwon Health and resolve this issue. It is not satisfactory for the minister to wash his hands like Pontius Pilate.

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

Responses

Hon. J. M. MADDEN (Minister for Planning) — Wendy Lovell raised the matter of child protection for the attention of the Minister for Community Services.

Sue Pennicuik raised the matter of commuter rail congestion, which I will refer to the Minister for Public Transport.

Inga Peulich raised a matter concerning liquor licensing and issues around glass where restrictions apply to problem venues, and I will refer that to the Minister for Consumer Affairs.

Bruce Atkinson raised the prospect of a reference group for the Box Hill central activities district, and I will bear that in mind and also refer it to the Premier.

David Davis raised a matter regarding Geelong Hospital staffing issues, which I will refer to the Minister for Health.

I have written responses to adjournment debate matters raised by Mrs Coote on 9 June, Ms Pennicuik on 2 September, Mrs Peulich on 12 November and Mr Koch on 12 November.

The ACTING PRESIDENT (Mr Leane) — Order! The house now stands adjourned.

House adjourned 4.07 p.m. until Tuesday, 8 December.