PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE ASSEMBLY

FIFTY-EIGHTH PARLIAMENT

FIRST SESSION

Thursday, 24 August 2017

(Extract from book 10)

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By authority of the Victorian Government Printer

The Governor

The Honourable LINDA DESSAU, AC

The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC, QC

The ministry

(from 10 November 2016)

Premier	The Hon. D. M. Andrews, MP
Deputy Premier, Minister for Education and Minister for Emergency Services	The Hon. J. A. Merlino, MP
Treasurer	The Hon. T. H. Pallas, MP
Minister for Public Transport and Minister for Major Projects	The Hon. J. Allan, MP
Minister for Small Business, Innovation and Trade	The Hon. P. Dalidakis, MLC
Minister for Energy, Environment and Climate Change, and Minister for Suburban Development	The Hon. L. D'Ambrosio, MP
Minister for Roads and Road Safety, and Minister for Ports	The Hon. L. A. Donnellan, MP
Minister for Tourism and Major Events, Minister for Sport and Minister for Veterans	The Hon. J. H. Eren, MP
Minister for Housing, Disability and Ageing, Minister for Mental Health, Minister for Equality and Minister for Creative Industries	The Hon. M. P. Foley, MP
Minister for Health and Minister for Ambulance Services	The Hon. J. Hennessy, MP
Minister for Local Government, Minister for Aboriginal Affairs and Minister for Industrial Relations	The Hon. N. M. Hutchins, MP
Special Minister of State	The Hon. G. Jennings, MLC
Minister for Consumer Affairs, Gaming and Liquor Regulation	The Hon. M. Kairouz, MP
Minister for Families and Children, and Minister for Youth Affairs	The Hon. J. Mikakos, MLC
Minister for Police and Minister for Water	The Hon. L. M. Neville, MP
Minister for Industry and Employment, and Minister for Resources	The Hon. W. M. Noonan, MP
Attorney-General and Minister for Racing	The Hon. M. P. Pakula, MP
Minister for Agriculture and Minister for Regional Development	The Hon. J. L. Pulford, MLC
Minister for Women and Minister for the Prevention of Family Violence	The Hon. F. Richardson, MP
Minister for Finance and Minister for Multicultural Affairs	The Hon. R. D. Scott, MP
Minister for Training and Skills, and Minister for Corrections	The Hon. G. A. Tierney, MLC
Minister for Planning	The Hon. R. W. Wynne, MP
Cabinet Secretary	Ms M. Thomas, MP

OFFICE-HOLDERS OF THE LEGISLATIVE ASSEMBLY
FIFTY-EIGHTH PARLIAMENT — FIRST SESSION

Speaker

The Hon. C. W. BROOKS (from 7 March 2017)

The Hon. TELMO LANGUILLER (to 25 February 2017)

Deputy Speaker

Ms J. MAREE EDWARDS (from 7 March 2017)

Mr D. A. NARDELLA (to 27 February 2017)

Acting Speakers

Ms Blandthorn, Mr Carbines, Ms Couzens, Mr Dimopoulos, Ms Graley,
Ms Kilkenny, Ms Knight, Mr McGuire, Mr Pearson, Ms Spence, Ms Thomson and Ms Ward.

Leader of the Parliamentary Labor Party and Premier

The Hon. D. M. ANDREWS

Deputy Leader of the Parliamentary Labor Party and Deputy Premier

The Hon. J. A. MERLINO

Leader of the Parliamentary Liberal Party and Leader of the Opposition

The Hon. M. J. GUY

Deputy Leader of the Parliamentary Liberal Party and Deputy Leader of the Opposition

The Hon. D. J. HODGETT

Leader of The Nationals

The Hon. P. L. WALSH

Deputy Leader of The Nationals

Ms S. RYAN

Heads of parliamentary departments

Assembly — Acting Clerk of the Legislative Assembly: Ms Bridget Noonan
Council — Acting Clerk of the Parliaments and Clerk of the Legislative Council: Mr A. Young
Parliamentary Services — Secretary: Mr P. Lochert

MEMBERS OF THE LEGISLATIVE ASSEMBLY

FIFTY-EIGHTH PARLIAMENT — FIRST SESSION

Member	District	Party
Allan, Ms Jacinta Marie	Bendigo East	ALP
Andrews, Mr Daniel Michael	Mulgrave	ALP
Angus, Mr Neil Andrew Warwick	Forest Hill	LP
Asher, Ms Louise	Brighton	LP
Battin, Mr Bradley William	Gembrook	LP
Blackwood, Mr Gary John	Narracan	LP
Blandthorn, Ms Elizabeth Anne	Pascoe Vale	ALP
Britnell, Ms Roma [1]	South-West Coast	LP
Brooks, Mr Colin William	Bundoora	ALP
Bull, Mr Joshua Michael	Sunbury	ALP
Bull, Mr Timothy Owen	Gippsland East	Nats
Burgess, Mr Neale Ronald	Hastings	LP
Carbines, Mr Anthony Richard	Ivanhoe	ALP
Carroll, Mr Benjamin Alan	Niddrie	ALP
Clark, Mr Robert William	Box Hill	LP
Couzens, Ms Christine Anne	Geelong	ALP
Crisp, Mr Peter Laurence	Mildura	Nats
D'Ambrosio, Ms Liliana	Mill Park	ALP
Dimopoulos, Mr Stephen	Oakleigh	ALP
Dixon, Mr Martin Francis	Nepean	LP
Donnellan, Mr Luke Anthony	Narre Warren North	ALP
Edbrooke, Mr Paul Andrew	Frankston	ALP
Edwards, Ms Janice Maree	Bendigo West	ALP
Eren, Mr John Hamdi	Lara	ALP
Foley, Mr Martin Peter	Albert Park	ALP
Fyffe, Mrs Christine Anne	Evelyn	LP
Garrett, Ms Jane Furneaux	Brunswick	ALP
Gidley, Mr Michael Xavier Charles	Mount Waverley	LP
Graley, Ms Judith Ann	Narre Warren South	ALP
Green, Ms Danielle Louise	Yan Yean	ALP
Guy, Mr Matthew Jason	Bulleen	LP
Halfpenny, Ms Bronwyn	Thomastown	ALP
Hennessy, Ms Jill	Altona	ALP
Hibbins, Mr Samuel Peter	Prahran	Greens
Hodgett, Mr David John	Croydon	LP
Howard, Mr Geoffrey Kemp	Buninyong	ALP
Hutchins, Ms Natalie Maree Sykes	Sydenham	ALP
Kairouz, Ms Marlene	Kororoit	ALP
Katos, Mr Andrew	South Barwon	LP
Kealy, Ms Emma Jayne	Lowan	Nats
Kilkenny, Ms Sonya	Carrum	ALP
Knight, Ms Sharon Patricia	Wendouree	ALP
Languiller, Mr Telmo Ramon	Tarneit	ALP
Lim, Mr Muy Hong	Clarinda	ALP
McCurdy, Mr Timothy Logan	Ovens Valley	Nats
McGuire, Mr Frank	Broadmeadows	ALP
McLeish, Ms Lucinda Gaye	Eildon	LP
Merlino, Mr James Anthony	Monbulk	ALP
Morris, Mr David Charles	Mornington	LP
Mulder, Mr Terence Wynn [2]	Polwarth	LP
Napthine, Dr Denis Vincent [3]	South-West Coast	LP
Nardella, Mr Donato Antonio [4]	Melton	Ind
Neville, Ms Lisa Mary	Bellarine	ALP
Noonan, Mr Wade Matthew	Williamstown	ALP
Northe, Mr Russell John	Morwell	Nats
O'Brien, Mr Daniel David [5]	Gippsland South	Nats
O'Brien, Mr Michael Anthony	Malvern	LP
Pakula, Mr Martin Philip	Keysborough	ALP
Pallas, Mr Timothy Hugh	Werribee	ALP
Paynter, Mr Brian Francis	Bass	LP
Pearson, Mr Daniel James	Essendon	ALP
Perera, Mr Jude	Cranbourne	ALP
Pesutto, Mr John	Hawthorn	LP
Richardson, Mr Timothy Noel	Mordialloc	ALP
Richardson, Ms Fiona Catherine Alison	Northcote	ALP
Riordan, Mr Richard [6]	Polwarth	LP
Ryall, Ms Deanne Sharon	Ringwood	LP
Ryan, Mr Peter Julian [7]	Gippsland South	Nats
Ryan, Ms Stephanie Maureen	Euroa	Nats
Sandell, Ms Ellen	Melbourne	Greens
Scott, Mr Robin David	Preston	ALP
Sheed, Ms Suzanna	Shepparton	Ind
Smith, Mr Ryan	Warrandyte	LP
Smith, Mr Timothy Colin	Kew	LP
Southwick, Mr David James	Caulfield	LP
Spence, Ms Rosalind Louise	Yuroke	ALP
Staikos, Mr Nicholas	Bentleigh	ALP
Staley, Ms Louise Eileen	Ripon	LP
Suleyman, Ms Natalie	St Albans	ALP
Thomas, Ms Mary-Anne	Macedon	ALP
Thompson, Mr Murray Hamilton Ross	Sandringham	LP
Thomson, Ms Marsha Rose	Footscray	ALP
Tilley, Mr William John	Benambra	LP
Victoria, Ms Heidi	Bayswater	LP
Wakeling, Mr Nicholas	Ferntree Gully	LP
Walsh, Mr Peter Lindsay	Murray Plains	Nats
Ward, Ms Vicki	Eltham	ALP
Watt, Mr Graham Travis	Burwood	LP
Wells, Mr Kimberley Arthur	Rowville	LP
Williams, Ms Gabrielle	Dandenong	ALP
Wynne, Mr Richard William	Richmond	ALP

[1] Elected 31 October 2015

[2] Resigned 3 September 2015
[3] Resigned 3 September 2015
[4] ALP until 7 March 2017
[5] Elected 14 March 2015
[6] Elected 31 October 2015
[7] Resigned 2 February 2015

PARTY ABBREVIATIONS

ALP — Labor Party; Greens — The Greens;
Ind — Independent; LP — Liberal Party; Nats — The Nationals.

Legislative Assembly committees

Privileges Committee — Ms Allan, Mr Clark, Ms D'Ambrosio, Mr Morris, Ms Neville, Ms Ryan, Ms Sandell, Mr Scott and Mr Wells.

Standing Orders Committee — The Speaker, Ms Allan, Ms Asher, Mr Carroll, Mr Clark, Ms Edwards, Mr Hibbins, Mr Hodgett, Ms Kairouz, Ms Ryan and Ms Sheed.

Legislative Assembly select committees

Penalty Rates and Fair Pay Select Committee — Ms Blandthorn, Mr J. Bull, Mr Clark, Mr Hibbins, Ms Ryall, Ms Suleyman and Ms Williams.

Joint committees

Accountability and Oversight Committee — (*Assembly*): Mr Angus, Mr Gidley, Mr Staikos and Ms Thomson. (*Council*): Mr O'Sullivan, Mr Purcell and Ms Symes.

Dispute Resolution Committee — (*Assembly*): Ms Allan, Mr Clark, Mr Merlino, Mr M. O'Brien, Mr Pakula, Ms Richardson and Mr Walsh. (*Council*): Mr Bourman, Mr Dalidakis, Ms Dunn, Mr Jennings and Ms Wooldridge.

Economic, Education, Jobs and Skills Committee — (*Assembly*): Mr Crisp, Mrs Fyffe, Ms Garrett and Ms Ryall. (*Council*): Mr Bourman, Mr Elasmar and Mr Melhem.

Electoral Matters Committee — (*Assembly*): Ms Asher, Ms Blandthorn, Mr Dixon, Mr Northe and Ms Spence. (*Council*): Ms Patten and Mr Somyurek.

Environment, Natural Resources and Regional Development Committee — (*Assembly*): Mr J. Bull, Ms Halfpenny, Mr Richardson and Mr Riordan. (*Council*): Mr O'Sullivan, Mr Ramsay and Mr Young.

Family and Community Development Committee — (*Assembly*): Ms Britnell, Ms Couzens, Mr Edbrooke, Ms Edwards and Ms McLeish. (*Council*): Dr Carling-Jenkins and Mr Finn.

House Committee — (*Assembly*): The Speaker (*ex officio*), Mr J. Bull, Mr Crisp, Mrs Fyffe, Mr Staikos, Ms Suleyman and Mr Thompson. (*Council*): The President (*ex officio*), Mr Eideh, Ms Hartland, Ms Lovell, Mr Mulino and Mr Young.

Independent Broad-based Anti-corruption Commission Committee — (*Assembly*): Mr Hibbins, Mr D. O'Brien, Mr Richardson, Ms Thomson and Mr Wells. (*Council*): Mr Ramsay and Ms Symes.

Law Reform, Road and Community Safety Committee — (*Assembly*): Mr Dixon, Mr Howard, Ms Suleyman, Mr Thompson and Mr Tilley. (*Council*): Mr Gepp and Ms Patten.

Public Accounts and Estimates Committee — (*Assembly*): Mr Dimopoulos, Mr Morris, Mr D. O'Brien, Mr Pearson, Mr T. Smith and Ms Ward. (*Council*): Ms Patten, Ms Pennicuik and Ms Shing.

Scrutiny of Acts and Regulations Committee — (*Assembly*): Ms Blandthorn, Mr J. Bull, Mr Dimopoulos, Ms Kilkenny and Mr Pesutto. (*Council*): Ms Bath and Mr Dalla-Riva.

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Thursday, 24 August 2017

The SPEAKER (Hon. Colin Brooks) took the chair at 9.32 a.m. and read the prayer.

MINISTER FOR WOMEN

Mr ANDREWS (Premier) (*By leave*) — The best people in public life are those who live their values, those who stand up and those who speak up. Yesterday we lost someone who did just that every single day of her life — every time she fought for her community, every time she stood up for the safety of women and children and every time she sought to exercise the power of government in all of its vast possibilities. Fiona Richardson was not just living her own values; she was demanding the same of us all. She was holding us to the same exacting standards she set for herself in this place, and in so doing she made us better representatives, better people.

Hers was an unlikely journey, from coastal Tanzania to the Victorian cabinet table — a difficult one too. I was stunned to silence when I watched Fiona's feature on *Australian Story* last year — a story about her childhood, her upbringing, her trauma and the unique perspective she brought to her ministerial and parliamentary responsibilities. Under her watch as Australia's first Minister for the Prevention of Family Violence, the dark and silent tragedies taking place behind closed doors in our homes were brought into the harsh and unforgiving light of a royal commission.

I think the 2000 pages of that commission's final report stand as perhaps Fiona's greatest legacy in public life. We should just reflect for a moment on the enormity of that document, a synthesis of a thousand testimonials, a thousand stories — the only one of its kind in our nation, and indeed the world's most comprehensive examination of this tragedy, this crime. We stood next to each other as the commission's report was handed down. I will never forget what she said at the time: 'If you actually set out to design a system most likely to fail, you would design the system that we had'.

Victoria has a very different system now, a different set of rules and standards and expectations — a model for every other Australian jurisdiction and so many across the world to emulate, a change that has saved lives and will continue to save lives into the future. I know who to thank for that work.

I do not know a Victorian Labor Party without Fiona Richardson. She joined in her teens and quickly set about breaking open — busting up, as it were — the party's sexist, smoke-filled back rooms, and in so doing she has made things so much easier and fairer for the next generation of Labor women, and indeed the generation after that.

She was a person of conviction and character and extraordinary composure, and a person of such strength. I think she has taught us all a lesson in that over these last few years. I think she has taught us all a thing or two about dignity as well. And she has taught us that there is always time to fight for others, even when you are weathering the toughest and most personal fight of all. Fiona cannot be replaced — not in this government, not in this movement.

Let us send our sincere condolences to Fiona's husband, Stephen; to her beautiful children, Catherine and Marcus; to all her family and friends; and to her colleagues and comrades in this place, across the party and across the community. Let us also send our thoughts to her staff in Northcote and in her ministerial office. She was very proud of you. I know that because she told me as much. Fiona worked very hard right up until the end. She demanded that we all do more — and in her memory, we will.

Mr GUY (Leader of the Opposition) (*By leave*) — Fiona Richardson has changed our state. Fiona Richardson has not only changed the values of our state and the attitudes of our state, but she is one of those members of Parliament that history will look back on and note with pride and dignity that she has left a mark in this place that few will.

There are many Victorian women who will lead a happy and safe life as a result of the work that she has done. There are many young girls in this state who will grow up in an environment that is safer for them and for their entire families because of the work that she has done. She is someone who in this Parliament has commanded respect from all sides of this chamber. It is unique, I think for all of us, to come across a member of Parliament for whom respect has been given and is forthcoming for their values and for their principles and who has transcended all sides of politics for the work that she has done, particularly around the portfolio of family violence.

Fiona was dignified and strong and held enormous poise in this chamber, and I find it, as no doubt many do in this chamber, an immensely difficult day to be in this chamber to note the passing of someone who made an immense difference to our state.

Can I just say a few words not as a politician but as an individual, particularly to those members opposite me in the government. I know this chamber is one that

sometimes has much venom and vigour and anger and has a combative nature, but I want to say to you all today how much we on this side and I personally grieve with you, for the loss of a friend and a colleague who was respected by so many. I want to say to you all how our heartfelt sympathies are with you today — with Fiona's staff, with all members of the government, with all of her friends, and of course with Stephen, Catherine and Marcus.

There are few times when we will all look back and say that that person, that individual, be they a backbencher, a minister or a Premier, has genuinely changed fundamentally the culture of our state. We will all look back at Fiona Richardson and say that she has done just that.

I again say to every member of this Parliament, to the 87 of us here today, and particularly to those in the government, that we extend our absolute and sincere sympathies and condolences on the loss of a friend, a colleague and someone who has changed our state for all of us. I would like at this very difficult time for all of us to come together to know that her legacy will be one that our state will never, ever forget.

BUSINESS OF THE HOUSE

Standing and sessional orders

Ms ALLAN (Minister for Public Transport) — By leave, I move:

> That so much of standing and sessional orders be suspended today as required so that:
>
> (1) the government business program agreed to on 22 August 2017 is rescinded;
>
> (2) the house, at its rising, adjourns until Tuesday, 5 September 2017;
>
> (3) the ministers who introduced the Caulfield Racecourse Reserve Bill 2017, the Long Service Leave Bill 2017, and the Renewable Energy (Jobs and Investment) Bill 2017 are deemed to:
>
> (a) have tabled the statement of compatibility;
>
> (b) moved the second reading; and
>
> (c) incorporated the second-reading speech into *Hansard* —
>
> for their respective bills, and each bill stands adjourned until Thursday, 7 September 2017, in the name of the Leader of the Opposition; and
>
> (4) the house immediately adjourns.

Motion agreed to.

CAULFIELD RACECOURSE RESERVE BILL 2017

Statement of compatibility

Ms D'AMBROSIO (Minister for Energy, Environment and Climate Change) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

> In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (the charter), I make this statement of compatibility with respect to the Caulfield Racecourse Reserve Bill 2017 (the bill).
>
> In my opinion, the bill, as introduced to the Legislative Assembly, is compatible with the human rights as set out in the charter. I base my opinion on the reasons outlined in this statement.
>
> **Overview of the bill**
>
> The bill will:
>
> revoke the existing restricted Crown grant and provide that the trustees under the Crown grant go out of office;
>
> establish a trust to manage the Caulfield Racecourse Reserve for racing, recreation and public park purposes;
>
> provide for the functions, powers and duties of the trust in relation to the management of the Caulfield Racecourse Reserve, including leasing and licensing powers;
>
> enable the minister to appoint, suspend and remove members of the trust;
>
> enable the minister to give directions to the trust in relation to the carrying out of its functions, duties and powers;
>
> provide mechanisms to define areas that may be used for each of the purposes for which the land is permanently reserved, being 'racing, recreation and public park', including ensuring public access to certain areas of the Caulfield Racecourse Reserve;
>
> provide for other related matters in relation to the management of the Caulfield Racecourse Reserve including to enable the making of regulations for the control, management and use of the reserve.
>
> ***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. This right is relevant to clauses 33 and 34 of the bill.
>
> Clause 33 of the bill provides the trust with the power to declare an event to be a Caulfield Racecourse Reserve event. It is intended that this power will be used to enable a person or body to exclusively control a wider area of the reserve for

an event (e.g. a race day). It is intended to facilitate the smooth running of race days on the reserve by enabling a person or body to take control of part of the reserve on event days and to suspend the operation of any regulations applicable to the reserve during the event. However, it is limited to declared event days so it also allows for such areas of the reserve to be used by the trust or the public on non-event days.

The minister administering the bill and the minister administering the Racing Act 1958 will be provided with the power to request the trust to vary an annual event declaration for race days in exceptional circumstances. This may include the cancellation or transfer of a racing event at the reserve.

Clause 34 of the bill provides the trust with an explicit power to set aside an area of the Caulfield Racecourse Reserve for management purposes. The set aside will be made by written determination and will outline any terms and conditions associated with the set aside, including if access is prohibited or restricted and the duration of the set aside. This will allow the trust to restrict public access to an area within the Caulfield Racecourse Reserve. For example, the trust may wish to restrict access to a certain area of the reserve to mitigate a risk to public safety such as that posed by a building works program. In most cases, public access to a set aside area is likely to be prohibited or restricted on a temporary basis.

The bill itself does not purport to set aside any areas of land or restrict or prohibit access to areas within the reserve. It enables the trust to declare an event (except for an annual event declaration related to racing) or set aside an area of land within the reserve for specific purposes, consistent with the purposes for which the land is reserved, as and when required. A subsequent decision to declare an event or set aside an area of the reserve may interfere with the right to freedom of movement, to the extent that a person can move freely around Victoria by passing across that part of the reserve subject to an event declaration or set aside determination. When making an event declaration or a set aside determination, the trust will need to consider the human rights set out in the charter in accordance with its obligations under that act. Any limits on people's movements would only be imposed to the extent necessary to fulfil the purpose of declaring an event or setting aside the area of land. All event declarations and set aside determinations will be published.

These powers are appropriate management tools which would only be imposed by the trust to the extent necessary to fulfil the purposes for which they are intended. It is a permissible interference with a person's right to pass across that part of the reserve to which access is restricted. As a result, clauses 33 and 34 of the bill do not limit the rights under section 12 of the charter.

Section 13 — right to privacy

A person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. The touchstone for the right is a reasonable expectation of privacy.

Clause 13 of the bill requires a member of the trust to declare in a meeting of the trust any pecuniary interest or conflict of interest in relation to a matter being considered or about to be considered by the trust. Insofar as the provision requires disclosure of personal information about which a person might have a reasonable expectation of privacy, I consider that any interference with privacy is lawful and not arbitrary. It is clearly set out in the bill and prescribes the circumstances in which any disclosure would occur. It is essential for the maintenance of the integrity of the trust that conflicts of interest are declared; this can be balanced against any interference with a member's privacy.

I consider that the bill is compatible with section 13 of the charter.

Section 18 — taking part in public life

Section 18 of the charter provides that every person in Victoria has the right, and is to have the opportunity, without discrimination, to participate in the conduct of public affairs, directly or through freely chosen representatives. It further provides that every eligible person has the right, and is to have the opportunity, without discrimination, to have access, on general terms of equality, to public office.

Clause 44 of the bill revokes the restricted Crown grant and clause 45 dissolves the Caulfield Racecourse Reserve Trust thereby removing the trustees appointed under the grant from office. The trustees have been consulted on the proposed new governance arrangements and have agreed to go out of office to enable the new management body to be established. The provisions of the bill do not prohibit the trustees from applying for reappointment to the trust, should they so desire. The revocation of the Crown grant and removal of trustees is necessary to establish the new governance framework and transition the trust to an independent public entity.

Clause 7 of the bill provides for the appointment of members to the newly established trust. In determining appointments, the minister is to consider a person's capacity to perform the functions of the trust and any qualifications, skills or experience relevant to the management of the reserve. These requirements do not engage any attribute protected against discrimination, or conduct constituting discrimination, under the Equal Opportunity Act 2010 that is also discrimination under the charter.

Clauses 9 and 10 of the bill provide for the circumstances in which a member of the trust can resign, be removed or the office becomes vacant. These clauses may engage and limit the right in section 18. However, the provisions are justified to facilitate good corporate governance and to hold members to account for their responsibilities as members of the trust.

Clauses 7, 9, 10, 44 and 45 of the bill are necessary to give effect to certain government commitments following the Attorney-General's investigation and report in 2014 and the subsequent recommendations of the bipartisan working group in 2016. Therefore, I consider that to the extent that these clauses are seen to impose a restriction on a person's right to take part in public life, they are reasonable limitations that can be demonstrably justified in a democratic society.

Section 19 — cultural rights

Section 19 of the charter provides for the rights of 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.

This right is relevant to clauses 33 and 34 of the bill. Clause 33 of the bill provides that the trust can make an event

declaration to enable a person or body to exclusively control a wider area of the reserve for an event. Clause 34 provides that the trust can make a determination to set aside an area on the reserve to restrict or prohibit access. For the same reasons as those mentioned above in relation to section 12 (regarding freedom of movement), the bill does not limit the rights under section 19 of the charter because the bill does not purport to make the event declaration or set aside any area of land to prohibit or restrict access to such areas.

However, as a result of the bill, an event declaration or a set aside determination may be made in the future that provides a lessee with exclusive control over land in the reserve or restricts or prohibits public access to set aside areas in the reserve. When making an event declaration or set aside determination, the trust will need to consider the human rights set out in the charter in accordance with their obligations under that act.

Making an event declaration or a set aside determination are valuable tools to provide for better management of race days and to protect public safety. They are most likely to have temporary application only and will be published. A decision to make an event declaration or set aside a prohibited access area in accordance with the bill may limit the ability of Aboriginal persons to continue to enjoy their distinct relationship with the land or to continue to take part in cultural practices within those areas to which the declaration or determination apply.

Any matters relating to cultural rights would be considered at the time that the declaration or determination are made. Consideration would be given to ways to mitigate potential impacts on cultural rights, for example, by assessing whether an exemption for the exercise of Aboriginal cultural practices could be applied or limiting the duration of the prohibition on access without compromising the purpose of the restriction or prohibition. This would be up to the trust to assess in determining the terms and conditions of the event declaration or set aside determination. Any limits on cultural rights would only be imposed if they were reasonable and justified in order to protect the area of land to be set aside or to prevent risks to public safety.

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.

Clauses 36 to 38 of the bill provide the trust with leasing, licensing and permit granting powers in respect of Caulfield Racecourse Reserve. It is expected that the trust may enter into leases and licences with third parties and grant permits in order to manage the reserve for the purposes of racing, recreation and a public park.

In addition, clause 33 provides that the trust may declare an event for the purposes of granting a person or body permission to exclusively use an area of the reserve on an event day or any days before or after an event day necessary to hold an event. The purpose of declaring an event is to enable event holders to effectively manage and control the part of the reserve upon which the event is being held consistently with the purposes for which the land is reserved. Clause 33(2) provides that, upon request from the Melbourne Racing Club, the trust must make an event declaration to declare any race days allocated by Racing Victoria each year to the Melbourne Racing Club to be conducted at the Caulfield Racecourse Reserve.

In these circumstances, there may be temporary restrictions of another person's ability under their lease or licence to hold other events in the relevant areas on those days and to access or use that land consistent with the terms of their lease or licence.

In addition, clause 33(10) of the bill provides for an urgent event declaration to be made in exceptional circumstances, meaning that an event declaration could be made with less than seven days notice of the event. This is to provide for unforeseen circumstances where an event at another racecourse cannot be held and the event is to be moved to the reserve at short notice. As a result, a leaseholder or licence-holder may receive less notice of any temporary restrictions on their ability to use the land. However, to reduce any potential impacts, it is intended that any urgent event declaration will be made in consultation with any leaseholder or licence-holder.

In my opinion, clause 33 is a reasonable and necessary provision to enable the trust to facilitate the racing purpose for which the land is reserved and appropriate event management, including safe and efficient traffic management, parking and pedestrian movement. Where an annual event declaration is made for race days, this will provide a mechanism for early notification to any leaseholder or licence-holder in relation to upcoming racing events.

To the extent that a future lessee or licensee could be regarded as having a property right that is deprived by an event declaration, that deprivation will be in accordance with law. It will be authorised under the bill and subject to the restrictions and procedures set out therein, including that the declaration must be in the public interest.

The minister administering the bill and the minister administering the Racing Act 1958 will be provided with the power to request the trust to vary an annual event declaration for race days in exceptional circumstances. This may include the cancellation or transfer of a racing event at the reserve. In this situation, any leaseholder or licence-holder will be notified and any temporary restrictions on their property rights will be removed in respect of the particular event.

In the interests of clarity, the bill further provides for the preservation of existing leases to the Melbourne Racing Club, and equitable interests of third parties arising therefrom. This will ensure that these rights and interests are not adversely affected by the change in land tenure and management arising from the revocation of the Crown grant and dissolution of the old trustee arrangements.

Clause 48 provides the minister with the power to grant a lease to the Melbourne Racing Club before the trust is established. If the minister exercises this power and a lease is granted, the lease will be saved upon the establishment of the trust and the trust will become the lessor.

Hon. Lily D'Ambrosio, MP
Minister for Energy, Environment and Climate Change

Second reading

Ms D'AMBROSIO (Minister for Energy, Environment and Climate Change) — I move:

That this bill be now read a second time.

Speech as follows incorporated into *Hansard* under standing orders:

The Caulfield Racecourse Reserve is one of Australia's most famous racecourses. It has been the venue for the Caulfield Cup and other premier racing events for more than 130 years and racing will continue as the primary use to make a critical contribution to Victoria's $2.1 billion thoroughbred racing industry and cultural life of the state.

The reserve is also a significant public asset, and is used for walking, picnics and other public recreation activities.

The land was permanently reserved during the 19th century for three purposes — a racecourse, public recreation ground and public park. The governance arrangements for the reserve are provided for in the restricted Crown grant issued in 1949, which replaced two earlier grants.

Under the Crown grant, 15 trustees are appointed by the Governor in Council to manage the reserve — six each representing government and the Melbourne Racing Club and three representing Glen Eira City Council. The appointment is for life or until resignation and cannot be revoked.

Key elements of the Crown grant include that the land must be used for the three designated reservation purposes, that the Melbourne Racing Club is permitted to hold race meetings on the reserve and on race days the reserve is placed under the control of the Melbourne Racing Club. Except for very minor changes made to the grant, these arrangements have remained the same since their inception.

Over recent years, community groups and other stakeholders have raised concerns about a range of issues regarding the administration of the reserve by the trustees. These concerns were investigated in 2014 by the Victorian Auditor-General.

The Auditor-General concluded that the reserve trustees have not been effective in their management of the reserve and that their decisions have disproportionately favoured racing interests without sufficient attention being given to the community-related purposes of the reserve.

The Auditor-General found that the trustees have not articulated a purpose, priorities and vision for the reserve. This, along with a lack of adequate management systems and processes, and the absence of a formal governance framework have compromised the trustees' ability to effectively manage the reserve. As an example, the trustees and the principal tenant, the Melbourne Racing Club, have been unable over several years to negotiate a lease covering the main grandstand complex and both parties have acknowledged that there is no prospect of agreement being reached.

In addition to the Auditor-General's report, representations from the community and the City of Glen Eira concerning public access to the reserve continue to be raised with government and local members of Parliament. This feedback has mirrored the findings in the Auditor-General's report; the main concern being that there is a disproportionate emphasis on racing which has led to inadequate space being made available for non-racing recreation use.

The Auditor-General's report contained recommendations to modernise governance practices and improve public access arrangements at the reserve to be implemented by the trustees and the Department of Environment, Land, Water and Planning. These recommendations included the department developing a performance monitoring and reporting framework to be used by the trustees to address the recommendations in the Auditor-General's report and enable management of the reserve in accordance with contemporary public sector governance standards.

In March 2016 the former Minister for Environment, Climate Change and Water, the Hon Lisa Neville, MP, established an independent bipartisan working group to report on the recommendations in the Auditor-General's report and to identify options for accelerating their implementation where necessary. The working group was also asked to provide recommendations on possible alternative management arrangements for the reserve based on those at similar mixed-purpose facilities on Crown land elsewhere in Victoria.

The bipartisan working group consisted of the chair, Mr Ken Ryan, Mr David Southwick, MP, member for Caulfield, and Mr Steve Dimopoulos, MP, member for Oakleigh. I would like to thank the members of the working group for their contribution to establishing the new management arrangements.

The working group met with the trustees and conducted a series of meetings with interested parties, to determine the extent the trustees and the department had implemented the Auditor-General's recommendations. It also examined governance structures at the State Sports Centre Trust, the Melbourne and Olympic Parks Trust, and the Melbourne Cricket Ground Trust and submitted its report to me in August 2016.

The working group found, that while there had been some progress, the trustees had not taken sufficient action to address the Auditor-General's recommendations. After considering a range of alternative management options, including the appointment of a skills-based committee of management appointed under the Crown Land (Reserves) Act 1978, the working group recommended that the most appropriate land manager for the reserve is an independent trust created under legislation with specific accountabilities and functions. It formed the view that this model is best placed to address the historic management challenges at the reserve and successfully implement the Auditor-General's recommendations.

This bill delivers on those recommendations.

The bill provides for the future use and management of the Caulfield Racecourse Reserve through the establishment of a new independent body, the Caulfield Racecourse Reserve Trust, which will replace the trustee model under the Crown grant. The legislative framework is like those established for other major public land management bodies in Victoria, including the Melbourne and Olympic Parks Trust, the State Sports Centre Trust and the newly established Kardinia Park Stadium Trust. The purpose of the bill is to establish a modern and transparent governance framework which provides the new reserve trust with the necessary powers to manage the Caulfield Racecourse Reserve for the purposes it has been reserved — a racecourse with public recreation.

I now turn to the detail of the bill to highlight some key points.

Part 2 of the bill establishes the Caulfield Racecourse Reserve Trust. The functions of the trust are broadly to be responsible for the planning, development, management, operation, care and use of Caulfield Racecourse Reserve for the purposes of racing, recreation and a public park. The trust may also accept appointment and act as committee of management of Crown lands.

The trust will consist of between five and seven members appointed by the minister on a part-time basis. The minister must appoint one of the members as chairperson. The trust may appoint a chief executive officer to assist the trust to perform its functions and duties and exercise its powers under the act.

The bill provides that the minister may give directions to the trust in relation to the performance of its functions and duties and the exercise of its powers under the bill. These powers extend to directions in relation to the expenditure of funds.

Part 3 of the bill sets out the reporting obligations of the trust. The trust, if requested by the minister, must prepare corporate or business plans in a form and by a date specified by the minister. In the event the trust becomes aware of matters that may prevent or significantly affect the achievement of the objectives of a corporate or business planning document, the trust must notify the minister.

To support the recommendations of the Auditor-General's report, the bill provides that the minister may issue a statement of obligations to the trust specifying obligations of the trust in performing its functions and exercising duties. Also in support of the recommendations of the Auditor-General's report, the bill provides that the trust, in consultation with the minister and the minister responsible for the Racing Act 1958, prepare a strategic management plan for the reserve setting out long-term planning for the promotion, development, management and use of the reserve.

The trust will also be required to prepare an annual report under part 7 of the Financial Management Act 1994.

Part 4 of the bill provides for the management of the Caulfield Racecourse Reserve.

A key concern of the local community has been a lack of clarity over how the reserve is to be used for each of its three reservation purposes — racecourse, public recreation and public park.

The bill provides that the minister may make an order containing a plan, which defines those areas of the reserve that may be used for racing purposes, and those that may be used for recreation and as a public park. The trust will advise the minister on the making of the order and the plan contained in the order must be signed by the surveyor-general. The order will come into effect on the day it is published in the *Government Gazette*.

The land use order is for the purposes of improving transparency, but will also provide clarity regarding which areas of the reserve are to be used for each of the three reservation purposes. It is important to note that an order will not revoke the reservations or reserve the land for other purposes.

The bill provides for event management declarations for Caulfield Racecourse Reserve. This element of the bill is to ensure that all aspects of major events held at the reserve can be delivered in an integrated and efficient manner. In practice, the main purpose will be to enable the Melbourne Racing Club to control parts of the reserve additional to the land it occupies under lease on major race days.

Under this provision the trust, by notice published in the *Government Gazette*, may declare an event to be held at the reserve — a Caulfield Racecourse Reserve event. Except for annual event declarations made for racing, the trust can make an event declaration providing it is satisfied that the purpose of the proposed event is not detrimental to purposes for which the land is reserved and is in the public interest.

In terms of racing, these events may include ordinary designated race days as outlined by the Racing Victoria calendar of race days and, where extraordinary circumstances dictate, additional racing events relocated from other racing venues in Victoria.

The new governance arrangements will not affect the setting of the Victorian thoroughbred racing calendar or the conduct of race meetings at the reserve. Racing Victoria will continue to be responsible for the setting of race dates following consultation with racing clubs. There will be a requirement for the trust to publish in the *Government Gazette* an annual event declaration that specifies the racing events to be held at the reserve for the upcoming year. The minister and the Minister for Racing may request the trust to vary the annual event declaration in exceptional circumstances, for example, to cancel or relocate a racing event to another venue. The trust must make the requested variation and publish it in the *Government Gazette*.

A range of information must be specified in the event declaration, including the title of the event, the times and dates when the event is to take place, the part of the reserve to which the declaration applies, the name of person or body who takes control of the reserve and any regulations made under the act that are suspended during the event.

The trust will be able to grant a lease of the reserve up to a maximum term of 65 years providing the minister is satisfied that the proposed purpose is not detrimental to the purposes of the reserve. Where the trust is seeking approval to grant a lease for a term greater than 21 years the minister must be satisfied that the proposed use, development, improvements or works to be carried out under the lease are of a substantial nature and value which justifies the longer term.

The trust will also be able to issue licences over any part of the reserve for a term of up to 10 years providing the licence purpose is not detrimental to the reserve purposes. The minister's approval will be required where the term of the licence is greater than three years. For short-term uses, the trust will be able to issue permits up to six months.

Part 5 of the bill sets out the financial provisions for the trust, including a requirement to establish and maintain a Caulfield Racecourse Reserve Trust Fund.

Part 6 of the bill enables the Governor in Council to make regulations for planning, development, management, care and use of the reserve.

Part 7 of the bill will revoke the restricted Crown grant held by the trustees and provide that trustees under the grant go out of office. Upon revocation of the restricted Crown grant it will be necessary to have a short-term interim land management arrangement in place while the process to

appoint the inaugural members of the new trust is finalised. During this period, it is intended that the land revert to the control of the minister responsible for the Crown Land (Reserves) Act 1978 to be managed by the minister under that act and by the minister's delegates as required.

The minister will have a power to grant a lease up to 65 years to the Melbourne Racing Club before the trust is established. If a lease is granted, the bill provides that the lease will be saved upon the establishment of the trust and the trust will become the lessor. This will help support the smooth transition from current arrangements for racing on the reserve to the new governance framework.

Part 7 of the bill also includes transitional provisions which preserve two existing leases issued by the trust to the Melbourne Racing Club together with consequential amendments made to other acts.

Conclusion

I would like to thank the outgoing trustees for their work managing the reserve over the years, particularly during the difficult period of transition to the new management arrangements. The new management structure will greatly enhance the reserve's management ensuring it can continue to host some of Australia's best racing and provide accessible open space for the local community to enjoy.

I commend the bill to the house.

Debate adjourned on motion of Mr GUY (Leader of the Opposition).

Debate adjourned until Thursday, 7 September.

LONG SERVICE LEAVE BILL 2017

Statement of compatibility

Ms HUTCHINS (Minister for Industrial Relations) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (the charter), I make this statement of compatibility with respect to the Long Service Leave Bill 2017.

In my opinion, the Long Service Leave Bill 2017, as introduced to the Legislative Assembly, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of the bill

The Long Service Leave Bill 2017 (bill) replaces the Long Service Leave Act 1992 and provides for the long service leave entitlements of certain employees, including public and private sector employees and police officers.

The bill sets out a basic entitlement to long service leave after seven years of continuous employment with one employer. It defines how periods of employment and pay rates are to be calculated and provides for a range of circumstances, such as taking leave in advance and after employment has ended.

The bill introduces provisions regarding authorised officers, who may require a person to produce information or documents in order for the authorised officer to perform functions under the new act, including determining compliance with the act. The bill also establishes a number of offences concerning payment in lieu of leave, adverse action and long service leave records.

Human rights issues

Right to privacy

Section 13(a) of the charter provides that a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. The bill contains provisions that may give rise to interferences with the right to privacy, as set out below, but in my view any such interferences will be neither unlawful nor arbitrary and so are compatible with the right.

Part 3 of the bill provides for the enforcement of long service leave entitlements. Under clause 29, the secretary may appoint a person as an authorised officer for the purpose of performing a function under the act. Authorised officers are given information-gathering powers to enable them to fulfil this function. Clause 31 provides that an authorised officer may, by written notice, require a person to produce a document in the person's custody or control or give any information that the authorised officer requires, within a reasonable period specified in the notice. The authorised officer may inspect, make copies of or take extracts from any document produced. Failing to comply is an offence, unless the person has a reasonable excuse. The person required to provide documents or information may be the employee, employer or a third party. The information may include personal information that attracts the right to privacy as protected under the charter.

These powers of information gathering are subject to important constraints. The bill contains strict confidentiality obligations, making it an offence for an authorised officer to directly or indirectly give to another person any information acquired, except to the extent necessary to perform a function under the new act. The authorised officer is subject to the secretary's directions in the performance of his or her functions and may only request information for the purpose of determining whether there has been compliance with the act. As a further safeguard, the authorised officer must have an identity card and must produce it for inspection before exercising a power under the act and at any time during the exercise of a power if asked to do so. Another protection is the privilege against self-incrimination — preserved in clause 39 with a limited abrogation — which enables a person to refuse or fail to produce documents (other than documents required to be kept under the act) or provide information if doing so would tend to incriminate the person.

The ability to have access to relevant information and documentation is a crucial part of the authorised officer's function to ensure compliance. In my view, while the exercise of these powers may interfere with the privacy of an individual in some cases, any such interference will be lawful and not arbitrary.

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. This right requires that powers which authorise the deprivation of property are conferred by legislation or common law, are confined and structured rather than unclear, are accessible to the public, and are formulated precisely.

Where a document is produced in response to a request under clause 31, discussed above, an authorised officer may take extracts from the document. Clause 32 also gives authorised officers the power to retain such documents for a limited time in certain circumstances. These powers engage the right to property in section 20, but do not limit it. In addition to the safeguards mentioned above in the context of the right to privacy, further limitations on the power apply. Documents may only be retained for the period necessary to perform a function under the act, and must be made accessible to the person otherwise entitled to possession to inspect, make copies of or take extracts from it.

In my view, the specific and confined circumstances in which an authorised officer can retain documents means that any interference with property occasioned by the bill is in accordance with law and therefore compatible with the charter.

Right to presumption of innocence

Section 25(1) of the charter provides that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law. The right in section 25(1) is relevant where a statutory provision shifts the burden of proof onto an accused in a criminal proceeding, so that the accused is required to prove matters to establish, or raise evidence to suggest, that he or she is not guilty of an offence. For the reasons set out below, the bill is compatible with the right to the presumption of innocence.

Prosecutions of offences under the act

Clause 10 of the bill provides that if an employee dies before taking all the long service leave to which the employee is entitled, the employer must pay the amount still owed to the employee's personal representative. Failing to do so is an offence. If, in the course of a prosecution for this offence, the employer alleges that the length of the period of the employee's continuous employment with the employer is wrong in the charge sheet, the employer bears the onus of proving the allegation. While this operates to impose an evidential burden on the defendant employer by requiring the employer to produce evidence to establish the accuracy of the employee's length of service, in my view it does not limit the right to be presumed innocent. The employer is under an obligation to keep detailed records of its employees' service and their long service leave entitlements, and is therefore in a unique position to provide this evidence. An employee's personal representative does not have access to this information. Further, once the correct length of service is established, it will still be a matter for the prosecution to demonstrate commission of the offence. To the extent that an evidential onus may nevertheless be considered to amount to a limit, any such limitation is reasonable and justified.

Under clause 36, it is an offence for an employer to take adverse action against an employee because the employee is entitled to long service leave, seeks to exercise his or her entitlement to long service leave, makes an enquiry as to his or her entitlement to long service leave or applies to the Magistrates Court for an order in relation to a direction to take long service leave. This reflects section 340 of the Fair Work Act 2009 (cth) (Fair Work Act), which prohibits a person from taking adverse action against another person because the other person has a workplace right, exercises a workplace right or proposes to exercise a workplace right.

In a proceeding for an alleged contravention of clause 36, the employer bears the onus of proving that the adverse action taken against an employee was not actuated by any of the four reasons above. This reflects the rebuttable presumption in section 361 of the Fair Work Act, which states that where an application is made alleging that a person took adverse action for a particular reason or with a particular intent, it is presumed that the action was taken for that reason or with that intent unless the person proves otherwise. This reversal of the onus of proof is a longstanding feature of the freedom of association and unlawful termination protections in the fair work regime and recognises that, in the absence of such a clause, it would often be extremely difficult, if not impossible, for a complainant to establish that a person acted for an unlawful reason. It is appropriate for the employer to bear the burden of proof in these circumstances because it relates to evidence which will be peculiarly within their knowledge.

'Reasonable excuse' exceptions

Two provisions in the bill create offences that contain a 'reasonable excuse' exception, which may be seen to place an evidential burden on the accused.

Under clause 37 of the bill, it is an offence for a person to make, without reasonable excuse, a false or misleading statement in, or material omission from, a long service leave record. A long service leave record includes any register, certificate, pay sheet or other document relating to an employee's long service leave entitlement. Clause 38 of the bill makes it an offence for a person to fail to comply with a notice to produce or provide information without reasonable excuse.

By creating a 'reasonable excuse' exception, the offences in clauses 37 and 38 of the bill may be viewed as placing an evidential burden on the accused, in that they require the accused to raise evidence as to a reasonable excuse. However, in doing so, these offences do not transfer the legal burden of proof. Once the accused has pointed to evidence of a reasonable excuse, which will ordinarily be peculiarly within their knowledge, the burden shifts back to the prosecution who must prove the essential elements of the offence. I do not consider that an evidential onus such as that contained in these provisions limits the right to be presumed innocent, and courts in other jurisdictions have taken this approach.

For these reasons, in my opinion, clauses 37 and 38 do not limit the right to be presumed innocent.

Deemed criminal liability for officers of bodies corporate

Clause 43 provides that if a body corporate commits an offence against certain provisions, including clauses 10, 36, 37 and 38 referred to above, an officer of the body corporate also commits that offence if the officer authorised or permitted the commission of the offence, or was knowingly concerned in any way (by act or omission) in the commission of the offence. This is relevant to the presumption of innocence as the provision may operate to deem as 'fact' that an individual has committed an offence for the actions of the body corporate. Under clause 43, officers may rely on a defence that would be available to the body corporate if it were charged with the offence and bears the same burden of proof as the body corporate in doing so.

As discussed above, some of these offences contain reverse onus provisions. In my view, it is appropriate to extend these offences and reverse onus provisions to officers of bodies corporate. A person who elects to undertake a position as officer of a body corporate accepts that they will be subject to certain requirements and duties in relation to employees, including a duty to ensure that the body corporate does not commit offences. In my view, clause 43 does not limit the right to the presumption of innocence as the prosecution is still required to prove the main elements of the offence — that is, that the officer authorised or was knowingly concerned in the commission of the offence. Courts in other jurisdictions have held that protections on the presumption of innocence may be subject to limits particularly in the context of compliance offences. Further, any limits imposed by the relevant reverse onus provisions are justifiable for the reasons set out in relation to those provisions above. Accordingly, I am satisfied that this provision is compatible with the charter's right to the presumption of innocence.

Right to protection against self-incrimination

Section 25(2)(k) of the charter provides that a person charged with a criminal offence is entitled not to be compelled to testify against himself or herself or to confess guilt. This right applies to protect a charged person against the admission in subsequent criminal proceedings of incriminatory material obtained under compulsion.

This right is relevant to clause 39 of the bill, which provides that it is a reasonable excuse for a natural person to refuse or fail to give information or documents if doing so would tend to incriminate the person. However, clause 39(2) specifies that this protection does not extend to the production of records or documents that the person is required to keep under clause 37 of the bill. The combined effect of clauses 37 and 39 therefore results in a limit on the right to protection against self-incrimination.

The privilege against self-incrimination generally covers the compulsion of documents or things which might incriminate a person. However, the application of the privilege to pre-existing documents is considerably weaker than that accorded to documents that are required to be brought into existence to comply with a request for information (and considerably weaker than that accorded to oral testimony).

The primary purpose of the abrogation of the privilege in relation to certain documents is to facilitate compliance with the long service leave scheme by assisting authorised officers to access information and evidence that is difficult or impossible to ascertain by alternative evidentiary means. Any limitation on the right in section 25(2)(k) that is occasioned by the limited abrogation of the privilege in respect of produced documents is directly related to this purpose. Importantly, the requirement to produce a document to an authorised officer does not extend to having to explain or account for the information contained in that document. If such an explanation would tend to incriminate, the privilege would still be available.

Furthermore, there are no less restrictive means available to achieve the purpose of enabling authorised officers to have access to relevant documents. To excuse the production of such documents where a contravention is suspected would allow persons to circumvent the record-keeping obligations in the bill and significantly impede authorised officers' ability to investigate and enforce compliance with the scheme. Any limitation on the right against self-incrimination is therefore appropriately tailored and the least restrictive means to achieve the purpose.

For the above reasons, I consider that to the extent that clause 39 may impose a limitation on the right against self-incrimination, that limitation is reasonable and justified under s 7(2) of the charter.

The Hon. Natalie Hutchins, MP
Minister for Industrial Relations

Second reading

Ms HUTCHINS (Minister for Industrial Relations) — I move:

That this bill be now read a second time.

Speech as follows, except for statement under section 85(5) of the Constitution Act 1975, incorporated into *Hansard* under standing orders:

Background

This bill seeks the repeal of the current Long Service Leave Act, and its replacement with a new act that is fairer, more flexible, and better suited to the modern workplace. As with the current act, it will serve as the default long service leave legislation applying to Victorian workers, in both the private and public sectors, unless specifically excluded. Our new long service leave arrangements will better meet the needs of employers and workers. Our new long service leave act will be fairer for people whose working arrangements change over the lifetime of their employment, particularly working women who take a career break to care for their children.

Although Victoria referred most of its workplace relations powers to the commonwealth in 1996, the Victorian government retained responsibility for regulating and administering long service leave.

Long service leave has been a workplace benefit for many years. The concept is well understood and accepted by workers and employers alike. Only about one in four workers, however, will ever qualify for long service leave.

There is general recognition that a worker deserves a break after providing long and faithful service to their employer. While this may seem like a straightforward concept, the realities of the modern workplace mean that the application of our long service leave laws is often not as simple as it seems.

Review of the current act

Labor's 2014 election platform committed us to reviewing the Long Service Leave Act. It had become increasingly apparent that the current Long Service Leave Act is not well placed to cope with the realities of the modern workplace.

A review of the act conducted by my department in 2016 confirmed that the act needed updating. Consultation with unions, and employer and industry groups such as the Victorian Chamber of Commerce and Industry, Australian Industry Group, Victorian Farmers Federation, the Victorian Transport Association, the National Retailers Association and the Victorian Automobile Chamber of Commerce, amongst others, highlighted shortcomings with the current act.

To aid the review, my department produced a discussion paper, which posed a number of questions for parties to consider. These questions dealt with the issues of flexibility, consistency, equity, clarity, and compliance.

Based on submissions from stakeholders and feedback from members of the public, a number of important reforms have been encapsulated in the bill now before the house. The bill has also been informed by my department's long service leave employment information and compliance unit. The unit works with employers and employees to understand their rights and responsibilities.

Detail of the proposals

The bill proposes a number of improvements to long service leave arrangements. However, the rate that leave accrues will not change. Currently, leave accrues at one-sixtieth of the period of continuous employment. This government believes that the improvements are fair and will have benefits for both employers and employees.

We are making the rules governing how leave is to be taken more flexible and easier to understand. Employees, with the approval of their employer, will be able to take long service leave at a minimum of one day's leave at a time.

We are simplifying the rules governing when leave can be taken. Employees will be able to apply to take long service leave after seven years service, on a pro rata basis. This brings the qualification for taking of leave into line with the payment of leave when employment ends. This will not increase employee entitlements or employers' costs as the long service leave entitlement has already crystallised at seven years.

The bill clarifies the definition of 'asset' in a transfer of business situation to include intangible assets. We have modelled the transfer of business arrangements on section 311 of the commonwealth Fair Work Act 2009 for consistency and ease of understanding.

We will remove the ability of employers to seek an exemption from the application of the act. My department advises me that the last time an exemption was granted was in the 1970s.

Detail of the proposals

The bill increases penalties to be comparable with current Victorian standards. The two existing civil penalties will also be changed into criminal offences. I am advised by my department that a limited number of prosecutions are commenced each year. Most complaints for non-payment of entitlements, or a refusal to allow an employee to take leave are successfully settled with the department's help before the need for court action.

Another change is to allow authorised departmental officers to require the production of records, when investigating alleged breaches. However, authorised officers will not have a right to enter premises.

The bill includes a new method of calculating leave where an employee's hours of work are not fixed, so that the average of the hours worked will be calculated as the greater of the average over the last 12 months, five years, or the entire period that the employee has been continuously employed. This method of calculating entitlements is fairer for some employees, notably those that have taken leave or reduced their hours of work to look after their dependents.

Similarly, the bill also includes a new method of calculating leave where an employee's hours of work have changed, so that hours worked will be calculated as the greater of the average over the last 12 months, five years, or the entire period of employment. The averaging will apply to where a change in hours has occurred in the 24 months prior to the long service leave being accessed. Again, this is fairer for the various scenarios that arise.

The bill provides an employee whose hours of work are about to change the right to request a statement from their employer outlining the old and new working arrangements. This statement would serve as evidence in any court proceeding. Employees often find it is difficult to pursue their entitlement because of a lack of adequate records, particularly where a business has been sold.

Consistent with our 2014 election commitment, the review of the current act has included an assessment of how the taking of parental leave (and other forms of leave) affects entitlements. The bill, like the current act, treats interruptions to service in different ways. Some forms of leave count as service, whilst other forms of leave, whilst not counting as service, will not break the continuity of service.

Currently, a period of unpaid parental leave up to 12 months does not break continuity of service but does not count as service. Any period of unpaid parental leave greater than 12 months will break continuity of service, even though under the Fair Work Act, employees are entitled to take up to two years unpaid parental leave. Therefore parental leave is treated less favourably than other forms of leave under the current act.

Under our proposed new act parental leave will be treated the same as other forms of leave. The bill provides that:

> any period of paid leave will count as service (and will not break continuity of service);
>
> any period of unpaid leave up to 12 months will count as service;
>
> any period of unpaid leave greater than 12 months will not count as service, unless agreed otherwise, but will not break service; and
>
> the employer and employee will be able to agree, at the time that leave commences, that a period of unpaid leave beyond 12 months will count as service.

These changes will:

> remove the anomalous treatment of parental leave compared to other forms of leave under the LSL act;
>
> be fairer for primary caregivers (who are usually women); and
>
> be simpler overall to apply as it makes the treatment of leave generally consistent under the act.

Casual and seasonal employees will be able to take up to 24 months parental leave without breaking their continuity of service. The Fair Work Act allows casual and seasonal employees to take up to 24 months unpaid parental leave.

Why a new act?

On the advice of parliamentary counsel, and in the interests of having legislation that is easy to read and comprehend, it is best to start again and enact fresh legislation.

Summary

The benefits of the proposed reforms include:

more flexible approaches to the taking of long service leave that will benefit both employees and employers;

making it easier for employers and employees to understand their rights and obligations;

ensuring casual and seasonal employees with the requisite continuous service have access to the same benefits as other employees; and

support for employees to enjoy their rights to take parental leave without adversely affecting their long service leave eligibility or accrual.

I commend the bill to the house.

Debate adjourned on motion of Mr GUY (Leader of the Opposition).

Debate adjourned until Thursday, 7 September.

RENEWABLE ENERGY (JOBS AND INVESTMENT) BILL 2017

Statement of compatibility

Ms D'AMBROSIO (Minister for Energy, Environment and Climate Change) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006, (the charter), I make this statement of compatibility with respect to the Renewable Energy (Jobs and Investment) Bill 2017.

In my opinion, the Renewable Energy (Jobs and Investment) Bill 2017, as introduced to the Legislative Assembly, is compatible with human rights as set out in the charter. I base my opinion on the reasons outlined in this statement.

Overview

The bill establishes renewable energy targets for Victoria. The bill also provides for annual reporting to Parliament on progress towards meeting the targets.

Human rights issues

There are no human rights protected under the charter that are relevant to the bill. I therefore consider that the bill is compatible with the charter.

The Hon. Lily D'Ambrosio, MP
Minister for Energy, Environment and Climate Change

Second reading

Ms D'AMBROSIO (Minister for Energy, Environment and Climate Change) — I move:

That this bill be now read a second time.

Speech as follows incorporated into *Hansard* under standing orders:

The Andrews Labor government recognises that the energy sector is rapidly transforming. The world is transitioning towards renewable energy and it is vital that Victoria embraces the transformation, seizing the significant economic, environmental and social benefits for current and future generations of Victorians.

This is an important step for the state. It is crucial that Victoria makes best value from our abundant wind, solar, biomass, marine and other renewable sources to drive investment and create thousands of new jobs in renewable energy right across Victoria.

The Andrews government sees the opportunities for our state to leverage our position at the centre of the National Electricity Market and bring on a pipeline of new renewable energy projects together with a sustainable supply chain of goods and services to support a clean energy economy.

This bill sets ambitious and achievable renewable energy targets that will underpin the decisive action that the Victorian government is taking to encourage investment in our energy sector and to ensure Victorians continue to benefit from a renewable, affordable and reliable energy system into the future.

Affordability, reliability and emissions-intensity have become core concerns for households and businesses. Thankfully, solutions to transition our energy system are available now, helping to achieve a modern, renewable energy system to support our economy and way of life.

Renewable energy is already the cheapest and cleanest source of energy supply. Renewable energy, including energy from wind and solar is now becoming the lowest cost of energy available. Importantly, as Victoria generates more energy from renewable sources it will drive the wholesale price of electricity lower and result in a net benefit on electricity bills for Victorian households and businesses.

Our approach to transitioning the energy system involves setting long-term goals and electricity generation profiles which enable a pipeline of projects and investment in new technologies and electricity infrastructure to be deployed. The government is investing in energy storage, and supporting new and emerging technologies to ensure a reliable and resilient electricity supply. Energy security will also be a key feature of actions to meet the targets in this bill, and weighting will be provided to projects and new technologies that add to overall security.

This bill is part of a package of policy reforms designed to deliver investment, employment and ensure a sustainable, growing economy.

The Andrews Labor government is re-establishing Victoria as a leader in renewable energy development. We have significant wind and solar resources at our disposal and are

seeking to leverage these resources to position our state at the forefront of energy transformation — in Australia and internationally.

Our transition to a modern and renewable energy future is already well underway. We are bringing forward investment in renewable projects through our renewable certificates purchasing initiative announced in August 2016. Our two new wind farms have a total generation capacity of around 100 MW, which is estimated to be able to supply enough renewable energy to power more than 80 000 Victorian homes. The wind farms are expected to be operational by 2018, and will be located at Kiata near Horsham and Mount Gellibrand near Colac. We are bringing forward 75 MW of large-scale solar through the second round of our renewable energy purchasing, of which 35 MW will be used to power all of Melbourne's 410 trams. We are also making energy storage mainstream in Victoria through deploying at least 40 MW of capacity by summer 2018.

The Renewable Energy (Jobs and Investment) Bill 2017, before you today, will legislate the previously announced renewable energy targets for Victoria: 25 per cent of electricity generated in Victoria will be sourced from renewable energy by 2020 and 40 per cent by 2025.

Our ambitious and achievable renewable energy generation targets — a significant increase from the current levels of 17 per cent — will require significant new generation by 2025, resulting in billions of dollars of new capital investment and thousands of new jobs, mostly in regional in Victoria.

This is a major step forward. This bill is an essential component of the government's plan to build a world-class energy future that delivers real economic benefits for an array of regional locations across our state.

This bill's purpose is to establish renewable energy targets for Victoria and support schemes that promote the generation of electricity by means of large-scale facilities that utilise or convert renewable energy sources into electricity. The Victorian renewable energy target (VRET) scheme will focus on large scale generation projects to ensure best value for the Victorian community.

The VRET scheme will complement the commonwealth government renewable energy target scheme until 2020. The design and flexibility of our scheme will deliver the best projects at the lowest cost to Victorian consumers. The design will also complement future national schemes.

Renewable energy sources including wind and solar and other energy sources declared by the minister will contribute to the targets. It is envisaged that except for large-scale solar, the competitive processes under the VRET scheme will be technology neutral subject to those sources declared by the minister.

Whilst it is anticipated that the majority of increased generation by 2025 will come from large-scale wind, solar and other renewable energy — the Andrews government is also empowering households, businesses and communities to adopt renewable energy. We have supported delivery of a new feed-in-tariff framework for selling excess electricity back into the grid, including payment for the environment and social value provided by energy. This has resulted in a doubling of the payments received by solar households and businesses. Over 300 000 solar installations that are already on Victorian rooftops will also be contributing to Victoria achieving the targets enshrined in this bill.

The bill outlines a number of important features of the targets. First, the minister must report to Parliament annually on the progress made towards meeting the renewable energy targets as well as the performance of renewable energy schemes that are helping to achieve the targets.

Second, the minister must publish in the *Government Gazette*, the minimum amounts of renewable energy generation capacity needed to meet the 2020 and 2025 targets.

To provide a signal of the investment required to meet the 2020 target, the minister will make a capacity determination for the renewable energy target for 2020 by 31 December 2017.

Then by 31 December 2019, when more information is available on policies at the commonwealth government level as well as updated electricity supply and demand forecasting, the minister must publish the additional new capacity needed to achieve the target for 2025.

Renewable energy is a low-cost alternative to many other power sources, and delivery of this large volume of renewable power within the state over coming years will help to feed more affordable power into the grid, keeping downward pressure on electricity prices.

Finally, the new power sources will add to diversity of supply, beyond the predominant current energy mix of brown coal, gas and hydropower. This is vital in Victoria, which not only has significant energy needs itself, but is an important hub within the national electricity market.

This bill will grow jobs, Victoria's economy, and return Victoria to a position of national leadership on renewable energy.

I commend the bill to the house.

Debate adjourned on motion of Mr GUY (Leader of the Opposition).

Debate adjourned until Thursday, 7 September.

The SPEAKER — The house is now adjourned.

House adjourned 9.44 a.m. until Tuesday, 5 September.