PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SEVENTH PARLIAMENT

FIRST SESSION

Thursday, 10 November 2011

(Extract from book 16)

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By authority of the Victorian Government Printer

The Governor

The Honourable ALEX CHERNOV, AO, QC

The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

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Deputy Premier, Minister for Police and Emergency Services, Minister for Bushfire Response, and Minister for Regional and Rural Development	The Hon. P. J. Ryan, MP
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Minister for Public Transport and Minister for Roads	The Hon. T. W. Mulder, MP
Minister for Ports, Minister for Major Projects, Minister for Regional Cities and Minister for Racing	The Hon. D. V. Napthine, MP
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Minister for Agriculture and Food Security, and Minister for Water	The Hon. P. L. Walsh, MP
Minister for Mental Health, Minister for Women's Affairs and Minister for Community Services	The Hon. M. L. N. Wooldridge, MP
Cabinet Secretary	Mr D. J. Hodgett, MP

Legislative Council committees

Privileges Committee — Ms Darveniza, Mr D. M. Davis, Mr P. R. Davis, Mr Hall, Ms Lovell, Ms Pennicuik and Mr Scheffer.

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

Legislative Council standing committees

Economy and Infrastructure Legislation Committee — Mr Barber, Ms Broad, Mrs Coote, #Ms Crozier, Mr Drum, Mr Finn, #Mr Ondarchie, Ms Pulford, Mr Ramsay and Mr Somyurek.

Economy and Infrastructure References Committee — Mr Barber, Ms Broad, Mrs Coote, #Ms Crozier, Mr Drum, Mr Finn, #Mr Ondarchie, Ms Pulford, Mr Ramsay and Mr Somyurek.

Environment and Planning Legislation Committee — Mr Elsbury, #Mr Finn, #Ms Hartland, Mrs Kronberg, Mr Ondarchie, Ms Pennicuik, #Mrs Petrovich, Mrs Peulich, Mr Scheffer, *Mr Tarlamis, Mr Tee and Ms Tierney.

Environment and Planning References Committee — Mr Elsbury, #Mr Finn, #Ms Hartland, Mrs Kronberg, Mr Ondarchie, Ms Pennicuik, #Mrs Petrovich, Mrs Peulich, Mr Scheffer, Mr Tee and Ms Tierney.

Legal and Social Issues Legislation Committee — Ms Crozier, Mr Elasmar, #Mr Elsbury, Ms Hartland, Ms Mikakos, Mr O'Brien, Mr O'Donohue, Mrs Petrovich, #Mr Ramsay and Mr Viney.

Legal and Social Issues References Committee — Ms Crozier, Mr Elasmar, #Mr Elsbury, Ms Hartland, Ms Mikakos, Mr O'Brien, Mr O'Donohue, Mrs Petrovich, #Mr Ramsay and Mr Viney.

** Inquiry into Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2011*

 # Participating member

Joint committees

Dispute Resolution Committee — (*Council*): Mr D. Davis, Mr Hall, Mr Lenders, Ms Lovell and Ms Pennicuik. (*Assembly*): Ms Allan, Mr Clark, Ms Hennessy, Mr Holding, Mr McIntosh, Dr Napthine and Mr Walsh.

Drugs and Crime Prevention Committee — (*Council*): Mr Leane, Mr Ramsay and Mr Scheffer. (*Assembly*): Mr Battin and Mr McCurdy.

Economic Development and Infrastructure Committee — (*Council*): Mrs Peulich. (*Assembly*): Mr Burgess, Mr Foley, Mr Noonan and Mr Shaw.

Education and Training Committee — (*Council*): Mr Elasmar and Ms Tierney. (*Assembly*): Mr Crisp, Ms Miller and Mr Southwick.

Electoral Matters Committee — (*Council*): Mr Finn, Mr Somyurek and Mr Tarlamis. (*Assembly*): Ms Ryall and Mrs Victoria.

Environment and Natural Resources Committee — (*Council*): Mr Koch. (*Assembly*): Mr Bull, Ms Duncan, Mr Pandazopoulos and Ms Wreford.

Family and Community Development Committee — (*Council*): Mrs Coote and Ms Crozier. (*Assembly*): Mrs Bauer, Ms Halfpenny, Mr McGuire and Mr Wakeling.

House Committee — (*Council*): The President (*ex officio*) Mr Drum, Mr Eideh, Mr Finn, Ms Hartland, and Mr P. Davis.. (*Assembly*): The Speaker (*ex officio*), Ms Beattie, Ms Campbell, Mrs Fyffe, Ms Graley, Mr Wakeling and Mr Weller.

Law Reform Committee — (*Council*): Mrs Petrovich. (*Assembly*): Mr Carbines, Ms Garrett, Mr Newton-Brown and Mr Northe.

Outer Suburban/Interface Services and Development Committee — (*Council*): Mrs Kronberg and Mr Ondarchie. (*Assembly*): Ms Graley, Ms Hutchins and Ms McLeish.

Public Accounts and Estimates Committee — (*Council*): Mr P. Davis, Mr O'Brien and Mr Pakula. (*Assembly*): Mr Angus, Ms Hennessey, Mr Morris and Mr Scott.

Road Safety Committee — (*Council*): Mr Elsbury. (*Assembly*): Mr Languiller, Mr Perera, Mr Tilley and Mr Thompson.

Rural and Regional Committee — (*Council*): Mr Drum. (*Assembly*): Mr Howard, Mr Katos, Mr Trezise and Mr Weller.

Scrutiny of Acts and Regulations Committee — (*Council*): Mr O'Brien and Mr O'Donohue. (*Assembly*): Ms Campbell, Mr Eren, Mr Gidley, Mr Nardella and Mr Watt.

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: Mr P. Lochert

MEMBERS OF THE LEGISLATIVE COUNCIL

FIFTY-SEVENTH PARLIAMENT — FIRST SESSION

President: The Hon. B. N. ATKINSON

Deputy President: Mr M. VINEY

Acting Presidents: Ms Crozier, Mr Eideh, Mr Elasmar, Mr Finn, Mr O'Brien, Ms Pennicuik, Mr Ramsay, Mr Tarlamis

Leader of the Government:
The Hon. D. M. DAVIS

Deputy Leader of the Government:
The Hon. W. A. LOVELL

Leader of the Opposition:
Mr J. LENDERS

Deputy Leader of the Opposition:
Mr G. JENNINGS

Leader of The Nationals:
The Hon. P. R. HALL

Deputy Leader of The Nationals:
Mr D. DRUM

Member	Region	Party	Member	Region	Party
Atkinson, Hon. Bruce Norman	Eastern Metropolitan	LP	Leane, Mr Shaun Leo	Eastern Metropolitan	ALP
Barber, Mr Gregory John	Northern Metropolitan	Greens	Lenders, Mr John	Southern Metropolitan	ALP
Broad, Ms Candy Celeste	Northern Victoria	ALP	Lovell, Hon. Wendy Ann	Northern Victoria	LP
Coote, Mrs Andrea	Southern Metropolitan	LP	Mikakos, Ms Jenny	Northern Metropolitan	ALP
Crozier, Ms Georgina Mary	Southern Metropolitan	LP	O'Brien, Mr David Roland Joseph	Western Victoria	Nats
Dalla-Riva, Hon. Richard Alex Gordon	Eastern Metropolitan	LP	O'Donohue, Mr Edward John	Eastern Victoria	LP
Darveniza, Ms Kaye Mary	Northern Victoria	ALP	Ondarchie, Mr Craig Philip	Northern Metropolitan	LP
Davis, Hon. David McLean	Southern Metropolitan	LP	Pakula, Hon. Martin Philip	Western Metropolitan	ALP
Davis, Mr Philip Rivers	Eastern Victoria	LP	Pennicuik, Ms Susan Margaret	Southern Metropolitan	Greens
Drum, Mr Damian Kevin	Northern Victoria	Nats	Petrovich, Mrs Donna-Lee	Northern Victoria	LP
Eideh, Mr Khalil M.	Western Metropolitan	ALP	Peulich, Mrs Inga	South Eastern Metropolitan	LP
Elasmar, Mr Nazih	Northern Metropolitan	ALP	Pulford, Ms Jaala Lee	Western Victoria	ALP
Elsbury, Mr Andrew Warren	Western Metropolitan	LP	Ramsay, Mr Simon	Western Victoria	LP
Finn, Mr Bernard Thomas C.	Western Metropolitan	LP	Rich-Phillips, Hon. Gordon Kenneth	South Eastern Metropolitan	LP
Guy, Hon. Matthew Jason	Northern Metropolitan	LP	Scheffer, Mr Johan Emiel	Eastern Victoria	ALP
Hall, Hon. Peter Ronald	Eastern Victoria	Nats	Somyurek, Mr Adem	South Eastern Metropolitan	ALP
Hartland, Ms Colleen Mildred	Western Metropolitan	Greens	Tarlamis, Mr Lee Reginald	South Eastern Metropolitan	ALP
Jennings, Mr Gavin Wayne	South Eastern Metropolitan	ALP	Tee, Mr Brian Lennox	Eastern Metropolitan	ALP
Koch, Mr David Frank	Western Victoria	LP	Tierney, Ms Gayle Anne	Western Victoria	ALP
Kronberg, Mrs Janice Susan	Eastern Metropolitan	LP	Viney, Mr Matthew Shaw	Eastern Victoria	ALP

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THURSDAY, 10 NOVEMBER 2011

Thursday, 10 November 2011

The PRESIDENT (Hon. B. N. Atkinson) took the chair at 9.36 a.m. and read the prayer.

CONDUCT IN GALLERY

Mr VINEY (Eastern Victoria) (*By leave*) — I desire to make a statement by leave. Yesterday during general business when the house was debating a motion proposed by Ms Hartland I had cause to suspend the sitting of the house for about 5 minutes. I did so because I believed that tensions in the gallery were increasing to a point where one of the people in the gallery was visibly and audibly distressed. Subsequently I spoke with Mrs Coote about this issue in the corridor. She referred to what had occurred in the house last night and told me that at around the same time other incidents occurred that she had felt were threatening to her. I can advise the house that I did not hear those things, and if I had, I certainly would have intervened.

I have been involved in the democratic process since I was four years old. I completely and utterly respect and value the role and function of this chamber and other democratic chambers. That includes, as I said to the gallery on the resumption of the sitting last night, the principle that members must be respected and be able to make their contributions in this place uninhibited and without any intimidation. I note that Mrs Coote has sought an apology from me, and I must say that the only position I can take on this is to apologise for not hearing the interjections that were made. President, through you, I can assure Mrs Coote that, on two bases, had I known what had taken place, I would have protected her — firstly, in my role as the Deputy President and, secondly, as a man.

The PRESIDENT — Order! I indicate to members that we are having some difficulties with the bells for our house on the second floor Legislative Assembly side. I do not think many of us would ever wander over there, for goodness sake, but in the event that any of you have some dalliance planned in the Assembly — —

An honourable member interjected.

The PRESIDENT — Order! Yes, it does affect some of the facilities of The Nationals over there. The bells are not working on the Assembly side on the second floor. We are getting component parts to fix the bells as quickly as possible, but members should be mindful of this problem if they are over in that part of the building today in the event that there are any votes of the house.

Mrs COOTE (Southern Metropolitan) (*By leave*) — I would like to reply and on the record thank Mr Viney for his gracious apology. Thank you.

PAPERS

Laid on table by Clerk:

Budget Sector — Quarterly Financial Report No. 1 for the period ended 30 September 2011.

Statutory Rules under the following Acts of Parliament:

Drugs, Poisons and Controlled Substances Act 1981 — No. 122.

Gambling Regulation Act 2003 — No. 121.

Magistrates' Court Act 1989 — Nos. 123 and 124.

Subordinate Legislation Act 1994 — Documents under section 15 in respect of Statutory Rule Nos. 123 and 124.

Victoria Police — Chief Commissioner —

Report under section 30L of the Surveillance Devices Act 1999, 2010–11.

Report under section 31 of the Crimes (Assumed Identities) Act 2004, 2010–11.

BUSINESS OF THE HOUSE

Adjournment

Hon. D. M. DAVIS (Minister for Health) — I move:

That the Council, at its rising, adjourn until Tuesday, 22 November 2011.

Motion agreed to.

MEMBERS STATEMENTS

Republic of Turkey: 88th anniversary

Mr ELASMAR (Northern Metropolitan) — On Friday, 28 October, I attended the 88th anniversary of the foundation of the Republic of Turkey. The celebration was hosted by His Excellency the Consul General, Mr Aydin Nurhan. Also in attendance were several parliamentary colleagues from both sides of the political spectrum, including you, President, who were there to acknowledge the achievements of the great Turkish leader Ataturk and to celebrate the founding of the Republic of Turkey.

It was a very pleasant occasion, and I would like to wish Consul General Nurhan, whom I know well, all the very best in his new ambassadorial appointment.

Early Years Awards

Hon. W. A. LOVELL (Minister for Housing) — During Children's Week I had the honour of presenting Victoria's Early Years Awards. These awards recognise the good work being done to improve the health, learning, development and wellbeing of Victorians aged eight years and under. The awards are now in their sixth year. The Glenelg Shire Council, the Knox City Council and the Hume City Council were each recipients of awards. Each of these municipalities had developed a range of initiatives, including playgroups that support indigenous parents, a playground that helps kindergartens build natural habitats in their playgrounds and an initiative that identifies pregnant women and new mums who need extra support.

I also presented the annual minister's award to the Maribyrnong and Moonee Valley Local Learning and Employment Network. The network helps families to develop English skills and links them to essential early childhood services. I know that Andrew Elsbury, a member for Western Metropolitan Region, is proud of the work being done by this group, and so am I.

I would like to congratulate all the winners of this year's awards on running programs that make a difference to the families in their regions and, in turn, to the community as a whole.

John Hort

Ms DARVENIZA (Northern Victoria) — I would like to take this opportunity to congratulate Mr John Hort, who received the Beth Raleigh Community Service Award. John has been a volunteer driver with the Shepparton Access group for 18 years. He has ferried over 1500 elderly and disabled passengers to their medical appointments. He has driven more than 22 000 hours and travelled more than 1 million kilometres. He is being recognised for being an inspiring volunteer and one of the community's unsung heroes. He is an extremely deserving recipient of the Beth Raleigh Community Service Award, and I congratulate him on receiving it.

Joan Thomas

Ms DARVENIZA — I would also like to congratulate Ms Joan Thomas, who was awarded the Ian M Stockdale Humanitarian Award by the Australian Lions Foundation. Joan has been a member of the Yarrawonga Lioness Club for more than 30 years. She has given countless hours of service, including being on many committees as well as being the president of the club, a show steward and a Meals on Wheels volunteer. Her award is testament to her services to humanity. Congratulations to Joan Thomas!

State Schools Relief

Mrs PEULICH (South Eastern Metropolitan) — I wish to pay tribute to State Schools Relief, whose annual general meeting I attended recently. In particular I would like to pay tribute to the board, to David Schmidt, the chief executive officer, and to all of the preceding board members. It is a very important organisation. The operations and staffing of the organisation and its accommodation have historically been paid for by the Department of Education and Early Childhood Development — that is, by the state government — but all the goods and services that are dispensed to students in need are provided through donations from schools, businesses and philanthropic organisations.

However, it is regrettable that the amount contributed by schools, which are the direct beneficiaries of the relief, especially in times of adversity — whether it is economic adversity or something like the impact of floods — has been disappointing. I think schools have an important role in fundraising to assist those very needy communities we see on our TV screens. It is hoped that this culture can be turned around.

Diwali festival

Mrs PEULICH — I would also like to pay tribute to Australian Indian Innovations Inc for another fantastic Diwali Fair, which I recently attended at Sandown. It is put on by the Indian community. In particular I would like to acknowledge Babu Akula, Yogen Lakshman, Vernon Da Gama and the committee members, Harjinder Soni, Pandit Patil and Neeraj Nanda, for an outstanding festival.

Baiada Poultry: employment conditions

Hon. M. P. PAKULA (Western Metropolitan) — I rise to add my voice to that of Ms Pulford in supporting the workers at Baiada Poultry in Laverton who are taking protected industrial action in support of their own job security, in support of direct employment, in support of workplace health and safety and in support of the principle that a deal is a deal.

Something like 70 per cent of the workforce at Baiada is comprised of Vietnamese migrants, and the rest of

the workforce is mostly made up of African and Indian migrants. That is great, but it is not so great when that workforce is exploited. Almost half the workforce are now engaged as contractors or cash-in-hand employees. In many cases it is unknown who their actual employer is. Many of them do not receive payslips, superannuation or the minimum wage, and they certainly do not receive the rates of pay or the conditions agreed between the company and the union in previous agreements.

We heard a lot yesterday from the Minister for Health about the progress of enterprise bargaining agreement negotiations, and I agree with him that it can be a difficult process with a lot of to and fro. But when a deal is struck it ought to stick, and the whole purpose of reaching an agreement, and as a consequence denying yourself the right to take industrial action, is that once reached all parties abide by it. To load up your workforce with contractors and casuals to whom you say the agreement does not apply and whom you engage on manifestly inferior conditions makes a mockery of the bargaining process and destroys the job security of the rest of the workforce. I applaud the courage of Baiada Poultry workers. I offer them my support, and all members should do likewise.

National Rhododendron Garden

Mr O'DONOHUE (Eastern Victoria) — I was pleased to join the Minister for Environment and Climate Change at the National Rhododendron Garden in Mount Dandenong last week. This beautiful 43-hectare property is home to 15 000 rhododendrons, 12 000 azaleas, 3000 camellias and 250 000 daffodils. It is a beautiful location, and the abolition of entry fees has seen a significant increase in patronage.

We were there with Mr Mike Hammer, president of the Victorian branch of the Australian Rhododendron Society, to acknowledge and confirm the coalition government's commitment before the last election to provide $200 000 to employ an additional horticulturalist at the rhododendron garden. It was a pleasure to be there and meet the gentleman who has been employed. I congratulate Matt Mills, the Liberal Party candidate for Monbulk at the last election, who pushed for this commitment. The rhododendron garden is a very special place that is loved by many. It is a great attraction in the Olinda and Dandenong Ranges region and is a great asset for Victoria.

Chisholm Institute: Frankston campus

Mr TARLAMIS (South Eastern Metropolitan) — I rise to congratulate the federal government and Frankston City Council on the recent announcement that Chisholm Institute of TAFE's Frankston campus will be the site for the new $19 million Frankston School TAFE Alliance for Regional Training Trade Training Centre.

I understand Frankston City Council has approved land at Samuel Sherlock Reserve to be used for this educational purpose, with construction of the new centre scheduled to commence this summer. Funding for the new centre will be provided under the Australian government's Trade Training Centres in Schools program and will provide students from years 9–12 with access to vocational education and training and give schools a broader range of options to improve year 12 retention rates and enhance pathways into vocational careers.

The centre includes a consortium of the following l3 local secondary schools from the Frankston region: Carrum Downs Secondary College, Elisabeth Murdoch College, Flinders Christian Community College, Frankston High School Senior Campus, John Paul College, McClelland Secondary College, Monterey Secondary College, Mount Erin Secondary College, Mount Eliza Secondary College, Patterson River Secondary College, Naranga Special School, Toorak College and Woodleigh School.

This builds on Labor's track record of investment at both a state and federal level in education to deliver meaningful pathways for students. Unfortunately the Baillieu government has shown no such commitment, as highlighted by its $481 million cuts to the education budget, including the cutting of Victorian certificate of applied learning coordinators. This lack of commitment is also highlighted by the government's decision to slash $250 million from funding for TAFE and vocational training providers, which will cause fees to skyrocket and force training providers to cut some courses.

My congratulations go to the federal Labor government, Chisholm TAFE, Frankston City Council and all participating schools for taking the initiative to help create this most welcome and needed trade training centre.

City of Hume: Sunbury separation

Mrs PETROVICH (Northern Victoria) — Today I rise to speak on the issue of my constituents in the Sunbury community and the opportunity now provided to them to decide if Sunbury should remain part of the Hume City Council area. Sunbury out of Hume is one of the most emotive issues in the Sunbury community,

yet the former Labor government denied the people of Sunbury the opportunity to decide their future.

For over a decade the Labor government has indulged in a string of broken promises and inaction, denying the people of Sunbury the opportunity to decide their future. In the lead-up to the 1999 state election Steve Bracks promised the Sunbury community that, if elected, he would conduct a plebiscite regarding Sunbury separating from Hume City Council. The duplicity and backflipping on the Sunbury out of Hume issue has been considerable and has created strong community angst.

I welcome the recent announcement by Minister for Local Government Jeanette Powell of an independent audit of the level of local government services provided to the residents and ratepayers of Sunbury by Hume City Council. A state government tender will be let to assess the level of services provided to Sunbury in comparison with those provided to the rest of the municipality, and it will identify any inequity in the delivery of services to the Sunbury community.

I am pleased that Hume City Council has agreed to willingly cooperate in this process. It is vital that we ensure that planning keeps pace with the needs of this rapidly growing community. This review is an important step in fulfilling another coalition election commitment and provides the people of Sunbury with a plebiscite to vote on their possible secession from Hume City Council. I am pleased that the Baillieu government is committed to listening to the people of Sunbury.

Government: election commitments

Mr BARBER (Northern Metropolitan) — The defining feature of the Baillieu government seems to be the cover-up. The secret smart meter documents, which were supposed to be released under a specific promise by the incoming government, have not seen the light of day. The last we heard from the minister was in June, when he said that he was working on them. The request for the secret myki report, which, when he was in a tight spot, the Premier seemed to promise to release, has been refused. The request by this chamber for the Victorian government's submissions on the Carbon Capture and Storage Flagships program has been refused. The documents on the metropolitan train timetable changes that were requested were released, but only after that timetable was in place. The request in relation to the $150 million subsidies offered to a new coal-fired power station — that being to HRL Ltd — has also been refused because the company did not want that information out in the open.

While the previous Labor government may have had a commitment to openness and transparency and then lost it, it is clear that this government has never had it.

Rail: level crossings

Mr EIDEH (Western Metropolitan) — Prior to the state election the now Minister for Public Transport spoke of a new authority to better manage public transport. He told the people of Victoria that the authority would coordinate and manage public transport and that it would be totally independent of the government. Yet we have seen with the amendments that have recently been passed that that is not the case. So should safety or convenience, public amenity or other matters of public good ever get in the way of Liberal Party decision making, what do members think the minister will decide? Two level crossings that will be updated this year are both way down on the list, but they are in the seats of ministers in this government.

I think, for example, of one terrible rail crossing in St Albans which has cost the lives of good people. Safety demands that this crossing receive attention urgently, yet Minister Mulder and Minister Asher will have rail crossings in their seats upgraded ahead of that one, which is much higher on the list. The people in my electorate, which includes St Albans, are not impressed — nor should they be. This new body will make such politically based outcomes far more common. When in opposition Premier Baillieu said, 'If you can't deliver decent services to Victorians, you don't deserve to govern Victoria'. Will the Premier honour his words?

Huyck.Wangner Australia: government support

Mr KOCH (Western Victoria) — I appreciated joining the Minister for Manufacturing, Exports and Trade, the Honourable Richard Dalla-Riva, when he was in Geelong recently to announce funding support for local manufacturer and exporter Huyck.Wangner Australia Pty Ltd. Huyck is the leading manufacturer and supplier of specially engineered consumable products used mainly in the production of paper. It is a strong local business employing a workforce of 70. The great news is that this government's assistance will help this unique and innovative manufacturing business grow and generate 30 new jobs.

Huyck has been a significant manufacturer of textiles in Geelong and is the last operation of its kind in Australia. It gets even better. Production is export driven, with 90 per cent of goods being sent to the niche high-end paper market in South Korea, Indonesia,

Thailand and China. The Baillieu coalition government is assisting a range of businesses in the Geelong region to capitalise on export opportunities by supporting product innovation and technology development and through strengthening grassroots business partnerships. I am pleased that the minister has made a commitment to strengthen Geelong's reputation as a hub of manufacturing excellence and as a reliable producer and exporter of high-quality, innovative products.

I congratulate Dale Smith, the operating manager at the Huyck plant in Geelong, on his considerable effort in re-establishing the plant's production after its earlier closure in 2009 and again making this a successful and viable operation competing in a difficult market.

VICTORIAN AUDITOR-GENERAL'S OFFICE

Independent financial auditor

Message received from Assembly seeking concurrence with resolution.

Assembly's resolution:

Hon. D. M. DAVIS (Minister for Health) — By leave, I move:

That the Council concurs with the Assembly and resolves:

That pursuant to section 17 of the Audit Act 1994 and in accordance with the agreement between the Parliament and Mr Peter Sexton:

(1) the Council agrees to terminate the services of Mr Peter Sexton;

(2) the termination be effected by notice in writing being given to Mr Sexton by the presiding officers of the Legislative Council and the Legislative Assembly.

Motion agreed to.

Ordered that message be sent to Assembly seeking concurrence with resolution.

BUSINESS NAMES (COMMONWEALTH POWERS) BILL 2011

Second reading

Debate resumed from 27 October; motion of Hon. M. J. GUY (Minister for Planning).

Mr LEANE (Eastern Metropolitan) — I am very pleased to speak on the Business Names (Commonwealth Powers) Bill 2011. The opposition will not be opposing the bill. This is a process that came out of the Council of Australian Governments when John Brumby was Premier. He agreed to the establishment of a national system for business name registration back in July 2009 when Kevin Rudd was Prime Minister and the leader of COAG. This is a similar process to the one followed for the rollout of smart meters, which occurred when John Howard was Prime Minister and leader of COAG.

There is not a lot in the bill. It will transfer certain powers and responsibilities from the state to the federal level in order to reduce red tape, save time and cut costs for business. The bill provides for a number of transitional provisions such as allowing Victorian business names registered by Consumer Affairs Victoria to be provided to the Australian Securities and Investments Commission to establish the national register and recognising applications, renewals and cancellations already in process in Victoria on the commencement of the national scheme that will be completed by CAV.

As I said, the opposition will not be opposing this bill considering that it is a process that was started by the Labor government under former Premier John Brumby. We wish it a speedy passage.

Mr ELSBURY (Western Metropolitan) — I am happy to speak on the Business Names (Commonwealth Powers) Bill 2011, which will adopt the national business names legislation of the commonwealth Parliament, repeal the Victorian Business Names Act 1962 and make consequential arrangements for the transition.

In 2009 the Council of Australian Governments agreed to the establishment of a national business name register to be administered by the Australian Securities and Investment Commission. By making this change the Victorian business name register streamlined the Australian business number process and the registration of corporations. In the past national companies were forced to pay for the registration of their name in each state. In Victoria the registration currently costs $85.50, and a three-year renewal costs $61.10. Under the new system a three-year registration or renewal will cost $70, while a single year registration or renewal will cost $30. That will be a saving for businesses when they register their names and a saving in administration costs for both businesses and state departments. By consolidating this process, businesses can get on with the job of doing what they do best and Consumer Affairs Victoria (CAV) can redirect its resources to other functions.

Amendments will be made to the Partnership Act 1958, the Associations Incorporations Act 1981 and the Co-operatives Act 1996. Transitional arrangements in the bill will include permission to transfer data to the national register. CAV will be allowed to conduct outstanding, renewal and cancellation processes, which will mean a continuation of the process for people who have already lodged their paperwork. The development of a national business names register will protect the value of business names and the reputation of people who are running their own enterprise.

On the odd occasion there might be two businesses with the same name. For the sake of this argument, say there is a business in Victoria called Andrew Elsbury and two separate businesses have had the foresight to register the successful good name of Andrew Elsbury in New South Wales and South Australia — —

Mrs Coote interjected.

Mr ELSBURY — I would quite enjoy that! Currently it is the case that if they all had the same name, two or more businesses could continue to trade under that name. Should another business want to use the Andrew Elsbury name in the future, I am afraid they will find it has already been taken — so it is all mine. I am more than happy to support this bill as it will streamline the process for getting on with business across Australia. It will help Victorian businesses do that right across this great nation.

Mr BARBER (Northern Metropolitan) — The Greens will support this bill.

Mr ONDARCHIE (Northern Metropolitan) — I rise to speak on the Business Names (Commonwealth Powers) Bill 2011. As Mr Elsbury and Mr Leane adequately pointed out this morning, this bill will help to streamline business operations. As a person with some business experience — I have had involvement in commencing at least six businesses across this country, both large and small — I think this is a good way for businesses to get on with being a business. One of the considerations that all governments need to take into account is that either they help businesses to grow or they get out of their way. This is precisely what this bill does.

The bill adopts national laws for the registration of business names, provides the commonwealth with a referral of power to make future amendments to those laws, repeals Victoria's business names registration legislation and provides for consequential and transitional provisions necessary as a result of the move to a national scheme agreed to by the Council of Australian Governments (COAG), as Mr Leane pointed out.

In Victoria the Business Names Act 1962 — which I might add was a very good year — currently requires entities to register their business names with Consumer Affairs Victoria, which administers and maintains a publicly available register of business names. This assists the community to identify individuals or entities operating under a particular business name in Victoria. If a Victorian business wishes to operate interstate, it must separately register its business name under the business names legislation in the other state or territory. This bill is going to streamline that process and make it much more efficient.

You might ask yourself what is in a name. Is your name Daniel; is your name Andrew? Who knows what is in a name. As a businessperson do you focus on 16 per cent or 19 per cent? Who would know? But this is important in terms of businesses moving forward. It makes the process much more streamlined. As Mr Leane pointed out, in 2009 COAG agreed to transfer responsibility for the registration of business names from states and territories to the commonwealth. It is an efficient piece of legislation. It will reduce red tape to make it easier for Victorian businesses to get on with being businesses. That is what we are about: helping businesses to grow and jobs to be created. I commend the bill to the house.

Mrs COOTE (Southern Metropolitan) — I rise to speak on the Business Names (Commonwealth Powers) Bill 2011 and congratulate Minister O'Brien, the Minister for Consumer Affairs, for bringing this to the Parliament. It helps small business and recognises that small businesses are a huge constituency in Victoria and an important part of our economy. As my colleague Mr Ondarchie has said, businesses will benefit from lower fees, less red tape and dealing with a single regulator for business names matters, the Australian Securities and Investments Commission, rather than multiple state bodies.

The bill fulfils Victoria's obligations under the 2009 Intergovernmental Agreement for Business Names Agreement and the 2008 National Partnership Agreement to Deliver a Seamless National Economy. As my colleagues have said, it repeals the Victorian Business Names Act 1962, makes consequential amendments to acts that refer to that act and adopts national business name legislation that was recently passed by the commonwealth government. It is a short bill that will have huge ramifications for a lot of businesses right across Victoria, including businesses in my electorate of Southern Metropolitan Region.

There is one particular business this will benefit, which is an organisation called Kikki.K. It has 64 stores Australia-wide and 74 stores worldwide. It is an excellent business. It was developed by a Swedish person called Kristina, who opened her first boutique in the Melbourne CBD. Not long after that the boutique was the recipient of the Lord Mayor's award for retail innovation. She has opened outlets around Australia, and this legislation will make it a lot easier for her to do business right across the country. In 2007 she was named the Telstra national young businesswoman of the year, and she was recently nominated for retail innovation in the World Retail Awards. Her business has been going for 10 years, and it is safe to say she uses the stationery she has done so well with. She is the creative director and founder of an international fashion stationery company. I encourage the work she does. Her head office is in Albert Park. She has 11 stores in Southern Metropolitan Region. She is to be congratulated, and she will be a beneficiary of legislation such as we are implementing today.

Motion agreed to.

Read second time.

Third reading

Hon. D. M. DAVIS (Minister for Health) — By leave, I move:

That the bill be now read a third time.

In doing so, I thank those who made a contribution.

Motion agreed to.

Read third time.

LEO CUSSEN INSTITUTE (REGISTRATION AS A COMPANY) BILL 2011

Order of the day read for resumption of debate on second reading.

Declared private

The PRESIDENT — Order! Having had the opportunity to examine this bill, I am of the opinion that it is a private bill.

Hon. D. M. DAVIS (Minister for Health) — I move:

That this bill be dealt with as a public bill.

Motion agreed to.

Second reading

Debate resumed from 27 October; motion of Mr DALLA-RIVA (Minister for Employment and Industrial Relations).

Hon. D. M. Davis interjected.

Hon. M. P. PAKULA (Western Metropolitan) — I note that Mr Davis is trying from across the chamber to explain to me what just happened, but I am satisfied that nothing untoward did.

Mr Barber interjected.

Hon. M. P. PAKULA — Mr Barber asks whether I am a Leo Cussen Institute graduate. No, I am not, but I am pleased to rise to speak on the bill and to indicate that the opposition will not be opposing it. As a law graduate from the early 1990s, I finished my law degree pretty much 20 years ago this month, I would say.

Hon. D. M. Davis — So he's rusty!

Hon. M. P. PAKULA — Mr Davis says I am rusty. I have had some opportunity in the intervening years to practise my skills in industrial tribunals and the like — and in the Parliament, some would say!

For law students of the 1980s and early 1990s the Leo Cussen Institute was an extremely important institution, because if you were one of those who missed out on articles of clerkship, the Leo Cussen Institute was your last chance to become qualified to practise. As someone who was at Monash University in the late 1980s, I can say that you found out whether you had articles roughly at the end of your third year of study or sometimes at the end of your fourth year. By that stage if you had not secured your articles of clerkship, you faced the very real prospect of having a law degree that you could not use — certainly not to its fullest extent with the ability to practice law in a law firm or at the bar.

For a lot of students at the time, obtaining articles of clerkship was very difficult because the legal profession was going through a bit of a downswing. There was a period a little earlier when there were lots of articled clerk positions with reasonably good money on offer, but as we got into the late 1980s and early 1990s and the recession kicked in, it became very difficult to secure articles of clerkship. I did mine at MacPherson and Kelley, which is a Dandenong-based firm that has offices elsewhere as well. I was very fortunate to do that, but some of the other people I went through Monash University's law school with were not so lucky, and they found themselves at the Leo Cussen Institute.

The thing about Leo Cussen is that whilst it is a different way of receiving practical legal training, it is not in any respect an inferior way of receiving practical legal training. The quality of the practical work offered by the Leo Cussen Institute is excellent and in many respects better than the legal training you receive at a law firm, because it is probably no surprise to a lot of people who have been through articles that the practical legal training that some articled clerks receive is not the best.

Mr Ondarchie — How was yours?

Hon. M. P. PAKULA — Without reflecting on my own experience, Mr Ondarchie, let me say that some partners in law firms view articled clerks as a form of indentured labour.

Mr Ondarchie — Go get the coffees!

Hon. M. P. PAKULA — It can be 'Go get the coffees' or it can be 'Do the tick-and-flick work', which brings in dollars but does not deliver to a young law graduate any real practical legal training or anything that prepares them particularly well for what will confront them when they become an admitted solicitor. The Leo Cussen Institute instead makes sure that graduates have exposure to the full range of circumstances that might confront them when they became fully fledged admitted solicitors, so it serves a very important function.

As the years have gone by, the Leo Cussen Institute's status as the only non-articles provider of practical legal training has changed. It is now subject to a deal of competition from other practical legal training providers, not just in Victoria but in Australia more generally. In that environment, there has been a move over the last few years to prepare it for that competitive environment. The institute no longer relies on government funding to operate. It has received moneys out of the Public Purpose Fund, but that has effectively been winding down over the last four years and will expire shortly. The Leo Cussen Institute is in a position to compete on a commercial footing, and the effect of this bill is to allow the institute to do that in a more appropriate way by converting it from a statutory authority to a company limited by guarantee.

The opposition raised some matters during the briefing from the department. We sought some comfort that this would not lead to a rise in fees for the Leo Cussen Institute course. We were assured by the department that this legislation would make no difference whatsoever in the setting of fees. We certainly hope and expect that that advice is correct, and we would obviously be quite concerned if it proved to be otherwise. The other thing that is not made clear in the second-reading speech, and I have asked the government's lead speaker to provide some advice on this when he gets to his feet, is who will be the shareholders of this company limited by guarantee. I am hopeful that the government speaker will provide that information when he gets to his feet. In other respects the opposition does not oppose the bill, and we look forward to its speedy passage.

Mr O'BRIEN (Western Victoria) — It is with great pleasure that I too rise to speak on the Leo Cussen Institute (Registration as a Company) Bill 2011. It is a fairly short bill that provides for an important change to the structure of the Leo Cussen Institute, which is presently a statutory body. The institute provides very important practical legal education and training for law graduates and continuing legal education for lawyers in Victoria all the way through their profession, wherever they end up. The institute has done so successfully for many years since being established in 1972.

Under this bill the institute, consistent with the 2009 report by Crown Counsel Dr Lynch, will become a company limited by guarantee. This reflects the changes in the tertiary education marketplace for law graduates in that there are now a number of other institutions. The Leo Cussen Institute under its new business structure will effectively become another company limited by guarantee, but the traditions and important structural relationships the institute has established will be preserved.

Briefly, this is an opportune moment to reflect on the history of the Leo Cussen Institute and its founder, Sir Leo Cussen. Leo Cussen is known as a great Victorian barrister and judge. He was said by Sir Owen Dixon to have been the greatest Australian judge who was not appointed to the High Court, or words to that effect. Leo Cussen never took silk by choice, which is an unusual situation but very humble for a barrister of his standing. It reminds me of one of the great criminal barristers, Brian Bourke, who has also declined to take silk despite his many years of experience and standing in criminal law at the bar and in liquor licensing as well. Nevertheless, when Leo Cussen was appointed to the bench he established himself as an outstanding legal mind and a very fair judge. He was a very consistent, practical and respected judge for many years.

Relevant to this place, Leo Cussen devoted a lot of his spare time to the consolidation of statutes. He supervised statutory consolidations in 1915, 1928 and at various other times to simplify the statute book. I am proud to say that Leo Cussen was originally of Irish

stock and, more importantly, was born in Portland in western Victoria. His mother was a Finn. He was educated at Hamilton College and stood for the inaugural election for the seat of Wannon in 1901 as an Independent. He was unsuccessful against a free trader, consistent with the recent elections where Independents were unsuccessful against the very valuable present member for the federal seat of Wannon, Dan Tehan. In any event, that was a blessing for Leo Cussen's legal career, because he continued to operate as a legal educator in his role as a consolidator of statutes, and he was an inspiration to many Victorians. He was also an engineer, which was a skill he shared with General Monash, another great Victorian lawyer of that time who left his name to the fine institution from which Mr Pakula and I both received our law degrees — that is, Monash University, which also competes in the adult education market both in this state and overseas.

There is one thing on which I would take minor issue with Mr Pakula: Leo Cussen Institute might have had that reputation in its early days, but it may have been a bit unfair to describe it as the place for lawyers who missed out on articles — maybe that was something that was said quite flippantly — because in fact some people have chosen to go to Leo Cussen for its valuable contribution to legal education. I refer to some of the alumni of the Leo Cussen Institute. I am sure Mr Pakula would not have cast this slight on the person who holds the highest office in the nation, being our Prime Minister, the Honourable Julia Gillard, who tops the list of alumni at the Leo Cussen Institute on its web page and who has said as Prime Minister:

> I made a deliberate decision that I didn't want to do articles, I wanted to do the Leo Cussen course —

that is reflective of the view of some people who have chosen to go to Leo Cussen —

> It was …a great way to make friends and legal contacts and to learn a lot about the practice of the law. And the work experience I did there was at Slater and Gordon, which was where I ultimately got my job in law.

Leo Cussen Institute has continued in that role of legal education, and I take this opportunity to commend the firm that gave me articles, Garland Hawthorn Brahe, where I had a range of experiences from running up to the court to get the filing done at 4.00 p.m., legal research and cleaning out the will cases; learning ethics and respect for authority, respect for elders and the ability to take orders; being involved in some very exciting litigation dealing with valuation and compensation cases as an articled clerk doing research; and reading many records of parliamentary debates which were relevant in deciphering ambiguous aspects of particular legislation.

Returning to one aspect of legal education that I do share with Mr Pakula is how quickly things have changed over the course of our time. When I finished school we were still handing in essays that were written by hand. By the time I had started university our work was done on computers, in type, but there was no internet. By the time I had finished university we had email and the internet was just getting under way. By 2000, when I came to the bar, there was Google and research online. Now for this speech I am pretty much able to download in an instant the background information from the parliamentary library. Information is now readily available, which in the context of legal education is very important.

One of the great aspirations of these law institutions when they were established and when the law degrees were broadened during the period when I was a student — that is, when many institutions became qualified to give law degrees — was the recognition that training in the law is a good background for many walks of life, not just Parliament or law but also business, community services, involvement in situations of any degree of complexity and structured logic and also where there is a desire to have fairness, integrity and respect in our community.

It is certainly not the only way to achieve these things and one does not need to practise law, but the opening up of the mysteries of the law to everyone and the ability now for anyone to readily access information on the web pages of legal institutions and to go to seminars at institutes such as Leo Cussen is a way of bringing greater understanding to all Victorians of the wonderful legal system we have in respect of the importance of the rule of law, justice, the separation of powers and respect for our legal institutions.

In relation to the specifics of the bill, it will create a new legal entity. The registered company will be taken for all purposes to be the continuation of and the same legal entity as the institute. This will provide certainty about the ownership of the institute's assets and the institute's status as an accredited higher education provider. It will also protect the staff and students of the institute, whose existing terms and conditions will not be affected by registration.

Importantly, the bill has been developed through consultation with the institute, and it has the institute's support. The Department of Justice has also consulted with the Australian Securities and Investments Commission on the bill, and ASIC has advised that the

registration process set out in the bill is a viable and appropriate means of registration. In relation to any further registration issues, those will be worked through with ASIC in due course.

It will be a company limited by guarantee. I am not able to advise the house on the names of the members. I believe there would initially be eight members, and that is consistent with many companies limited by guarantee. I am sure that information can be provided to Mr Pakula. If we can provide a list of the names, we will do so, if Mr Pakula seeks to have that information, but as is usually the case, they would be eight eminent persons. As a company limited by guarantee, they are not shareholders as such, they are members, profits are not distributed to them, they agree to be bound by the important non-profit activities of the institute and, importantly, they guarantee that it will continue as it previously has to serve a valuable role in the future.

If there is any other information as to the specifics of the members, I will endeavour to provide it to Mr Pakula. I commend the bill to the house.

Ms PENNICUIK (Southern Metropolitan) — I follow two legally trained members of Parliament who have waxed lyrical about their training in the law, so I have to admit that I have no training in the law except possibly the five years of training in the law that I gathered in this place by being spokesperson for the Greens on Attorney-General issues, justice, corrections and the police, which has certainly given me a far greater knowledge of the law then I had before that. I almost trained for law but for certain things — —

Mr O'Brien — You might qualify for an honorary degree one of these days.

Ms PENNICUIK — I thank Mr O'Brien. But my path led towards education and environmental science, and I chose to take that path in the end. I could nearly have trained as a lawyer.

The bill before the house changes the Leo Cussen Institute (LCI) from a not-for-profit statutory body which has operated for 40 years to a registered company limited by guarantee for charitable purposes under the commonwealth Corporations Act 2001. The provisions of the bill have been well outlined by Mr Pakula and Mr O'Brien. It is interesting to note that due to its charitable purpose the institute will put all income towards promoting its charitable purpose and will not pay any dividend bonus to company members. In relation to company members, Mr Pakula asked who the company members will be or where they will be drawn from. I presume those company members would be publicly listed somewhere — for example, on the report of the Leo Cussen Institute, on its website or in some such location.

According to the minister's second-reading speech, if the institute is wound up:

> … the constitution will require any surplus assets to be distributed to an entity with similar charitable purposes.

This means:

> … that the assets and goodwill established by the institute over the last 40 years will continue to be applied for the benefit of educating the legal profession.

As well as running courses in Victoria, the Leo Cussen Institute is accredited to provide a practical legal training component of the articles training program in Western Australia and also runs approved programs for trainees in Queensland, particularly for national firms.

The issues I raise about the bill relate to fees and assistance for students. A report in 2006 by Professor Susan Campbell noted that the Leo Cussen Institute had received over $2 million in funding from the legal practice board in 2005. Regarding student fees, the report noted that the 2006 LCI course fees were $6150 for the on-site course and $6450 for the online course. It received, according to its own submission, a subsidy from the Public Purpose Fund of approximately $11 250 per student. Thus the apparent total cost per student is $17 400 on-site and $17 700 online.

The 2012 course fees for the graduate diploma of legal practice are over $8000, and on the Leo Cussen Institute website it states:

> If you expect to have difficulty in paying the fee, then you should discuss the matter with the executive director … well in advance of the enrolment date.

The costs of the graduate diploma course are now most likely being subsidised by continuing professional development (CPD) and other courses run by the Leo Cussen Institute, so it is very much a commercial operation reliant on revenue from the CPD courses in order to train lawyers for admission.

I have questions about the fees. I am not sure if there is another government speaker to speak on this bill. I would have preferred to have made my contribution before a government speaker so that the government speaker could answer my question, which is: what is subsidising Leo Cussen Institute's graduate diploma fees currently? In his second-reading speech the minister said that the corporate constitution will require

the Leo Cussen Institute, among other things, to encourage:

> … access to participation in legal practice by people with diverse and disadvantaged backgrounds.

I would like to know how people with diverse and disadvantaged backgrounds will be encouraged. Those are the major issues I raise in relation to the bill. Otherwise, the Greens support the bill.

Mrs COOTE (Southern Metropolitan) — I rise to make a short contribution to the debate on the Leo Cussen Institute (Registration as a Company) Bill 2011. I commend my colleague Mr O'Brien for a very comprehensive outline of what this bill entails and for giving us some poignant background commentary on Leo Cussen.

The purpose of this bill is to change the corporate structure of the Leo Cussen Institute from a statutory body to a charitable company limited by guarantee. I encourage people reading *Hansard* to have a look at what Mr O'Brien said in his contribution, because he clarified the mechanics of that purpose very clearly. This follows recommendations of two reviews over the past few years.

I remind the chamber that the Leo Cussen Institute was established in 1972 and named after one of the most distinguished judges in our history. Leo Cussen was not born in my electorate of Southern Metropolitan Region. He was born in Portland, as Mr O'Brien rightly said, in 1859, and he died in Hawthorn on 17 May 1933. He was given a large public funeral at St Patrick's Cathedral, which was presided over by Archbishop Daniel Mannix. Upon his death, Sir Robert Menzies described him as 'one of the great judges of the English-speaking world'. As Mr O'Brien has said, he did an amazing amount of good work in this state over a sustained time, including looking into the Victorian statutes.

I would like to reiterate what Mr O'Brien said, because Leo Cussen undertook the project of consolidating the Victorian statutes for the Parliament of Victoria, the statues we see here in front of us in this chamber, which are a reference tool for all of us in this place. He began the task in 1908, and it took him seven years to conclude it. He consolidated the statutes into five volumes. His entry in the Australian Dictionary of Biography says he 'modernised the language of many provisions, and included many amendments and valuable and substantial annotations'. He actually did this for free, and he did it over a long period of time as a great public duty. We must be mindful of that contribution he made from which all of us here gain so much benefit so many years later.

It is also interesting to note that he was a very good Victorian in every other sense. He served as a trustee of the Public Library, Museums and National Gallery of Victoria and became the president of that organisation in September 1928. He was a member of the Felton Bequest. As we know, that bequest is the basis for Victoria's world-renowned art collection. Anyone who has been associated with the Felton Bequest ought to be commended, and Leo Cussen was a very valuable member of that board.

Leo Cussen was a member of the law faculty of Melbourne University, a member of the Council of Legal Education and vice-president of the Walter and Eliza Hall Institute of Medical Research. He was a very dedicated Victorian who contributed enormously.

Mr O'Brien interjected.

Mrs COOTE — As I have been reminded by Mr O'Brien, the Felton Bequest contributed to saving the Esplanade Hotel, which is in Ms Crozier's and my electorate.

Ms Pennicuik interjected.

Mrs COOTE — I beg Ms Pennicuik's pardon; it is also in her electorate.

Honourable members interjecting.

Mrs COOTE — Good heavens! It is in the electorate of everybody currently here, and of Mr Lenders, who is not in the chamber, but especially of the Leader of the House, Mr David Davis.

It is important to understand what the Leo Cussen Institute does. The institute at Monash University has a number of specific and general powers. These include the power to purchase property, accept gifts and bequests, charge fees and borrow and invest money. While the bill provides that the loans raised by the institute can be the subject of a Treasurer's guarantee, no such guarantee has ever been provided, which is what we are discussing.

Under section 5 of the Leo Cussen Institute Act 1972, the institute consists of eight members, two of whom are appointed by each of the following organisations: the University of Melbourne, Monash University, the Victorian Bar Council and the Law Institute of Victoria. The institute's composition reflects the close initial involvement of the Melbourne and Monash law schools in developing its early practical training courses,

because at the time the act was passed they were the only universities that provided undergraduate law degrees.

As Mr O'Brien rightly pointed out, many people, including our current Prime Minister, Julia Gillard, have passed through the Leo Cussen course. I was interested in an observation of Mr Pakula; he said that those who could not get articles went to the Leo Cussen Institute. I wonder what happened to poor old Julia Gillard. She obviously could not get articles from anybody. They recognised how bad she was going to be, so they would not give her any articles. However, not everybody was in the same position, because there are several alumni who could have got articles wherever they chose but instead chose to go to the Leo Cussen Institute. They include Murray Baird, who is chair of partnership at Moores Legal. On the website of the Leo Cussen Institute he is quoted as saying:

> The Leo Cussen Institute course first attracted me because of the range of subjects in which practical training was offered.

Naomi Guyett, who is a partner at Gadens Lawyers, is quoted on the website as saying:

> The best thing about the PTC —

the Leo Cussen practical training course —

> was the breadth of topics we were taught and the extensive materials provided on each of those topics, which were of great assistance in the 'real world'.

That is perhaps why Julia Gillard could not get her articles, because she did not really get the real world, and she still does not get it!

Russell Robertson, who is a partner at O'Farrell Robertson McMahon, is quoted as saying:

> My broad training in the Leos practical training course helped enormously.

I say to Mr Pakula that I have been advised that it was your last chance if you missed out, or if you were 'unlucky', which is what Mr Pakula actually said in his contribution — —

Hon. M. P. Pakula — On a point of order, Acting President, I have sat here being verballed for long enough by both Mr O'Brien and Mrs Coote. Very clearly, I talked specifically, not generally, about the experience I had in the late 1980s. Can I also say I made it very clear that in many respects the Leo Cussen Institute provided better legal training than articles did.

The ACTING PRESIDENT (**Mr Tarlamis**) — Order! There is no point of order.

Mrs COOTE — Ms Gillard will be very proud of Mr Pakula. I am sure her advisers are riffling through his comments right now. He will have a promotion any minute.

In any case I wish the bill safe passage. It provided members with an important opportunity to think about and listen to members speak about Leo Cussen, who was a great Victorian.

Motion agreed to.

Read second time; by leave proceeded to third reading.

Third reading

Motion agreed to.

Read third time.

Sitting suspended 10.45 a.m. to 10.47 a.m.

ELECTRICITY INDUSTRY AMENDMENT (TRANSITIONAL FEED-IN TARIFF SCHEME) BILL 2011

Second reading

Debate resumed from 27 October; motion of Hon. P. R. HALL (Minister for Higher Education and Skills).

Mr ELSBURY (Western Metropolitan) — I am more than happy to rise this morning to speak in support of the Electricity Industry Amendment (Transitional Feed-in Tariff Scheme) Bill 2011. The bill has become necessary because of the popularity of solar panels being placed on roofs by people wanting to reduce their impact on the environment and to assist in curbing electricity bills.

An increase in the take-up of the technology was the result of the federal government introducing rebates for installing solar panels. Those rebates have been reduced, but the support for placing solar panels on roofs continues. The former state government's regime of a two-tariff system has also increased the support for solar panels. The general tariff was introduced in 2004 and the premium feed-in tariff was introduced in 2009. The latter of these programs proved to be exceptionally popular, and who could blame people for taking up an offer of 60 cents per kilowatt hour in feeding power back into the grid system.

The premium feed-in tariff has achieved its 100-megawatt limit, which was placed upon it by the

previous government when it established the feed-in tariff program, so it is time for us to look at where we go from here. Those who signed up for the premium feed-in tariff and those who had the ability to outlay the cash required to install a solar unit will continue to benefit from the arrangement they entered into, which is the 60 cents per kilowatt hour of electricity provided to the system. This arrangement will continue for the legislated time period.

I note that opposition members in the other place voted against this bill, which is a bit of an odd act. Nonetheless, they voted against the replacement program for the soon-to-be-retired premium feed-in tariff. From that action I can only surmise that Labor believes Victoria has done its share in rolling out solar panels and that no more incentive is needed for people to take up this technology. I can appreciate that an incentive has been developed by the federal government. It is called the carbon tax. It will drive people to seek any alternative means of getting power to their homes because power bills under the tax will increase. The carbon tax has been introduced by the Gillard government and will impact on the bottom line of every family, no matter the compensation used as a carrot to get people over the line in this debate.

The issue remains; instead of hitting people over the heads with a tax, this government is seeking to continue to provide people with an incentive for reducing their energy consumption. The new transitional feed-in tariff will be paid at a rate of 25 cents per kilowatt hour and this will be available for five years. This new tariff provides a reasonable ability for the owner of a new solar panel unit to pay off newer models, which become cheaper as demand remains high and technology improves the efficient manufacture of solar panels.

I stress again that those on the premium feed-in tariff will be given the old rate, which will assist them in recouping the costs involved when they installed their panels. Given that the 100-megawatt-per-hour target has been achieved and the cost of panels has reduced, it is the responsibility of the government to adapt to those facts. We need to remember that at every stage money must come from somewhere to support this scheme, while an incentive is still needed to maintain support for solar panels as an option for clean energy. The cost of the scheme comes from electricity users through their bills. If you cannot afford to put panels on your roof, you cannot access the rebate.

I have long suspected those opposite of seeking to redistribute wealth; however, I did not think they were going to take it away from those who cannot afford it and give it to those who can. Like I said, a balance must be struck to inflict the least penalty on those who cannot afford to take up solar products, like pensioners and young families, while encouraging those who can afford it. In relation to what some of the other states are doing, they have — —

Mr Barber interjected.

Mr ELSBURY — I am pleased to hear that. Mr Barber said that we are slashing and burning and we are taking it away. That is what other states have done. There is no replacement scheme. We are replacing the scheme with 25 cents per kilowatt hour being put back into the network, back into the system. I say to Mr Barber that the reduction reflects the reduced cost in actually installing panels, so it does not cost as much to put solar panels on your roof as it did three years ago. It does not cost as much simply because the technology has changed and people are taking it up at a rate that makes it commercially viable, so you have mass production of the panels occurring. The cost of placing a panel on your roof has reduced. In fact, Rod Capuano of SolarMyHome said:

> The cost of solar units are about $2000 cheaper than four months ago —

that is pretty amazing; that is a really huge achievement —

> so, even though the feed-in tariff is less, the payback rate for the systems is about the same.

An independent person who is involved in the solar industry has come out and said the new tariff system is equivalent to the old tariff system, considering the reduction in the cost of providing solar panels for people's homes.

We need to move towards reducing our impact on the environment.

Mr Barber — Humans don't impact the climate, you told me. Which is it?

Mr ELSBURY — Mr Barber, we can quibble about this, but the fact is that — —

Mr Barber — There is nothing to quibble about.

Mr ELSBURY — I do not believe in having pollution that we breathe, okay? We can talk about that later if you would like.

Mr Barber — So what are the solar panels for?

Mr ELSBURY — The solar panels will improve air quality, Mr Barber, and they will improve the efficiency of homes being able to provide power in a

carbon-taxed environment, which will be hurting families right across the western suburbs. It will be hurting people because they will not have their jobs anymore, and it will be impacting upon the solar industry, because if this tax continues to go down its path, I suggest that the cost of manufacturing panels will go up again.

Mr Barber — How much?

Mr ELSBURY — I do not have those figures, Mr Barber. I can say that it has gone down by $2000 because of the efficiency of producing these systems now, but I can only guess what would happen when the carbon tax comes in and starts impacting upon businesses that are attempting to, firstly, manufacture solar panels, and, secondly, install them. Unfortunately small businesses are going to suffer under a carbon tax. But I digress.

I believe the government is doing its absolute best to balance the needs of people who are consumers of electricity but cannot put a solar panel on their roof, whether that be because their financial circumstances or because of the fact that they rent and their landlord does not want to put a solar panel on the roof because it simply does not benefit the landlord at all. We are also balancing the need to maintain a status quo based on the financial obligations which are now being put on people when they purchase a new solar panel unit, which costs much less because of changes in technology. With that, I am more than happy to say this bill will achieve many of the outcomes it seeks to. It will provide people with a continued incentive to take up solar and will continue to provide people with a reasonable payback period. I commend the bill.

Ms PULFORD (Western Victoria) — It will be interesting to see exactly what objectives will be achieved in Mr Elsbury's parallel universe, because it seems to me that this legislation will have the very opposite impact to what Mr Elsbury has been arguing.

The Electricity Industry Amendment (Transitional Feed-in Tariff Scheme) Bill 2011 amends the Electricity Industry Act 2000 to establish a transitional feed-in tariff scheme to commence, if this legislation passes, on 1 January 2012. The issues relate to the tariffs for small-scale solar generation, essentially from solar panels that people put on the roofs of their homes. The scheme that Mr Elsbury heroically tried to defend is that which would apply at the closure of Labor's premium solar feed-in tariff scheme. The government's decision to do this as it has when it has came as a bit of a surprise, like the fact that we are debating this now rather than after a couple of other bits of legislation. But that is okay; we have run to the chamber and are here to have our say on this important issue now. It does come as a surprise, because it is in stark contrast to the government's election promise, which was to maintain the premium feed-in tariff scheme until its replacement by a gross feed-in tariff scheme.

We have learnt over the last year that the coalition says very different things before and after elections on many issues and subjects and in many policy and legislation debates. Just to refresh the memories of government members, the Liberal-Nationals coalition policy says the coalition will:

> Strongly support feed-in tariffs that provide a fair reward and encourage the supply of renewable and low-emissions energy into the grid.
>
> Direct the Victorian Competition and Efficiency Commission (VCEC) to inquire into and report on the design and implementation of a market-based gross feed-in tariff scheme —

and ask VCEC to examine a number of features of a market-based gross feed-in tariff scheme. That is the kind of election commitment that would be compatible with some of the statements made by MPs from the Liberal and Nationals parties in the last Parliament. They described Labor's approach on this as disappointing and half-hearted and said it did not have a successful set of incentives to encourage the widespread take-up of the installation of solar schemes in residences. Murray Thompson, the member for Sandringham in the Assembly, was concerned that the scheme was too restrictive because it applied only to principal places of residence and systems of 5 kilowatts and under. There have been many comments from current government MPs, and I wonder how they rationalise the coalition's quick change of heart. But the Liberal-Nationals — —

Mr Leane — Are there any more?

Ms PULFORD — Do you want some more?

Mr Leane — Yes, have you got any more?

Ms PULFORD — Yes, Mr Leane. Christine Fyffe, the Deputy Speaker and member for Evelyn in the Assembly, said:

> We saw with the solar feed-in tariff bill the government's half-hearted attempt to encourage people to take up solar power which would assist in feeding more energy back into the power grid. That is simply not enough.

Mr Leane — If that was half-hearted and they have taken it two-thirds of the way, I wonder what the percentage works out as.

Ms PULFORD — It is two-thirds of half-hearted. That is a good question; that is one for the mathematicians.

Mr Ramsay — It is still the most generous in Australia.

Ms PULFORD — The most generous in Australia? I think that is a stretch, Mr Ramsay.

Mr Ramsay — Victoria is leading the way.

Ms PULFORD — Leading the way where?

The ACTING PRESIDENT (**Mr O'Brien**) — Order! Mr Ramsay! There are a number of speakers on the list. If members wish to add themselves to the list and speak in turn, that would be appreciated. Obviously a level of interjection is tolerated, but conversations across the chamber are disruptive.

Ms PULFORD — A final note from the Liberal-Nationals coalition policy is:

> It is proposed that the current 'premium' net feed-in tariff scheme will remain in place as an additional option for the time being. Retailers will also be able to continue to offer a 'one for one' or other feed-in tariff under the existing 'fair' tariff requirements.

The government has had something of a change of heart. The old scheme provided 60 cents per kilowatt hour with an expiry date of 2024, and the standard scheme provided for a one-for-one payment with an indefinite finish date. The premium feed-in tariff that the Labor government had supported was due to be reviewed or declared at capacity if it reached 100 megawatts or cost $10 or more per year in pass-through costs to all consumers through their bills. None of these conditions has been met, yet the Baillieu-Ryan government has taken a blunt instrument to this scheme because, for some reason that remains a bit of a mystery to me, it just does not like renewable energy.

Mr P. Davis — That's unkind.

Ms PULFORD — You know it is true, though. As Mr Elsbury indicated in his contribution, this week the commonwealth Parliament passed legislation to price pollution. This is a significant change and a significant reform to the national economy.

Honourable members interjecting.

The PRESIDENT — Order! There have been references in both chambers to the word 'lie' this week, and I think it is unparliamentary even in interjections. I would ask Mr Leane to withdraw and Ms Pulford to continue.

Mr Leane — I withdraw.

Ms PULFORD — A price on carbon pollution will create many incentives for investment in renewable energy. It is my view that the role of the Victorian government at this time of transition is to support, encourage and nurture our renewable energy industry, so that, as that transition occurs in the economy, people are able to pursue research and/or find employment in those sustainable industries that are providing jobs and simultaneously supporting clean energy. It beggars belief that at this moment in time, with the national debate now coming to something of a conclusion with the passage of legislation through the commonwealth Parliament, the Baillieu government is taking action to diminish opportunities in wind energy and in solar energy.

I was going to talk a bit about geothermal energy, but this all seems like a familiar theme from a time under a previous government. Part of this theme is the axing of the premium solar net feed-in tariff.

Mr Elsbury was attempting to make the argument that this was a great thing for the solar industry, but I quote the Clean Energy Council from 1 September of this year:

> The Victorian government's decision today to cut its solar power support scheme by more than half is disappointing and puts hundreds of solar jobs in that state at risk …

The Clean Energy Council policy director, Russell Marsh, went on to say:

> There are approximately 3400 people employed by the Victorian solar industry and many of these jobs are in regional areas … This cut means many of these jobs are at risk. Our modelling shows that a rate of 35–40c would have ensured jobs were secure and the industry still had the potential to expand.

The Alternative Technology Association also expressed some significant concerns as well, and similarly said:

> At low cost to the community, the Victorian government could have continued to support the industry and consumers to invest in small solar, with a feed-in tariff of about 35–40 cents/kilowatt hour. As it stands, today's harsh decision will damage solar.
>
> Hot on the heels of their disastrous wind energy policy, which will cost the state millions of dollars in lost investment and hundreds of jobs, this is another bad blunder by the Baillieu government.

That is what the industry that has been affected has to say about it.

I will briefly touch on some issues around the transition. As members would be well aware, the incentives currently in place have generated a great deal of advertising and entrepreneurship around solar panel installation. There have been ads for bargain systems over the last 12 months, but some of the 4 kilowatt systems can cost up to $12 000, which is a significant investment for people who want to do the right thing in terms of generating their own energy and also generating a little bit of surplus energy to put back into the system. People have gone ahead and made these commitments based on the 60-kilowatt-per-hour tariff. As they sit around the kitchen table they do the sums of whether it is going to work for them and how many years it is going to take to earn back that investment.

I am sure members have all read articles in the papers about an increasing desire in the property market for houses, apartments and even rental properties that have green energy installations. People are attracted to these properties because they diminish the day-to-day running costs of the home. People commit money to have panels installed but, due to installers being really busy and installations taking a while, it can take up to three months for the installation to occur. This is certainly the experience of people in my electorate. People have committed money and signed the contracts, but they have not had the final paperwork signed off by the cut-off date that the Minister for Energy and Resources, Mr O'Brien, referred to in his second-reading speech. They have signed up after working out the costs and benefits, taking into account their personal circumstances. They have made the purchase, but their sums were all based on the higher tariff rate, and they have been caught out because they are now contracted for a long time, and they are going to be hit with the lower tariff rate.

I note Mr O'Brien's media release when this announcement was made by the government and his comments in the second-reading speech in the Assembly, and it appears to me that the government did not intend to have people caught with one foot in each scheme. Mr O'Brien's comments seemed to strongly suggest that the government's intention was to announce this on 1 September and to close off the old scheme on 30 September. The language in the release and the minister's speech was very encouraging, urging people to sort out their paperwork and get it in on time.

It seems to me fairly clear that the government was not intending to have people stuck in this situation, but because of the supply and demand issues around the availability of installers — at least in parts of my electorate, and this may vary across the state — several people have contacted my electorate office because they are concerned that they are stuck in the middle. I do not think that was the government's intention. I invite government speakers to suggest an appropriate solution for people caught in that situation.

Mr P. Davis — I did not quite understand. Stuck in the middle of what?

Ms PULFORD — The minister made his second-reading speech and his media statements on the announcement that came with this legislation on 1 September and people had to have all their paperwork in by 30 September, but the paperwork cannot be completed until the installation is completed. From what he was saying, I think the minister's intention was to indicate that that month would be enough time for everyone to get their paperwork squared up and sorted and that people would be buying what they thought they were buying. Because the installation has taken longer, it has certainly been the experience of people in my electorate that they have been caught having signed up before 1 September but not having all their installation and paperwork completed by 30 September. I urge the government to consider the particular circumstances of what could be only a relatively modest number of people who are in a quite difficult position because of this decision by the government.

I have a number of questions that I will be interested in exploring in the committee stage. In particular I ask government members to indicate in their contributions when that part of their election commitment for a review by the Victorian Competition and Efficiency Commission will be fulfilled. This is obviously critical, given this transition. There are real risks to the industry, people have been caught in the middle and people may have made a decision to install solar panels. While people make a lot of big purchase decisions in the new year, now people will not be making those decisions. As I indicated earlier, those in the industry are very concerned about what that will mean for jobs in the renewable energy sector in Victoria, particularly in regional Victoria.

Mr Ramsay interjected.

Ms PULFORD — Well, 25 cents is a bit less than 60 cents, Mr Ramsay. The industry thrived under a stronger tariff scheme, and the industry now knows that the rate that the Baillieu government has determined to set the tariff at is a rate that puts jobs across the state but particularly in regional communities in jeopardy. This is adding insult to injury after the assault on the wind energy industry. It represents another broken promise of the Baillieu government, another act of environmental vandalism by the Baillieu government

and another act of considerable negligence in terms of being in the right place at the right time to support our industries when they most need support.

As a transition is occurring in the national economy with the legislation for a price on carbon having been passed this week, the Victorian government needs to be supporting the evolution of these industries, not cutting off their legs. The opposition will be opposing the bill.

Mr BARBER (Northern Metropolitan) — This bill is the next in a series reflecting the Baillieu government rolling out its anti-environment policies. We have its war on wind farms. We have had the removal of the endangered species law where it applies to loggers, or, as former logger Mr Blackwood, the member for Narracan in the other place, said, it removes the threat of a threatened species being found in that area for a logging operation. Acting President, if you are in town this Sunday, you could join me and many other members of the environment community as we walk backwards to Parliament House to signify how quickly and dramatically the Baillieu government has taken us backward on the environment.

We have to ask: why is this bill here before us today? It is certainly something that unites coalition members. The half of those opposite who do not believe greenhouse gas emissions from human activity are causing climate change are united with the other half, who are there simply to back up the big polluters. The bill introduces a practical measure of a feed-in tariff, which the Greens have always supported. It encourages the shift to 100 per cent renewables and in some small way backs up clean energy sources against those massive subsidies in this country to hydrocarbons which this government is now fighting tooth and nail to protect.

As I stand here we do not know the cost of this scheme so far, so it is pretty hard to mount an argument about what the scheme might cost compared with the government's forthcoming legislation under which it will offer continuing multimillion-dollar subsidies to the Anglesea power plant and coalmine. We are voting on this policy in a complete information vacuum even though since the beginning of the year we have been trying to find out the cost so far of the Victorian feed-in tariff. In fact early in the year we had a debate on this. Mr Elsbury, on behalf of the government, said, 'Don't worry. It's all under control. Nothing's about to happen anytime soon. We're nowhere near the 100-megawatt cap', as he described it. It is actually not a cap. The legislation simply says that the minister may close down the scheme when we reach 100 megawatts. There is absolutely no compulsion on the minister to do what he has already done.

In a question on notice that the Greens first put on 16 August, we asked: what has been the cost of this particular scheme that the government now seeks to abolish? Under the act the minister has total power to request from the retailers, the distribution businesses, both the number of panels which are operating and for which the tariff is received and the total payouts, if you like, to the people who have been putting their green electrons into the grid. Why is it that the government took this decision but will not disclose even the most basic information about what this scheme has cost so far, and why has it brought forward for debate this bill based on something we still do not know?

The kindly Mr Hall tells me that during the committee stage I may just have a chance to find out the answer to that. So right here at the death knell, when we are expected to vote on the bill, we are supposed to be deciding our position on this bill without the most basic piece of information — what it costs. I like to know what things cost before I vote on them. I certainly asked questions early in the year. As I remember, when we first voted for it there was a lot of debate about the cost of the scheme, with Greens, Liberal, Labor and Nationals members contributing and with the non-government parties, as they were then, joining together to green up in a number of ways the then government's scheme, but here we are and we do not know much about what it costs.

Nor do we know anything really about what this government intends to do to reduce emissions; there is no plan. We know what the coalition is against at the federal level. At the federal level we kind of know what the coalition is for because we have the direct action plan. When Mr Philip Davis interjected earlier and said something about magic puddings I was reminded that I must race back to my office and get a copy of his government's direct action plan, the greatest magic pudding of all; the magic pudding that delivers twice the emissions reductions at one-tenth of the cost. Mr Ondarchie knows what people say. They say that when a deal seems too good to be true, it probably is.

But we have at least learnt — and this is for the information of Mr Ramsay as well — that the Liberal Party supports the renewable energy target. That is the much maligned renewable energy target. Every time it comes up — particularly in relation to wind farms, which has been the main technology, along with solar, to take advantage of the renewable energy target — Mr Ramsay starts bleating about government subsidies. 'Taxpayer subsidies', he says — —

Mr Ramsay — Bleating? I did not bleat.

Mr BARBER — Maybe you have been hanging around with your stock too long, Mr Ramsay. It is said that people come to resemble their pets. The bleating in my left ear is much more whiny and annoying than any wind turbine could ever be to any citizen.

Mr Greg Hunt, the federal shadow minister for climate action, environment and heritage, does not just say that the Liberals support the renewable energy target, he actually takes credit for it.

Mr Ramsay — On a point of order, Acting President, I have heard enough of this diatribe from Mr Barber. My understanding was that he was supposed to be speaking about the solar feed-in tariff. Now he is actually discussing the federal coalition greenhouse gas emissions direct action plan. Could you, Acting President, ask him to perhaps come back to the bill that we are supposed to be discussing? Also, if I might add, I take objection to a number of the analogies he has used in relation to me and some animals. I am not sure what he referred to. He has thrown 'bleating' and 'sheep' and a few other things into the mix in the last couple of minutes. I take offence to that.

The ACTING PRESIDENT (**Mr O'Brien**) — Order! I was wondering whether that would be the substance of Mr Ramsay's point of order. On the first aspect of the point of order, in the context of this debate involving renewable energy targets, I do not believe that Mr Barber should be ruled out of order on relevance, but I would always remind him to return to the bill. On the second aspect, if Mr Ramsay has taken offence to the references to 'bleating' and 'sheep', then I would ask Mr Barber to withdraw or be heard on the point of order if he does not believe it is offensive.

Mr BARBER — Acting President, I will certainly withdraw. I will seek your protection from any further noises and interjections coming into my left ear as I attempt to explain what is quite an important and complicated area of policy.

The ACTING PRESIDENT (**Mr O'Brien**) — Order! Interjections can be provoked, so I caution Mr Barber on that. I do not need to say any more about it. The reason I have sought Mr Barber's input on the point of order is that it is a novel phrase in the sense that I do not know if there are any rulings on 'sheep' and 'bleating' and whether they are offensive, but if Mr Ramsay found it offensive, then that is a matter for him. If Mr Barber wants to make any further contribution on that, that would be fine. If Mr Barber is prepared to withdraw, then that is also fine.

Mr BARBER — I am happy to continue. I have nothing on the point of order. I think I have withdrawn the relevant statement.

The ACTING PRESIDENT (**Mr O'Brien**) — Order! I ask Mr Barber to return to the bill.

Mr BARBER — It is a difficult debate to take part in when you yourself have not formed your own position as to whether climate change is happening and being driven by human emissions of carbon dioxide. We have seen the extraordinarily difficult situation that some famous climate change deniers have got themselves into in both the federal and state parliaments. Some of the extraordinary abuse that was flying around about the carbon package last week did no credit at all to the coalition. It just shows what happens if you paint yourself into a corner as a climate change denier.

The coalition should perhaps spend less time using its parliamentary book allowance to buy copies of denialist tomes and a bit more time reading — for example, *NewScientist*, a credible publication. The lead article of the 22 October issue is headed 'Climate change: what we do know — and what we don't'. I am quite happy to make my copy of that available to any member who might like to bring it into the debate.

We have here a proposition to cut the feed-in tariff from 60 cents back to 25 cents. That will immediately reduce the payback period of solar panels. It will reduce one of the ways whereby non-polluting sources can reach a level playing field, if you like, with those highly subsidised polluters who receive billions of dollars of tax rebates and subsidies and who are simply subsidised by the fact that they get to pollute the atmosphere for free, or at least only have to pay $26 a tonne as a result of this week's vote, and those who pay their full price — —

Mr Ondarchie interjected.

Mr BARBER — There again, Acting President, on your question of relevance, I am being dragged into some of the discussions that might be looked at in Durban next week. In today's *Australian Financial Review* we see that virtually all Australia's major trading partners, trading competitors and those we trade with and thereby compete with in their own domestic markets have numbers on the table for emissions reductions. Some of them are using emissions trading systems, but all of them have a mechanism in place to achieve those reductions. Those targets, whether they are based on emissions intensity or absolute emissions,

all look a hell of a lot more ambitious than Australia's target of 5 per cent.

By the way, we have to remember — and we can go back to the direct action plan — that 5 per cent is coalition policy. There is little doubt about that particular question. But in terms of those operating emissions trading schemes, members can also see that explained in Mr Hunt's document. Of course he has used the sleight of hand of looking only at national emissions trading schemes rather than looking at perhaps the Californian example. The state of California is the world's eighth biggest economy, and its scheme starts on 1 January. It is rapidly looking to join with other western US and Canadian states, and it will not be long before all those schemes link up internationally.

Which country is one of our other major export destinations? It is our friends, and my birth countrymen, across the ditch: New Zealand already has an emissions trading scheme in place. If we looked at small businesses, we would find that one of their largest export destinations is New Zealand. There is little doubt to any casual reader of the *Australian Financial Review* that massive subsidies to fossil fuels here in Australia are a barrier to those seeking to invest in clean energy and that, through a whole range of mechanisms, worldwide prices on pollution are being imposed right now.

The situation for the tens of thousands of Australians who are themselves now power plant operators — anybody who has solar panels on the roof — is that they are competing with the old school way of delivering power that the Liberal Party is such a staunch defender of: the big, dumb and centralised coal-fired model. What the coalition seemingly wants to tack onto that model is Mr Philip Davis's nuclear model, which is equally big, dumb and centralised. That is why it is so popular with socialist governments around the world. It is a reality that to continue protecting the present Australian model, or to bring in Mr Davis's nuclear model, you have to socialise your grid, and that generally means socialising your body politic. By contrast, the Greens propose a free market model, where any citizen who wants to become a power generator through the installation of solar panels on their roof can put it straight into the grid.

Mr P. Davis interjected.

Mr BARBER — Mr Davis says he supports it.

Mr P. Davis — At what cost to energy consumers?

Mr BARBER — At a fair cost. I have already addressed that question. For the benefit of the chamber, I have been asking that question since the beginning of the year, and the Minister for Energy and Resources has not seen fit to answer my question on notice. We may get the answer during the debate on this bill.

The question Mr Davis may be asking is: what is a fair price? First of all, a fair price is representative of the benefit of those solar panels. To get a good rendition of that we could look at the Sinclair Knight Merz report to the Clean Energy Council titled *Value of Generation from Small Scale Residential PV Systems*. When I get to the end of this little discussion I will come back to where I was debating the Kennett government's private monopoly model for distribution businesses. One view of the value of solar electrons from rooftop PVs (photovoltaic panels) is that the value of net exports should also equal the retail tariff. It should simply be that your meter spins backwards and you get what you would normally pay for electrons. The alternative view is that the tariff on exports is the value of that generation to the wholesale market.

What level is required to allow these industries to get to the point — which Mr Elsbury attempted to say with his one reference — where they are at grid parity? There are a range of benefits to the group from rooftop PVs. One is that they avoid the cost of electricity supplied from distant generation sources — that is, network losses. That is the benefit that any rooftop PV owner gives to the grid now, but for which they do not get paid; they deliver their electrons right to the place they are being used. They do not get any credit for the fact that Hazelwood power station made its electrons down in the Latrobe Valley and then delivered them right across the other end of the state to the aluminium smelter without proper compensation for network losses. That is a rule built into the grid as set up by the Kennett government. The extra benefit from solar panels is due to their close proximity to the actual load they are supplying.

Then there is the spot value on the wholesale market. With a smart meter, which the Minister for Energy and Resources, Mr O'Brien, seems to have gone to ground on, it should be possible to determine the value of my instantaneous solar electricity in wholesale terms at that moment. The estimates of that are anything up to 5 cents per kilowatt hour, where it would normally be paid at 2.5 cents or 3 cents. Then there are network savings in terms of deferred investment in fixed cost assets. We know this is the major driver for higher electricity bills: as power demands rise there is a need for distribution businesses to continually invest in upgrades to the tune of billions of dollars. With a

properly designed, properly conceived plan for the grid — which Mr O'Brien does not have — a combination of demand reduction and solar panels could be used to avoid, possibly indefinitely, these very expensive upgrades. Then there are the ancillary savings, such as the avoided market fees.

Under the current market arrangements, which were set up by the Kennett government using regulated monopolies and which show every sign of continuing, it is very difficult to capture the value. An analysis of the spot price weighted to the generation that comes from solar PV shows that it could be 50 to 100 per cent higher than the time-weighted average price. With a smart meter, that should be able to be captured. The volume-weighted price in New South Wales was estimated to be around 7.9 cents per kilowatt hour. It is not directly comparable to Victoria, because we have a lower wholesale price. The wholesale price here, for example — at a 10-year low, I might add — has been somewhere around 3 to 5 cents, depending on the time of day. Network losses could be worth another 8 per cent, and the avoided market fees and costs — just the administration costs — could be around 0.1 cents per kilowatt hour. Although it is hard to calculate the value of network deferral, it is probably quite small at the moment, given the small amount of PV. With a large-scale uptake of solar PV, which this bill now puts at risk, it is possible that whole and very expensive transmission upgrades could be avoided with proper planning.

That alone suggests that PV owners, who are just another type of electricity generator, deserve a better deal than they are being given under this bill. It shows that this government has no agenda for reforming the electricity market. The coalition had a lot to say about it when in opposition, but now it is in the driver's seat it has put all the different controls at arms length. The Minister for Energy and Resources will not intervene through the consumer law; he leaves that to the Australian Competition and Consumer Commission. He will not intervene under his ministerial responsibilities for energy; he leaves that to the Essential Services Commission. He has cut the solar rebate and does not even write submissions to the Australian Energy Regulator when it comes to decisions about prices in Victoria.

However, if we look at the coalition's policy from the state election, we see that it said it would not be a back-seat passenger in the energy market, unlike former Premier Mr Brumby, and would be an active participant. We have not seen a sign of that. It is hard to know who is on what side of this debate. We have Philip Davis's nuclear proposal — —

Mr P. Davis — Last week I asked you a question, and I'm still waiting for the answer.

Mr BARBER — We do not float balloons down here, Mr Davis. If Mr Davis is thinking there will be a nuclear power future, presumably he is saying it will be in his electorate. Only a complete political animal would say it should be in somebody else's electorate. Mr Davis is saying there should be nuclear power in his electorate, which is at the centre of the electricity grid. There is only the small question of how the nuclear fuel would be transported.

Honourable members interjecting.

The ACTING PRESIDENT (**Mr Finn**) — Order! I am sure it is a small question, and Mr Davis will have ample opportunity at some stage to answer that question, but now is not that opportunity. I ask Mr Ondarchie and Mr Davis to relax and enjoy the day.

Mr BARBER — Floating the nuclear option is merely a political device. Former Prime Minister John Howard tried it, but it did not work out too well for him. We can safely put that one aside, because only a socialist government willing to introduce socialism back into the electricity system would be willing to pay the massive subsidies that would be required to get a nuclear power plant up and running. It is clear that the push towards 100 per cent renewables is rapidly gaining pace.

Mr Elsbury put forward in scant detail some figures about the payback associated with this bill. It is true that the Minister for Energy and Resources has claimed that this will deliver a 10-year payback on solar panels, but the Alternative Technology Association, which has been doing this a lot longer than any of us, has a different view. The first thing the ATA notes is that this guarantees payment for only five years, so anybody taking part in the scheme today will have guaranteed payment under the scheme for only five years. Even with the current rate at which the cost of solar panels is falling, would it deliver a 10-year payback?

The Alternative Technology Association says absolutely not. It has released its modelling, which goes into considerable detail about its assumptions, including things like the capital cost. Whatever figure Mr Elsbury may want to throw around, he should be aware there are a lot of poor-quality solar units out there. The cheap prices he may quote generally have low warranties associated with them. It is not as simple as looking up the cheapest set of solar panels in a newspaper and calling that your capital base.

Then there is the feed-in tariff rate, which is 25 cents. We know there are some retailers that offer a little more than the base rate, so to be generous to the minister's calculations we should add another 6 cents because some retailers are willing to pay it. The life is only five years, therefore we have to make an assumption of what the value of electricity will be after that time. To be conservative, we can assume that power prices will continue to rise as they have done.

There is also the small-scale technology certificate (STC) price. The so-called renewable energy target certificates have been trading in the low 20s due to the way the Gillard government stuffed up its implementation of the renewable energy target. The Greens warned the Gillard government and moved amendments against it, and we warned this state government that when it folded its scheme into the federal scheme it would create the same problem. To be conservative, let us suggest that the STCs will move back to and start trading in the area of $30.

Mr Ondarchie — They are going to hover at $20.

Mr BARBER — I am being conservative, Mr Ondarchie, so let us say $30, with a discount rate of 6 per cent. The percentage of generated electricity exported to the grid is another thing we do not know, because the government, despite being in place for 11 months, has not wanted to tell us how high the net export rate has been for solar panels under this scheme. It was a major bone of contention when the legislation was first brought in, but this government, which likes to do things under the cover of darkness, has rolled it out and kept the information quiet because it is afraid of informed debate around the measures it brings to the Parliament.

If we put together all those conservative assumptions, which currently do not apply — but conservatively we can suggest an even more favourable group of settings — the ATA, which is the expert in this area, finds that even with a 25 per cent export rate and a 1.5-kilowatt system the best payback it can get is 11 years. For every other scenario with larger systems or higher export rates the payback blows out to around 20 years. I have not seen any attempt by the government to seriously — —

Mr Ondarchie interjected.

Mr BARBER — Mr Ondarchie asks what the life of a PV is. It comes back to the quality of the PV and the warranty that comes with it. However, these estimates are working on the basis of somewhere between $4.50 and $5 per watt. With that assumption Mr Ondarchie should be able to compare the example that Mr Elsbury gave or, if he has in his folder the information the minister has, he may be able to do a quick calculation. However, there is no doubt in the minds of those at the Alternative Technology Association, which has been doing this since before most people knew what a solar panel was, that this scheme will not deliver a 10-year payback rate. At best, under some scenarios it will be 11 years, but under other configurations it will be up to 20 years, so it is a hit to the benefit of anybody who wants to invest some of their capital — their personal patient capital, if you like — into fixing this problem.

Why are we here? Because we have 100 megawatts of solar power in Victoria, and along with all the wind power that we have coming on-stream and available through the grid expansions in South Australia and Tasmania, the coal industry is not doing too well in Victoria. It is getting hurt, and every 100 megawatts of renewables that gets put into the grid is 100 megawatts less that it is going to be selling through its polluting, coal-fired power stations. It is fighting like a wildcat.

From the direct action plan, we have seen that the federal Liberal opposition says it supports the renewable energy target, so we will take it at its word on that. I know Mr Davis did not support it when it came to the state Parliament, but the official policy doctrine through the rather thin document known as the direct action plan is that the Liberal Party supports the renewable energy target. The emissions trading scheme, proposed under federal bills delivered just this week, adds another $23 per megawatt hour to the price of electrons, so that is there as well. That is something. That is another 2.5 cents of benefit to PVs, but not enough to keep the PV industry flourishing.

There is one area in which I have to compliment the Victorian government in relation to the environment, and that is the expansion of the Victorian energy efficiency target. Mr O'Brien mentioned this in question time yesterday, and he suggested that members of the Labor opposition in the other house should come and hug Greg Barber in the way that Labor MPs had reportedly hugged Bob Brown. If I saw Mr O'Brien in the corridor, I would certainly give him an arm around the shoulder for the Victorian energy efficiency target. It is going to reduce our emissions by nearly 6 million tonnes through energy efficiency. In the process it will also reduce profits for coal-fired power stations, and it is the reason that Victoria's demand for power has been growing by only a bit over 0.5 per cent for several years in a row.

That is the reason why this is a great time to introduce stronger measures to reduce emissions, particularly where measures such as a feed-in tariff for PV have wider benefits beyond simply the electrons they generate — wider than just the typical 3 or 4 cents on the spot market that they might earn. Mr Ondarchie, with some education in these areas, ought to get into that Sinclair Knight Merz report and see what it is that the Victorian government might be able to contribute to improve the efficiency of the regulated monopoly known as the electricity grid — the one that Mr Davis and I seem to have different views on and the one set up by the Kennett government and left largely intact. We now know that Minister O'Brien is just going to sit back and watch the federal regulator do what it does.

The regulated monopoly set up by the Kennett government is of course one of the biggest barriers to improvements in this area. People seeking to have their wind turbines, even individual ones, connected to the grid find enormous barriers put up for them by electricity distributors. There are a huge number of improvements that would be economically efficient and that would also reduce emissions, but, with the state government wanting to run a mile from all this, those things are just not going to happen in the next four years.

Paul Keating used to refer to himself as the economic reform Road Runner, and the reason he used the analogy of the Road Runner was that he kept economic reform moving so fast over the space of about 15 years that, in his view, he actually set fire to the road behind him and left nothing for the coalition to follow. At the end of that — —

Hon. M. J. Guy — That's me; I am the new Road Runner. The planning Road Runner!

Mr BARBER — Certainly! Mr Matt Guy may be one of the reform road runners in this Parliament, but he has the Premier, Ted Baillieu, and a few other people hanging around his ankles, which is slowing him down.

The point that Mr Keating was making in relation to economic reform was that at the end of that decade you could point to the conservative parties having opposed, or at least seemingly opposed, every one of his reforms, so there was a lost generation where the coalition could not catch the Road Runner and decided that, since it could never catch him or get past him, it was easier to just oppose everything or at least be seen to be that harrumphing kind of voice that says, 'We kind of support this, but we do not like it'.

That analogy is exactly where the coalition finds itself on climate change. It has worked out that it cannot keep up with the Greens in terms of reform in this area, which the entire world is engaged in. Ten years from now we will find that all these reforms have gone ahead, that the world has not ended and that whole new industries are springing up in renewables, energy efficiency and carbon farming. Even though the coalition may have supported some elements of that — and it is interesting to see which of the 19 bills it did and did not vote for in the federal Parliament this week — it has been the party which has been against it all, and some members of the coalition would be proud to say that. From others, like Mr Guy, I sense a bit of nervousness about the fact that in 10 years the coalition may have very little to say about the environment, yet the environment is the defining issue of the decade.

The ACTING PRESIDENT (**Mr Finn**) — Order! I hope Mr Barber is not reflecting on the Chair in any way.

Mr BARBER — Jump out of the chair, Acting President, and we will see how we do.

The government finds itself in quite a diabolical situation. It does not have anything to say about climate change except for its discredited direct action policy. It knows the issue is not going away. It knows the issue is moving fast and it is being left behind. The government is throwing out the anchors wherever it can, but the trends are inevitable. Thousands of Victorians already have jobs that depend solely on the existing pollution prices and constraints that have been built in, especially the renewable energy target, which members of this government are fighting tooth and nail while their federal colleagues claim credit for it.

From here on in, through the carbon-farming initiative there will be hundreds of millions of dollars going into carbon storage and biodiversity. The renewable energy target is going to quadruple in the next nine years. The $23-a-tonne benefit will be available to clean energy producers through the carbon tax that has just passed. There are the benefits of emissions trading. There is also the immediate asset write-down for small business that was offered as part of the carbon tax package for them to invest in energy-saving devices, which will be an immediate benefit into their working capital that will arrive on 1 July along with the various other benefits in the package. The government is discombobulated because half of its members are enthralled with defending the coal industry and the other half believes that climate change is just a big hoax and that any day now we will wake up and that will be that. It is a sad state of affairs.

In the committee stage of this bill we will get into a little bit more of the detail of this bill, which has not been forthcoming up until now. The government has brought this bill before the house in complete secrecy, not wanting its proposition to be debated with any real information associated with it. The bill will be a hit to the solar industry, which I am sure will continue to flourish in the longer term. For that reason we are opposing the bill. We will vote against the bill.

The minister, using a trigger in the bill, has already shut down the mechanism. I have to say that was a trigger put in place by the previous government, and it showed the previous government's lack of confidence in the future of the solar industry. In any case, if this bill were to fail, the trigger would be available for the minister to restart the industry. What is being offered in place of the former feed-in tariff scheme is a poor substitute, little better than what someone by the end of the five-year period would be able to attract in the retail electricity market. Therefore it is replacing an imperfect but effective scheme with something that is worth very little to those who want to invest in renewable energy.

Business interrupted pursuant to standing orders.

QUESTIONS WITHOUT NOTICE

Government: appointment process

Mr LENDERS (Southern Metropolitan) — My question is to Mr Hall in his capacity as the minister representing the Minister for Agriculture and Food Security. What process does the Minister for Agriculture and Food Security follow when making recommendations to cabinet to deal with real or potential conflicts of interest when making appointments, especially those relating to close friends and members of his party?

Hon. P. R. HALL (Minister for Higher Education and Skills) — The question has been directed to me in my capacity as minister representing the Minister for Agriculture and Food Security. As such, I will convey that question to the minister and respond to the member in the normal way in which ministers who represent ministers in the other chamber respond.

Supplementary question

Mr LENDERS (Southern Metropolitan) — I note Mr Hall's answer, but my question was for the minister in general terms. I would have thought Mr Hall could certainly give a general answer about what Mr Walsh would do, given that there are guidelines for cabinet ministers on how to make appointments. My supplementary question is: in general terms, what would the minister do?

Hon. P. R. HALL (Minister for Higher Education and Skills) — In general terms, it is an interesting supplementary question. There are a variety of processes that I, in my portfolio, for example, undertake when I am seeking to appoint people to positions. By far the most frequent means of doing that is to go through a public process seeking expressions of interest for that position. Beyond that, from time to time there are people who are well credentialled who may be considered for a particular position. In general terms, the only response I can give to Mr Lenders in respect of that is as I have done — that is, in my experience how I might seek to appoint people to positions for which I have responsibility. As I said, if there is a different method employed by the Minister for Agriculture and Food Security, that will be part of the response I give the member.

Smoking: regulation

Mr O'BRIEN (Western Victoria) — My question is to the Minister for Health, the Honourable David Davis, and I ask: can the minister inform the house of progress being made by the Baillieu government in its efforts to protect children from second-hand smoke and to discourage them from taking up smoking themselves?

Hon. D. M. DAVIS (Minister for Health) — I thank the member for his question and for his interest in tobacco control, which this chamber has a long history of bipartisan activity on. People will remember Mr Drum's bill which sought to regulate point-of-sale matters surrounding tobacco; they will remember that that bill was brought to this chamber and passed with the support of the then opposition, the Greens and the Democratic Labor Party. Later a bill that mirrored that bill came from the other chamber and we, as members of this chamber, were able to vote in favour of the point-of-sale regulation of tobacco products. That was introduced on 1 January, and I was pleased to work with councils and the department on the implementation of those tobacco control measures. We were also able to take steps to strengthen the prosecution provisions in the legislation with respect to smoking in cars with children, and that again drew support from across the chamber.

I can indicate to the house that recently I banned a number of products that will no longer be available for sale in Victoria. These are small cigarette papers that are brightly coloured and flavoured in a way that is clearly designed to attract children and to entice young people.

Honourable members interjecting.

Hon. D. M. DAVIS — There is no question that Tasmania and New South Wales have already moved on this matter, and Victoria has now joined them. People will be very pleased that things called Juicy Jay's banana-flavoured and cherry-flavoured cigarette papers, which are clearly designed to make smoking attractive to younger people, will be banned in this state. The sale of these items will be prohibited. You will no longer be able to buy Juicy Jay's orange-flavoured tobacco papers in this state. Again this is one small step.

Mr Jennings — Where did you get them?

Hon. D. M. DAVIS — I purchased them, Mr Jennings, and the department obtained them prior to the process of banning them. But I think it is important that people see what we are talking about here. This product is clearly designed to entice younger people and to make smoking an attractive proposition. It is an important step to make sure that under section 15N(1) of the Tobacco Act 1987 these products will no longer be available. I am sure these measures will meet with support across the chamber. I do not think anyone wants to see these products made available; they are clearly designed to entice younger people and encourage them to take up smoking. These are small but important steps in a series of tobacco control measures that I think meet broad support across the community.

Children: Take a Break program

Ms HARTLAND (Western Metropolitan) — My question today is for the Minister for Children and Early Childhood Development, Ms Lovell, and it is in regard to the Take a Break occasional child-care funding. As the minister is aware, occasional child care is provided by 220 community-based centres across Victoria, and it is often the only form of affordable child care accessible to many disadvantaged families and those in rural or isolated areas. The federal government recently announced an increase in commonwealth-funded child-care places, including 250 new places in Victoria. The Victorian government has said all along that it would put back into play its share of the former Take a Break funding if the federal government restored its share. Will the government capitalise on this opportunity and provide the funding required to prevent the closure of more occasional child-care services in Victoria, especially country Victoria?

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — I note that the member is correct; there was a federal announcement on 25 October of some additional occasional care places, but these are not Take a Break occasional care places. The federal Minister for Employment Participation and Childcare, Kate Ellis, made that very clear on ABC radio last week. The details of the federal government's announcement are still very sketchy. My department has We have been seeking additional information from her department through my department. That information has not been forthcoming. My office also sought additional information from her office. We received a letter last week that told us that the details of her announcement will not be available until the end of January next year.

What is clear from an interview she did on radio last week is that they will be funded through the child-care benefit and the child-care rebate. I have previously written to the minister asking her to make occasional care places available with funding through the child-care benefit and child-care rebate, so it appears that the federal announcement is in direct response to my lobbying of the minister.

Honourable members interjecting.

Hon. W. A. LOVELL — There are a couple of further points I would like to make. I note there is in the federal minister's announcement an acknowledgement that the funding of child care is a responsibility of the federal government. I also note that the commonwealth must acknowledge the particular impact on rural and regional areas when setting the eligibility criteria, because when the federal government withdrew its funding to the Take a Break program it did impact more on rural and regional areas, and it is most important that Victoria gets its fair share of the funding announced. Once we know the details at the end of January, which is when Ms Ellis has told us the information will be available, we will be able to make informed decisions about what Victoria will do.

But I note that in this chamber several weeks ago I asked the member who has asked this question today, Ms Hartland, to sign a joint letter with me to Kate Ellis. A letter was produced — a totally non-political letter — asking Ms Ellis to reinstate funding for Take a Break. After accepting and saying in this chamber that she would sign the letter, it was extremely disappointing that Ms Hartland reneged on the assurance she gave in this chamber and would not sign the letter.

Supplementary question

Ms HARTLAND (Western Metropolitan) — I thank the minister. I am extremely disappointed in her answer. On the issue of the letter, that was not a non-political letter; that was a letter intended to wedge me, and that is why I would not sign it. There was no negotiation; she presented a letter that she wanted signed.

My supplementary question is: the minister has basically now said no, the state government is not going to put money back into Take a Break, so what do we tell people in country areas who are sending me postcards and telling me that they use this occasional child care, especially when they are undertaking dangerous farm practices? They have nowhere else to take their children in regional and country centres. Those centres will close. What will the minister do for those parents when their centres close?

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — I do not like being verballed by the member, and I certainly did not say there was a hard and fast rule that we would not re-fund a program. Our commitment to re-fund the program was based on the federal government putting its money back into Take a Break. The federal government has not done that at this point. As I said in my substantive answer, once we understand the full impact of the federal government's announcement, we can then make informed decisions.

Honourable members interjecting.

Hon. W. A. LOVELL — The end of January is when we will get the information. What is clear from the federal government's withdrawal of funding from the Take a Break program is that the federal government — the level of government responsible for child care and the funding of child care — does not have a sustainable model for the delivery of child care in rural Victoria, in fact in rural areas anywhere. It does not have a sustainable model.

Ordered that answer be considered next day on motion of Ms MIKAKOS (Northern Metropolitan).

Fishermans Bend: development

Ms CROZIER (Southern Metropolitan) — My question is to the Minister for Planning, Mr Guy, and I ask: can the minister inform the house what action the Baillieu government has taken to advance the Fishermans Bend precinct as Melbourne's latest urban renewal opportunity?

Hon. M. J. GUY (Minister for Planning) — I thank my colleague Ms Crozier for a terrific question about creating jobs and urban renewal for Victoria, some of the hallmarks of the Baillieu government that we are getting on with after 12 months in office. I had much pleasure recently in launching Victoria's newest urban renewal authority, Places Victoria, which will focus on not just building buildings but building spaces that are livable. It will focus on what is important to all Victorians, on places that are livable, places that are unique and places that will benefit this state for a long time.

We launched the new authority with its CEO, Mr Sam Sangster, and its chairman, Mr Peter Clarke, and a new structure. That new structure will even include an area of the organisation dedicated to City West, completing Melbourne's Docklands and the Fishermans Bend precinct. It will start that precinct in cooperation with local government and industry as a true mixed-use precinct that will create jobs, investment and residential opportunities on the doorstep of one of the world's greatest CBD areas.

As we in this chamber know, other governments have seen opportunities for and the importance of urban renewal. The Cain government, to its credit, saw the Southbank precinct development, the Kennett government saw the Docklands precinct and this government, the Baillieu government, sees the Fishermans Bend precinct. We know some members oppose it. A local member, the member for Albert Park in the Assembly, Mr Foley, believes we should be creating 19th century, unionised shoe factories on the edge of the city, but we believe we can do better than that. We believe we should construct an area that creates real jobs into the future, a true mixed-use precinct, one that in 20 years time we will look back on as a legacy to the city, as the Cain government did with Southbank and as the Kennett government did with Docklands.

I find it annoying, distressing and sad that some members opposite who, when previously in opposition opposed CityLink, opposed the Melbourne Museum being built, opposed things time and again and are again opposing the development of Melbourne's newest urban renewal precinct, Fishermans Bend. Mr Tee is on record opposing the development at Fishermans Bend, which I find strange given that his own party during the Cain government era saw the development of the Southbank precinct and saw opportunities into the future. It is a shame that we have some short-sighted politicians who do not want to believe in urban renewal, opportunities for the city to progress, opportunities for jobs growth — —

Mr Viney interjected.

Hon. M. J. GUY — Are you still interjecting, Mr Viney? Poindexter has been quiet today but the Muppet show up the back is still going — —

Mr Viney interjected.

Hon. M. J. GUY — I take up your interjection, Mr Viney. Thank you very much. Mr Viney may not believe in urban renewal, his leader may not believe in urban renewal, but he may believe in Docklands. There is a studio in Docklands where we might be able to shoot *Mr Bean* mark 2. We might be able to shoot *I, Frankenstein*, and maybe get 19 people in the audience or send it off to 19 film distributors or somewhere else. We might have a 19 per cent share rating — one of the two. We believe in urban renewal — —

Mr Viney interjected.

The PRESIDENT — Order! I expect a higher standard of behaviour from the Deputy President given his position. I can understand an interjection here and there, but when it starts to roll on to the level that it has, it is inappropriate.

Hon. M. J. GUY — This government is committed to urban renewal. We are committed to good outcomes for Melbourne. I am not sure what Mr What's-his-name or the other one believes, but he certainly does not believe in Fishermans Bend; this government does, we are going to deliver it and Places Victoria will be the agency that does it.

Government: appointment process

Mr LENDERS (Southern Metropolitan) — My question is to the Minister for Higher Education and Skills, Mr Hall, in his capacity representing the Minister for Agriculture and Food Security, Mr Walsh. When Mr Walsh presented to cabinet the nomination of Graeme Stoney for the VicForests board, did the Premier absent himself when his brother-in-law's nomination was before cabinet?

Hon. P. R. HALL (Minister for Higher Education and Skills) — The considerations of cabinet are cabinet in confidence and not something that is spoken about openly in public. As such, I am not in a position to answer that question.

Supplementary question

Mr LENDERS (Southern Metropolitan) — I appreciate Mr Hall's answer, but I draw his attention to *Hansard* of 28 June, when the Deputy Premier, when asked by the cabinet secretary whether he had absented himself on the Rapke discussions and response, answered and said he did not. My supplementary question is: if the Deputy Premier can say he was absent from a cabinet decision because he was conflicted on a Dorothy Dixer from the cabinet secretary, why is it that Mr Hall cannot provide an answer to this house on whether the Premier absented himself when the cabinet appointed his brother-in-law to a government board?

Hon. P. R. HALL (Minister for Higher Education and Skills) — I abide by my previous answer — that is, I respect that the issues within cabinet are subject to the confidentiality that all governments have exercised. If a question is being asked of the actions of the Premier, then I suggest to the Leader of the Opposition that his side will have an opportunity to directly ask the Premier that question later today if it so chooses.

Maternal and child health: government initiatives

Mrs COOTE (Southern Metropolitan) — My question is to the Minister for Housing, who is also the Minister for Children and Early Childhood Development, Ms Lovell. I ask: can the minister advise the house of any recent improvements in the area of take-home maternal and child health resources?

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — I thank the member for her question and her ongoing interest in maternal and child health in Victoria. Over the course of this month a new and improved health and development record called My Health and Development Record will be distributed to maternity hospitals across Victoria. I was delighted to be able to launch the record when I recently addressed a conference of the Victorian Association of Maternal and Child Health Nurses. This is a new and improved record, and it is a result of an extensive review undertaken into the usability and practicality of the former record. The views of parents were the primary reference point for this review. It will be used by maternal and child health nurses, other health professionals and, most importantly, parents to record the growth and development of their child.

The new record, which is a folder, allows parents to not only record the health of their child but also insert mementos and photographs along the way to make it a truly valuable record of their child's first few years of life. After launching the record I had the pleasure of being able to present the first copy to a new mother from Maribyrnong, Anita Beniwal, and her beautiful newborn son, Aaryan, at the Royal Women's Hospital.

I take this opportunity to wish Ms Beniwal and Aaryan all the best from everyone in this chamber.

The Baillieu government is committed to improving maternal and child health services for Victorian families. Improvements to existing services will combine with initiatives such as the provision of an additional $180 000 in this year's state budget to expand the maternal and child health nurses scholarship program in order to provide an additional 50 postgraduate scholarships.

I look forward to seeing the maternal and child health sector continue in its development for the benefit of all children and new parents.

Nurses: enterprise bargaining

Mr JENNINGS (South Eastern Metropolitan) — My question is to the Minister for Health. Yesterday the minister ruled out using the lockout arrangements in Victorian hospitals as part of the government's industrial relations strategy. I ask: was this based on any advice the minister had received that the state would have created an additional liability for patient damages had Victorian hospitals applied the lockout provisions to its nurses?

Hon. D. M. DAVIS (Minister for Health) — I am very happy to answer this question, because it is an important one. It was based on the fact that there is a policy that is in position, which remains in position from the earlier government's time and which requires any such action to be notified and to be agreed to prior to it occurring. There is a policy in position. That is the key point.

On a deeper level, the government is determined to keep our hospitals open. We are determined to work with the nursing profession. We seek to have our hospitals remain open; we would not want to close hospitals. Locking people out of a hospital would mean it would be difficult to maintain services at that hospital. It would be the wrong way to go. We seek to keep our hospitals open for patients. One of the key issues that we see with the Australian Nursing Federation's decision to push forward with the closure of one in three hospital beds in Victoria is the impact that will have on the safety of patients in our hospitals and the security of people to get the services they urgently need on some occasions.

Supplementary question

Mr JENNINGS (South Eastern Metropolitan) — I thank the minister for his answer. I congratulate him because it was a good answer, but it was not a complete answer. In recognition of it having been a good answer, he will note that I did not interrupt him once during his answer. I would like the minister to specifically address the question of whether he believes, on the basis of advice he has received, there would have been an additional liability that could have accrued to the state had those provisions been used and then perceived to have had an adverse effect on an individual Victorian patient?

Hon. D. M. DAVIS (Minister for Health) — The key points are the ones that I have outlined, and they are that there is a policy position and that remains in force. It is a sensible policy position. The fundamental step is that we want to keep hospitals open. We want to keep them available to patients. We want our highly qualified nurses doing the work that is required so that patients can come through. Closing one in three hospital beds would imperil that. If a lockout mechanism closed a hospital or part of a hospital, it would be very difficult to maintain the level of services required.

Auditor-General: *TAFE Governance*

Mr RAMSAY (Western Victoria) — My question is to the Minister for Higher Education and Skills. I ask: can the minister advise the house of the department's response to the report of the Victorian Auditor-General's Office entitled *TAFE Governance*, which was tabled in this house on 26 October 2011?

Hon. P. R. HALL (Minister for Higher Education and Skills) — I thank Mr Ramsay for his question. He refers to a report of the Auditor-General that was tabled in this house on 26 October that concerned TAFE governance. While the catalyst of that particular report by the Auditor-General was a particular matter concerning Holmesglen Institute of TAFE, the recommendations made within the report have very broad application across the governance of all TAFE institutes within this state; so this report has been welcomed by my department and me.

The report makes recommendations concerning a number of organisations, including the department, Skills Victoria, the Victorian Skills Commission, the Department of Treasury and Finance as well as Holmesglen TAFE. I am pleased to be able to report to the house that in respect of those recommendations to government bodies, being the Skills Commission, Skills Victoria and the Department of Treasury and Finance, the government accepts every one of the recommendations. The comments of departments that have been included in the Auditor-General's report indicate exactly that.

I also make the comment and observation that some of the recommendations are already well advanced in their implementation. I have taken some measures after observing some of the things that I inherited. I have taken measures during the course of this year that go some way towards meeting those recommendations put forward by the Auditor-General. I might mention also that legislation has been introduced in the other house this week that addresses at least one of those recommendations.

In respect of Holmesglen, I have written to the chair of the Holmesglen board advising him of my expectation that the recommendations relating to the Holmesglen institute will also be implemented. I know the department secretary is meeting with the chair of Holmesglen during the course of this week.

The Auditor-General's report is helpful in that it coincides with a number of other areas of work that the department and I are currently undertaking with respect to TAFE governance and the architecture around training. While the previous government put in place a demand-driven training system in this state, it left intact a system of architecture around that, which you would almost describe as unfit for purpose, given the change to the whole dynamics of the training market in Victoria. We need to look at whether the governance model for our TAFE institutes is appropriate to our new market-driven system. We need to look at industry engagement structures to make sure that under this new market-driven system industry engagement is meeting the needs of government and industry and getting the industry's messages to government.

In terms of all this work, including some of the fees and funding work which I have previously spoken about in this house, what I expect to be able to do is to come back to the Parliament and the people of Victoria early in the new year and put in place a structure around training in this state that is enhanced, that strengthens the training system and that better meets contemporary needs. I look forward to reporting to the house early next year on those matters all coming together to strengthen the training system that we have here in Victoria.

Nurses: enterprise bargaining

Mr JENNINGS (South Eastern Metropolitan) — My question is to the Minister for Health. In the last 24 hours I think we have come some way towards defusing some of the conflict areas in the industrial relations climate in Victoria, and I would encourage the minister to go further. Could the minister today rule out, just as he has ruled out the lockout provisions, that the stand-down provisions will not be used, and is it his intention not to use those provisions in Victorian hospitals in the coming days?

Hon. D. M. DAVIS (Minister for Health) — The member has obviously asked a question about some very specific parts of the process — —

Mr Jennings interjected.

Hon. D. M. DAVIS — No, I make the point that the government is determined to negotiate with the ANF (Australian Nursing Federation) through the processes that exist — that is, with the health services acting through the VHIA (Victorian Hospitals Industrial Association). That process is well advanced. In fact I believe there may be conciliation processes occurring today, around now, and my understanding is that conciliation processes are booked every day for the foreseeable future, including through the weekend. We are hopeful those discussions will be successful in getting a resolution to the process. We are determined to work with the ANF to do whatever is required to get an outcome, so the 86 health services and the VHIA will be working — —

Mr Jennings interjected.

Hon. D. M. DAVIS — No, I believe this is quite important background for the house to know. Obviously, as the member would understand, I am not a part of a negotiating team and not doing the actual negotiations, but I do ask for some significant details of what is occurring and the sequence, and I welcome the fact that there is a clear sequence of negotiating occasions that will — —

Mr Leane interjected.

Hon. D. M. DAVIS — I am sorry, Mr Leane, I think this is quite a serious matter. I have got 2 minutes and 13 seconds left and I intend to give a full answer to this and an answer that actually treats it with the general seriousness that I believe the house and the community believe it deserves. You may not regard this as a serious matter, but I certainly do.

The government is determined to negotiate with ANF through those bargaining agents and the 86 health services and to get a result that is in the community's interests. We would hope there would be no need for any further arrangements. We would hope a negotiated settlement would be found, and we would also hope ANF would not proceed with the stated intention to close one in three beds. As I explained to the house earlier this week, on Tuesday afternoon ANF sent letters to health services around the state indicating that

bans will begin at 7 o'clock on Saturday morning. Those processes — —

Mr Jennings interjected.

Hon. D. M. DAVIS — We have made it very clear that we are keen to negotiate. We have made it very clear that we want to reach a good outcome; we want the health services to be able to reach a good outcome. Obviously a significant offer is available in terms of 2.5 per cent plus productivity offsets, and we are very open to sensible suggestions that are made and put forward.

The point here is that the opportunity is there — and Mr Leane might be getting toey, but he will just have to keep listening — to get a good outcome for the community, to ensure that the nursing union, the ANF, pauses with its implementation of bans at 7 o'clock on Saturday morning when its members will start closing every third bed in Victoria. That is going to have a devastating impact, and public safety and security is the primary objective of the government here, so we are quite concerned that that will not be happening.

Mr Jennings — President, I do have a supplementary, although I was prepared to move by leave, if it helps the minister, that we have an extension of time for his answer.

The PRESIDENT — Order! Mr Jennings can ask a supplementary question at this point.

Supplementary question

Mr JENNINGS (South Eastern Metropolitan) — I note the minister did not quite take the opportunity in his substantive answer of ruling out the use of stand-down provisions, and if he is going to baulk at that matter today, can he step up and indicate that he is not contemplating as part of his industrial relations strategy using agency casual nurses if stand-down provisions were used to replace full-time nursing positions in Victorian hospitals?

Hon. D. M. DAVIS (Minister for Health) — As I have said, our major focus is on guaranteeing a good outcome to the EBA (enterprise bargaining agreement) negotiations and to work genuinely with the ANF through the health services and their agents to get a good outcome for the future for nurses, with higher salaries and good conditions, and better outcomes for the community. That is one side of it. But in terms of the period where admittedly argy-bargy occurs in an industrial environment of this nature — an EBA negotiation — our primary objective is to guarantee the safety of Victorians and Victorian patients. If the ANF closes one in three beds, that will make it very difficult to guarantee safety.

In terms of agency nurses, it is not my position to employ staff in hospitals. What occurs in hospitals is that nurses and doctors and other staff are employed by the health agencies, and I would not want to say to nurses that agency nurses have no role in hospitals. Currently they are routinely hired to fill places and gaps in the system.

Information and communications technology: national broadband network

Mrs PETROVICH (Northern Victoria) — My question is to the Minister for Technology. I ask: can the minister inform the house of the action the Baillieu government is taking to secure a fair share of the NBN (national broadband network) rollout for Victoria?

Hon. G. K. RICH-PHILLIPS (Minister for Technology) — I thank Mrs Petrovich for her question and her interest in the rollout of the NBN.

Mr Somyurek — Do you support an NBN?

Hon. G. K. RICH-PHILLIPS — I will come to that, Mr Somyurek. The Victorian government has been very clear about the benefits of high-speed broadband for the state. We see it as a driver of productivity, a driver of innovation, something that will benefit our health sector, something that will benefit sustainability in this state and something that will drive the next wave of reform for Victoria. Whether it is high-speed broadband delivered by NBNCo Ltd through its fibre rollout or whether it is high-speed broadband delivered by existing providers through wireless or satellite rollout — whatever the platform — the Victorian government sees enormous potential for the rollout of high-speed broadband and the use of high-speed broadband in this state.

The house has heard me say previously that it is not just the provision of the infrastructure that is important; it is actually having the applications to use that infrastructure. That is why last month I was pleased to announce the new Broadband-Enabled Innovation (BEI) program to provide incentives for Victorian institutions and businesses to develop applications to use the rollout of high-speed broadband.

Last week I was pleased to be at the University of Ballarat for the announcement of the first round of grants under the BEI program. One of the major recipients under the first round of the program was the three-dimensional Telehealth project being undertaken by the University of Ballarat in conjunction with

Grampians Rural Health Alliance. The purpose of that project is to provide opportunities for clinicians, particularly clinicians based in regional centres and clinicians based in metropolitan centres, to undertake consultations with patients in remote locations around the state.

At the university last week we had a demonstration of a clinician undertaking a consultation with a cancer patient. The cancer patient was from Horsham and the consultation was being undertaken in Ballarat. We had the three-dimensional image and the clinician was able to undertake a detailed assessment of the patient and address their clinical needs via the high-speed broadband link. That is the type of initiative that can be generated under the BEI program.

It is for that reason that the Victorian government and the Victorian community were very disappointed with the announcement by NBNCo last month of its first year of major rollout of NBN premises across Australia, because — —

Mr Somyurek — So did you advocate for Victoria?

Hon. G. K. RICH-PHILLIPS — Absolutely, Mr Somyurek. The Victorian government has advocated for Victoria; those opposite have not. In the first round NBNCo announced a rollout of 485 000 premises in the first year, of which Victoria's share is only 61 000. Only 61 000 premises out of 485 000 — 12 per cent of the rollout — are coming to Victoria. As honourable members know, we have 25 per cent of Australia's population and we are receiving only 12 per cent of the rollout. We have a Prime Minister who is a Victorian, we have a communications minister in Canberra who is a Victorian, and we do not have Victoria receiving its fair share under this program. The Victorian government is advocating for a better deal for Victoria under this project, and I call on those opposite to put Victoria first, talk to their federal colleagues and ensure that Victoria gets a better deal.

QUESTIONS ON NOTICE

Answers

Hon. D. M. DAVIS (Minister for Health) — I have answers to the following questions on notice: 1168–79, 1181–267, 1269–317, 1368–80, 1382–98, 1400–4, 1409–20, 1422–33, 1435–67, 1518–74, 1576–608, 1610, 1612–52, 1654–786, 1788–886, 1889, 1891–962, 1964–6, 1968–2002, 2005–21, 2023–54, 2056–89, 2091–137, 2139–48, 2150–205, 2207–59, 2432–43, 2445–61, 2463–84, 2488–540, 2624–56, 2660–79, 2681–702, 2704–39, 2742, 3567–77, 7512–607, 7896–991. That is 1383 answers, which is a significant achievement. I was reflecting on this: it is some sort of record. It might be a world record; I do not know. It is certainly a record in my period in the chamber. People like Mr Hall or Mr Davis or the President may remember others.

Mr Viney — On a point of order, President, I am not sure what motion Mr Davis, the Leader of the Government, is actually speaking to. If he is speaking to a motion, I would like to know the procedure, what the motion before the house is and how members can participate in the debate.

The PRESIDENT — Order! I understand Mr Viney's point of order, and I think I would be concerned if Mr Davis were to make an extensive speech with regard to the tabling of answers to questions, which is a fairly straightforward process. Nonetheless, at this stage the context he has put to the answers is not of great concern to me. As I said, I certainly do not see that this ought to be an extended speech, and I would ask the Leader of the Government to be mindful of that. Are there any concluding remarks?

Hon. D. M. DAVIS — I should note, President, that 1884 answers have been tabled this week, which is a significant number of questions on notice that have been answered. I indicate that the government is seeking to keep up with the very significant flow of questions in a genuine way. As I say, perhaps we have hit some sort of world record today.

Mr Lenders — On a point of order, President, I seek your ruling. We have new sessional orders that preclude opposition members from speaking on this on a Thursday. Now we have the Leader of the Government, in a provocative fashion, commencing a debate on it. The ruling I seek from you is on the applicability of sessional orders which completely take away any right of reply in such a debate. I seek the leave of the house to respond to the Leader of the Government, who has entered into a debate. This is two sitting weeks after he removed the ability of the opposition to comment on this issue on a Thursday, so I seek leave to respond.

The PRESIDENT — Order! I will put it to the house as to whether or not leave will be granted, but from my perspective in the Chair I do not believe the Leader of the Government was actually entering into a new debate. I accept that the process is that he is essentially expected by the house to table the answers

to questions and to advise the house of the number of questions that have been answered. That obviously enables the house to monitor the progress of questions that have been put on the notice paper and discharged. The Leader of the Government has embellished that process today, and I would suggest it is not something that I would be looking to continue on future occasions, but I do not think the remarks constituted a debate as such. They were perhaps some observations about the number of questions that have been asked and answered.

The Leader of the Opposition has requested leave to respond to the remarks that were made by the Leader of the Government. Is leave granted?

Hon. D. M. Davis — Not on this occasion.

Leave refused.

Honourable members interjecting.

SUSPENSION OF MEMBERS

Hon. M. J. Guy and Hon. M. P. Pakula

The PRESIDENT — Order! I ask Mr Guy and Mr Pakula to vacate the chamber for half an hour.

Hon. M. J. Guy and Hon. M. P. Pakula withdrew from chamber.

ELECTRICITY INDUSTRY AMENDMENT (TRANSITIONAL FEED-IN TARIFF SCHEME) BILL 2011

Second reading

Debate resumed.

Mr P. DAVIS (Eastern Victoria) — I rise to speak on the Electricity Industry Amendment (Transitional Feed-in Tariff Scheme) Bill 2011. I will not reprise the excellent speech that Mr Elsbury gave when introducing the discussion today, when he properly encapsulated the essence of the bill and gave a very good rationale for the government policy this bill seeks to implement. That policy has been described by industry stakeholders as providing the solar industry with a soft landing in relation to the changes that are needed to realise the legislative framework put in place by the previous government.

For the benefit of Mr Barber, the aspiring federal parliamentary leader who sought to spend most of his contribution time debating commonwealth parliamentary matters, policy and legislation, I make the point, as he seems to have missed it, that section 40FE of the Electricity Industry Act 2000 clearly sets out that there is a cap on the previous scheme, the premium feed-in tariff scheme. It surprised me, when I went back to that legislation, that the estimate the then minister had made of the cost to a consumer arising from that scheme was around $10 — and that is written into the act. I was surprised to find that the estimates of the cost of the operational scheme to consumers, as reported by the Auditor-General, was a significantly higher cost to consumers.

I make the point that the action the Victorian government has taken in relation to this bill is intended to maintain an incentive for the installation of solar generators for retail customers. In its own way, that is meritorious on a number of fronts. One is that there has been an industry expectation created around incentives, and the difficulty in stepping back from that level of incentive, which is around 60 cents, was that the collapse of market demand would have meant that small business operators who installed solar panels would have been in a lot of commercial trouble. At the same time there are electricity consumers who were seeking to move into solar schemes and who for timing reasons had not been in a position to avail themselves of the premium tariff scheme. As a result of this bill, they now have a default option.

What I really wanted to lead to was the conceptual problem that we have with the legislative framework around renewable energy. I refer to the issue that Mr Barber alluded to about debates occurring in different jurisdictions, and I want to crystallise what it is that legislators are seeking to do in a policy sense, which is essentially to interfere in a market that is in itself imperfect — that is, it is a highly regulated market. The energy industries, by their very nature, are not industries that lend themselves to perfect competition in the way that more disaggregated industries do. There is an inevitable centralisation, because of the monopoly or oligopoly positions in the marketplace, which determines that regulators must intervene and set a framework. That framework can be well administered or poorly administered, depending on the policy positions adopted by the regulators at the time.

Mr Barber alluded to the current construct of the transmission and distribution system in Victoria, and I acknowledge, having been involved in setting the framework in a previous government, that it is imperfect because of the legacy of a state-owned monopoly.

Mr Barber interjected.

Mr P. DAVIS — I will address Mr Barber's interjection about maximising the net yield to the state from the sale of the assets. Yes, that was one of the objectives of the restructure, but importantly it was also driven by the notion of stepping away from a monopoly structure into a competitive market in the best way that could be done in that transition. I would not deny that further reform of the energy market could, should, must and will take place over time.

Mr Barber further argues for an entirely disaggregated model for a distributed energy generation industry. I agree with Mr Barber that that is not a bad model. It is quite clear that small-scale renewable energy lends itself exceedingly well to a distributed generation sector. However, the reality is that in the contemporary environment we are largely dependent upon centralised baseload power generation that for the time being will continue to be dominated by brown coal. In a previous debate I posited a question to which I have not yet had a response from Mr Barber: is he advocating for a nuclear model, which is of course the solution, and if not, why not?

Mr Barber — No, because it doesn't work.

Mr P. DAVIS — Mr Barber interjects that it does not work. If Mr Barber's objective is zero or close to zero greenhouse emissions, he is being incredibly inconsistent. If that is his primary driver in the context of this debate, that is a question that needs to be answered.

Honourable members interjecting.

Mr P. DAVIS — One of the other sources of energy generation is, of course, hot air. We have a good deal of it going across the chamber at the moment, which is making my task all the more interesting and challenging.

I did want to walk through some of the options for alternative renewable energy. The other question I would posit for Mr Barber to respond to is about his total aversion to biomass generation. Biomass is probably one of the greatest potential renewable energy resources in this state. I would have thought that, contrary to his current position, Mr Barber would have been a great advocate for biomass. I notice Ms Pennicuik shaking her head. I know that this summer she will be in East Gippsland hugging trees to death.

It is the biomass from forest residues that could very significantly displace brown coal — the brown coal that Ms Pennicuik and Mr Barber hate so much. If they got up and argued in this place to replace brown coal with biomass, they would have far more credibility than they do at the moment. In my view the Greens have no absolutely no credibility at all in this debate on energy, because you will not take up a case to argue for — —

The PRESIDENT — Order! Mr Davis should address his comments through the Chair.

Mr P. DAVIS — The Greens have absolutely no credibility in this debate because they will not take a consistent position to advocate for the environment. They say they are for the environment. What they are for is a change in the economic structure of Australia. They are interested only in the redistribution of wealth, by arguing for tax measures and consumption levies that transfer wealth from the poor to wealthier people or indeed investors.

I make the case about your neighbours in Brunswick, Mr Barber, who — —

The PRESIDENT — Order! I advise Mr Davis to address his comments through the Chair — not 'your neighbours'.

Ms Pennicuik — Mr Barber's neighbours.

Mr P. DAVIS — Mr Barber's neighbours. Thank you for that assistance; I really needed to be refocused in this debate.

Mr Barber's neighbours in Brunswick, most of whom are tenants, I would suspect, will be subsidising other people. I have to admit that I have children who reside in Brunswick. I know that Brunswick is a very cosmopolitan suburb of Melbourne, but essentially a lot of people in rental accommodation there are students who struggle to pay their electricity bills. As a result of the schemes that Mr Barber advocates for, they are very heavily subsidising people in the leafy suburbs of Melbourne — let me not name them — who can well afford to install solar panels.

The reform that the government has introduced is to ensure the continuation of the premium tariff scheme, which has been found to be poorly implemented. It will continue the scheme but at a lower cost to consumers. That is what is important about the Baillieu government: it is acting entirely responsibly. I support this bill because it will ensure that there is an effective solar tariff scheme in place but at a much reduced cost for consumers.

In conclusion, I ask that Ms Pulford advise the Department of Primary Industries, through the

minister's office, of any specific examples of people who are caught in the middle, as she described them, because I understand that they are being dealt with on a case-by-case basis.

Sitting suspended 1.00 p.m. until 2.02 p.m.

Mr SCHEFFER (Eastern Victoria) — The objective of this bill is to amend the Electricity Industry Act 2000 to introduce a new feed-in tariff scheme to begin after the current premium solar feed-in tariff scheme reaches capacity and also to amend the National Electricity (Victoria) Act 2005 to give effect to this new scheme. Ms Pulford has already indicated in her contribution that the opposition does not support the bill.

The government's argument for the provisions in this bill is basically that the premium solar feed-in tariff scheme has reached its statutory capacity and because of that it should be closed to new customers who will be able to access the new transitional feed-in scheme that the bill introduces. The government says that the 100-megawatt cap specified in the Electricity Industry Act 2000 will be reached by the end of this year — that is well ahead of schedule — and that if the current arrangements were to continue, all electricity consumers who end up paying for the tariff to the small solar power generators would face an increasing impost and this would be unfair.

The new transitional feed-in tariff scheme will be open to those small solar generators who would otherwise have been eligible for the premium solar feed-in tariff scheme but will pay them a feed-in tariff rate of 25 cents per kilowatt hour, whereas the premium scheme, members will remember, paid 60 cents per kilowatt hour. The bill also provides for the wind-up of the transitional scheme when a capacity of 75 megawatts — that is statewide — has been achieved, or when the annual consumer cost cap of $5 is reached. The difficulties with this proposal are twofold: that it runs counter to the promises that the coalition made in its energy policy in the lead-up to the 2010 election and also that the changes rely on assessments of the capacity of small solar generators that the industry disputes and that the government, we believe, has not provided adequate data to defend.

The coalition election policy document entitled *The Victorian Liberal-Nationals Coalition Plan for Energy and Resources* states very clearly that a coalition government would direct the Victorian Competition and Efficiency Commission to inquire into and report on the design and implementation of a market-based gross feed-in tariff scheme and would ask VCEC to examine the following possible features of a market-based gross feed-in tariff scheme.

These are as follows: a requirement for electricity retailers to include in every retail contract an offer to purchase all power generated by a customer's feed-in capacity; the tariff available to all solar, wind, fuel cell and other low-emission sources; the retailer to pay the customer at the end of each normal billing period any amount earnt by a customer from the feed-in; providing that customers can be paid in cash, not just in credits that are wiped out if not used; providing that customers feeding into the grid at times of peak demand can access the higher prices that are available at such times; offering the potential for payment of a higher rate when the transmission and distribution savings are greatest, such as in regional Victoria; applying to feed-in sources installed anywhere, including businesses, farms, community organisations and all residential premises — even vacant land so long as there is a connection point; and requiring no hidden cross-subsidy from other consumers.

The government — having put that on its website as still being part of its policy — has not yet referred any of these matters to the Victorian Competition and Efficiency Commission, and it seems to me that such an inquiry is a minimum prerequisite for the changes to be made to the feed-in tariff arrangements that are detailed in this bill that is before us today. The coalition is on the record as supporting the gross feed-in tariff. When the Brumby government introduced the premium tariff scheme in 2009, the coalition talked up its support for a gross feed-in tariff and criticised the government for introducing a net feed-in tariff scheme.

At the time coalition members supported boosting investment in renewable energy sources and supported indexation or adjustment of the 60 cents per kilowatt hour tariff. Until the Victorian Competition and Efficiency Commission has considered these matters, as the coalition promised the Victorian community, we on this side do not believe it would be right for the opposition to support this bill. I hope the minister will advise the house when this particular coalition commitment is discharged.

Another concern we have with the proposed legislation goes to the impact that these measures will have on the solar electricity industry and the potential loss of jobs. Notwithstanding the unemployment figures that have come out today, we are still living at a time of serious global economic volatility. We always need to keep an eye on job creation in this state. The government reassures us in the second-reading speech that the solar energy industry is going along very well. Lots of

photovoltaic panels are going up on Victorian rooftops and we can now afford to reduce the level of additional support the industry has been receiving to make it more competitive with fossil fuels.

Not so fast — because industry does not agree. Since the government announced its intention to slash the premium solar feed-in tariff for new applicants, the Clean Energy Council and the Energy Supply Association of Australia, for example, have called for the government to hold off making these changes until VCEC has undertaken a review of the scheme, as the government promised in its election commitments. The Clean Energy Council estimates that 1800 jobs could disappear from the solar industry if the changes are implemented. It says that putting in place these transitional arrangements is unnecessary because the cost to general electricity users is not unduly onerous when we take into account the significant community benefit of a strong solar energy industry. That is the other reason the opposition cannot support the bill, and we urge the government to hold off implementation of these measures until we have better information on taking the next step.

In winding up my contribution I say again — and it is a point I have made in previous contributions on issues relating to energy — the government's approach to the renewable energy industry is confusing because it lurches from one position to another. We hear an astoundingly ferocious attack on the wind industry from the Minister for Planning, Mr Guy, and then we see an inept dismantling of the solar feed-in tariff scheme. Then there was a report on a speech made by the Premier a few months back when he said Victoria would abandon its legislated 20 per cent cut in greenhouse emissions. The Treasurer publicly tied himself up when he revealed that he did not even realise these targets were enshrined in Victorian law.

The Minister for Environment and Climate Change, Ryan Smith, who was responsible for the debacle concerning the reintroduction of cattle grazing in the high country, announced that the Climate Change Act 2010 would be reviewed so that there can be greater coordination between federal and state-based greenhouse gas emission reduction schemes. Then there was last week's announcement that Greenearth Energy had secured a $25 million funding agreement with the Victorian government to progress its geothermal power project near Geelong.

The government is ricocheting back and forth, supporting some green energy proposals and carbon reduction debate proposals but then criticising and critiquing the federal government's carbon reduction programs and renewable energy in Victoria, such as the wind and solar industries. It seems to me that the government is wanting to walk on both sides of the street, pushing its renewable, green credentials to its constituents in the leafy suburbs of Melbourne, but then clipping back real growth in the renewable energy industry when it impinges on certain non-progressive interests in other sensitive electorates or where policies might perhaps start running up against the electrical transmission and distribution industries. In our view this legislation needs to be put on hold until the government honours its election commitment to direct VCEC to review premium solar feed-in tariff arrangements and works out a way forward for the solar industry that will not result in the loss of jobs.

Mrs PEULICH (South Eastern Metropolitan) — I wish to also place on record my support for the Electricity Industry Amendment (Transitional Feed-in Tariff Scheme) Bill 2011, the purpose of which is to amend the Electricity Industry Act 2000, introduce a new energy feed-in tariff scheme that will commence after the premium solar feed-in tariff scheme reaches its capacity and make other related amendments to the National Electricity (Victoria) Act 2005 to give effect to the new energy feed-in tariff scheme.

The Labor Party's opposition to this bill is pure and utter political posturing.

Mr Leane interjected.

The ACTING PRESIDENT (**Mr O'Brien**) — Order! Mr Leane!

Mrs PEULICH — I will get to the substance of it, but it is timely that Victorians have an opportunity to benefit from innovation that will hopefully make energy cheaper for them, given that the carbon tax has been passed in the federal Parliament with the collusion of the Labor Party and the Greens.

The Victorian coalition government will introduce a new transitional feed-in tariff (TFIT) scheme, to replace the current premium feed-in tariff (PFIT) scheme, for properties installing rooftop solar panels. Both the premium solar feed in-tariff scheme and the general feed-in tariff (GFIT) scheme — known as the standard feed-in tariff scheme — which operates alongside it, were established to encourage the uptake of small-scale solar energy by allowing customers to enter into contracts with their electricity retailers to receive payments for excess electricity generated by small-scale renewable generators at their premises. It has been made clear that neither of the schemes was funded by the state government. The GFIT scheme is

retailer funded; the PFIT scheme, which is now being replaced, is funded by all customers within a given distribution area.

The GFIT scheme commenced in 2004 and offered the same rate of payment for electricity exporters to the grid as customers pay for electricity consumed from the grid, typically in the range of 20 to 24 cents per kilowatt hour. The majority of customers who install solar photovoltaic roof panels now apply for the PFIT scheme. It commenced in 2009 and has a much higher feed-in rate of 60 cents per kilowatt hour. However, the PFIT scheme was open for customers who installed individual solar panel systems of 5 kilowatts or less. The PFIT scheme will reach its statutory cap by the end of this year, which is well ahead of the time anticipated when the scheme was established in 2009. The government announced that the PFIT scheme would be closed and anticipated that it would be replaced, without retrospectivity, so that existing customers receiving the PFIT rate would continue to receive the rate for the legislated period in the act, which ends in November 2024.

The new TFIT scheme for properties installing rooftop solar panels will provide a fair and reasonable incentive for households to install solar energy systems while a review of feed-in tariffs is carried out by the Victorian Competition and Efficiency Commission. This review of feed-in tariffs was coalition policy. It is expected to commence later this year and report in the second half of 2012. The new scheme, as I mentioned before, does not affect those currently accessing the PFIT scheme. While the review is being conducted, the transitional feed-in tariff scheme will provide fair pricing to households feeding solar power back into the grid while also supporting the solar panel installation industry. Unlike many other states that have closed down all feed-in tariff schemes, Victoria's TFIT scheme will provide a more sustainable approach that reduces the boom and bust cycle for the industry.

The new scheme will mean that more people invest in rooftop solar panel systems, which will have an average payback period of 10 years. That is about the same as was forecast for the PFIT scheme when it was first introduced. Since the premium scheme was introduced in 2009, the cost of smaller scale solar systems has dropped by about 50 per cent and is predicted to continue to fall. The new TFIT scheme will be available from 1 January 2012 for all customers with solar photovoltaic systems of 5 kilowatts or less. The tariff will be available for five years from the scheme's commencement.

Minister O'Brien, the Minister for Energy and Resources, has issued a warning to consumers that they should always be wary of solar installers pressuring them for a quick decision at the door. It would be misleading to guarantee new customers access to the premium rate from now on. If misleading claims are made regarding access to the premium tariff, the minister has indicated that those who make the misleading claims will face severe penalties under Australian Consumer Law. Misleading and deceptive conduct can lead to penalties of up to $220 000 for an individual and $1.1 million for a body corporate.

The scheme has been well received by the broader community. I will read some industry quotes. The *Age* of 2 September 2011 reports:

> Australian Solar Energy Society chief executive John Grimes said the government had made 'pretty much the right decision' compared with NSW …

The National Electrical and Communications Association was reported in the *Surf Coast Times* of 6 September 2011 as saying:

> … NECA is pleased that the minister has taken on board our views by introducing a TFIT as this will certainly provide a softer landing for the solar industry and hopefully ensure its ongoing viability here in Victoria.

The Bendigo *Advertiser* of 5 September 2011 says:

> … many householders would not be affected by the reduction in the feed-in tariff because their systems were only big enough to supply their own household with power with none to spare.

The *Wangaratta Chronicle* of 5 September 2011 says:

> … Wangaratta-based Steintech Electrical and Solar chief executive officer, Michael Steinlauf, said it is a positive move.
>
> He said 25 cents is a good tariff compared to Western Australia and New South Wales, which have already ended their solar incentives altogether.
>
> …
>
> 'Looking at our business going into the future, we expect to get busier,' Mr Steinlauf said.

Bloomberg New Energy Finance research spokesman Kobad Bhavnagri was reported in the *Age* of 6 September 2011 as saying:

> … the Victorian government had made a relatively sensible change to the solar tariff compared with NSW …

Many other positive comments have been made about this. It is disappointing that the opposition cannot set aside its desperate attempts to claw some political advantage as it tries to reassemble and consolidate

following what would have been a surprising loss for it. It should get used to it. The opposition's comeback, which for the sake of Victoria and Victorians will hopefully not be too soon, will require that it reconnects with the community, not just its support base but the broader community — the swinging voters in swinging seats and the forgotten voices.

This government is committed to providing fair and sustainable support for the renewable energy industry. It does not have highfalutin ideas but practical and implementable initiatives such as this, including rooftop solar installations. The new transitional feed-in tariff of 25 cents per kilowatt hour has been well received. The TFIT will provide a payback period of less than 10 years, which was the same as Labor had under the previous PFIT scheme. Given the dramatic reduction in the cost of solar panels over the past two years, they are becoming ever more affordable, with higher rates of subsidy no longer required. It is a much more sustainable system, and hopefully more people will be able to take advantage of it.

Feed-in tariffs are paid by other electricity consumers through their bills; they are not funded by the state budget. Given the huge waste of taxpayer funds through hugely inflated costs of major projects, an enormous amount of waste and mismanagement by the former government, the punishing attitude of the Gillard government on Victorians who dared to vote for any party but Labor in state elections, the general decline as a result of global financial circumstances and the tightening of money, governments right around the world, including the Victorian government, need to be very careful about the way they use their money and manage their costs. Pensioners and householders who cannot afford solar panels should not subsidise those who can with an overly generous scheme, and I think this is the major policy difference: pensioners and householders who have previously been subsidising much more expensive schemes for those who are much better off will be the beneficiaries of this scheme.

The Victorian Auditor-General released a report in April this year on facilitating renewable energy development, including the former government's proposed large-scale solar feed-in tariff and the former Victorian renewable energy target scheme. The Auditor-General stated that a number of the previous Labor government's renewable energy policies had been undermined by poor planning, were proven not to be effective, and lacked a business case and a cost-benefit analysis. They were compared with the bungling of smart meters. The Auditor-General stated that the Brumby government's proposed Victorian large-scale solar feed-in tariff would increase household electricity bills by $23 to $47 a year on average — nearly 500 per cent more than the increase claimed by the Labor government, which was $5 to $15 a year. According to the Auditor-General, limited planning, especially a lack of clarity about how the targets would be achieved, contributed significantly to those targets not being met.

Similar limitations are evident in the 2010 solar energy targets. There was no business case, and there was certainly no cost-benefit analysis to support the planning process. Since coming to office, the Victorian coalition government has taken practical action much like our federal colleagues in terms of the direct action plan on climate change. We focused on providing affordable, reliable and sustainable energy supply, including subsidising access to energy-efficient products, doubling the energy saver incentive scheme target, doubling funding for the energy technology innovation strategy, developing carbon capture and storage projects, confirming $50 million for the Silex solar energy demonstration plant and introducing a new year-round electricity pricing concession which entitles eligible concession card holders to 17.5 per cent off their electricity bills.

We have a very strong record of delivering better outcomes for the community in practical ways. I urge the opposition to rethink its strategy, put politics aside and get behind sensible measures to benefit Victorians.

Mr TARLAMIS (South Eastern Metropolitan) — I also rise to contribute to the debate on the Electricity Industry Amendment (Transitional Feed-in Tariff Scheme) Bill 2011. This bill amends the Electricity Industry Act 2000 and the National Electricity (Victoria) Act 2005 to establish a new transitional feed-in tariff scheme, which is expected to commence on 1 January 2012. It replaces a successful premium solar feed-in tariff scheme, introduced by the former Labor government, which provided a payment of 60 cents per kilowatt hour. That scheme had an expiry date of 2024, and the standard scheme provided a one-for-one payment with an indefinite finish date. The effect of this bill is the locking out of around 90 per cent of the solar energy generation market by making solar installations with capacities at up to a 5-kilowatt-hours capacity ineligible for the standard or general feed-in tariff scheme, leaving access to the transitional feed-in tariff scheme at a fixed rate of 25 cents per kilowatt hour for a contract period of five years only.

I wish to make it clear that the opposition opposes this bill. The bill breaks yet another election commitment by the Baillieu government, which went to the last

election with a detailed policy on feed-in tariffs. Amongst those details was a promise to refer to the Victorian Competition and Efficiency Commission an inquiry into a gross feed-in tariff scheme so that it could report back on the design and implementation of a market-based gross feed-in tariff scheme. The government's policy went on to state that there is significant community support to provide separately for the feed-in of power and that any source feeding into the grid would be able to earn a price based on the value of the total amount of power fed in, determined on a basis that is fair and straightforward.

The ACTING PRESIDENT (**Mr O'Brien**) — Order! There was an electronic communication. I remind all members, observers and others to ensure that electronic devices are on silent.

Mr TARLAMIS — The government's policy also stated that a market-based feed-in tariff scheme should have a focus on promoting the take-up of lower emissions generation and that the current premium net feed-in tariff scheme would remain in place as an additional option for the time being. Let us compare the Baillieu government's pre-election policy and promises with the actions it is now taking, which are currently before the house in this bill. As yet the Victorian Competition and Efficiency Commission has not received a brief from the government to inquire into the design and implementation of a gross feed-in tariff scheme. Despite its promise to maintain the premium feed-in tariff (PFIT) scheme until a replacement feed-in tariff scheme is in place, the government has walked away from this commitment. Rather than promoting the take-up of lower emissions electricity generation, as was its policy before the election, the Baillieu government is killing off the renewable energy industry in Victoria.

On the net feed-in tariff, we reflect on the position taken by the government when its members were sitting on the opposition benches, we will remember that a raft of MPs — a number of whom are now ministers — argued strongly for a more generous gross feed-in tariff to encourage people to use solar power and to deliver greater use and take-up of renewable energy. So you can understand the public's surprise at the announcement on 1 September by the Minister for Energy and Resources that this government would oversee the total abolition of the premium feed-in tariff scheme, giving consumers and industry only four weeks notice to put panels on roofs and lodge their paperwork. In regard to the lodgement of paperwork, the minister stated in a media release of 1 September that:

> Failure to meet the 30 September deadline will mean people will not be considered for PFIT.

In the same media release he went on to say:

> Given it can take up to several months to complete the required steps, it is very unlikely that people purchasing a solar system from today will have enough time to qualify for the premium rate.

Killing off a scheme in this way clearly highlights the contempt and disregard this government has for consumers and the industry. This decision means that the once-booming solar panel industry in Victoria is about to experience a significant decline. Since Labor's feed-in tariff came into effect 18 months ago the Victorian industry has installed 70 megawatts of solar panel generation capacity. As I said earlier, the premium feed-in tariff scheme was introduced by Labor and was designed to kick-start small-scale solar energy generation until the industry was able to compete on more cost-equitable terms with other energy sources. People in the 60 cent per kilowatt hour premium scheme signed up for a 15-year contracted period or until 2024 to ensure that they had a reasonable period of time to recoup the value of their investment. By all accounts it was an efficient and cost-effective scheme.

Unfortunately this bill closes off the successful premium feed-in tariff to new entrants, blatantly breaking the Baillieu government's election commitment. Thousands of solar panel installers across the state now face an uncertain future, and this decision will lead solar companies to abandon plans to invest in Victoria. The Clean Energy Council has completed modelling that indicates that scrapping the premium tariff will cause demand for small-scale solar energy installations to plummet, and up to 1800 Victorian jobs are likely to disappear from the industry. That is 1800 more Victorians who are about to become unemployed.

In effect this decision can only be viewed as the government strangling the small-scale solar energy industry by removing assistance from Victorians who overwhelmingly want to do their bit to reduce their carbon footprint and create greener jobs, cleaner jobs and the jobs of the future — jobs which this government has now said are no longer important. The vision for Victoria in clean energy and tackling carbon emissions was established by the Bracks and Brumby Labor governments. In contrast the Baillieu government has taken Victoria from being the nation's leader in clean energy and tackling carbon emissions to being a place of uncertainty that has no vision. The Baillieu government's actions undermine the commonwealth government's aim of developing a

clean-energy, low-carbon future and, regrettably, will have a detrimental impact on Victoria's economy. This appears to be of no consequence to the government, which on the face of it is being overtaken by the climate sceptics among its members, who are singing in unison with their federal colleagues, the well-known climate deniers.

It seems the only contribution the Baillieu government can make to alternative energy is to claim credit for a Labor-initiated $25 million geothermal project near Geelong. The only problem is that that funding had already been announced by the Labor government in 2009. In the last 12 months the Baillieu government has done next to nothing to protect Victoria's environment for future generations. We are pleased the Baillieu government is still committed to the geothermal project, but what it now needs to do is develop and fund other renewable energy projects that will benefit Victorians, rather than introducing legislation that will kill off investment in solar energy projects and kill off investment in wind farms. The introduction of this legislation is a backward step that highlights that this government has no plan for renewable energy in Victoria and no plan for jobs in Victoria.

Mr FINN (Western Metropolitan) — It is a very great pleasure to stand in this chamber this afternoon to support this bill, because it provides for a very real chance of relief on the issue of electricity prices. That is obviously a very good thing indeed. It is a great pity that the more extreme elements of the Labor Party and the Greens do not care about what happens to Victorian families. Members of this house might recall that a few years back a great deal of noise was generated about what was best for working families. Remember the term 'working families'? The Labor Party lived, died, breathed and ate for working families. Now its members could not care less about working families. The Labor Party does not care that working families will be sitting around their dinner table late at night wondering how on God's earth they are going to pay their electricity bills. The extreme left will put ideology first, second and third every time. The lefties are here today, coming into this chamber crowing all manner of nonsense about climate change and all the stuff that we have come to expect from them.

I note that they have not quoted Al Gore, the champion of climate change, the man who told us that we were going to be swallowed by the ocean and the man who, as a result of having made millions of dollars out of climate change, went and bought a beachside mansion on Miami Beach. How fair dinkum is he? I would suggest he is about as fair dinkum as the rest of them. The only reason that we see all this enthusiasm for the carbon tax, carbon credits and all the other nonsensical things they talk about is that there is a buck in it for their mates. That is the bottom line. There are a lot of people making a lot of money out of this climate change industry. That is something that members opposite should explain.

Mr Leane interjected.

Mr FINN — Mr Leane gets very excited when I talk about these sorts of things. I do not know whether he has a guilty conscience. Perhaps he does. Perhaps he is concerned. After all, if we dig really deeply into the psyche of Mr Leane, we might find some concern for the working families that the Labor Party used to rabbit on about ad nauseam. We might remember that during the debate on the carbon tax earlier this year Mr Leane's very good friend and colleague from the Electrical Trades Union, Dean Mighell, came out and opposed the carbon tax on the basis that it would put his members out of work.

Mr Leane interjected.

Mr FINN — Mr Leane might be saying that he is in Parliament now so it does not matter how many electricians lose their jobs because he will not be one of them. That may well be the attitude that he takes, but it is not good enough. I am here because I care about people and families. I care about people in the suburbs. I care about people who are struggling. I care about the battlers that the Labor Party once cared about.

At least the Greens are consistent. We know they do not like families. They put it on the record that they do not like families. They particularly do not like children. They see families and children as the enemy, because children and families are causing all the problems in the world. Every problem that we face as a planet is being created by children: that is the view of the Greens. They do not particularly care what happens to working families, they do not particularly care what happens to families in the suburbs and they do not particularly care about those families sitting around late at night wondering how they are going to pay their electricity bills. But this government does. This side of the chamber does care about those people, and this bill is about easing some of the pressures that they face.

In the federal Parliament earlier this week, after the passing of the carbon tax bill, we saw all the smirks and the backslapping from the Greens. Senator Brown and all his mates were gathered around giving high fives and carrying on. But let me tell you, among all the euphoria there was one thing missing: the support of the Australian people. The Australian people made it very

clear on every occasion leading up to the passing of this appalling tax in the federal Parliament on Tuesday that they do not want this tax. They did not want it, and they do not want it.

Let us face facts: Julia Gillard would not be Prime Minister of this country now if she had told the truth. If she had got up the day before the election last year and said, 'There will be a carbon tax under any government that I lead', she would not have won the election. She was elected on a lie, and that lie was legislated on Tuesday. That is as a direct result of the Labor Party putting its own political needs ahead of the needs of average Australians. It is despicable that the Labor Party would put its own needs ahead of the needs of those who will find themselves under a great deal of pressure and in a lot of trouble as a result of this big new tax on everything that will achieve nothing. We see one of the chirpies from the left getting up there, and she might fall off her perch in a minute. We will find out.

Ms Pulford — Acting President, on a point of order, the member has spoken extensively about federal government matters and has not spoken about the bill that we are debating in the house, so I would urge you to bring him back to the matter at hand.

Mr FINN — On the point of order, Acting President, what I am speaking about is electricity prices, and that is what this bill is about. The basis of this bill is electricity prices. If I cannot make reference to what is going to impact on electricity in debate on this bill, then I think we will take it all back, and I urge you to recall what Mr Barber had to say when he was addressing the house: he ranged far and wide on a range of issues. Once again I come back to that dreadful word 'precedent', but one has been set, strangely enough, by Mr Barber himself.

The ACTING PRESIDENT (**Mr O'Brien**) — Order! I have heard enough on the point of order. There is no point of order. In fact when a similar point of order was taken by Mr Ramsay against Mr Barber and I was in the chair I also expressed my view, as I do now in relation to the matters that Mr Finn has been talking about, that this bill does raise federal issues in the context of the debate. I urge Mr Finn to use the time available to him to return to the bill in the best way he can, but I do not uphold the point of order.

Mr FINN — Certainly, Acting President. I appreciate your consistency on this matter. I am deeply concerned about what is going to happen to this state and this country over the next few years as a result of electricity prices going through the roof. We have had in this state of Victoria a decided advantage over other states, and particularly over other nations, as a result of our ample and relatively cheap electricity supply. Now with the carbon tax that advantage is gone, and we can thank our friends from the left — from the Labor Party and the Greens — for their efforts in making sure that we are behind the eight ball.

As a result of the actions of the federal government and its coalition colleagues, the Greens, we will suffer big time. We will see a lot of businesses looking at their electricity bills and saying they cannot afford either to stay in business or to stay in Australia, and they will shift offshore. Is it any wonder that the Indians and the Chinese in particular are rubbing their hands together with glee at what we here in Australia have just done. They can see the benefits: the jobs that will be lost in Australia and the jobs that will be pouring into China and India. They see the economic advantage they will now have as a result of what our friends from the left have done over these past couple of weeks. It is a disgrace.

But this bill does go some way toward helping families. I just want to reiterate the point that this side of the chamber is about helping those families. We are talking about families. They remain the centre of what this state is all about. Families built this state, and families remain the centre and focal point of this state. This bill is about providing lower electricity prices and easing the pressure of families' electricity bills, and that has to be a very good thing. In conclusion, I urge those with a conscience in the Labor Party and the Greens — and let us face it, there may not be many in the Greens who are in that category — who have some concern somewhere within themselves for ordinary Australians to support this bill but also to stand up and reject all this nonsense that has led to the carbon tax.

Mr Barber interjected.

Mr FINN — Mr Barber should get up and publicly reject the nonsense that his party is built on: this global warming scam. It is a con. It is a scam. It is something that the average Australian has woken up to, and I tell you what: come the next election our friends opposite are going to wake up to it as well, because it will not be a very nice thing; they will not have a good election night. But the people of Australia and the people of Victoria deserve a better go. With this bill the government is determined to give the average Australian a fair go.

Mr LEANE (Eastern Metropolitan) — I want to address one thing that Mr Finn stated in his contribution. He does this quite often. I know it is all

theatrical, and we take it that way. Mr Finn said the ALP does not care about families, and I have to rebut that. The ALP does care about families. I am sure all members of this chamber would not be here if they did not care about everyone's families. I want to start by rebutting that. I know they are only words thrown around and do not mean anything, but I would like to state that we do care about families. So far as the Electricity Industry Amendment (Transitional Feed-in Tariff Scheme) Bill 2011 goes, can I make a suggestion to the government. I note that a lot of press releases come out after legislation passes through this house and there is a big red stamp on them that says 'Policy implemented'. I suggest the government keep its ink dry on the stamp for this one, because the policy that the coalition went to the election with and what it said on a previous feed-in tariff bill it brought into this house was that a net feed-in tariff was not good enough.

A net feed-in tariff was not going to encourage the industry and it was not going to encourage consumers to invest in solar energy. The government's argument, when it was in opposition, was that a net feed-in tariff was not good enough. The coalition went to the election with that policy, and part of the policy commitment to the people of Victoria was that when in government it would implement a review and maintain the current feed-in rate during that review. The review would look to how the government could implement a gross feed-in tariff, and that is exactly what the coalition committed to the electorate. Now what the government has actually done is cut the premium feed-in tariff, which it said was not good enough, by nearly two-thirds, from 60 cents to 25 cents — so please spare me the 'Policy implemented' stamp.

I know Minister O'Brien said during the debate in the Assembly that this review will go ahead and be finished by the end of 2012, but I say to members that the important thing about having a review is to review first and then implement the recommendations from the review. Instead, action is being taken to cut the feed-in tariff from 60 cents to 25 cents, rather than implementing a gross feed-in tariff, which is what the government said it was going to do. I sat and listened to opposition members arguing one after another that the net feed-in tariff was not good enough, so spare me the 'Policy implemented' stamp.

Although the coalition took this to the electorate, it was never fair dinkum in implementing it when in government. The coalition went to the electorate and it lied to the electorate on this issue, just like it lied when it said it would make the teachers in Victoria the highest paid teachers in the country. When the Premier was taken to task about breaking that commitment regarding teachers he said it was a concept and not a commitment. His weasel words at that time said it was a concept. It was never a concept, it was a commitment. It is the same with the 100 extra hospital beds, so the government can save the ink on that one.

Mr Finn — On a point of order, Acting President, I am always entertained by Mr Leane's contributions, but despite your earlier ruling, he is roaming a little too far from the topic at the moment. He has just passed the area of education and is now moving into health, and I fear transport may be next. I do not see the connection to the bill at all.

The ACTING PRESIDENT (**Mr O'Brien**) — Order! I am conscious of my earlier ruling. It is a broad debate and some of the language in relation to the telling of lies was used in general terms. During his contribution Mr Finn also mentioned federal lies, and I let that go as I do not think it was directed to a specific member. The phrase 'weasel words' was also used, and I caution the member that that is getting close to the line in relation to reflections on a member of the other place, in this instance the Premier. Having said that, I call on Mr Leane to return to the bill.

Mr LEANE — Thank you, Acting President. One of my goals in this chamber is to get Mr Finn to call a point of order on the relevance of my contribution. It is amazing.

Getting back to the bill and getting back to a policy that was formulated and taken to an election, this policy was formulated at the end of the last Parliament, when the previous feed-in tariff bill was debated. We heard the then opposition members say one after another that this premium rate of 60 cents would not encourage investments or jobs and that it would not encourage consumers to go out and buy solar panels. They said it was not good enough. The position taken by the then opposition was that there should be a gross feed-in tariff, which is what was taken to the election.

It was hoped that someone working or investing in the solar industry, or for that matter someone considering installing their own personal solar panels on their roof, would look at this coalition policy and say, 'I like that compared to the previous legislation; I may vote for the coalition based on this commitment'. The problem was that the coalition hoodwinked them, just like it hoodwinked them when it said it was going to deliver a train to the airport, a train to Rowville, a train to Doncaster and a train to Avalon, and just like it hoodwinked them when it said it was going to deliver 100 extra hospital beds. It has actually reduced beds at Box Hill.

At the end of today this bill will be passed. At the end of today the 60 cent feed-in tariff for solar will become 25 cents on the implementation date. I understand all that. I understand that is what will happen, but I am really looking forward to seeing if the media release that comes out of Minister O'Brien's office is stamped 'Policy implemented'. The government should get a new red stamp that says, 'We dogged on this policy', and that should be stamped on the media release. At least that would be honest. That is exactly what the government is doing today. Government members have made some interesting statements and put forward some vague arguments, but the reality is that the government dogged on this policy. I will not say that government members are using weasel words, but they are using a heap of similar expressions. The government knows that the stamp should say 'Policy dogged on'.

House divided on motion:

Ayes, 21

Atkinson, Mr	Koch, Mr
Coote, Mrs	Kronberg, Mrs
Crozier, Ms	Lovell, Ms
Dalla-Riva, Mr	O'Brien, Mr
Davis, Mr D.	O'Donohue, Mr
Davis, Mr P.	Ondarchie, Mr
Drum, Mr	Petrovich, Mrs (*Teller*)
Elsbury, Mr	Peulich, Mrs
Finn, Mr	Ramsay, Mr (*Teller*)
Guy, Mr	Rich-Phillips, Mr
Hall, Mr	

Noes, 19

Barber, Mr	Pakula, Mr
Broad, Ms	Pennicuik, Ms
Darveniza, Ms	Pulford, Ms
Eideh, Mr	Scheffer, Mr
Elasmar, Mr	Somyurek, Mr (*Teller*)
Hartland, Ms	Tarlamis, Mr
Jennings, Mr	Tee, Mr
Leane, Mr	Tierney, Ms (*Teller*)
Lenders, Mr	Viney, Mr
Mikakos, Ms	

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1

Mr BARBER (Northern Metropolitan) — I have a series of questions that relate more to the operation of the existing scheme that this bill seeks to replace. Rather than look at the comparable operative sections, I think we should be able to deal with most of these in the purposes clause. I have spoken to members of the other parties, and I believe that they are amenable to coming along in that way.

The DEPUTY PRESIDENT — Order! Are members comfortable with dealing with as much of this as we can in clause 1? Mr Barber, to continue.

Mr BARBER — This legislation was set up with the support of all parties in the previous Parliament. In fact the non-government parties combined to propose a series of amendments that widened the opportunities and benefits of the scheme. Ultimately the then government brought in its own amendments to implement many of the things that the non-government parties were asking for. For example, the old scheme — that is, the one we are seeking to replace here — was made available to farmers, schools, councils and other groups that were not purely residential. The system size that was permitted was also increased. There were undertakings given at the time that while cash payments were not required, it was the then government's view that most retailers would be willing to make cash payments under the fee intake — —

Honourable members interjecting.

The DEPUTY PRESIDENT — Order! There is far too much background noise and I think there may be some problems with the microphones. I am struggling to hear Mr Barber. In the context of the microphones giving us a bit of trouble, I ask members to reduce the level of conversation in the chamber.

Mr BARBER — The government has put forward a number of different rationales for why it is bringing forward this bill at this time. It has argued that the previous legislation had a cap. It is our view that there is no cap; there is simply the option for the minister to close down the scheme if certain conditions are met. The government has also argued that the reduced price of solar panel units means that even under this new scheme it will still be able to achieve a 10-year payback. Also, we have heard some statements during the second-reading debate about the cost of the scheme to consumers. If those matters do in fact form the rationale for the new bill that the government is bringing in, then I think we need to explore that and it can only be explored in relation to the purposes clause during the committee stage.

I can also tell you that earlier in the year the Greens moved a motion in this place in relation to the progress of this scheme which sought information about the number of eligible solar panel units, and a question on notice that we put on the notice paper on 16 August

requested the minister to give us information — which he would certainly have had because he had the power to obtain it under this bill — relating to the number of qualifying PV (photovoltaic) units, the aggregate nameplate capacity, the total cost of the scheme, the current average cost per customer and when they expect any of the triggers in the bill to be reached.

I received an answer of sorts to that question at the end of question time today. The answer unfortunately did not answer any of my questions. That answer itself was signed off on 4 October, and here we are a month later with the government putting forward a proposition to eliminate the old scheme that we just voted for in the last Parliament and replace it with its new scheme. This means that up until this point, while the government has put forward this proposition no-one has had the true facts behind the operation of the scheme. That is why we have to ask these questions in committee now, but it is incredibly disappointing that a government would want to put forward a change to such an important scheme without ever wanting the facts to be exposed so that there could be a proper debate. I have a number of questions for the minister if it is appropriate to ask them at this time and if there are no other speakers wanting to make a presentation.

I would like to ask the minister: what is the number of qualifying solar energy generating facilities under section 40FJ of this scheme as we stand now, and what is the aggregate installed or nameplate generating capacity of those facilities?

Hon. P. R. HALL (Minister for Higher Education and Skills) — Mr Barber is right in that I did supply him with an answer to that question. I appreciate the fact that it did not contain a lot of the empirical data that he sought, but the obtaining of that particular data is not able to be undertaken at this time for the reasons outlined in the answer to the question supplied to him — that is, section 40FJ requires reporting by 1 November of this year, and that period of time is just some days past and the collation of that material is to be completed by 30 November. Therefore we are still theoretically within the reporting time period. In terms of the specific numbers and details that are asked about in the question — that is, the number of qualifying solar energy generating facilities and the aggregate nameplate generating capacity of those — that information is not available until that data, which was due in on 1 November, is collated.

Mr BARBER (Northern Metropolitan) — The principal act that is being amended by this bill says in section 40FE(2) that the minister may declare the declared scheme capacity day only if:

> (a) the Minister is satisfied that the aggregate of the installed or name-plate generating capacity of qualifying solar energy generating facilities is equal to or greater than 100 megawatts; or
>
> (b) the Minister has estimated that the average cost per customer of electricity per year arising out of the operation of the premium solar feed-in tariff scheme is $10 or more —

with either of those able to become a trigger.

Can the minister tell me if either of those events has actually occurred?

Hon. P. R. HALL (Minister for Higher Education and Skills) — The sole reason we have this legislation before the house at this point of time is that the minister expects that those trigger points will be reached. In terms of a total capacity of 100 megawatts of electricity under this particular scheme, it is expected that 100 megawatts of generation capacity will be achieved by the end of this month.

Mr BARBER (Northern Metropolitan) — Does the minister acknowledge that for the purposes of this legislation the minister may declare a day under that subsection, and that therefore means that the minister is in no way obliged to close the scheme even if those trigger points are reached?

Hon. P. R. HALL (Minister for Higher Education and Skills) — Yes, that is true.

Mr BARBER (Northern Metropolitan) — We do not need to have this legislation. The minister does not have to close the scheme just because it reaches 100 megawatts; any time after that the minister could close the scheme — it is simply up to the minister. Right now it is really a minister's choice to close down this scheme and make that decision. It is totally in the hands of the minister to get to the 100 megawatts and keep going if he wants. We could get to 200 megawatts if he wanted, and he could continue to closely monitor the progress of the scheme. There is no cap, as has been suggested. In relation to subsection (b), which is the other trigger — that is, the one that says if the scheme is costing $10 or more per household — can the minister tell me if that trigger has been reached or if the minister has a prediction for when that trigger will be reached?

Hon. P. R. HALL (Minister for Higher Education and Skills) — The first thing I want to say is that yes, it is true, as Mr Barber has said, that there is no absolute requirement for the minister to close off the scheme, but I need to point out to the committee again that the decision to do so at this point of time was made by

giving due regard to those who bear the cost of this scheme.

While a premium feed-in tariff is being paid, the government itself does not pay for that; it is the customers of the electricity retailers who pay for it. The cost of any premium feed-in tariff is borne by all customers of that retailer. It is about striking a balance between what is fair and reasonable in terms of encouraging and assisting those who wish to install solar generation facilities and what is fair and reasonable for those who bear the costs of others doing so. It therefore relates to the most recent question asked of me by Mr Barber about the expectation of when the $10 per customer ceiling will be reached. I am advised that at the same time as the 100 megawatts of capacity is reached it is expected that we are going to be very close to the $10 per customer trigger as well.

Mr BARBER (Northern Metropolitan) — That in itself is useful information, because the minister has now told us that when we get to 100 megawatts we think it will be costing us $10 per customer. Bravo to those Department of Primary Industries people who originally made these two projections, because they seem to have landed one right on top of the other in the original legislation! However, can the minister tell me what the current average cost per Victorian customer is right now?

Hon. P. R. HALL (Minister for Higher Education and Skills) — Right now I cannot supply that figure with accuracy to the nearest cent, again because it is a similar question to a couple of previous questions that Mr Barber asked and aspects of his question on notice. The reporting period is up until 1 November, but the collation of that reported material, which would enable me to answer that question with a greater deal of accuracy, has simply not been done yet.

Mr BARBER (Northern Metropolitan) — If we cannot be super accurate, I would be happy to receive any information. Up to the date of when the minister last obtained usable data, what does he believe has been the total cost of the operation of this scheme so far?

Hon. P. R. HALL (Minister for Higher Education and Skills) — The advice I have received is that with the best information available it is expected that the 100-megawatt notional trigger point for the termination of this scheme will be reached by the end of November. I do not have in my possession any interim data with respect to that, so I am trusting of that advice provided to me by the department.

Mr BARBER (Northern Metropolitan) — In terms of the 100 megawatts, we have access to the data from the federal regulator, and we know almost on a monthly basis how many PVs there are in Victoria. We do not know exactly how many of those people are claiming a payment under this tariff, but the government must have some information about the cost of this scheme. That information comes from the retailers, who pay the money to those people who have solar panels in their area. In a minute we are going to get onto the government's claim that there will be a 10-year payback under its new scheme. There is a whole series of inputs that has to go into that assessment. I really want to know how much money has been paid to people, at any given date that the minister may have information from, to run the scheme to the point that we have got it to now. That way we can go back and look at how many solar panels were in operation and we can work out the average cost to the taxpayer of running this scheme.

Hon. P. R. HALL (Minister for Higher Education and Skills) — I will just seek some advice.

I am in a position where I cannot give Mr Barber further specific advice on that. The only advice I can give is that the informal data and feedback from the retailers is that this figure is getting close, but until the 1 November data which was required to be submitted is collated I cannot be any more specific than that.

Mr BARBER (Northern Metropolitan) — On a related topic, the minister, by press release on 1 September announcing this new direction, said that the estimate was that the simple payback rate of solar panels under his newly designed proposal — the one we are being asked to vote on — would be around 10 years. It seemed that this was part of the rationale for the legislation — that is, 10 years was an acceptable payback and he would therefore design the new scheme in order to achieve a 10-year payback. To make the claim, which is really the basis of the whole reason for bringing in this bill, that at a certain level of costs, the minister argues, there will not be a major reduction in the benefit of PVs and therefore there will not be a major hit to the PV industry, the minister must have had some assumptions and must have had some useful data.

We flogged this out last time in the debate about a gross feed-in tariff versus a net feed-in tariff and a whole range of other issues, and there were many different assumptions put forward by the then government about the operation of photovoltaics. Those assumptions were questioned by many advocates for a gross feed-in tariff. The current government's policy, as we have heard, was to have an inquiry into a gross feed-in tariff. I

cannot believe the minister has made the claim he has in relation to the 10-year payback under the new scheme that he has just designed without him bringing into it some of the data he has obtained from the operation of this scheme. If he is not using real-world data to make his claim of a 10-year payback, then we are in even more trouble.

The set of assumptions behind the minister's 10-year payback claim are something I would like to hear more about. I would like to hear from the minister at the table about the following things, because I believe those assumptions would have included them: the capital cost in dollars per watt; the likely contribution of the renewable energy credits, the so-called small-scale technology certificates, and any multiplier that has been applied to those; the modelled electricity price at the end of five years, when this scheme cuts out; the discount rate applied; the relevant panel system sizes; and the percentage of power that is likely to be exported and therefore attract the 25-cent, formerly 60-cent, target. Is the minister at the table able to tell me anything about any of those assumptions that the Minister for Energy and Resources used when making the claim of a 10-year payback?

Hon. P. R. HALL (Minister for Higher Education and Skills) — The answer is yes, at least in part; I can help Mr Barber with some aspects of the question. The advice I have received is that the Department of Primary Industries (DPI) has calculated that the 25-cent transitional feed-in tariff will on average have a payback period of 10 years. This is based upon an installation of a 1.5-kilowatt solar PV system.

DPI has met with the Alternative Technology Association (ATA) to discuss the difference in the calculation results between the department and the association. DPI advises that the key difference is the assumption of the net cost of installing a solar PV system and the export ratio. DPI's calculations are based on a 1.5-kilowatt system with a net system cost of around $4600. DPI assumes an export ratio of 30 per cent. I am advised that the ATA calculations are based on higher costs and a lower export ratio.

DPI is in contact with the ATA and other industry participants to make sure that customers have access to all the information they need up-front to make an informed decision suited to their circumstances. If people choose to buy a system with a different system cost, that will affect the payback period. There are a couple of figures there which Mr Barber will find helpful in terms of how the payback period of 10 years has been calculated by DPI.

Mr BARBER (Northern Metropolitan) — Does the 30 per cent export rate come from the department's knowledge of the operation of this scheme to date, or is it just simply a number that has been picked for the purposes of an analysis?

Hon. P. R. HALL (Minister for Higher Education and Skills) — I am advised that the 30 per cent figure comes from discussions with suppliers who indicate that a 30 per cent export ratio is a reasonable expectation, given the experience over the last few years.

Mr BARBER (Northern Metropolitan) — This comes from the difficulty of not actually having the information about the operation of the scheme that the government proposes to shut down. In my view there is no urgency to shut it down; the minister can keep the scheme operating for as long as he wants and he can bring legislation forward to change it whenever he needs to. The minister at the table has informed me that information has been obtained up to 1 November — it is just that it has not yet collated it. The government seems to want all of us to legislate in the dark, and I find that particularly unacceptable. If the government is working off 1.5 kilowatts and a 30 per cent export rate, then that is very close to the lowest of the scenarios the ATA worked on, which achieved an 11-year payback rate. But for all other configurations of systems that people are purchasing, according to the federal government figures — that is, 2 kilowatt systems, 3 kilowatt systems or lesser export rates — we are achieving dramatically worse results than a 10-year payback. The government seems to have just picked the one scenario that would get it as close as possible to a 10-year payback period. Are there other scenarios of different export rates and different panel unit sizes and, if so, what were the paybacks achieved on those?

Hon. P. R. HALL (Minister for Higher Education and Skills) — The reason 1.5-kilowatt systems were chosen for the economic modelling is because, as I am informed, that is the average size of solar panel systems that households choose to purchase and install and because 1.5-kilowatt systems were the same-sized capacity systems that were used for the previous estimations of return under the old system. I cannot give the member an absolute guarantee as to whether modelling was done on larger capacity systems.

Mr BARBER (Northern Metropolitan) — I dispute the minister's last statement that 1.5 kilowatts is the average. In fact from observing the data for Victoria for the recent systems, which we have from the federal government through the Office of the Renewable Energy Regulator, it is evident that people are going for

the larger systems, and many people have been surprised by that. It is, of course, a function of a net feed-in tariff that the larger your system, the more you are likely to export. That is why it is a great shame that we have not had proper scrutiny of the gross feed-in tariff analysis that was offered by the government as part of its election policy, because that would have been done on the basis of real data, not just what has been thrown out in a press release.

Ms PULFORD (Western Victoria) — Is the government still committed to a gross feed-in tariff scheme? The second part of that question is: is the government still committed to the Victorian Competition and Efficiency Commission review that was foreshadowed in the government's election policy and, if so, when is this to occur?

Hon. P. R. HALL (Minister for Higher Education and Skills) — The government is committed to a feed-in tariff scheme. That is why we have legislation before us here today in the form that it is. And yes, I can confirm that the government still intends to use the Victorian Competition and Efficiency Commission to undertake a review of the tariff scheme. There is a ministerial press release from the Minister for Energy and Resources dated 26 August, which says:

> As the Department of Primary Industries website states: 'The state government plans to request a review of feed-in tariffs, to be carried out by the Victorian Competition and Efficiency Commission (VCEC). Results are expected in 2012'.

That is a direct quote from the website.

Ms PULFORD (Western Victoria) — The Clean Energy Council has indicated that 30 to 40 cents per kilowatt hour would have ensured that jobs were secure and that industry would continue to expand. Given this information from the sector, why has the government settled on 25 cents per kilowatt hour?

Hon. P. R. HALL (Minister for Higher Education and Skills) — There are varying views as to whether setting 25 cents as compared to 35 cents to 40 cents will have a material impact on the number of jobs and the number of people choosing to install solar panels. In briefing notes here I have press cuttings which favour Ms Pulford's argument and others that have the contrary view. I will not go through all those.

What I will say goes to some of the questions and to the answers I have been trying to give Mr Barber. With respect to the modelling of this scheme, it was first struck by the previous government as a premium feed-in tariff scheme. It was structured at such a level that the expectation, in terms of the cost of installation and therefore a return on that additional cost, was that about a 10-year payback was seen to be reasonable for both those who were making use of the scheme and those who are contributing to the cost of the scheme — that is, everybody else who does not have solar panels. So it is that a 10-year payback scheme was modelled as appropriate. It has obviously worked very well, when the expectation was that the premium feed-in tariff scheme might last for the best part of 9, 10 or more years. As I think Ms Pulford said, it was 15 years for the premium solar feed-in tariff which still exists, and those customers on that will continue to be paid that rate right through until 2024. Those particular conditions were struck with the expectation that there would be a 10-year payback.

Again, the modelling undertaken by the government, at 25 cents per kilowatt hour for the periods of time and with the trigger points elaborated and outlined in the second-reading speech and reflected in the legislation, shows that a 10-year payback will still be achieved.

Ms PULFORD (Western Victoria) — Could the minister elaborate further on the modelling and particularly the extent to which work has been done by the department to understand the impact on jobs in this sector in Victoria?

Hon. P. R. HALL (Minister for Higher Education and Skills) — As I said, the expectation is that if we can produce a scheme that delivers the same 10-year payback benefit to consumers, then we would not expect that there will be any material difference in jobs and activity in this sector between what has happened in the past under the current scheme and what we expect to happen under this proposed scheme.

Mr BARBER (Northern Metropolitan) — I do not have any questions. I have been asking questions about this all year, I have brought the issue forward for debate, and I have put questions on notice. I have not been given answers. We cannot get the relevant information that we need to test the government's claims here today. We have heard that there is no urgency because the minister always has in his pocket the ability to declare the scheme closed, at any time of his choosing, and of course to bring this bill forward for a further vote. I therefore move:

> That progress be reported.

I do so in order that when the committee considers the bill in a future sitting week we and the community we represent can be fully informed about the details of the legislation we are being asked to vote on.

Hon. P. R. HALL (Minister for Higher Education and Skills) — I want to argue against reporting progress on this bill. While Mr Barber says it is totally a matter for the minister to make a decision about whether the current scheme is altered or terminated and a new solar feed-in tariff scheme is put in place, which is what this legislation does, that needs to be considered in terms of the context of who pays for this scheme. If, as is expected, this scheme is fully subscribed to the tune of 100 megawatts of production, then beyond that the consumers bear what this Parliament has considered to be an unfair cost on or contribution from all those who are not the beneficiaries of this scheme.

These decisions have been taken based on the best information available, without all that data being available on 1 November and therefore being collated. If the committee defers further consideration of this bill, it will put at risk, by way of their electricity bills, the vast majority of electricity consumers in this state who are not the direct beneficiaries of this scheme. We believe that this scheme strikes the right and appropriate balance and that consumers who are able and wish to participate will get the benefit without inflicting undue cost on all the other electricity consumers in this state. As I said, we believe that this legislation has been struck on consideration of the best advice available and in consideration of what is fair for consumers. Therefore we oppose reporting progress at this time.

Mr LENDERS (Southern Metropolitan) — Labor Party members will support Mr Barber's motion. We do so because this house is meant to provide scrutiny. Mr Hall has been here for 23 years in various capacities, so I think he knows as well as anybody that it is unsatisfactory for members when questions are asked and there is no response. Reporting progress on the bill will allow more time. I understand that the bill does not come within Mr Hall's portfolios and that he is representing another minister. Therefore Mr Barber's motion is most appropriate, because it will enable Mr Hall to come back to the committee with that information so that the committee can be in a more informed position.

We on this side lament that in this Parliament on every single occasion when anyone who is not on the government benches has sought either to refer legislation to a legislation committee which the government controls or to report progress so that there can be more scrutiny, the government has rejected that. It has done that without exception in this Parliament. Whether it be the arrogant comments of Mr Dalla-Riva earlier this week that government members have a mandate and therefore they can do what they like, or the more measured tones of Mr Hall, with his Hall doctrine, what we see constantly is that this house is a rubber stamp and therefore it meets the government's time lines. Mr Barber's motion is measured and reasonable and the Labor Party will support it.

Committee divided on motion:

Ayes, 19

Barber, Mr (*Teller*)	Pakula, Mr
Broad, Ms	Pennicuik, Ms
Darveniza, Ms	Pulford, Ms
Eideh, Mr	Scheffer, Mr (*Teller*)
Elasmar, Mr	Somyurek, Mr
Hartland, Ms	Tarlamis, Mr
Jennings, Mr	Tee, Mr
Leane, Mr	Tierney, Ms
Lenders, Mr	Viney, Mr
Mikakos, Ms	

Noes, 21

Atkinson, Mr	Koch, Mr
Coote, Mrs	Kronberg, Mrs
Crozier, Ms	Lovell, Ms
Dalla-Riva, Mr	O'Brien, Mr
Davis, Mr D.	O'Donohue, Mr
Davis, Mr P.	Ondarchie, Mr
Drum, Mr	Petrovich, Mrs (*Teller*)
Elsbury, Mr	Peulich, Mrs
Finn, Mr (*Teller*)	Ramsay, Mr
Guy, Mr	Rich-Phillips, Mr
Hall, Mr	

Motion negatived.

Ms PULFORD (Western Victoria) — It is regrettable that we were not able to report progress given that there are some unanswered questions, but now that we are back here I just have one final matter that I would seek clarification on from the minister. It has been brought to my attention that there are a number of people who signed contracts prior to the government's announcement on 1 September about the change to a feed-in tariff scheme but did not have all aspects of their installation finalised by 30 September. It appears to me from the minister's comments in the second-reading speech that it was never the government's intention to trap people between two schemes, but my electorate office has brought to my attention the fact that this has occurred in a number of cases, and I hazard a guess that other members would have people who have been similarly affected in their constituencies.

Mr Philip Davis, in response to my question on this matter in the second-reading debate, indicated that people in this situation could contact the Department of Primary Industries for a case-by-case consideration of their circumstances, but I would like to take the opportunity during the committee stage to ask the

minister to confirm that this is the case and perhaps comment on that issue.

Hon. P. R. HALL (Minister for Higher Education and Skills) — I thank Ms Pulford for her questions. Yes, I can make some comments which I hope will be helpful for some of her constituents. Let me say first of all that in any scheme changeover there is obviously a desire to avoid anybody being inadvertently disadvantaged. That is why we believed the announcement on 1 September for people to have paperwork in by 30 September, given, as I have said today, that an expected closure when the scheme reached 100 megawatts by the end of November, gave a two-month time period in which at least most people who had made a genuine effort to make the decision to use solar power would be accommodated and given a proper warning.

That is why there was an announcement on 1 September which stated that solar installers needed to have lodged the following forms with customers' electricity suppliers: the solar connection form, the electrical work request and a certificate of electrical safety. Customers would also need to have agreed to a premium feed-in tariff contract with their electricity retailer. That was the paperwork.

The actual physical connection and the switch-on, I suppose, of the technology may not have been in place by the time all the paperwork needed to have been lodged. I think that would have accommodated most people and stopped many being caught in the middle. But as my colleague Mr Davis has said, if there are case-by-case circumstances, then the department is happy to consider those particular cases. If people have genuinely been disadvantaged and through no fault of their own have made a decision and been caught by the changeover to the scheme, they will be given consideration on a case-by-case basis.

Ms PULFORD (Western Victoria) — I thank the minister for that response. I am no technician, but I believe people in this circumstance have been unable to complete the paperwork because some of it relates to the final installation and the signing off of that final installation. It is not possible to complete the paperwork before completing the installation, and if appropriately qualified technicians are not available to do the installation, that has been the cause of the delay in the cases that have been brought to my attention. I will point them in the direction of that process through the department.

Clause agreed to; clauses 2 to 25 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Hon. P. R. HALL (Minister for Higher Education and Skills) — I move:

That the bill be now read a third time.

I thank members for their contributions towards what has been a good debate.

The PRESIDENT — Order! The question is:

That the bill be now read a third time and that the bill do pass.

House divided on question:

Ayes, 21

Atkinson, Mr	Koch, Mr
Coote, Mrs	Kronberg, Mrs
Crozier, Ms	Lovell, Ms
Dalla-Riva, Mr	O'Brien, Mr (*Teller*)
Davis, Mr D.	O'Donohue, Mr
Davis, Mr P.	Ondarchie, Mr
Drum, Mr	Petrovich, Mrs
Elsbury, Mr (*Teller*)	Peulich, Mrs
Finn, Mr	Ramsay, Mr
Guy, Mr	Rich-Phillips, Mr
Hall, Mr	

Noes, 19

Barber, Mr	Pakula, Mr
Broad, Ms	Pennicuik, Ms
Darveniza, Ms (*Teller*)	Pulford, Ms
Eideh, Mr	Scheffer, Mr
Elasmar, Mr	Somyurek, Mr
Hartland, Ms	Tarlamis, Mr
Jennings, Mr	Tee, Mr (*Teller*)
Leane, Mr	Tierney, Ms
Lenders, Mr	Viney, Mr
Mikakos, Ms	

Question agreed to.

Read third time.

SENTENCING AMENDMENT (COMMUNITY CORRECTION REFORM) BILL 2011

Committed.

Committee

Clause 1

Ms PENNICUIK (Southern Metropolitan) — My question on clause 1 of the bill — and I raised this briefly during the second-reading debate — is about the

Attorney-General anticipating in his second-reading speech that the bill will lead to a reduction in sentences of imprisonment, with advantages such as the promotion of rehabilitation of offenders and maintaining family ties. I am interested in this point because bills previously before us during this session have been about reducing non-custodial options, such as suspended sentences, home detention et cetera. This bill completely rearranges the non-custodial options — community-based orders, combined custody and treatment orders, intensive correction orders et cetera — and rolls them into one. The minister suggests this will lead to a reduction in imprisonment, whereas the rationale for the other bills was to make sure that people do go to prison, but that will lead to an increase in imprisonment. I am wondering whether the Department of Justice or the minister has done any work on what sort of a reduction in imprisonment will result from this new sentencing bill.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Before I move on to that, I seek leave for Mr O'Brien to join me at the table.

Leave granted.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Firstly, it is about returning truth to sentencing. As members would be aware, a range of sentencing reforms have already been put through the Parliament to abolish suspended sentences and home detention. This is the third reform in that series and introduces a comprehensive community correction order (CCO), which replaces the current semi-custodial and community-based sentences. The advice I have received is that the reforms contained in the bill will replace all the current semi-custodial and community-based sentences with the new CCO. The new CCO will have a maximum length of two years. In the Magistrates Court and the High Court a CCO will have the same maximum length as the maximum period of imprisonment for the relevant offence. The standard terms of every CCO will include that a person not reoffend, not leave Victoria without permission and report to a community corrections officer.

Another thing I thought would be important to outline is that at least one optional condition — and they are referenced in clause 21 — must be contained in the order. A statement was made in the second-reading speech about the options. The optional conditions include: unpaid community work of up to 600 hours; curfews of up to 12 hours per day for up to six months; and place or area exclusions — an offender may be ordered not to enter or remain in a specified place or area. Further optional conditions include: non-association conditions that ban association or contact with any specified person or specified class of person; residence restrictions or exclusions where an offender may be ordered to live at a specified address or not live at a specified address; and bans on entering licensed premises where offenders will be banned from some licensed premises completely, while they may be permitted to enter other types of licensed premises with certain conditions.

The optional conditions also include: a specified supervision period at the start of the CCO, during which the offender is subject to intensive supervision by Community Correctional Services where the supervision period would operate immediately following sentencing, when offenders are at the greatest risk of reoffending; rehabilitation and treatment conditions that involve at least one activity specified in the order, including alcohol and drug treatment and mental health, violence or other offence-specific programs as specified by the court in the order or as directed by Corrections Victoria; judicial monitoring, which may enable courts to supervise an offender during the term of the CCO to review his or her compliance with the order; and a bond condition, where the offender pays an amount of money to the court as a bond.

I have outlined a whole range of options. I want to be very specific about the optional conditions, at least one of which is in addition to the standard terms of the CCO. There is now a whole raft of opportunities for a court not to impose a term of imprisonment.

Ms PENNICUIK (Southern Metropolitan) — I think I knew all that. I asked whether the department or the minister has looked at any estimate or done any work. The minister suggests this will lead to a reduction in imprisonment. How much of a reduction in imprisonment? For example, as was mentioned by Mr Pakula in his contribution to the second-reading debate, the budget papers estimate that there will be an increase in reoffending. That does not seem to gel with what the minister is saying about one of the aims of this bill, which is to reduce imprisonment, which I am in favour of doing. I would like to know how he can make that claim, what work has been done and what the estimated reduction in imprisonment is that this new regime of non-custodial correction orders will bring about.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I may just ask for clarification, because in leading into the discussion Ms Pennicuik mentioned the second-reading speech.

Could Ms Pennicuik point to what she was referencing that forms the basis of her follow-on questions?

Ms PENNICUIK (Southern Metropolitan) — I am sorry, but when I said 'second-reading speech' I meant 'statement of compatibility'. If the minister looks at the section entitled 'Human rights considerations' and goes about halfway down that, he will see a paragraph that reads:

> The purpose of the CCO conditions is to allow a court greater flexibility to impose a less restrictive order than imprisonment where appropriate, potentially leading to a reduction in sentences of imprisonment with advantages such as the promotion of the offender's rehabilitation and the preservation of family and community ties.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Ms Pennicuik was referencing *Hansard*, and we are trying to reference it against the original statement of compatibility document.

I refer Ms Pennicuik to the second-reading speech, just before the heading 'Structure of the CCO'. That is on page 2 of 6 of the second-reading speech, which my learned colleague will pass to Ms Pennicuik.

Ms Pennicuik — I have it.

Hon. R. A. DALLA-RIVA — Ms Pennicuik has it. It says here:

> Instead of using the legal fictions of imposing a term of imprisonment that is suspended or served at home, the courts will now openly sentence offenders to jail or, where appropriate, use the CCO to openly sentence the offender to a community-based sentence. Unlike the CCTO —

which is the combined custody and treatment order —

> and ICO —

which is the intensive correction order —

> which are technically sentences of imprisonment, the CCO is a community-based sentence. There is no legal fiction involved. The CCO can be combined with a jail sentence, but it will not pretend to be one.

Basically, as outlined in the second-reading speech, the CCO is a transparent sentence that can be understood by everyone in the community. Truth in sentencing means that when you are sentenced to a term of imprisonment, you are sentenced to jail under our reforms.

Ms PENNICUIK (Southern Metropolitan) — I guess the minister is not going to answer my question or take the question on notice, which is: has the department done any estimate of the reduction in imprisonment that this new regime will bring about? I am very interested in that issue.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank the member. I just wanted to get clarification on where we were heading. Clearly the government has looked at what the impact on prisons and the courts will be. In line with the recommendations of the Sentencing Advisory Council, these reforms are designed to reduce the use of suspended sentences by providing community-based alternatives. In terms of supporting these reforms the government will spend $72.4 million over four years to strengthen the capacity of Corrections Victoria to monitor and supervise offenders within the community. On the advice we have, the Victorian prison system is at capacity for those who require imprisonment. For others this will provide tough community-based options designed to improve rehabilitation outcomes and reduce reoffending within the community.

Ms PENNICUIK (Southern Metropolitan) — Could the minister repeat the amount of money he said was being allocated to Corrections Victoria to assist with the transition to what will be the new act?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — In 2010–11 the Department of Justice received funding of $72.4 million over four years to strengthen the capacity of Corrections Victoria to supervise offenders in the community. I think it is important that rather than going where you may be heading, which is to ask whether there will be an evaluation of the bill's impact — —

Ms Pennicuik interjected.

Hon. R. A. DALLA-RIVA — See? I used to be a mind reader, but I saw no future in it.

Hon. M. P. Pakula — But you could go into comedy instead!

Hon. R. A. DALLA-RIVA — Thank you, Mr Pakula.

Corrections Victoria will oversee an evaluation that will analyse the impact of the community correction order, the CCO, and measure stakeholder confidence in the strengthened CCS (Community Correctional Services) service delivery model. It will monitor the number of offenders being managed through CCOs, the impact on order completion rates and the outcomes of offenders managed under the new CCS intensive case management model. The evaluation will identify how the strengthened CCS service delivery model has

impacted on and slowed the growth in prisoner numbers. The government will monitor impacts on sentencing practices and procedures. As I said, the evaluation will identify how the strengthened CCS service delivery model has impacted on and, we anticipate, slowed the growth in prisoner numbers.

Hon. M. P. PAKULA (Western Metropolitan) — I want to go back to the $72.4 million over four years the minister referred to in the answer he gave to the preceding question. I think the commentary he gave before that was along the lines of there being a reduction in the use of suspended sentences and $72.4 million will be provided over four years for corrections officers or community correction orders. Is that $72.4 million over four years therefore the current estimate of the difference in the spending between what the government would spend if the offenders were on suspended sentences versus what it will spend with them on community correction orders? Is that an accurate reflection of what that $72.4 million is?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The advice I have is that, no, it was a budget allocation for part of the strengthening of the capacity of the new CCOs or for part of the CCO funding. Remember all the other orders are going into one CCO. As I indicated earlier, we moved the abolition of suspended sentences through the house, and we abolished home detention. CCTOs and ICOs will now fall into the new CCO introduced by this bill.

Hon. M. P. PAKULA (Western Metropolitan) — I understand that much, but there have always been community-based orders of some form or another. Is this an extra $72.4 million over four years or is it money that is taken from elsewhere?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Yes, it is an extra $72.4 million on top of the existing funding.

Hon. M. P. PAKULA (Western Metropolitan) — Going back to my earlier question, is it not then the case that what the department has assessed as the current estimate is that community correction orders will cost $72.4 million over the next four years than it has previously and that is money that is not currently being spent because those offenders would be on suspended sentences or other things that are by definition less costly to government? Is that right?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The advice I have is that when we went to the election we were very clear in our commitment to significant reform of community-based sentences. That is no secret. We made that commitment in a press release on 23 November. I will read from the press release, which says the government will be:

> … providing our courts with a broad range of strong and effective new powers to ensure offenders repay the community for the harm they have done.

The press release outlines our election commitment to bring in:

> … a single, flexible community correction order (CCO) delivering tougher, common-sense sentences targeted directly at both the offender and the offence.

Part of that commitment was additional money to strengthen community-based sentences in addition to removal of suspended sentences and removal of home detention, which was never any secret in the broader community. It was all part of the overall package. The $72.4 million is to strengthen the package and allow greater management of this new regime.

Hon. M. P. PAKULA (Western Metropolitan) — I accept all that, and that is why, with the sentencing bill, the home detention bill and this bill, the opposition did not oppose the passage of those bills. We acknowledged that they were items that the government campaigned on. All I am seeking to have the minister confirm is that the cost of doing away with suspended sentencing and home detention and beefing up community correction orders as he describes it, is $72.4 million over four years.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I just wanted some clarification from the advisers, because obviously home detention is now removed.

Ms Pennicuik interjected.

Hon. R. A. DALLA-RIVA — We passed the legislation here to abolish home detention, so I guess in that regard there are savings here, there will be savings elsewhere and there will be savings in terms of the management of some of the other orders. Obviously there will also be a cost impost in terms of additional enforcement for our election commitment. In terms of the money, yes, it is allocated for that, but I am sure there will be savings elsewhere because it is just the nature of some of the legislative changes.

As was indicated, what also cannot be forgotten is that through the management and reduction of recidivism and through the options of more involved management orders, there will be savings made by the reduction of

crime not only in terms of a dollar figure but also in terms of resources, police, courts and so on. There will also be savings in terms of the community knowing that when a person is sentenced to jail, that person is going to jail. If they are sentenced to a community correction order, that will be managed better and more effectively than perhaps such orders have been managed in the past, and there will be a lot more opportunity for Corrections Victoria to manage the programs into the future.

Ms PENNICUIK (Southern Metropolitan) — Back to the evaluation that the minister mentioned Corrections Victoria will undertake, I would like to know whether it is planned to include so-called stakeholders in that evaluation, such as the Law Institute of Victoria, the Federation of Community Legal Centres, Youthlaw, the Human Rights Law Centre et cetera. Also, what time frame is attached to that evaluation, and will there be a report to the Parliament over and above what might be reported in the annual report of Corrections Victoria?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I am advised that it will be 'the usual consultation with the stakeholders', so I gather that will include some of those organisations that you have identified. It would, as I said earlier, analyse the impact of the orders, measure stakeholder confidence in the service delivery model and look at the number of offenders being managed through the orders, the impact of the order completion rates and the outcomes of offenders managed under the new management model.

I did seek clarification as to whether there would be a separate body that would conduct that evaluation. My understanding is that the review or evaluation would be conducted internally. I can imagine that there would be a process and that if it were an internal evaluation, it would not be tabled in Parliament. However, as was rightly pointed out by Mr O'Brien, legislation passed recently in this place allows input to be made to the Sentencing Advisory Council by members of the police, victims of crime and additional people. There will be continuing evaluation, but in terms of Ms Pennicuik's specific question, I asked the advisers and was informed that it would be conducted initially internally and through the various stakeholders.

Ms PENNICUIK (Southern Metropolitan) — The minister would be aware that I have complained about internal reviews by Corrections Victoria for a long time in that they do not become public. We rely on the department to say if the review found that something was successful or not successful, but the review is not made public. I would encourage the department and the minister to be a bit more open and transparent when the non-custodial regime is being completely changed.

I want to raise one more issue regarding the funding for the new regime. I mentioned in the second-reading debate that I had received some correspondence from Youthlaw which said, amongst other things, that if these orders are to work properly for young offenders, including mentally impaired, intellectually disabled and drug and alcohol-affected young people, there needs to be a concentrated effort on youth and young adults. I would like to hear what Corrections Victoria will put in place in that respect.

This point was also raised in the Sentencing Advisory Council's report: when you are looking at young adults with complex problems and people with mental health issues, community-based orders with a lot of conditions are very hard for them to comply with. That cohort of people — young people with mental health issues and people with drug and alcohol issues — is most likely to breach those orders. There are issues with the severe consequences for breaching the orders in this bill. I want to know what is being put in place by Corrections Victoria to anticipate these issues in relation to young offenders and young adults.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I accept the concerns expressed by Ms Pennicuik; certainly it is a difficult situation. Obviously the appropriate sentence for the offence committed would be determined by the court. Obviously a sentence that would justify a jail term would be a jail term under our new regime. However, one great thing about this bill is that it now allows courts to choose to impose a CCO, for example, on an offender who is at risk of jail but who can be dealt with appropriately within the community. The CCO is now broad enough — I outlined all those conditions earlier on — to allow onerous conditions to be placed on a person who is permitted to remain in the community. The CCO can then provide opportunities for rehabilitation whilst still constituting punishment and protecting the community. It provides judges with a strong and flexible sentencing tool so that they can respond directly to the offender and the offending behaviour. Judges can use the CCO to impose a range of restricted optional conditions such as curfews, place or area exclusion and non-association conditions as well as bonds.

My view and the view of the government is that this will allow greater opportunity for sentencing judges to give the appropriate sentence to a person who is at risk of jail but who can be appropriately dealt with in the

broader community. When I was the spokesperson for corrections one of my concerns was the level of recidivism. I was always of the view that there needed to be better options than jail, and I think this CCO provision will allow for that. But having said that, jail will mean jail; we cannot get away from that. At least there are a lot more sentencing options for judges, and the issue of additional money that Mr Pakula raised will in turn allow for a greater case-management type of process through Corrections Victoria.

As to Ms Pennicuik's specific feelings about Corrections Victoria, obviously there are mechanisms for dealing with complaints through the Ombudsman and the like. Mr Pakula says there are issues about Corrections Victoria and raises complaints about some areas There are other options, and I wanted to cover that.

Ms PENNICUIK (Southern Metropolitan) — To clarify my question, it is about whether Corrections Victoria is cognisant of the fact that given there are a range of conditions — and I agree with the minister that we all hope this will lead to fewer offenders serving time in prison and on community correction orders — there are some onerous conditions. The point I make is that young adults, people with mental health issues and people with drug and alcohol problems often find it difficult to comply with those conditions. As identified by Youthlaw and the Sentencing Advisory Council it is that cohort of people who most often breach their conditions because of the chaos in their lives. They need more monitoring and support from corrections. I ask whether the department has anticipated that and made plans for it in amongst its $72 million?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The answer is yes. In clause 21 there are treatment and rehabilitation conditions that allow targeted responses to underlying issues, including youth issues, which are listed in the bill. To constitute the treatment and rehabilitation condition the court must specify at least one of the following conditions: assessment and treatment, including testing, for drug abuse or dependency; assessment and treatment, including testing, for alcohol abuse or dependency; assessment and treatment at a residential facility for withdrawal from or rehabilitation for alcohol or drug abuse or dependency; medical assessment and treatment, including but not limited to, general or specialist medical treatment, or treatment in a hospital or residential facility; mental health assessment and treatment, including but not limited to, psychological, neuropsychological, psychiatric treatment in a hospital or residential facility; programs aimed at addressing factors relating to the offending; and any other treatment and rehabilitation that the court considers necessary or desirable, including but not limited to, employment, educational, cultural and personal development programs that are consistent with the purpose of the condition. To be clear, that is contained in new section 48D, headed 'Treatment and rehabilitation condition', inserted into the act by clause 21 at page 35 of the bill.

As I said previously, there is extra funding to Community Correctional Services, which includes more funding to programs. CCS is to work with program providers to have appropriate programs available to young offenders. For example, there is the YMCA Bridge Project, which falls within my portfolio responsibility. I have seen young people who have been in jail who have no support mechanism once they come out. They are in no-man's-land, so to speak. Those are the types of programs that will pick up young offenders so they are able to engage in meaningful, long-term, sustainable employment. It does work; the recidivism rate is around 2 per cent. There is a huge success rate in terms of offenders never seeing jail again. Those are the types of things that really work. It is a change, and I think it is a change for the better.

Ms PENNICUIK (Southern Metropolitan) — I will take it as a rhetorical question then that the department is aware it may need to put more resources into this area. I am aware of the other provisions of the bill and that what the minister has been talking about is post-release from prison. I am talking about monitoring the CCOs, but we can move on.

The DEPUTY PRESIDENT — Order! It would be better if we did this a little more formally than just chatting across the table.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Deputy President, I need to take that up because this is a new regime that has been well thought out by the government and Corrections Victoria. It is not necessarily something that has been around before. A lot of it is new and will apply to the CCOs — not necessarily to imprisonment but to the CCO program.

Ms PENNICUIK (Southern Metropolitan) — I think I am pretty across what it is, what it changes and what it keeps the same. Some things we kept the same, but in his earlier overview of the bill the minister mentioned one of the things that does change in that a community corrections order has eligibility criteria and core conditions, and every one of them has to have at least one of the optional conditions under new section 48 contained in clause 21 of the bill. Previously

a community-based order did not have to have any conditions imposed other than not reoffending, not leaving the state — and I forget what the other one was. It was complying with something the secretary said.

Mr Drum interjected.

Ms PENNICUIK — I say to Mr Drum that I speak from memory. That is a very low-level community-based order. It is just above having a fine imposed. I am concerned about the gap between a fine and a CCO with one of those so-called optional conditions. The fact is it is not optional to not have one of them; you have to have at least one of them. I am concerned about how that is going to work. People will have to have a condition applied to them, whereas under the existing regime they would not have a condition applied to them. That means that the actual sentence imposed, even though it is still non-custodial, is more onerous than what currently exists under the community-based order. I am wondering about the philosophy behind that.

There is no reason why the community correction order could not comprise both the core and optional conditions that the court may or may not choose to impose. Under this bill it has to impose one of them, but under the previous regime a community-based order did not have to have one of those conditions. I am saying that this makes things more onerous for very low-level offenders.

I can see the advisers waving around bits of paper.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — There is this underlying assumption that if conditions are applied, it becomes more onerous. We went to the election with the opportunity to give teeth to community-based sentences. One interpretation that Ms Pennicuik has provided is that conditions would make things harder. The other side of it, and I have tried to explain this, is that it would makes things easier, it would ensure that we do not have offenders reoffending and it would give a multitude of options to the courts to deal with the multitude of different circumstances in which offenders go to court. Not all offenders are the same. Every offender has different needs and has committed different types of offences. If the court decides that jail will mean jail, then jail it will be, but if it decides that it is to be a community-based order or a community correction order, as we have indicated in our policy, the courts will be able to impose conditions that will protect the community but also prevent offenders reoffending.

Ms Pennicuik interjected.

Hon. R. A. DALLA-RIVA — Ms Pennicuik would have to agree that the recidivism rate is way too high. My view is that we need to give the courts and Corrections Victoria greater opportunities. Additional funding will be provided, and this will end up being beneficial to the offender. Courts will be required to assess the suitability of orders before they are imposed, and the offenders will have to consent to them. I think there are some good opportunities all round.

Ms Pennicuik — The question has not been answered.

Hon. R. A. DALLA-RIVA — Let me just make this clear. There are so-called terms of the order needed. There are standard terms for every CCO. The standard terms sit alongside the optional conditions. The standard term, as Ms Pennicuik said, includes that a person does not reoffend, does not leave Victoria without permission and reports to a community corrections officer for other basic requirements as specified in the order. These requirements are needed to ensure that every offender does the basic things they are required to do in order to comply with the CCO. Then the question will be why there is a minimum of one optional condition for each CCO, which Ms Pennicuik has raised. As I said, as part of the standard terms of every order, there must be at least one optional condition attached to the order.

Basically, as I said before, this puts teeth into community-based sentencing. It ensures that offenders have an obligation to do something under each order, and there are a whole range of issues that allow that to happen. I think I have answered the question.

The DEPUTY PRESIDENT — Order!
Ms Pennicuik, do you have anything further on clause 1?

Ms PENNICUIK (Southern Metropolitan) — I will take that as having been answered as far as it going to be. I will just make the comment that there is an alteration at the lowest end of the scale, and that is a concern I wanted to raise. I do not have any further questions on clause 1.

Clause agreed to.

Clause 2

Ms PENNICUIK (Southern Metropolitan) — I wanted to go to the delayed starting date of certain provisions of the bill. We raised this in the briefing with representatives of the department, and they explained

that it had something to do with logistics in terms of some of the offences that are covered by section 4. That does not come into effect until 30 June 2013. If it does not come into effect before then, it does come into effect on that date. The Scrutiny of Acts and Regulations Committee (SARC) raised that as an issue. Is the department going to attempt to expedite the proclamation of those provisions?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — My understanding is that the Scrutiny of Acts and Regulations Committee also noted that the default commencement date of the bill is 30 June 2013, which is longer than the usual practice of allowing 12 months for the commencement period. On 2 November 2011, the Attorney-General wrote to SARC explaining the reasons for the long commencement period. SARC tabled the Attorney-General's response in *Alert Digest* No. 13, dated Tuesday, 8 November 2011. It is on page 19.

There are several reasons why the longer commencement date for this bill was appropriate. Essentially the bill represents the most significant reform to community-based sentencing in Victoria in 20 years. The reforms are far reaching and must be commenced in stages to ensure a smooth and orderly implementation. The bulk of the reforms will commence early next year, with some specific reforms commencing later in 2012. The specific reforms that will commence later are the bond conditions under the community correction order, the expanded drivers licence penalties and the new powers for Corrections Victoria to deal with offender compliance in community sentencing. These specific reforms involve complex operational and logistical coordination between several agencies, including the ports, Corrections Victoria, VicRoads and Victoria Police. Additional staff, training and changes to IT systems are also required, and the government expects all agencies to be ready for these reforms to commence in 2012. However, the bill provides an additional six months in the event that any unforeseen issues arise that need to be resolved before the second stage of the act commences.

Clause agreed to; clauses 3 to 20 agreed to.

Clause 21

Ms PENNICUIK (Southern Metropolitan) — Clause 21 is really the guts of the bill. It talks about the extra optional conditions that will apply to CCOs. Rather than prosecuting them all, I am interested in new section 48L, which is on page 44 of the bill. Before I go to that particular section, the minister mentioned all the optional conditions before. New section 48F deals with the non-association condition, which means that a person cannot associate with another person or other classes of persons. New section 48H is about exclusion from certain places or areas. New section 48I deals with the curfew condition, where home detention can be reinstated for up to 12 hours a day. New section 48J deals with the alcohol exclusion condition, where people can be barred from licensed premises or areas of other premises which are licensed.

I asked about them all in the second-reading debate. I am wondering how they are going to be monitored and implemented, because it is quite difficult to monitor where someone is at every given hour of the day. That is a general question. Then I will go to my only other question on this clause, with regard to new section 48K, but I ask if the minister could ask the department how it is going to monitor those conditions.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Ms Pennicuik asked the question about the implementation process, and I indicated earlier that, because of these reforms being significant, there would have to be a period of time to undertake those reforms. Specifically as to how the CCOs would be enforced, the advice I have is that Corrections Victoria and Victoria Police will continue to work together to monitor and enforce sentences served in the community, including a new CCO condition banning association, no-go zones, curfews, alcohol bans and contact with certain persons. All suspected breaches of banned association or contact will be investigated and action taken, where appropriate, which may involve charging the offender and returning them to court.

In terms of the systems that are in place to detect the breaches, non-compliance with CCO conditions — for example, curfews, no-go zones, alcohol bans, residence exclusions — may be detected by Victoria Police. Where Corrections Victoria becomes aware from Victoria Police, or any other source, of alleged non-compliance by an offender, the alleged breach will be investigated and enforced in the same way as any other sentence. In practice, a person in breach of one of the CCO conditions will probably be detected if they are involved in a public or reported disturbance or are checked by police. Messaging systems will be in place so that Victoria Police can identify if an offender is in breach of a CCO by being in a prohibited licensed premises or a no-go zone or in breach of a curfew.

In rural and regional areas police will know more about those in the community who are subject to CCOs and

may detect breaches of this order in the normal course of their duties. Corrections Victoria monitors offender compliance with all requirements of an order and will investigate each reported incident. I just want to make sure that Ms Pennicuik has it clear that, unlike home detention — and as has been said, this is another form of home detention — this does not turn the family into a jailer. A curfew is not home detention. The curfew condition will allow courts to keep an offender at their home for up to 12 hours per day for a period of up to six months — for example, a young offender who has been convicted of alcohol-related violence offences on Friday and Saturday nights may be required to spend those nights at home. Unlike home detention the CCO does not pretend to be a sentence of imprisonment.

The CCO is a community-based sentence and, as I said before, it is tailored to suit a wide range of offending which, while serious, does not warrant a sentence of imprisonment.

Ms PENNICUIK (Southern Metropolitan) — With regard to the next new section, which is the judicial monitoring condition, the only question I have about that is: can the minister tell me whether he knows if all efforts would be made to ensure that the original sentencing judicial officer would be involved as far as practicable in the monitoring of the offender?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The advice is yes, but it is preferred that it be managed by the courts.

Clause agreed to; clauses 22 to 47 agreed to.

Clause 48

Hon. M. P. PAKULA (Western Metropolitan) — I am interested in the alcohol exclusion condition in new section 48J and particularly 48J(2), which says:

> (a) the offender must not enter or remain in any licensed premises characterised as a nightclub, bar, restaurant, cafe, reception centre or function centre …

et cetera. Right now in pretty much every suburb in Melbourne there will be a coffee shop in the local shopping centre in which on a Saturday morning people are drinking coffee and eating bacon and eggs or a muffin, and at night they might be able to get a meal with a drink. Does this provision mean that if a person is subject to that restriction, that person could not go into that place on a Saturday morning for a coffee? Is that what it means; is that the effect of it?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I understand we are still on clause 21.

The DEPUTY PRESIDENT — No, we have adopted clauses 21 through to 47.

Hon. M. P. Pakula — We are on clause 48.

The DEPUTY PRESIDENT — We are on clause 48.

Hon. R. A. DALLA-RIVA — No, we are still on clause 21.

The DEPUTY PRESIDENT — I moved the adoption of clauses 21 to 48, and the minister said 'aye' to that question.

Hon. M. P. PAKULA (Western Metropolitan) — It is in fact my mistake, Deputy President. I am looking at proposed section 48J, which it seems is part of clause 21.

The DEPUTY PRESIDENT — Order! The only way we can now proceed is if Mr Pakula moves that clause 21 be recommitted.

Clause 21 recommitted, by leave, on motion of Hon. M. P. PAKULA (Western Metropolitan).

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — My advice is that if you are subject to a CCO, you are banned from that licensed premises; it does not matter what hour of the day. Is that what Mr Pakula is talking about? If it is a pub at night and it becomes a coffee shop in the day, the view is that it is still a licensed premises and that the restriction would apply to either that venue or indeed that area, depending on the conditions.

Hon. M. P. PAKULA (Western Metropolitan) — It is not even places that are pubs at night. Certainly where I live, and in places where most of us live now, there are venues that are in effect cafes and for the large part of the day they behave as cafes but at dinnertime people can have a glass of wine with a meal. There might be four or five venues in a given suburb that are effectively cafes. I suppose my issue goes primarily to the question of enforcement. If someone has a restriction, how on earth would there be any way of keeping someone out of a coffee shop at 10 o'clock on a Saturday morning? Are people's photos going to be distributed all over Melbourne? How is any proprietor of one of these cafes that becomes a restaurant at night meant to know that someone has been excluded?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — There are two parts to the question. I will just say this because it needs to be covered: if they work in a cafe — for example,

they are banned from licensed premises yet they work in a cafe — under the alcohol exclusion conditions offenders may be completely banned from entering a cafe that is also a licensed premises. However, the condition allows a court to consider the impact of a ban on any employment of the offender, so the court may also have the power to allow the offender to access particular licensed premises if it considers it appropriate. That is in terms of a licensed premises.

In terms of the other part that Mr Pakula has queried, I have sought more advice. That advice is that an offender may be banned from a facility at night, for example, but may be allowed — if there is a reason, depending on the court and the reasons and arguments for it — to go there in the morning. The court's flexibility could allow the CCO to be tailored.

Mr Pakula asked another question about enforcement. I mentioned to Ms Pennicuik about the process in place to deal with breaches whereby non-compliance with CCO conditions — for example, curfews, no-goes, alcohol bans or residence restrictions — may be detected by Victoria Police. It is expected that Corrections Victoria and Victoria Police will continue to work together to monitor and enforce sentences served in the community, including the new CCOs.

I must say to Mr Pakula that in the old days, from my own experience as a police officer, when you were out and you found somebody, you did not often know if they were on a community-based order or whatever until you did a check, and all of a sudden you found they were breaching their order. It would be along the same lines. In rural and regional areas police know more about those in the community who are subject to CCOs and so may detect breaches of these orders in the normal course of their duties. Regarding enforcement, non-compliance with alcohol exclusion conditions will be detected and enforced by Victoria Police in the usual way, including notifying Corrections Victoria of alleged breaches of CCO conditions. If Corrections Victoria becomes aware of or is notified of suspected breaches, this will be investigated and action will be taken where appropriate, which may involve charging the offender and returning them to court. More generally, Corrections Victoria will be responsible for managing the offender whilst they are subject to the CCO — other than reoffending, which remains a matter for police — and this includes responding to any non-compliance with the order.

Hon. M. P. PAKULA (Western Metropolitan) — So if you are subject to the alcohol exclusion condition, you might be charged and returned to court for having a coffee on a Sunday morning if you are in the wrong venue? Is that what the minister is saying?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — No, that is not correct, because if the order does not exclude you at that licensed premises in the morning, then you have committed no breach.

Hon. M. P. PAKULA (Western Metropolitan) — Given the minister's grace in granting leave I will stop there.

Clause agreed to; clause 48 agreed to; clauses 49 to 53 agreed to.

Clause 54

Ms PENNICUIK (Southern Metropolitan) — My question to the minister is in regard to a provision in clause 54 at page 85 of the bill which goes to contravention of old community-based orders. Currently, if a community-based order is contravened, the offender is resentenced for the original offence in the court.

Hon. R. A. Dalla-Riva — Which page is the member referring to?

Ms PENNICUIK — It is on page 85 of the bill under the heading 'Contravention — Old community-based orders'. Currently, if a community-based order — which I was talking to the minister about before and is the lowest of the current level of community orders — is contravened, the offender is resentenced in the court for the original offence. Under this bill if an old community-based order is in force and is contravened, then the offender can be imprisoned for three months. A community-based order is a low-level, keep-the-person-out-of-jail order, but under the bill a contravention attracts three months imprisonment. What was the thinking behind that and why is it there?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — This is about putting teeth back into community corrections. Again, we made it clear that we would strengthen our position in that regard. What this does is allow for contraventions of the old community-based orders to be dealt with, and it will be an offence to contravene an old CBO without reasonable excuse. My advice is that the penalty will be three months imprisonment as outlined. A reasonable excuse for a contravention might be alleged reoffending where the offender is acquitted of that offence — for example, self-defence to an assault. In relation to non-compliance with the order, a

reasonable excuse may be proven, for example, by the inability to comply due to illness. The offence does not apply retrospectively. The offence does not apply to contraventions of old CBOs that occur before the commencement of clause 21 of the bill.

The offence should be dealt with under part 3C as if it were a contravention of a CCO under new section 83AD, with the exception of the powers of the court in sentencing. In addition to sentencing the offender for the contravention offence, the court must either confirm the order or cancel the order and resentence the offender for the original offence. The court does not have the power to vary the CBO. The court must take into account how much the offender complied with the order and the conditions that were originally contained in the CBO.

Ms PENNICUIK (Southern Metropolitan) — I thought that answer was a little bit confusing. The contravention under the provision has to have occurred before new section 21 comes into force. It appears to me that we are talking about community-based orders which will only exist now if they are already in force, and once they expire, they will not exist any more. My question is: why is a harsher penalty being applied to contravention of community-based orders than would have been applied at the time the person was sentenced to the community-based order? It seems to me they are getting a harsher penalty for a contravention if it occurs now, for example, before the commencement of new section 21, than they would otherwise have been subjected to.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The new penalties will apply immediately on commencement of the bill. The new penalties are not retrospective and only apply to offences committed on or after the commencement of the bill. They are prospective and they are tougher — we make no bones about that. That is the intention of the bill, and that is where it is at.

Ms PENNICUIK (Southern Metropolitan) — Is it not one of the principles we work on that people should not have a sentence imposed that is harsher than what existed at the original time they were sentenced to the community-based order? I am just asking. These community-based orders will be phased out. They are the lowest level of community orders that exist, and I am concerned that this harsh penalty seems to be applying to the community-based order when the government could have chosen just to leave it in place the way it was — that is, that offenders go back to court to be sentenced for their original offence, as is the case now. The minister can take that as a rhetorical question, as he has already answered the question.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I need to add something, because I indicated in my first response that there is a whole range of aspects the court must take into account; for example, how well the offender complied with the order and the conditions that were originally contained in the CBO. There are, as I said, reasonable provisions in new clause 10; it is not as straight up as indicated.

Clause agreed to; clauses 55 to 59 agreed to.

Clause 60

The DEPUTY PRESIDENT — Order! Mr Pakula, to move his amendment 1, which I think he agrees is a test of his amendments 2 to 7, which relate to community correction orders that have unpaid community work conditions attached. This is also a test for his amendments 14 and 15. If Mr Pakula agrees with that, we will proceed.

Hon. M. P. PAKULA (Western Metropolitan) — I seek your guidance, Deputy President. You say it is a test of amendments 2 to 7 and 14 and 15. What do you say then, Deputy President, about clauses 8 through 13?

The DEPUTY PRESIDENT — Order! Amendment 8 has been adjudged as a separate amendment and would test 9 to 13. They will be put separately. I am happy to hear a different view.

Hon. M. P. PAKULA — At the outset, Deputy President, the thrust of the amendments is that the secretary or delegate of the Department of Justice, rather than imposing an additional sentence, should apply to the Magistrates Court for an order. I will just have a look at the bill. Applications for orders in regard to separate circumstances are referenced. One is in regard to unpaid community work and one is in regard to curfew. I accept the proposition. I am happy to have it treated in the way you have suggested, Deputy President.

The DEPUTY PRESIDENT — Order! I call on Mr Pakula to move amendment 1. Once we deal with that we can deal with amendments 2 to 7, and 14 and 15 may be tested by that. Once we deal with that group of amendments we will proceed to amendment 8.

Hon. M. P. PAKULA — I move:

1. Clause 60, page 91, line 16, omit "direct the offender to" and insert "apply to the Magistrates' Court for an order that the offender".

Notwithstanding the confusion, amendments 1 through 15 contain important changes. There are two separate provisions, but there is one general principle. The general principle put forward by the opposition is that the separation of powers is important, should be preserved and should not be offended in circumstances such as this where it is so simple to respect that separation of powers.

Let us be clear about what the opposition is proposing versus what the bill provides. The bill is providing that. In regard to breaches by persons on community-based orders, the bill provides for the secretary of the department, or the secretary's delegate, and we understand in a real-world situation they would be regional managers from Corrections Victoria, to unilaterally impose extended sentences — that is, orders beyond those that were applied by the courts. That would apply to curfews and also to community-based orders.

We take the view, as does the Law Institute of Victoria (LIV) and the legal profession more generally, that it is appropriate in those circumstances and also not onerous for Corrections Victoria to go back to court and seek an extension of the order. That should be the case whether we are talking about unpaid community work or in regard to a curfew. Extensions of those orders that have been handed down by courts could have all kinds of implications that Corrections Victoria may not have considered. It is important to note that when the court handed down its original decision it would have been in possession of all the facts and arguments that would have been provided by counsel, both for the defence and the Crown.

Rather than reinvent the wheel, I would like to restate the view of the Law Institute of Victoria, as provided in correspondence to me. I will not waste the committee's time unduly, but in correspondence from Caroline Counsel, the president of the Law Institute of Victoria, dated 11 October, the following paragraphs appear:

> The LIV is extremely concerned at the proposal to increase the powers of the Secretary of the Department of Justice, namely, the power of the secretary to direct an offender to perform unpaid community work in addition to that imposed by the court (clause 60 of the bill, inserting new s83AU into the Sentencing Act 1991), and the power of the secretary to increase specified curfew hours in addition to those imposed by the court (clause 60, inserting new s83AV into the Sentencing Act 1991).
>
> The Secretary of the Department of Justice is a public servant and a member of the executive arm of government and the extension of these judicial powers to the secretary is a clear erosion of the principle of the separation of powers.

I will stop there for a moment. I do not think there can be any contest on the matter of fact that handing judicial power to a member of the executive is a clear erosion of the principle of the separation of powers. If the government is going to erode that separation in this way, one would think there ought to be a very good reason to do so. It ought to be in a circumstance of the most serious kind.

The fact is there is absolutely no obvious reason to do it other than convenience. It is simply more convenient for Corrections Victoria to be able to increase a penalty rather than having to go to the bother of going back before a magistrate and seeking to have that order extended. As a member of this Parliament in which the separation of powers is held very dear, I have to say that to erode that separation merely for the convenience of the Secretary of the Department of Justice or officers of Corrections Victoria is nowhere near a good enough reason.

In its correspondence the law institute goes on to say:

> Further, the LIV objects to the new powers … to allow an authorised person … to serve an infringement notice …

I will not read that whole paragraph. The letter continues in a similar vein.

We are moving this amendment and government speakers have already indicated that they will not support it, which I find extremely regrettable. As I have indicated, the proposal is for a clear erosion of the separation of powers. There is no good reason for it. There are very good practical reasons as well for Corrections Victoria to go back to court in those circumstances.

Complex relationships are formed between officers of Corrections Victoria and the persons they supervise. There can be all kinds of goings-on that the Parliament cannot currently contemplate, such as people might fall out and people might have difficult and troubled relationships. In a situation where individuals, being the corrections officer and the offender, might work and relate very closely over a period of time, for the corrections officer or the regional manager to be able to increase a penalty that has been imposed by a court without further reference to the court is in our view a dangerous precedent and that is why we have moved the amendment.

Ms PENNICUIK (Southern Metropolitan) — The Greens will be supporting Mr Pakula's amendment. We concur with Mr Pakula that it should be for the Secretary of the Department of Justice or his or her delegate to impose an additional sentence over and

beyond what has been imposed by a court. If the secretary is of the view that such an addition to the sentence needs to be imposed, that decision should be referred to the sentencing court. That is a principle that we should stick with. If the secretary decides that the breach is not so serious that it should go back to court, there should be some other way of negotiating with, monitoring or speaking with the offender.

The matter should either not go back to court or go back to court. There should not be this halfway house where the secretary or his or her delegate imposes an addition on the curfew, which could be up to 2 hours per day for up to 14 days. That is quite significant, as are the 16 hours of community work that could be added. The principle of referring a matter back to the court is the one we should stick with, and for that reason the Greens will support the amendment.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank members for their statements and for the proposed amendments. In response, I indicate to those in the chamber that the Victorian Liberal-Nationals coalition media release of 23 November 2010 made a very clear commitment to give teeth to community-based sentences. We indicated at the time that as the alternative government we would initiate the most significant reform of community-based sentences Victoria has seen in 20 years. As has been indicated, we stated that we would provide a broad range of strong and effective new powers to the courts and provide the capacity for the courts to draw on a combination of these new powers and existing powers to require offenders to undergo various treatments — be it drug and alcohol treatment, mental health treatment or anger management courses, as listed in front of me — to get them to re-establish their lives on a stable basis, develop responsibility for their conduct and avoid reoffending.

The release states:

> Under a coalition government, offenders given community-based sentences will be required to put in real work to repay the community for the harm they have done.

It is also outlined here, which is in the context of the — —

Hon. M. P. Pakula interjected.

Hon. R. A. DALLA-RIVA — Calm down, Mr Pakula. The release also says:

> Authorities will be given the discretion to issue an on-the-spot fine for less serious breaches, which will streamline the enforcement process and slash enforcement costs.
>
> …
>
> This initiative will dramatically strengthen the hand of authorities to deal with offenders who treat their CCO as a joke, deliberately act up, are disruptive or just won't work, and who think they can get away with it because of the effort and paperwork required to haul them back before the court.

That was our election commitment, and the people of Victoria went to the election with that fully understood.

Honourable members interjecting.

Hon. R. A. DALLA-RIVA — I will just repeat it again.

Hon. M. P. Pakula — No, don't! You do not have to repeat it.

Hon. R. A. DALLA-RIVA — You cannot say it is rubbish and then say there is no — —

Hon. M. P. Pakula interjected.

Hon. R. A. DALLA-RIVA — It says:

> Authorities — —

Hon. M. P. Pakula — One media release three days prior!

Hon. R. A. DALLA-RIVA — You might want to get a story into the *Age*, but the fact is that this was a statement made before the election. The release says:

> Authorities will be given the discretion to issue an on-the-spot fine for less serious breaches.

Hon. M. P. Pakula — I am not seeking to amend that bit.

Hon. R. A. DALLA-RIVA — Hang on; it goes on to say:

> This initiative will dramatically strengthen the hand of authorities to deal with offenders who treat their CCO as a joke …

Right? The bill's new powers are aimed at improving offenders' compliance with community corrections orders without the need to always return breaches to court. The new powers are not a blunt instrument but a fair and appropriate process that protects the courts' independence. When the Attorney-General introduced the bill he said that the new powers would streamline the enforcement process of community-based sentences.

The new powers are given to the Secretary of the Department of Justice, and they deal with less serious compliance issues through, for example, on-the-spot

fines of $122.14, which is 1 penalty unit; increases in unpaid community work; and curfews. The powers may only be exercised when the offender fails to comply with the CCO without a reasonable excuse and it is not serious enough to charge them with a contravention of the order. There are strong safeguards to protect the independence of the courts and preserve oversight by the judiciary. The new on-the-spot fines are like any other infringement notice: if the offender disagrees with the fine, they may appeal to the infringement courts. The new powers to direct any extra unpaid work and an increased curfew are strictly limited.

Hon. M. P. Pakula — This is a brave new argument about the on-the-spot fines.

Hon. R. A. DALLA-RIVA — Ms Pennicuik raised the issue; I am answering both.

Hon. M. P. Pakula — We are not seeking to amend that part.

Hon. R. A. DALLA-RIVA — Ms Pennicuik raised the issue about fines — —

Hon. M. P. Pakula — Go on; go back to your script.

Hon. R. A. DALLA-RIVA — Any extra unpaid community work directed cannot exceed 16 hours — or two days — in a 12-month period, and the increased curfew is limited to a maximum 2 hours per day for up to 14 days. If the court imposes the maximum curfew or maximum unpaid work when setting the sentence, the direction power cannot be exercised. For example, a curfew cannot exceed 12 hours of any given day or last longer than 6 months.

Only senior departmental officers of Victorian Public Service band 6 or higher may exercise the powers — for example, regional managers, who Mr Pakula mentioned, from Corrections Victoria. These officers are not the same officers who case manage the offender. The court's independence is protected. When the court is making the community correction order it contemplates that the secretary or her delegates may in the future give these limited directions to the offender. The court knows that appropriate enforcement steps can be taken to ensure the offender meets the court's objective.

The bill also provides basic procedural fairness. The offender must be given written reasons for the secretary or her delegate's decision and be informed of their right to appeal to the court. Importantly, the offender has the right to apply to the court that sentenced them for review of the secretary's decision. The offender may dispute whether they breached the order or the direction was warranted or the amount of the extra work or curfew.

Hon. M. P. PAKULA (Western Metropolitan) — At the risk of inciting the minister to read that again, let me just make two points. Firstly, we take issue with this suggestion by the minister that a media release dropped 72 hours before the election somehow constitutes widespread community debate and therefore provides a mandate. This was not debated in the election campaign at all; it was dropped out as a media release three days prior to the election.

Secondly, in nothing the minister read out was there any suggestion before the election, even if we accept that the media release somehow provided the government with a mandate, where the coalition at any stage indicated that public servants would be given the power to increase a curfew or increase an unpaid work provision.

The minister is right: the media release made mention of the fines. The opposition is not seeking to amend the part of the bill that relates to the ability of the secretary to impose a fine; the opposition is seeking to amend only that part of the bill that gives the secretary or the secretary's delegate the power to change the unpaid work order made by the court or the curfew order made by the court. We are not saying that the offender should not have to cop extra; we are saying that the secretary should go back to court and seek an order. There is nothing inconsistent between what the minister says is in the coalition's 23 November media release and what the opposition is moving as part of this amendment.

Ms PENNICUIK (Southern Metropolitan) — I think the minister's response has only strengthened my resolve to support the amendment. I am also concerned about its actual application, because, as the minister correctly said, if the offender has already been given the maximum amount of community work and cannot be actually sentenced to any more or any further curfew, how useful is it to the secretary? What does the secretary then do under this provision?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — My advice is that in those circumstances they apply a fine, or, as Ms Pennicuik quite rightly pointed out, if there is no more time available in terms of their having maxed out their curfew or unpaid work, then they would most likely be taken before a court for a variation.

Ms PENNICUIK (Southern Metropolitan) — Which supports my contention that they should go back to the court in any case. I do not know whether the Secretary of the Department of Justice is in the position to adjudge whether that is a fair imposition. That is what we have the courts there to do. We do not have public servants doing that generally; we have the courts to do that. I do not like the fines at all. I am concerned about the imposition of fines on offenders in this cohort who cannot pay a fine. What happens to them then? We will support the amendment. We do not believe this is the correct way to go.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — This is an intervening step that is available, as opposed to the present situation where the only option is to breach the order and go back to court. As I said, this is about managing it better. We disagree. We went to the election with that and a range of other areas. In relation to our commitment to tightening the provisions on community-based sentences, we have introduced this bill and made a whole raft of policy announcements. As I said, at all stages if the person on the community-based order disagrees with either the on-the-spot fine or the additional curfew, there are opportunities for the court's independence to be protected — that is, the offender will be properly informed of their rights to appeal and apply to the court for a review of the secretary's decision.

Hon. M. P. PAKULA (Western Metropolitan) — If the offender avails themselves of their right to challenge an increase in the courts, is the imposition of the additional penalty stayed until that matter is heard by the courts?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The answer is yes. The direction takes on the date specified by Corrections Victoria with regard to the directions for more unpaid community work and an increased curfew. Does the appeal stop the secretary's decision taking effect? The answer is yes. However, if an offender appeals to the court, it becomes a decision for the court. The court decides whether the direction should be given and whether the offender should perform additional unpaid community work or face an increased curfew.

The DEPUTY PRESIDENT — Order! The question is that amendment 1 moved by Mr Pakula be agreed to. I advise the committee that this is a test of proposed amendments 2 to 7 and 14 and 15. Those of that opinion say aye. To the contrary no. I think the ayes have it, on the voices.

Hon. R. A. Dalla-Riva — No, they don't.

The DEPUTY PRESIDENT — Order! I called the ayes, Minister. I said the ayes have it. Are you saying the noes have it? Is a division required?

Hon. R. A. Dalla-Riva — Yes.

The DEPUTY PRESIDENT — Order! Ring the bells.

Bells rung.

Members having assembled in chamber:

The DEPUTY PRESIDENT — Order! The question before the committee is that amendment 1 moved by Mr Pakula be agreed to and that this is a test of his proposed amendments 2 to 7 and amendments 14 and 15. I called that the ayes had it on the voices. I advise the committee that because I was put in a position on a previous occasion of calling on the voices, when clearly there was some argument as to whether or not the voices were in the way that I called it, I have decided I am going to strictly call it on the voices as I hear them, which is in accordance with standing order 16.01. I am advising all members while they are here that if members wish to call a division, they should pay attention to the way I call a vote on the voices.

Committee divided on amendment:

Ayes, 19

Barber, Mr	Pakula, Mr
Broad, Ms	Pennicuik, Ms
Darveniza, Ms	Pulford, Ms
Eideh, Mr	Scheffer, Mr
Elasmar, Mr	Somyurek, Mr
Hartland, Ms	Tarlamis, Mr
Jennings, Mr	Tee, Mr
Leane, Mr (*Teller*)	Tierney, Ms
Lenders, Mr	Viney, Mr
Mikakos, Ms (*Teller*)	

Noes, 21

Atkinson, Mr	Koch, Mr
Coote, Mrs	Kronberg, Mrs
Crozier, Ms	Lovell, Ms
Dalla-Riva, Mr	O'Brien, Mr (*Teller*)
Davis, Mr D.	O'Donohue, Mr (*Teller*)
Davis, Mr P.	Ondarchie, Mr
Drum, Mr	Petrovich, Mrs
Elsbury, Mr	Peulich, Mrs
Finn, Mr	Ramsay, Mr
Guy, Mr	Rich-Phillips, Mr
Hall, Mr	

Amendment negatived.

Hon. M. P. PAKULA (Western Metropolitan) — I move:

8. Clause 60, page 92, line 15, omit "direct" and insert "apply to the Magistrates' Court for an order".

The DEPUTY PRESIDENT — Order! This amendment will be regarded as a test of proposed amendments 9 to 13.

Hon. M. P. PAKULA (Western Metropolitan) — Whilst I am sure we are all tempted to go over the debate that we have just had in regard to amendment 1, I do not imagine that the answers from the minister will be different in any meaningful way to the ones that we have had.

Mr Leane — Maybe you should test it.

Hon. M. P. PAKULA (Western Metropolitan) — Mr Leane says maybe I should test it. I am happy to receive an indication from the minister about whether or not I am likely to receive different answers if I raise the same issues, but I think, to save us all time and given the hour, I am content to put my amendment on the assumption that the government's position in regard to amendment 8 will be substantially the same as the government's position on amendment 1. I can indicate that the reasons that the opposition is moving amendment 8 are substantially the same as the reasons it moved amendment 1.

Ms PENNICUIK (Southern Metropolitan) — The Greens will support this amendment for the same reasons we supported the previous amendment.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Again I thank the members for their contributions, and again we stand by the bill as it is and will not be supporting the amendments.

Committee divided on amendment:

Ayes, 19

Barber, Mr (*Teller*)
Broad, Ms (*Teller*)
Darveniza, Ms
Eideh, Mr
Elasmar, Mr
Hartland, Ms
Jennings, Mr
Leane, Mr
Lenders, Mr
Mikakos, Ms
Pakula, Mr
Pennicuik, Ms
Pulford, Ms
Scheffer, Mr
Somyurek, Mr
Tarlamis, Mr
Tee, Mr
Tierney, Ms
Viney, Mr

Noes, 21

Atkinson, Mr
Coote, Mrs
Crozier, Ms
Dalla-Riva, Mr
Davis, Mr D.
Davis, Mr P.
Drum, Mr
Elsbury, Mr
Finn, Mr (*Teller*)
Guy, Mr
Hall, Mr (*Teller*)
Koch, Mr
Kronberg, Mrs
Lovell, Ms
O'Brien, Mr
O'Donohue, Mr
Ondarchie, Mr
Petrovich, Mrs
Peulich, Mrs
Ramsay, Mr
Rich-Phillips, Mr

Amendment negatived.

Clause agreed to; clauses 61 to 64 agreed to.

Clause 65

Ms PENNICUIK (Southern Metropolitan) — My question is regarding clause 65, which allows for the suspension, cancellation or disqualification of a drivers licence or learners permit for any offence. Under this bill a person can have their drivers licence suspended or cancelled or can be disqualified even though they have not committed a driving offence, and I am concerned that that has ramifications for people in terms of their being able to get to and from work and carry on the normal obligations and responsibilities of family life. I am concerned about taking away someone's drivers licence when they may be absolutely no threat on the roads — may in fact be safe drivers. I am concerned about the principle of taking away someone's ability to drive when they have not committed an offence that has anything to do with road safety or driving, and I ask the minister what the reason for that is.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — It is a policy position that has been put forward. The media release of 23 November, before the last state election, did say that the conditions applied to a community correction order and may include driving licence restrictions, suspension or cancellation. We made that very clear.

It says in that media release:

> Our reforms will empower the courts to take direct and meaningful action targeted at stopping further criminal behaviour. The burglar who drives from suburb to suburb invading victims' homes may lose their licence or even their car …

Obviously the offences caught by the bill are not driving offences. Road safety offences are captured by road safety legislation and serious driving offences such as culpable driving are captured by the existing sentencing act powers.

Under this bill the courts will have a new power to suspend or cancel a drivers licence or a learners permit and disqualify a person from obtaining one for any offence for any period the court thinks fit. 'Any offence' means offences not already captured by the existing sentencing act powers and, as I said, not already captured by the Road Safety Act 1986

regulations and road rules. Where the offence is committed under the influence of alcohol, the offender, if they are later relicensed by the magistrate, may be required to have an alcohol interlock attached to their vehicle for any period the court thinks fit. The provision is clearly designed to restrict people from going to certain places if a curfew or other restrictions are part of their order.

Ms PENNICUIK (Southern Metropolitan) — I do not want to labour this, but it does not necessarily restrict people from going to a certain place, because that assumes that the only way they can get there is if they drive their own or another vehicle. They can certainly go there in a taxi or by public transport. I do not want to prosecute this too far except to say that I trust that the courts would be very careful about imposing a sentence on someone that restricts or takes away their licence when they have not actually committed a road safety offence. I record my concern about that.

Clause 65 agreed to; clauses 66 to 108 agreed to; schedule agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Motion agreed to.

Read third time.

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION BILL 2011

Introduction and first reading

Received from Assembly.

Read first time for Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) on motion of Hon. G. K. Rich-Phillips; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations), Hon. G. K. Rich-Phillips 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 (charter act), I make this statement of compatibility with respect to the Independent Broad-based Anti-corruption Commission Bill 2011.

In my opinion, the Independent Broad-based Anti-corruption Commission Bill 2011 as introduced to the Legislative Council is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The purpose of the bill is to establish the Independent Broad-based Anti-corruption Commission (IBAC), and to constitute a joint house committee of Parliament to oversee IBAC.

The objects of the bill are to:

(a) assist in the prevention of corrupt conduct;

(b) facilitate the education of the public sector and the community about the detrimental effects of corrupt conduct on public administration and the ways in which corrupt conduct can be prevented;

(c) assist in improving the capacity of the public sector to prevent corrupt conduct; and

(d) provide for the investigation and exposure of corrupt conduct.

The bill provides IBAC with prevention and education functions to achieve those objectives, including:

examining the systems and practices in the public sector and public sector legislation, and publishing information on ways to prevent corrupt conduct;

providing information to, consulting with and making recommendations to the public sector and assisting the public sector to prevent corrupt conduct by providing advice, training and education services; and

educating the community about the detrimental effects of corruption on public administration, and ways in which to assist in preventing corrupt conduct.

Human rights issues

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

Privacy and reputation (section 13 of the charter act)

Section 13(a) of the charter act provides that individuals have a right not to have their privacy unlawfully or arbitrarily interfered with. The right to privacy concerns a person's 'private sphere', which should be free from government intervention or excessive unsolicited intervention by other individuals. An interference with privacy will not be unlawful provided it is permitted by law, is certain, and is appropriately circumscribed. An interference will not be arbitrary provided that the restrictions on privacy are reasonable in the particular circumstances and are in accordance with the provisions, aims and objectives of the charter act.

Clauses 25, 28 and 31 of the bill enhance the right to privacy by requiring the Commissioner, any deputy commissioner, the chief executive officer and IBAC officers, to take an oath or affirmation that (amongst other things) he or she will not disclose, except as authorised by law, any information received in the performance of the functions or the exercise of the powers of the office.

Clause 36 allows the Governor in Council to make regulations to prescribe matters in relation to security checks for IBAC officers and other persons engaged by IBAC under clauses 29 and 30. It further allows for the making of regulations setting requirements for the disclosure and reporting of pecuniary interests by IBAC officers, and for the compilation, maintenance and publication of registers of pecuniary interests of such persons. It also provides that such regulations may provide for the information collected pursuant to this clause to be included by IBAC in its annual report.

Such regulations have the potential to require officers of IBAC and consultants to disclose personal information. For example, regulations to enable security checks by IBAC could require an IBAC officer or consultant to disclose personal or sensitive information to ensure that the officer or consultant is a fit and proper person to hold a position within IBAC.

Any requirement that officers disclose personal information will be clearly linked to the purpose of conducting security checks to ensure the probity of officers appointed to IBAC. This is of utmost importance in a public body whose functions include assisting in the prevention of corruption. As an additional protection, IBAC, as a body established or appointed for a public purpose by or under an act, will be subject to the Information Privacy Act 2000 and will be required to hold any personal or sensitive information obtained securely and in accordance with that act.

In addition, IBAC officers may be required to disclose pecuniary information which could then be made publicly available on a register of pecuniary interests and by publication in IBAC's annual report.

The requirement that officers disclose pecuniary interests is important in order to maintain the integrity of IBAC and for IBAC and its officers to avoid conflicts of interest or perceived conflict of interest. In many cases, that information will already be publicly available (for example on registers of shareholder interests) and so will only engage the right to privacy in limited circumstances.

I consider that any interference with privacy occasioned by clause 36 will not be arbitrary, as the information which may be required of officers will be clearly linked to their fitness to undertake work within IBAC, or alternatively will be necessary to determine if their private interests conflict with their public duties.

For the reasons stated, I do not consider that clause 36 provides for the unlawful or arbitrary interference with privacy and there is therefore no limitation on the right to privacy under section 13 of the charter act.

Right to freedom of association (section 16 of the charter act)

Section 16(2) of the charter act says that every person has the right to freedom of association with others. This right protects the right of all persons voluntarily to group together for a common goal. It applies to all forms of association.

The right to free association reflects the freedom of a society, and is essential to the exercise of other human rights, such as freedoms of movement, expression, religion and belief. The right is particularly important in a free and democratic society to ensure that a person's eligibility to participate in elections for public office is not restricted unjustifiably on the grounds of their membership of an association. However, the right is not absolute and can be subject to reasonable limitations in section 7 of the charter.

Clauses 14(2)(b), 18(11), (12) and (13), 19(1)(d) and 21(1)(d) of the bill engage the right to freedom of association.

Election to Parliament

Clause 14(2)(b) renders a person ineligible from being appointed as a commissioner of IBAC if he or she is a member of the Parliament of Victoria or of the commonwealth or of another state or a territory. Clauses 19(1)(d) and 21(1)(d) respectively hold that the Commissioner and a deputy commissioner will cease to hold office if he or she nominates for election for the Parliament of Victoria or of the commonwealth or of another state or a territory.

Restrictions on employment, business and community activity

Clauses 18(11), (12) and (13) place restrictions on the Commissioner or a deputy commissioner's employment, business or community activity. Subclauses (11)–(12) prohibit the Commissioner or a deputy commissioner from engaging in any employment, business or community activity, or from entering into a contract to provide services, that may create an actual or perceived conflict of interest with his or her role.

Subclause (13) requires the Commissioner or a deputy commissioner to seek the approval of the Governor in Council to apply for or hold any professional, trade or business licence (including a legal practising certificate under the Legal Profession Act 2004), and to conduct any trade, business or profession, or accept any other employment.

The purpose of the limitations is to prevent actual or perceived conflicts of interest arising between the Commissioner or a deputy commissioner's activities outside of their role and the fulfilment of their public duties.

The limitations on the right are direct, proportionate and balanced with both the need to ensure public trust and confidence in the offices of the Commissioner and deputy commissioners, and also the need to ensure the independence of those roles. The limitation is reasonable, as it is not an absolute prohibition on employment, business or community activity. The limitation supports the objects of the act to prevent corruption, which in turn enhances the right to take part in public life, a right that the charter act seeks to protect and promote.

The limitations are reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom. I consider there are no less restrictive means reasonably available to achieve the intended purposes.

Right to take part in public life (section 18 of the charter act)

Section 18 of the charter act holds 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. This includes the right to be elected in state elections.

The bill enhances the right to take part in public life through the objects outlined in clause 4 which include the facilitation of education of both the public sector and the community about the prevention of corrupt conduct. This will provide IBAC an opportunity to engage with the public, and to enhance its understanding of the nature of public administration. More generally, the promotion of good public governance and the prevention of corruption will enhance the right to take part in public life.

Clauses 14(2)(b), 19(1)(d), 21(1)(d) of the bill, discussed above, which prevent the Commissioner or a deputy commissioner from being a member of Parliament, limit the right to take part in public life. This right may be limited on objective, non-discriminatory and reasonable grounds. The limitation is in place to prevent actual or perceived conflicts of interest arising between the Commissioner or a deputy commissioner's duties in relation to the IBAC, and duties and interests that would attach to the public office of being an elected member of the Parliament. This is particularly important given that the IBAC will be overseen by a joint parliamentary committee and that the Commissioner and deputy commissioner/s may have a role in educating and advising parliamentarians in relation to ways to prevent corruption.

The limitations on the right are direct, proportionate and balanced with both the need to ensure public trust and confidence in the offices of the Commissioner and deputy commissioners, and also the need to ensure the independence of those roles. The limitations are reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom. I consider there are no less restrictive means reasonably available to achieve the intended purposes.

Conclusion

For the reasons given in this statement, I consider that the bill is compatible with the Charter of Human Rights and Responsibilities Act 2006.

Richard Dalla-Riva, MLC
Minister for Employment and Industrial Relations
Minister for Manufacturing, Exports and Trade.

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Independent Broad-based Anti-corruption Commission Bill 2011 implements a key election commitment of the coalition government to establish an anticorruption commission for Victoria.

This bill establishes Victoria's first ever Independent Broad-based Anti-corruption Commission (IBAC). This is historic legislation for Victoria.

The establishment of the Independent Broad-based Anti-corruption Commission is the keystone of the government's integrity reforms — the most far-reaching and fundamental reforms to the anticorruption and integrity system in Victoria's history.

The Independent Broad-based Anti-corruption Commission Bill 2011 is the first stage of the establishment of IBAC. The bill enables a commissioner to be appointed, and facilitates the practical process of establishing IBAC. Further legislation vesting IBAC with investigations powers will follow before the end of the year. Once appointed, the Commissioner can commence setting up the new body in time for the body to receive its investigations powers.

This bill also establishes IBAC with education and prevention functions and powers. The bill will allow the IBAC Commissioner to begin educating the Victorian community about corruption and its negative effects, and proactively preventing corruption. This is important work, recognised by experts as key components of any effective anticorruption system.

With the exception of Victoria and South Australia, every state in Australia has an independent anticorruption commission. The New South Wales Independent Commission Against Corruption was established over 20 years ago. South Australia has committed to introducing an anticorruption commission.

Victoria has never had a dedicated commission with the ability to tackle corruption across the whole of the public sector.

The government believes that the integrity of the Victorian public sector, and community confidence in public sector accountability, is best assured with the establishment of an independent broadbased anticorruption commission.

The government has long been on the record about the importance of ensuring that bodies with significant powers are subject to appropriate scrutiny. The need for such measures was recently highlighted by the Ombudsman in his October 2011 report, *Investigation into the Office of Police Integrity's Handling of a Complaint*.

At the same time as the introduction of this bill, the government is also introducing a bill to establish the Victorian Inspectorate, to oversee the IBAC. The Victorian Inspectorate is a key feature of the government's legislative arrangements to ensure that the IBAC is subject to robust oversight. Together with the joint house committee of Parliament established under this bill (the IBAC parliamentary committee), the Victorian Inspectorate will ensure that IBAC's use of its powers is both appropriate and proportionate. The Victorian Inspectorate will have broad

jurisdiction to investigate the conduct of IBAC, to ensure that it is appropriate and lawful.

The government has also recently introduced legislation to establish the office of the Public Interest Monitor to provide important checks and balances on applications for the use of covert investigation and coercive powers in Victoria. It is critical that the Victorian community has full confidence that applications for, and the use of, covert investigation and coercive powers are subject to optimal safeguards and oversight. Together, the Public Interest Monitor, the Victorian Inspectorate and the IBAC parliamentary committee are designed to do just that.

The key aspects of the Independent Broad-based Anti-corruption Commission Bill 2011 are as follows:

Functions

The bill provides IBAC with education functions for the purpose of preventing public sector corruption.

A prescriptive but non-exhaustive list of IBAC's education and prevention functions is set out in the bill. This includes:

assisting in the prevention of corrupt conduct;

facilitating the education of the public sector and the community about the detrimental effects of corrupt conduct on public administration and ways to prevent corrupt conduct; and

helping to improve the capacity of the public sector to prevent corrupt conduct.

This bill gives IBAC the flexibility to conduct a wide range of activities in performing its education and prevention functions. These include:

developing education and prevention programs, modules and information resources;

conducting general and targeted training and information sessions;

conducting and publishing research about corruption and best practice models for preventing it;

conducting outreach programs targeting rural and regional communities; and

publishing material for specific community groups and the community as a whole.

In addition, the bill specifically allows IBAC to proactively work with public sector agencies to identify corruption risks and to assist agencies to improve their systems and processes in order to prevent corruption occurring.

IBAC Commissioner

The bill establishes the IBAC Commissioner as an independent officer of the Parliament. The Commissioner will have an equivalent level of independence to other independent officers of the Parliament and comparable interstate officers.

The Commissioner must be, or have been, a judge, or a person who is eligible for appointment as a judge.

The Commissioner is to be appointed by the Governor in Council for a non-renewable term not exceeding five years. Given that IBAC will have a role in overseeing parliamentarians and the executive, the non-renewable fixed term will help to ensure the Commissioner's independence.

The IBAC parliamentary committee will be able to veto the appointment of the IBAC Commissioner, with the exception of the inaugural appointment. For the first appointment, prior to the establishment of the IBAC parliamentary committee, the Premier will consult with the Leader of the Opposition.

The bill also provides that one or more full-time deputy commissioners may be appointed by the Governor in Council. It is anticipated that one or more deputy commissioners may be required as IBAC expands its operations.

Reporting

As a body led by an independent officer of the Parliament, IBAC will be able to report to Parliament directly.

The bill requires IBAC to report at least annually to Parliament on its functions.

IBAC will also have the power to table a special report in each house of Parliament on any matter relating to IBAC's functions and, if it considers it necessary, make recommendations on how better to prevent corruption.

New joint house committee of Parliament

A further key feature of the bill is the establishment of a joint house committee — the IBAC parliamentary committee — to oversee IBAC. The role of this committee will be to:

monitor and review IBAC's exercise of its functions;

examine any reports made by IBAC; and

report to both houses of Parliament on any matter connected with the exercise of its functions that require the attention of Parliament.

The composition of the IBAC parliamentary committee will be determined in accordance with the Parliamentary Committees Act 2003.

Further legislation

Preparation of the legislation outlining IBAC's investigative role is well progressed and will follow before the end of the year.

This further legislation will vest IBAC with investigative functions, powers and safeguards. IBAC will be given significant powers in order to combat public sector corruption. The further legislation will include:

details of IBAC's jurisdiction;

own-motion powers and receipt of complaints and referrals;

general investigation powers, including a range of coercive powers;

provisions dealing with the conduct of examinations; and

additional powers for the Victorian Inspectorate to reflect IBAC's expanded powers and functions.

The government has been clear about the importance of getting IBAC's investigative powers and oversight arrangements right. The government has also been clear about the importance of ensuring that what we introduce in Victoria is the best model for Victorians. The Victorian community will be best served by an IBAC that is tailored to our local environment.

The government appointed a consultation panel headed by former Supreme Court judge Stephen Charles, QC, to canvass the views of a range of legal, community and operational stakeholders on key issues relating to IBAC's investigative role. The consultation panel's report is being carefully considered in the development of the further legislation.

IBAC will be established as soon as practicable following passage of this bill. The search for a commissioner is well under way and the government looks forward to announcing the appointment of IBAC's inaugural Commissioner. Once appointed, the Commissioner will be able to commence IBAC's important education and corruption prevention role.

This bill is the first stage of these important reforms. By enabling the IBAC Commissioner to be appointed, the bill will facilitate the practical process of establishing IBAC as the first stage of implementation of a robust, comprehensive and cohesive system.

The government is committed to ensuring a cohesive and comprehensive integrity and anticorruption system for Victoria. The Independent Broad-based Anti-corruption Commission Bill 2011 is the centrepiece of these historic reforms.

I commend the bill to the house.

Debate adjourned on motion of Hon. M. P. PAKULA (Western Metropolitan).

Debate adjourned until Thursday, 17 November.

JUSTICE LEGISLATION FURTHER AMENDMENT BILL 2011

Introduction and first reading

Received from Assembly.

Read first time for Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) on motion of Hon. G. K. Rich-Phillips; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations), Hon. G. K. Rich-Phillips 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 (charter act), I make this statement of compatibility with respect to the Justice Legislation Further Amendment Bill 2011.

In my opinion, the Justice Legislation Further Amendment Bill 2011, as introduced to the Legislative Council, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The purpose of the bill is to amend:

1. section 49(12) and 50(2) of the Major Crime (Investigative Powers) Act 2004 to extend the operation of s 49 (Contempt of chief examiner) and 50 (No double jeopardy) to 1 January 2016;

2. section 328(c) of the Criminal Procedure Act 2009 to allow police prosecutors to represent protective services officers who are informants in criminal proceedings in the Magistrates Court; and

3. section 2 of the Road Safety Amendment (Hoon Driving and Other Matters) Act 2011 to remove the default commencement date applicable to sections 11, 13, 14, 15, 16, 17 and 22 of that act, being provisions that are dependent upon the commencement of the commonwealth Personal Property Securities Act 2009.

Human rights issues

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

Clauses 3 and 4 of the bill extend the operation of sections 49 and 50 of the Major Crime (Investigative Powers) Act 2004, which would otherwise cease on 1 January 2012.

Section 49 prescribes the circumstances in which a person attending the chief examiner in answer to a witness summons is guilty of contempt and sets out the procedure by which a person may be charged and detained. The provision engages the liberty rights in section 21 of the charter act as well as the criminal procedure rights in section 25.

Section 50 protects the right against double jeopardy in section 26 of the charter act by ensuring that while a person may be able to be proceeded against in respect of an offence under the act and a contempt of the chief examiner, but is not liable to be punished more than once for the same act or omission.

The proposed amendment to section 328 of the Criminal Procedure Act 2009 does not raise any issues in relation to human rights protected by the charter act.

Liberty rights

Although section 49 enables detention of persons, that detention is compatible with the liberty rights in section 21 of the charter act. Detention occurs in prescribed circumstances and in accordance with clear procedures and cannot be regarded as arbitrary. The right to be brought promptly before a court is given effect to through the procedures set out in subsections (3) to (9).

Criminal procedure rights

Although there are questions raised in other jurisdictions as to whether and when contempt proceedings amount to a criminal charge so as to engage the criminal procedure rights in section 25 of the charter act, the provisions in the act are compatible with those rights.

Section 49(2) requires the chief examiner to issue a written certificate charging the person with contempt and setting out or attaching details of the alleged contempt. This would satisfy the right to be informed of the nature and reason for the charge in section 25(2)(a) of the charter act. Although section 49 does not expressly require provision of the charge to the arrested person, police officers are public authorities and would therefore be required to act compatibly with the charter and ensure this occurs.

Section 49(11) provides that a certificate of charge is evidence of the matters set out in or attached to it. This provision engages the right to examine, or have examined, witnesses against him or her, unless otherwise provided for by law. However, I consider the right is not limited by this evidentiary provision as it does not prevent the chief examiner from being called to give evidence and be cross-examined in the event the matters set out in or attached to the charge are disputed.

Section 49(1) provides that a person is guilty of contempt if the person fails without reasonable excuse to: produce a document or other thing; or refuse or fail to answer certain questions. This provision imposes an evidential burden only on an accused to raise the possibility of a reasonable excuse. Ultimately, the burden remains on the prosecution to prove the offence beyond reasonable doubt. Accordingly, I consider that the provision does not limit the right to be presumed innocent in section 25(1) of the charter act.

Conclusion

For the reasons given in this statement, I consider that the bill is compatible with the Charter of Human Rights and Responsibilities Act 2006.

Richard Dalla-Riva, MLC
Minister for Employment and Industrial Relations
Minister for Manufacturing, Exports and Trade

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The bill makes minor technical amendments to three acts.

Firstly, the bill amends section 328 of the Criminal Procedure Act 2009 to allow a police prosecutor to appear on behalf of a protective services officer acting as the informant in criminal proceedings in the Magistrates Court. The amendment is consistent with the existing section that allows a police prosecutor to appear on behalf of the informant in such proceedings where the informant is a member of the police force.

Secondly, the bill amends the Major Crime (Investigative Powers) Act 2004 to extend the duration of the operation of contempt powers currently available to the chief examiner where a person fails without reasonable excuse to answer questions, produce documents, be sworn or make an affirmation, or otherwise behave in a manner that would constitute contempt of the Supreme Court. In addition, the amendment will ensure that a person who is guilty of both an offence under the act and contempt is only prosecuted once.

Under the current provisions, the ability of the chief examiner to take action against a person for contempt and the protection against double jeopardy where a person is guilty of both an offence under the act and contempt will cease from 1 January 2012. The bill extends the sunset period in sections 49(12) and 50(2) to 1 January 2016. The amendments allow the continuation of the provisions to be revisited by the Parliament at a later time.

Finally, the bill amends the Road Safety Amendment (Hoon Driving and Other Matters) Act 2011 to ensure that certain provisions of that act will not come into operation prior to the provisions of a related commonwealth act.

The personal property securities register is to be established under the commonwealth Personal Property Securities Act 2009. It represents arguably the largest reform to security interests in goods ever undertaken in this country. The commonwealth recently advised that the commencement of the Personal Property Securities Act 2009 has been delayed from October 2011 to late January 2012. There is a risk that the commencement may be delayed further still.

This delay has ramifications for certain, as yet unproclaimed, provisions in the Road Safety Amendment (Hoon Driving and Other Matters) Act 2011, which amend the Road Safety Act 1986 and the Police Regulation Act 1958. Those amendments will, when they come into force, provide that where the police are taking or have taken vehicle impoundment, immobilisation or forfeiture enforcement action with respect to a vehicle, the Chief Commissioner of Police must lodge a notice, called a financing statement, with the registrar of the commonwealth personal property securities register.

The main purpose of the lodgement of a financing statement on the commonwealth register is to inform any person considering purchasing the vehicle or taking a security interest in the vehicle of the enforcement action that has been taken or is pending with respect to the vehicle. This measure will help to protect consumers and security holders.

The provisions of the Road Safety Amendment (Hoon Driving and Other Matters) Act 2011 are currently subject to a default commencement date of 1 February 2012. This default date was deliberately chosen to ensure that the Victorian requirements will come into force simultaneously with the commonwealth personal property securities regime.

The bill removes this default commencement date to ensure that the relevant provisions of the Road Safety Amendment (Hoon Driving and Other Matters) Act 2011 will not

commence operation until the commonwealth personal property securities register commences operation.

I commend the bill to the house.

Debate adjourned on motion of Mr LEANE (Eastern Metropolitan).

Debate adjourned until Thursday, 17 November.

LIQUOR CONTROL REFORM AMENDMENT BILL 2011

Introduction and first reading

Received from Assembly.

Read first time for Hon. M. J. GUY (Minister for Planning) on motion of Hon. G. K. Rich-Phillips; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Hon. M. J. GUY (Minister for Planning), Hon. G. K. Rich-Phillips 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 (charter act), I make this statement of compatibility with respect to the Liquor Control Reform Further Amendment Bill 2011.

In my opinion, the Liquor Control Reform Further Amendment Bill 2011 (the bill), as introduced to the Legislative Council, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The purpose of the bill is to amend the Liquor Control Reform Act 1998 (the principal act) to:

a. introduce a 5-star rating system that will reward responsible liquor licensees with discounts on their annual liquor licensing renewal fees;

b. introduce a demerit points system applicable to liquor licensees where demerit points are incurred for nominated offences, and once a demerit point threshold is met the licence will be automatically suspended for a set period of time;

c. introduce a new category of licence for wine and beer producers to simplify and modernise the existing regulatory regime for vignerons;

d. reflect in the objects of the act the importance of live music to the hospitality industry and the broader community;

e. ensure that licensees that exclusively supply packaged liquor obtain a packaged liquor licence; and

f. make a number of other minor and technical amendments.

The bill also makes a consequential amendment to the Infringements Act 2006.

Human rights issues

Fair hearing rights

The bill introduces a star rating and demerit points system for licensees and permittees. Licensees and permittees will receive a discount off their renewal fees where they have no demerit points, and will receive demerits where nominated offences occur. The accrual of demerit points will lead to automatic suspension, and the suspensions are not reviewable or appealable. These amendments therefore engage the right to a fair hearing.

Section 24 of the charter act 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. This right has been interpreted as encompassing proceedings which are determinative of private rights and interests in the broad sense, including administrative proceedings.

Under the Infringements Act 2006, individual convictions and infringements can be appealed, including the nominated offences that will lead to demerit points under the principal act once amended. As such, licensees have an opportunity to a fair hearing in each instance that a conviction or infringement is received. Further, the responsible minister will have the power to change (delay or shorten) or cancel a suspension in exceptional circumstances. 'Exceptional circumstances' is defined broadly to provide the minister with the power to change a suspension when the benefits of the suspension are outweighed by the costs to the community. Licensees are able to seek the minister's consideration of exceptional circumstances at the time at which they were notified of an upcoming suspension. Should the minister require, the suspension will be able to be delayed until the minister has determined whether it is to be changed in any way.

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

Conclusion

For the reasons given in this statement, I consider that the bill is compatible with the Charter of Human Rights and Responsibilities.

Matthew Guy, MP
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

This bill amends the Liquor Control Reform Act 1998 to fulfil a number of the government's election commitments made in the *Victorian Liberal Nationals Coalition Plan for Liquor Licensing*. This is the second tranche of election promises being implemented by the Baillieu government in regard to liquor, following the commencement of new secondary supply laws in August this year, and the introduction of new powers and tougher fines to combat public drunkenness and maintain public order in October.

This bill will bring about some significant enhancements to the Liquor Control Reform Act 1998, including introducing a 5-star rating and demerit points system for liquor licensees that will reward responsible licensees and penalise those that repeatedly do the wrong thing.

It will replace the outdated vigneron's licence with a new wine and beer producer's licence that is more flexible and representative of modern Victorian winery and brewery businesses.

Further, the bill will recognise the important role the live music industry plays in the hospitality industry and the broader community, and will address an inequality in the way packaged liquor outlets are regulated by ensuring that licensees that exclusively sell packaged liquor have a packaged liquor licence. Finally, the bill makes a range of minor and technical amendments that will improve the operation of the Liquor Control Reform Act 1998.

Five-star rating and demerit points system

The bill establishes a 5-star rating and demerit points system, which will reward licensees who behave responsibly and penalise those who repeatedly do the wrong thing.

Under the 5-star rating system, licensees will receive discounts on their annual licence fees if they consistently obey relevant liquor laws. All licensees will commence at a 3-star rating. Once the scheme is established, 3-star rated licensees will move to a 4-star rating if they have not committed any relevant infringements in the previous 24 months. If they continue to comply with liquor laws, they will move to a 5-star rating 12 months later. However, if a licensee subsequently commits a relevant offence, they will lose the higher star rating and will no longer qualify for the fee discount.

The 'relevant offences' are those under sections 108(4), 119 or 120 of the Liquor Control Reform Act 1998. These offences relate to the presence on licensed premises, and service of, minors and intoxicated patrons. They are the same offences that underpin the existing compliance history risk fee.

The details of the 5-star rating system are not contained in the bill. Rather, the bill creates a new regulation-making power so that the details of the 5-star rating scheme can be prescribed in the Liquor Control Reform Regulations 2009.

Under the demerit points system, liquor licences will be automatically suspended when a venue accumulates sufficient demerit points.

Demerit points will be applied for 'non-compliance incidents', which are defined as paid infringements, successful prosecutions and infringements that are unpaid and in respect of which enforcement orders have been issued, for the same relevant offences that apply to the 5-star rating system. One non-compliance incident will incur one demerit point.

There will be three suspension thresholds. Five demerit points within a three-year period will lead to a 24-hour suspension; 10 demerit points will lead to a 7-day suspension; and 15 demerit points will lead to a 28-day suspension.

The bill provides that the Victorian Commission for Gambling and Liquor Regulation must maintain a demerits register, which must record details of demerit points. The commission will be required to notify a licensee or permittee within a certain period of time when a demerit point has accrued in relation to their licence, and when a suspension of the licence is pending. The commission may publish on its website details associated with a licence, including the star rating and demerit point level of all licences.

The bill also provides an equitable framework to enable the commission to calculate on what date a suspension is to take place. The suspension must commence either on the same day of the week as the day that the non-compliance incident occurred that resulted in the latest demerit point being recorded; or, if the last non-compliance incident occurred between 12.01 a.m. and 7.00 a.m., the suspension must begin on the same day of the week as the previous day that the incident occurred. For example, if the demerit point occurred at 2.00 a.m. on a Sunday, the suspension must begin on a Saturday.

Further, the suspension must begin on a day no less than 14 days after the date of the notice being provided to the licensee or permittee, and no more than 60 days after the date that the latest demerit point was recorded on the demerits register.

The minister will have a power to delay, cancel or shorten a suspension in cases in which he considers that the cost to the community of the suspension would outweigh the benefits. Where a suspension is cancelled or reduced, alternative enforcement action will be explored for that licensee.

If a licence or permit that has accrued demerit points has been transferred to another person under section 32 of the Liquor Control Reform Act 1998, the new licensee or permittee may apply to the commission to remove any demerit points from the demerits register accrued before the transfer. There will be a fee in relation to this application, and the bill sets out a number of factors that the commission may consider in making its decision.

Wine and beer producer's licence

The bill will introduce a new wine and beer producer's licence to replace the existing vigneron's licence. The vigneron's licence is viewed as being too restrictive and complex by industry, is not sufficiently flexible to cover all the activities undertaken by a modern winery, and does not cater for breweries at all. This has resulted in some wineries and breweries, most of which are small businesses, often

being required to obtain several licences and as a result incur multiple fees and significant administrative burden.

The new wine and beer producer's licence will authorise wine and beer producers to supply the licensee's own product to any other licensee, the licensee's own product from the licensed premises for off-premises consumption, any liquor from the licensed premises for on-premises consumption (for example, at a restaurant or function centre) and the licensee's own product by way of email, telephone, facsimile transmission, internet or other electronic communication.

Supply of liquor under the wine and beer producer's licence will be authorised from two premises: a primary premises and a retail premises. The primary premises will be the premises used by the licensee for the production, storage or distribution of liquor that is the licensee's product. At the primary premises, all activities under the licence are authorised to take place. The retail premises, on the other hand, is designed for those wineries and breweries that have a retail outlet that is in a different location from their primary winery or brewery site. The retail premises must be within the same wine-growing region as the production premises, and the only form of supply authorised here is the supply of the licensee's own product for off-premises consumption. That is, at the retail premises only tastings and take-away sales are permitted. An example is a winery 5 kilometres out of Wangaratta. This premises is where the winery has its vineyard and where the production facilities are situated. Also at this site, the winery has a storage facility from which it fills internet orders, a restaurant and a warehouse where bottle shops can purchase the licensee's product wholesale. However, this winery also has a cellar door in the Wangaratta town centre. This retail outlet is where tourists travelling through Wangaratta can sample the winery's product and purchase sealed bottles to take home. These activities will all now be captured by the new licence.

The wine and beer producer's licence also provides for an optional authorisation to be included on the licence that will permit the licensee to attend an unlimited number of promotional events, at which the licensee's product is authorised to be supplied for consumption by the glass at the event or in sealed bottles to take away. This optional authorisation allows wineries and breweries to attend events to promote their product under the same licence that authorises the range of other activities undertaken at the licensed premises. This innovation removes the burden for licensees of needing to apply for a temporary limited licence each time they wish to attend a promotional event, saving the licensee time and money. The annual cost of the additional authorisation is the same as the cost of one temporary limited licence. Licensees that have obtained the authorisation will be able to attend all events other than major events (as defined in the act) and horseracing events.

The new licence is designed for producers of wine, cider, brandy, perry and beer, in particular small businesses, who produce a product that is uniquely theirs. As such, in the case of wine, cider, brandy and perry, the eligible producers will either grow their own fruit and produce the product themselves; grow their own fruit but have financial responsibility for someone else producing the product; purchase fruit grown in Australia from someone else and produce the product themselves; or purchase fruit grown in Australia from someone else and have financial responsibility for someone else producing the product. In the case of beer, the product must be brewed by or at the direction of the licensee and the licensee assumes the financial risk. In all circumstances, the product must be uniquely the licensee's own.

The bill sets out transitional provisions for existing vigneron's licence-holders to automatically transfer to the new wine and beer producer's licence. It also allows for producers that currently hold another type or types of licence to choose to transfer to the new licence if they are eligible and wish to do so. Licensees in either of these scenarios that currently have more than one licence will have the opportunity to effectively consolidate these licences into one. The transitional provisions in the bill provide that holders of other licences will have 12 months from the date of commencement to transition to the new licence without needing to pay a variation fee or being subject to planning approval or display requirements. After that date, eligible licence-holders remain able to transfer to the new licence, but will be required to pay the requisite licence variation fee and will need to comply with the planning and display requirements as per any variation of licence category under the act. In switching to the new licence during the transition period, the conditions a licensee currently has on their licence will be replicated on the new licence. This is so there is not a need for the licensee to seek further planning permission to undertake new activities, making the transition process a simple and seamless one for licensees.

Live music

The bill amends the objects of the act to recognise the role of live music in licensed venues as a valued part of the hospitality and entertainment industries. Live music is an important part of the social and cultural fabric of our state. Many of our greatest musical talents have honed their craft in the pubs and bars and lounges of Victoria. The existence of a variety of live music venues is critical to nurturing young musical talent. Live music also provides an important economic benefit for Victoria, with many people employed directly and indirectly in the industry. It is important that liquor licensing law reflects the economic and social contribution of live music to Victoria.

Amending the objects of the act will reflect the significance of live music to the hospitality industry and the wider community and ensure that live music is an ongoing consideration across all liquor licensing decisions.

Packaged liquor

Under existing licensing arrangements, a general licensee may exclusively supply packaged liquor, ostensibly operating a bottle shop while avoiding the higher fee and additional regulatory requirements of a packaged liquor licence. Accordingly, general licensees trading in this way attract an unfair competitive advantage over packaged liquor licensees.

The bill addresses this anomaly by prohibiting the exclusive supply of packaged liquor under a general licence. As a result, licensees operating a typical bottle shop will have to obtain a packaged liquor licence and adhere to the same requirements as other comparable licensed premises. This amendment will prevent instances of this inequity arising in future and will establish a more even playing field amongst packaged liquor outlets.

Minor and technical amendments

The bill also includes a number of minor and technical amendments to improve the operation of the act.

For example, the bill will clarify that the directors of a body corporate which holds a licence are liable as if they were the licensee. An equivalent amendment will be made in relation to the members of the committee of management of an unincorporated club that holds a licence.

In addition, the bill will provide the commission with discretion to decide whether to grant a licence to premises that are intended by the occupier of the premises to be primarily used by people under the age of 18 years. This amendment will allow the commission to grant a licence to premises that are for the most part used by people under the age of 18 years but on some occasions have a legitimate reason for seeking a licence, such as schools or junior sporting clubs that seek a licence for fundraising events involving parents or other adult supporters.

The bill will clarify that a packaged liquor licence and a late night (packaged liquor) licence may authorise trading on Christmas Day and/or Good Friday. This power was unintentionally removed following amendments to the act that commenced on 1 January 2010. The amendment will also validate any decision made by the commission or the former director of liquor licensing since 1 January 2010 that relied on this power.

I commend the bill to the house.

Debate adjourned on motion of Ms PULFORD (Western Victoria).

Debate adjourned until Thursday, 17 November.

MINES (ALUMINIUM AGREEMENT) AMENDMENT BILL 2011

Introduction and first reading

Received from Assembly.

Read first time for Hon. P. R. HALL (Minister for Higher Education and Skills) on motion of Hon. G. K. Rich-Phillips; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Hon. P. R. HALL (Minister for Higher Education and Skills), Hon. G. K. Rich-Phillips 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 (charter act), I make this statement of compatibility with respect to the Mines (Aluminium Agreement) Amendment Bill 2011.

In my opinion, the Mines (Aluminium Agreement) Amendment Bill 2011 (the bill), as introduced to the Legislative Council, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The purpose of this bill is to amend the Mines (Aluminium Agreement) Act 1961 (the act). The amendments to the act are of a minor and technical nature. The bill also enables the Minister for Energy and Resources (the minister) to authorise the acquisition of an interest in land by Alcoa of Australia Pty Ltd.

Human rights issues

Property rights

Clause 11 of the bill inserts a new section 7A into the act, enabling the minister to authorise the compulsory purchase of an interest in land.

Section 20 of the charter act provides that a person must not be deprived of their property other than in accordance with the law. This means that any law that deprives a person of their property must be sufficiently precise, accessible and should not allow arbitrary interference with property.

Clause 11 of the bill provides that the Land Acquisition and Compensation Act 1986 (land acquisition act) will apply to the acquisition of interests in land under the bill. Acquisition of land under the land acquisition act gives rise to a right to compensation on just terms. Parties with an interest in the land to be acquired may dispute any offer of compensation, and disputed compensation claims may be submitted for review by the Victorian Civil and Administrative Tribunal or the Supreme Court of Victoria. Furthermore, the land acquisition act sets out clear notification requirements and procedures for acquisition and the lawfulness of an acquisition may be challenged through judicial review. Authorisation to acquire land will thus only be given as the result of a detailed and transparent statutory process involving the consideration of the rights and interests of all affected parties.

Accordingly, there is no limitation of the property right under section 20 of the charter act, because any deprivation of property would be in accordance with law.

Conclusion

For the reasons given in this statement, I consider that the bill is compatible with the charter act.

Peter Hall, MLC
Minister for Higher Education and Skills

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

On 22 November 1961, the state and Alcoa entered into a 50-year agreement supporting the development of the Point Henry aluminium smelter and the operation of the power station and associated coal mine at Anglesea. The agreement was validated by the Mines (Aluminium Agreement) Act 1961. The agreement gives Alcoa the right to mine coal in the leased area.

It was an important agreement in its day and continues to be so today because the government is committed to the responsible development of Victoria's natural resources, and to attracting more jobs and investment to our state in the minerals and resources sector.

This bill will further that commitment. It will amend the mines aluminium agreement and make a series of amendments to the Mines (Aluminium Agreement) Act 1961.

The bill ratifies, validates and approves the mines aluminium agreement entered into by Alcoa and the state in 1961 by amending and restating the agreement. It reflects the extension of the agreement for a further term of 50 years, a legal option provided to Alcoa by the 1961 agreement and which Alcoa advised the state of Victoria in 2008 that it is exercising. The terms set out in the amended agreement reflect the willing negotiations undertaken by both parties to achieve long-term benefits for the regional community, the economy of Victoria, Alcoa's ongoing operations in this state and significantly improved environmental outcomes.

Alcoa makes a significant contribution to the Victorian economy, including annual sales of $1.6 billion and expenditure of $770 million. It also employs approximately 1550 people and 250 contractors.

New definitions

The amendment agreement updates the plan of the lease area to correlate with the definitions of 'leased area', 'freehold land', 'purchased land' and 'prior land' and a copy of the plan will be lodged with the Central Plan Office and accessible to the public. The amendment agreement amends the definitions of 'prior land' and 'purchased land' to provide clarity on descriptions of these areas of land which are subject to the agreement. These definitions refer to parcels of land within the boundary of or adjacent to the leased area that Alcoa owns. These definitions are largely of historical significance only. The definition of 'specified area' used in the agreement is a new term introduced into the agreement which refers to the specific area where mining operations are authorised under the deemed approved work plan and any area which has been the subject of an approved mine extension plan.

Application of the Mineral Resources (Sustainable Development) Act 1990

Alcoa's mining operations on the leased area will now be regulated by the Mineral Resources (Sustainable Development) Act 1990, with the exception of that act's rent and royalties, and compensation regimes. This will bring the Alcoa mine largely into line with the compliance requirements that apply to all other coal mines in Victoria and provide for a clear and transparent regulatory regime that was not evident under the 1961 agreement.

Key benefits that derive from the adoption of this regulatory regime include the requirement for a work plan which now provides a transparent outline of the work to be undertaken in the next 50 years within the specified area. Future mining proposals that seek to mine coal outside the specified area will attract the variation to work plan processes under the Mineral Resources (Sustainable Development) Act 1990 for the review of operational and environmental issues.

The application of the rehabilitation provisions ensures that Alcoa must provide a significant rehabilitation bond and develop a rehabilitation plan to ensure that the land is properly rehabilitated after mining work has been completed.

The powers of the state to ensure Alcoa's compliance with the deemed work plan are strengthened by the adoption of the Mineral Resources (Sustainable Development) Act 1990 as inspectors under the act have powers of entry, seizure, to give directions, and to execute warrants. Inspectors can also issue infringement notices and order Alcoa to cease work. No such powers were available to the state under the 1961 agreement.

Compensation

Alcoa's obligations to pay compensation to the owner, occupier or lessee from the Crown of any adjoining land, in respect of any damage caused by Alcoa under the agreement, have been retained in preference to the compensation scheme under the Mineral Resources (Sustainable Development) Act 1990. Alcoa regards the latter provisions as involving a significant and unquantifiable risk, compared to its existing obligations.

Management of environmental impacts and the Anglesea Heath

The new agreement provides for a new clause 21D to outline a process for the assessment of additional significant environmental impacts beyond the current mine operation. The 1961 agreement provides only limited references to environmental issues in relation to the operations of the mine and does not outline any systematic and comprehensive approach to the management of environmental issues.

Mining operations to 2016 will occur within the current detailed mining area and include removing overburden (the removal of soil lying above the coal resource) and the underlying coal for approximately 10 hectares of land. Beyond 2016, the proposed mining operations outlined in the work plan extend beyond the current mining area into 246 hectares of the adjacent land in stages which provide for progressive mining and rehabilitation over the next 50 years. This means that the work plan provides for increased mining operations over the next 50 years in 246 hectares of the total leased area of 7145 hectares, or 3.4 per cent. This adjacent land is currently the subject of a separate cooperative agreement between Alcoa and the Department of Sustainability and Environment that provides for the protection and management of the Anglesea Heath.

Alcoa has established an environment management system which includes an environmental policy and plans and management programs to ensure that activities at Anglesea are managed to minimise impacts on the environment. The work plan also includes a mine rehabilitation and closure plan

and an environmental management plan that addresses water management, hydrocarbon and waste management, dust and noise control and provides for the preparation of a regular environment improvement plan. The community engagement plan outlines a process for identifying community issues and documentation of stakeholder engagement.

Victoria's native vegetation management framework for action applies to mines established since the introduction of the framework in 2002. As the Alcoa Anglesea mine predates the framework, it does not apply to Alcoa's current mining operations. Accordingly, Alcoa has no legal obligation to comply with the framework in the work plan endorsed by the Department of Primary Industries for the next 50 years of mining activity. However, the maintenance of the Anglesea Heath area (outside the specified area to which the work plan applies) by Alcoa provides an implicit offset to the mining operations within the specified area. Further, if Alcoa decides to undertake work outside the specified area, then Alcoa will be required to comply with native vegetation offsets.

Clause 21D will give Alcoa and the community certainty as to how additional significant environmental impacts will be assessed and provides the Victorian government and community with a transparent process that has not previously existed under the 1961 agreement.

The process in clause 21D is modelled on an environmental assessment process applied to mine expansions under section 42A of the Mineral Resources (Sustainable Development) Act 1990 where planning permits are not required for some work variations. In a broader context, this process will form part of a wider assessment undertaken by the Department of Primary Industries in relation to Alcoa's work plan to assess all the implications of the mine expansion proposal consistent with the approach adopted for all other mines in Victoria.

A key element of the proposed process is that it provides for interdepartmental consultation regarding the potential for additional significant environmental impacts of any proposed future mine expansion. The outcome of this preliminary consultation is to provide feedback to Alcoa and enable refinement of a proposal for a mine extension including its environmental management. Advice must also be sought from the minister responsible for the Environment Effects Act 1978 concerning the proposal. If this advice confirms potential for additional significant environmental impacts, the process provides for the Minister for Planning to require Alcoa to prepare an environmental impact and management report. This report and related consultation together with relevant expert advice would underpin an assessment of the proposal by the Minister for Planning.

The assessment also informs a decision on the mine extension proposal and conditions that might be imposed in the work plan other than conditions that are inconsistent with the company's rights under the agreement.

As part of the broader environmental management strategy of which the mines aluminium agreement is a part, Alcoa has also agreed to review the Anglesea Heath Cooperative Land Management Agreement 2000 which focuses on the management of the Anglesea Heath in the area not being mined by Alcoa.

Technical and other amendments

The bill also makes a number of technical amendments. For example, the bill amends the Mines (Aluminium Agreement) Act 1961 to include a new definition of the term 'reserve area'. This term is currently used in section 5 and section 6 of the act, and is defined by reference to the definition included in the agreement. However, the agreement will no longer include a definition of this term when the amendment agreement comes into effect. In order to overcome this problem, the term will be defined as having the meaning that it had in the act immediately before the commencement of the bill so that the current definition is effectively preserved. The bill also updates legislative references to other acts and deletes provisions that are no longer applicable.

The bill makes it clear that the Occupational Health and Safety Act 2004 applies to Alcoa's Anglesea mining operations in the same manner that the act applies to all other mines in Victoria. There has been some uncertainty about the status of the Anglesea mine in the past because the term 'mine' in the relevant occupational health and safety regulations was previously defined as a place at which work is done under a mining licence granted under the Mineral Resources (Sustainable Development) Act 1990. Alcoa does not have a mining licence under the act as its right to mine is conferred by the agreement. This amendment to the agreement ensures that consistent obligations are imposed on the Alcoa Anglesea operation to protect the health and safety of all workers.

The bill gives effect to clauses 21A and 21B of the agreement. Clause 21A provides that the work plan prepared by Alcoa and endorsed by the Department of Primary Industries is deemed to be an approved work plan under the Mines (Aluminium Agreement) Act 1961 and that Alcoa is also deemed to have a work authority. Deeming an agreed work plan to exist at the commencement of the agreement balances the state's objective of ensuring that the Mineral Resources (Sustainable Development) Act 1990 applies to Alcoa's future mining operations, while giving Alcoa adequate certainty that its existing right to mine under the agreement is maintained and the validity of such rights is not disturbed. This also forms the basis for the environmental review process to apply to the specified area to which the work plan applies.

Clause 21B provides that for the avoidance of doubt the Aboriginal Heritage Act 2006 applies as far as reasonably practicable to Alcoa's Anglesea mining operations. Clause 21B makes a clear statement regarding the value of indigenous cultural heritage to the state of Victoria and the bill requires Alcoa to prepare a cultural heritage management plan before any mining activity authorised by the work plan is undertaken except where the area has been subject to previous significant ground disturbance.

The bill also includes a new section 7A in the principal act that enables Alcoa to apply to the minister for approval to compulsorily acquire an interest in land for the purposes of the agreement. This provision has been inserted to preserve Alcoa's existing rights under the agreement. The agreement currently refers to powers of compulsory acquisition contained in section 26 of the State Electricity Commission Act 1958. That section has been repealed, and the new section 7A of the principal act effectively replicates what was previously in section 26 of the State Electricity Commission Act 1958.

The bill also repeals the Mines (Aluminium Agreement) (Brown Coal Royalties) Act 2005 which has never come into operation. This act was passed by the Parliament on the understanding that it would not come into operation without Alcoa's agreement being obtained to amendments that sought to increase the royalties paid commensurate with the royalties paid by the other coal mines in Victoria. Alcoa has never agreed to an increase in royalties for the coal resource removed from the Anglesea mine. The negotiations to extend the current agreement resulted in the current royalty rate remaining unchanged, unless Alcoa uses coal mined from the leased area to generate electricity at a time when it is no longer operating its aluminium smelters at either Point Henry or Portland. If that happens, then the royalty rates under the Mineral Resources (Sustainable Development) Act 1990 will apply. In return for the royalty rate remaining unchanged, the state has secured Alcoa's acceptance that the mine will be subject to regulation under the Mineral Resources (Sustainable Development) Act 1990 which includes a significant rehabilitation bond, and the application of a significant environmental impacts review process for future mine expansions.

The agreement and bill will provide a legal framework for the future development of coal resources at Anglesea that will contribute to the economy of Victoria and provide for significantly improved environmental and socially sustainable development including for our rural and regional communities. Through the agreement, and the application of the Mineral Resources (Sustainable Development) Act 1990, the regulatory framework that applies to mining operations in Victoria will now complete its coverage to provide a consistent regulatory framework for all coal mines in Victoria.

The bill reflects the government's ongoing commitment to the sustainable development of Victoria's mineral resources.

I commend the bill to the house.

Debate adjourned on motion of Mr LENDERS (Southern Metropolitan).

Debate adjourned until Thursday, 17 November.

PUBLIC INTEREST MONITOR BILL 2011

Introduction and first reading

Received from Assembly.

Read first time for Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) on motion of Hon. G. K. Rich-Phillips; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) Hon. G. K. Rich-Phillips 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 act), I make this statement of compatibility with respect to the Public Interest Monitor Bill 2011 (the bill).

In my opinion, the bill, as introduced to the Legislative Council, is compatible with the human rights protected by the charter act.

I base my opinion on the reasons outlined in this statement.

Overview of bill

The purpose of the bill is to establish a principal public interest monitor and deputy public interest monitors (PIMs).

The object of the bill is to provide a further safeguard for applications for:

surveillance device warrants by Victoria Police, the Office of Police Integrity (OPI), the departments of primary industries and sustainability and environment, and the Australian Crime Commission under the Surveillance Devices Act 1999;

a retrieval warrant, an assistance order and an approval of an emergency authorisation for surveillance devices;

telecommunications interception warrants by Victoria Police and the Office of Police Integrity under the Telecommunications (Interception and Access) 1979 (cth);

covert search warrants, preventative detention orders and prohibited contact orders by Victoria Police under the Terrorism (Community Protection) Act 2003;

coercive powers orders by Victoria Police under the Major Crime (Investigative Powers) Act 2004; and

an extension, variation, renewal or revocation of an order, warrant or approval for these powers.

Surveillance device warrants and retrieval warrants are made under the Surveillance Devices Act 1999 (SD act) and authorise the placement and retrieval of surveillance devices.

Victoria Police and the OPI's power to intercept telephone communications is provided for under the Telecommunications (Interception and Access) Act 1979 (cth). Victoria Police and the OPI are declared eligible authorities for the purposes of an application for a warrant authorising telecommunications interception. The Victorian Telecommunications (Interception) (State Provisions) Act 1988 imposes additional procedural requirements on Victoria Police and the OPI in relation to telecommunications interceptions.

The PIM will also be present at applications under part 2 and 2A of the Terrorism (Community Protection) Act 2003 (TCP act). Part 2 and 2A powers include:

covert search warrants, allowing a search to be conducted without the knowledge of the owner and/or occupier of a premises;

preventative detention orders, allowing for the detention of a specified suspect for a period of time; and

prohibited contact orders, allowing the authorised agency to prohibit a specified person from contacting other specified persons.

The PIM will also be present in all applications, extensions and variations of coercive powers orders under part 2 of the Major Crime (Investigative Provisions) Act 2004 (MCIP act).

A PIM will appear at hearings for these powers to test the content and sufficiency of the information relied on and the circumstances of the application. Further to this function, the role of the PIMs includes:

to ask questions of any person giving information in relation to the application; and

to make submissions as to the appropriateness of granting the application.

The PIMs will also have the functions conferred on them by any other act or law.

Human rights issues

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

Privacy and reputation (section 13 of the charter act)

Section 13(a) of the charter act provides that individuals have a right not to have their privacy unlawfully or arbitrarily interfered with. The right to privacy concerns a person's 'private sphere', which should be free from government intervention or excessive unsolicited intervention by other individuals. An interference with privacy will not be unlawful provided it is permitted by law, is certain, and is appropriately circumscribed. Interference will not be arbitrary, provided that the restrictions on privacy are reasonable in the particular circumstances and are in accordance with the provisions, aims and objectives of the charter act.

Clauses 23, 31, 43 and 44 amend the SD act, TISP act, TCP act and MCIP act to require that the PIM be provided with a copy of the relevant application and any supporting affidavit and other material. These documents may contain personal information collected by investigators that would previously have been made known only to law enforcement officers, integrity officers and judicial officers hearing the application. Increasing the distribution of this information to include a PIM engages the right to privacy and reputation. However, personal information shared with PIMs will be protected by strict confidentiality obligations. Clause 17 of the bill provides that a PIM must not disclose any information obtained in the course of his or her role, except in the performance of his or her functions as a PIM. A breach of this obligation constitutes an offence.

I consider that clauses 23, 31, 43 and 44 do not constitute a limitation, interference or restriction on the right to privacy. A PIM's entitlement to receive applications for these powers and supporting material is an arrangement that will be lawful, will not be arbitrary, and is appropriately circumscribed by confidentiality obligations outlined above. For the reasons stated, I consider that there is no limitation on the right to privacy under section 13 of the charter act.

The engagement with the right to privacy must be considered in light of the public interest purpose of the bill. The bill establishes the PIM as a further safeguard to help ensure that particular warrants, orders and approvals for law enforcement purposes are granted only in appropriate cases. As applications for these powers are usually considered at ex parte hearings, the introduction of the PIM to consider applications and act as a contradictor (where appropriate) enhances the right to a fair hearing.

Right to a fair hearing (section 24 of the charter act)

Section 24 of the charter act holds 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. It also holds that all judgements or decisions made by a court or tribunal in a criminal or civil proceeding must be made public, unless exceptions apply including that a law other than the charter act otherwise permits. Section 24 deals with the right to a fair hearing, incorporating principles of procedural fairness. Procedural fairness concerns the extent to which the procedures of a hearing protect the rights of the parties, such as the right of a party to be provided a reasonable opportunity to present his or her case under conditions that do not place that party at a substantial disadvantage vis-a-vis his or her opponent.

Warrants, orders and approvals issued in ex parte hearings occur in the absence of the affected party. Material gained under some of these powers could be used in criminal proceedings. The PIM will be able to make submissions on an application in the public interest, offering additional comfort that decisions to grant these powers have been informed by the PIM's submissions on the merits of the application. This therefore promotes the right to a fair hearing.

Conclusion

For the reasons given in this statement, I consider that the bill is compatible with the Charter of Human Rights and Responsibilities Act 2006.

Hon. Richard Dalla-Riva, MLC
Minister for Employment and Industrial Relations

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

This bill establishes public interest monitors to provide important checks and balances on the use of significant covert investigations and coercive powers in Victoria.

Covert investigations and coercive powers, such as surveillance devices, telecommunications interceptions, covert searches, preventative detention, prohibited contact orders and coercive power orders are among the most intrusive powers available to integrity and law enforcement bodies in Victoria.

Strong accountability measures should exist for the use of such significant powers. It is critical that the Victorian community has full confidence that applications for covert investigation and coercive powers are subject to optimal safeguards and oversight.

The recent report of the Victorian Ombudsman, *Investigation into the Office of Police Integrity's Handling of a Complaint*, has expressed concerns about the oversight of telecommunications interception powers and recommended the introduction of measures to ensure there is merits-based assessment of telecommunications interceptions in Victoria. In that report the Ombudsman states:

> There appears to be a considerable gap in oversight arrangements in relation to the use of telecommunication interception powers in Victoria. (paragraph 35)
>
> This gap in accountability with regard to telecommunication interception has been recognised in some other states. (paragraph 39)
>
> The measures taken or being considered in New South Wales and Queensland are measures that may be of assistance in ensuring that there is an effective merits-based assessment of telecommunication interceptions in Victoria. In this regard, I recommend that consideration be given to developing appropriate measures to allow the merit of telecommunication interceptions to be assessed and monitored in Victoria. (paragraph 44)

The government has taken swift action to help ensure that applications for the use of such powers are tested in the public interest, through the introduction of public interest monitors.

The bill provides for public interest monitors to have a role at hearings of applications for these powers. At the application hearing, a public interest monitor will represent the public interest by testing the content and sufficiency of material relied upon in the application and the circumstances of that application.

The government has long been on the record about the need to ensure integrity and law enforcement bodies are subject to robust oversight. Consultation has highlighted the importance of ensuring the use of these significant powers is scrutinised carefully. Public interest monitors will assist state and federal judicial officers and Administrative Appeals Tribunal (AAT) members to provide that scrutiny at the time of applications are sought. This will give Victorians confidence that the content and sufficiency of material relied upon in support of the application is vigorously tested.

In 2010 alone, Victoria Police and the OPI made 424 applications for telecommunications interception warrants. None of these applications was refused. Applications for telephone interception warrants were routinely heard by members of the AAT; records show that in the last three years not a single application by a Victorian agency has been refused.

The figures for surveillance device warrants tell a similar story. Over the last three years, 2007–08, 2008–09 and 2009–10, there were 423 applications for surveillance device warrants made by Victoria Police and the OPI, and only two were refused.

These applications are heard ex parte, without the knowledge of the target of the covert power and without the opportunity to appear at hearings for an application. Public interest monitors will be entitled to appear at hearings of these applications, to test the material on which they are based, in the public interest.

Public interest monitors will offer additional comfort that decisions to grant these powers have been informed by public interest monitors' submissions as to the appropriateness of the application. Public interest monitors will assist the relevant judges, magistrates or AAT members by appearing at the hearings of applications for these powers. Public interest monitors will provide increased accountability for integrity and law enforcement agencies.

The bill introduces public interest monitors into application processes by amending the Surveillance Devices Act 1999, Telecommunications (Interception) (State Provisions) Act 1988, Terrorism (Community Protection) Act 2003, and the Major Crime (Investigative Powers) Act 2004.

The telecommunications interception powers regime is governed by commonwealth legislation. Introduction of public interest monitors into the application process will require amendments to commonwealth legislation. The government has notified the federal Attorney-General about this important legislation. Officers from the Victorian Department of Justice will progress this issue with the federal Attorney-General's department as a matter of priority to ensure public interest monitors are authorised to attend hearings for applications for telecommunications interception warrants as soon as possible.

Public interest monitors performing substantially similar functions have existed in Queensland since 1998 and in the Australian Capital Territory in relation to terrorism offences since 2005.

The key aspects of the Public Interest Monitor Bill 2011 are as follows:

Functions

Public interest monitors will have a role prior to, and at hearings of, applications for:

> surveillance device warrants, retrieval warrants, assistance orders, and approvals of emergency authorisations by Victoria Police, the OPI, the departments of primary industries and sustainability and environment, and the Australian Crime Commission (when applying for warrants regulated under Victorian legislation) under the Surveillance Devices Act 1999;
>
> telecommunications interception warrants by Victoria Police and the OPI under the Commonwealth Telecommunications (Interception and Access) Act 1979 (subject to other necessary commonwealth legislative amendments);
>
> covert search warrants, preventative detention orders, and prohibited contact orders by Victoria Police under the Terrorism (Community Protection) Act 2003; and
>
> coercive powers orders by Victoria Police, for the chief examiner, under the Major Crime (Investigative Powers) Act 2004.

Public interest monitors will also have a role at applications for extensions, variations and revocations of such warrants. At a hearing, a public interest monitor will be able to ask questions of any person providing information about the application. A public interest monitor will make submissions to the judge, magistrate or AAT member on the appropriateness of the application.

Public interest monitors will appear at applications made by the OPI, and subsequently the IBAC when it is authorised to apply for such warrants.

Requirement to notify

An officer of an integrity or law enforcement body will be required to notify a public interest monitor about an application to exercise one of these powers. This obligation includes giving a public interest monitor a copy of the application and any affidavit.

The bill amends the enabling acts under which these powers may be applied for to introduce a positive obligation on an applicant to provide full disclosure of all matters relevant that are adverse to the application. A breach of this obligation to provide full disclosure will be an offence. The offence highlights the critical role of public interest monitors, and the importance of the applicant providing all information to the public interest monitor as part of the application process. The offence will not be a strict liability offence — it will require a knowing or reckless failure.

Principal public interest monitor and deputy public interest monitors

There will be one principal public interest monitor, who will be supported by deputy public interest monitors. Public interest monitors must be Australian legal practitioners. The principal public interest monitor may issue guidelines about how the deputy public interest monitors perform their functions.

It is necessary that, in performing their functions, public interest monitors act independently and avoid any conflicts of interest. Therefore a person will be ineligible for appointment if they are a member of the Parliament of the commonwealth or a state or territory, or the Director of Public Prosecutions, Solicitor for Public Prosecutions, any person appointed under the Public Prosecutions Act 1994, or employed in, or seconded to, the Office of Public Prosecutions.

In addition, a public interest monitor must not be employed in or by, or seconded to, any body that is eligible to apply for any of the warrants, orders and approvals specified in the act.

A public interest monitor must avoid any actual or potential conflict of interest, and may declare that he or she is unable to carry out the functions of a public interest monitor in a particular case if a potential or actual conflict arises. They will also be subject to strong obligations of confidentiality to ensure that sensitive information remains confidential.

Reporting

The principal public interest monitor will report annually to the minister on the performance of the functions of all public interest monitors. The minister will cause the report to be laid before Parliament within 14 sitting days of receiving it. The report will include the total number of applications at which a public interest monitor appeared, the number of applications by each agency at which a public interest monitor appeared, the number of orders made, warrants issued or authorisations approved on applications by each agency, the number of applications made by telephone, and the number of applications by each agency that were refused or withdrawn.

The inaugural principal public interest monitor and deputy public interest monitors will be appointed by the Governor in Council as soon as possible following passage of the legislation.

Covert investigation and coercive powers are significant powers. Strong accountability measures should exist for the use of significant powers. It is critical that the Victorian community has full confidence that applications for covert investigation and coercive powers are subject to optimal safeguards and accountability. This is why we are establishing the office of public interest monitor.

I commend this bill to the house.

Debate adjourned on motion of Hon. M. P. PAKULA (Western Metropolitan).

Debate adjourned until Thursday, 17 November.

SEX WORK AND OTHER ACTS AMENDMENT BILL 2011

Introduction and first reading

Received from Assembly.

Read first time for Hon. M. J. GUY (Minister for Planning) on motion of Hon. G. K. Rich-Phillips; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Hon. M. J. GUY (Minister for Planning), Hon. G. K. Rich-Phillips 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 (charter act), I make this statement of compatibility with respect to the Sex Work and Other Acts Amendment Bill 2011.

In my opinion, the Sex Work and Other Acts Amendment Bill 2011, as introduced to the Legislative Council, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The purposes of this bill are to:

assign and clarify responsibility for monitoring, investigation and enforcement of provisions of the Sex Work Act 1994;

continue the ban on street prostitution by extending the operation of the banning notice regime in part 2A of the Sex Work Act 1994 for a further two years;

enhance Victoria Police's role in investigating and prosecuting the owners of brothels operating without a permit under the Planning and Environment Act 1987;

tighten restrictions on persons with serious criminal backgrounds entering the sex work industry;

amend the Confiscation Act 1997 to broaden the range of offences relating to illegal sex work to which that act will apply;

amend the Confiscation Amendment Act 2010 in relation to declarations of property interests and applications for exclusion from civil forfeiture, and to extend the default commencement day of that act; and

make other miscellaneous amendments.

Human rights issues

1. Extension of banning notice regime in part 2A of the Sex Work Act 1994

Part 2A of the Sex Work Act 1994 provides for the issue of banning notices against persons reasonably suspected of inviting or soliciting street sex work in a declared area. Part 2A was inserted by part 11 of the Justice Legislation Further Amendment Act 2010, and commenced operation on 1 January 2011. Under section 21M of the Sex Work Act 1994, part 2A is due to sunset on 1 January 2012.

Clause 15 of the bill amends section 21M to continue the operation of part 2A until the third anniversary of its commencement, 1 January 2014.

Right to freedom of movement (section 12)

The banning notice regime limits the right to freedom of movement in section 12 of the charter act, by providing police members with the power to issue a banning notice which excludes a person from entering a declared area for the period specified in the notice (which cannot exceed 72 hours). An area is declared by the Minister if the Minister is satisfied that conduct contrary to sections 12 or 13 of the Sex Work Act 1994 frequently occurs in the area. The notice can only be issued if a police member suspects on reasonable grounds that a person is committing, or has committed, an offence under section 12(2)(b) of the Sex Work Act 1994 and the giving of a banning notice may be effective in preventing or deterring the person from committing a further relevant offence. No notice can be issued if there are reasonable grounds for believing that the person lives or works in the declared area, and only one notice can be given per offence. The purpose of the regime is to reduce the detrimental impact of street sex work in residential areas caused by certain persons not complying with the prohibition on soliciting another person.

The extension of the operation of the banning notice regime does not change the operation of the scheme, engage new rights or effect new limits on rights. The banning notice regime is being extended as the original one-year period of operation was insufficient to assess the impact of the notice regime. Clause 14 will amend section 21L of the Sex Work Act 1994 to require the Chief Commissioner of Police to submit an annual report to the Minister for Police and Emergency Services in relation to the operation of part 2A, demonstrating the continued trial nature of this scheme and commitment to monitoring its effects on the community.

As the scheme is being extended for a period of time that is proportional to its original duration, I consider that this amendment is compatible with the charter act.

2. Entry to premises

Clause 9 inserts new sections 78A, 78B and 78C into the Sex Work Act 1994 to provide for new search powers for police members in respect of suspected brothels.

New section 78A provides for the granting of a warrant by a magistrate for police members to search premises where there are reasonable grounds to suspect that the premises are being used for the operation of a brothel in contravention of section 126 of the Planning and Environment Act 1987. New section 78B provides for entry without a search warrant where the chief commissioner, outside of office hours, believes on reasonable grounds that the premises are being used for the purpose of the operation of a brothel in contravention of section 126 of the Planning and Environment Act 1987 and that relevant evidence is likely to be lost if entry to the premises is delayed until a search warrant is obtained.

These new powers engage the right to privacy in section 13 of the charter act.

Right to privacy (section 13)

Section 13(1) of the charter act provides that a person has the right not to have his or her privacy unlawfully or arbitrarily interfered with.

To the extent that the search of premises in these situations interferes with a person's privacy, the interference will be lawful and not arbitrary. The interference will only occur in confined situations where a magistrate is satisfied that reasonable grounds exist to suspect a relevant offence is being committed. In regards to the power to search without warrant, this will only operate in situations of urgency when a search outside office hours is necessary to prevent relevant evidence being lost. Such a search must be authorised by the Chief Commissioner of Police and the relevant grounds set out in writing. New section 78C prevents this power from being misused by obligating a court to rule inadmissible any evidence obtained if the necessary requirements to authorise the search were not complied with.

Accordingly, I consider that the powers do not limit the right to privacy in the charter act.

3. Expansion of offences to which court-ordered forfeiture powers apply

Clause 16 substitutes a new clause 17 in schedule 1 to the Confiscation Act 1997 to expand the range of offences under the Sex Work Act 1994 that are triggering offences for a charge-based restraining order or a discretionary conviction-based forfeiture order under the Confiscation Act 1997.

Currently, all indictable offences under the Sex Work Act 1994 and the summary offence of operating as an unlicensed sex work service provider contrary to section 22(1A) are triggering offences in schedule 1 to the Confiscation Act

1997. The inclusion of an offence in schedule 1 means that, if the relevant requirements are satisfied, the Director of Public Prosecutions can make an application to the court for the discretionary forfeiture of tainted property under section 32 of the Confiscation Act 1997 within six months of the date of conviction for a schedule 1 offence. The director may also apply for a restraining order over certain property when a person has been or is about to be charged with a schedule 1 or schedule 2 offence.

The bill will expand schedule 1 to include the following summary offences under the Sex Work Act 1994:

advertising sex work services contrary to section 17(1) to (4); and

carrying on a business as a sex work service provider with an unlicensed partner under section 57.

The Confiscation Act 1997 provides for the confiscation of the proceeds and instruments of crime and property suspected to be tainted in relation to serious criminal activity. The regime, by its nature, engages a number of charter act rights as it contains strong powers that are primarily directed at confiscating persons' property. However, the strong powers are balanced by a range of appropriate safeguards designed to protect the individual rights of persons who may be subject to the scheme.

The addition of new offences to schedule 1 does not amend the operation of the scheme, engage new rights or effect new limits on rights. The inclusion of these offences is consistent with other offences already included in schedule 1 to the Confiscation Act 1997 that relate to unlawful advertising or unlicensed operation in other regulated industries such as gambling and fishing. It is appropriate for the purposes of deterrence and disgorging ill-gotten gains that the courts have discretionary power, subject to safeguards and satisfying the necessary criteria set out in the Confiscation Act 1997, to restrain and forfeit property from which a person has profited whilst engaging in unlawful activity in the regulated sex work industry.

Accordingly, I consider the addition of these new offences to schedule 1 of the Confiscation Act 1997 to be compatible with the charter act.

4. Expansion of offences to which automatic forfeiture and civil forfeiture powers apply

The Confiscation Act 1997 provides for automatic forfeiture following conviction and civil forfeiture powers in relation to a number of indictable offences under the Sex Work Act 1994 relating to the provision of sexual services by children and carrying on a business as a sex work service provider without a licence or in breach of a licence, where specified monetary values are involved in the offence.

Clause 17 inserts new clauses 2(ba) to (bd) into schedule 2 to the Confiscation Act 1997 to expand the automatic and civil forfeiture powers under the Confiscation Act 1997 to apply to the following indictable offences under the Crimes Act 1958:

sexual servitude contrary to section 60AB;

aggravated sexual servitude contrary to section 60AC;

deceptive recruiting for commercial sexual services contrary to section 60AD; and

aggravated deceptive recruiting for commercial sexual services contrary to section 60AE.

The offences will trigger automatic or civil forfeiture if the value of the commercial benefit obtained or intended to be obtained from commercial sexual services is over a minimum threshold amount, which is set at $50 000 in the case of one offence or $75 000 in the case of more than one offence. This high threshold confines the operation of these forms of forfeiture to more serious criminality.

The automatic and civil forfeiture powers engage a number of charter act rights; however, as discussed above, the addition of new offences to schedule 2 does not amend the operation of the scheme, engage new rights or effect new limits on rights.

The automatic and civil forfeiture powers operate in defined and specific circumstances, and serve important policy objectives in confiscating property used in, or derived from, serious illegal activity relating to sexual servitude or deceptive recruiting for commercial sexual services. These powers operate amid a range of safeguards that may modify or exclude the operation of these powers depending on the circumstances of a particular case. These safeguards include the right for the accused and other persons to seek to exclude property from the operation of restraint or forfeiture on specified grounds. The court also has broad powers to modify the operation of restraining orders and, in the case of civil forfeiture, powers to make appropriate orders to address hardship.

I consider that the inclusion of these offences in schedule 2 to the Confiscation Act 1997 is compatible with the charter act and consistent with other offences already included in schedule 2 relating to commercial benefit obtained from the provision of sexual services by a child or carrying on business as a sex work service provider without licence or in breach of licence.

5. Repeal of power to defer declaration of property interests

Section 19A of the Confiscation Act 1997 imposes an obligation on a person believed to have an interest in property that has been restrained for confiscation purposes to give a declaration as to their own and others' interest in that property. This assists in identifying interests in property that may be subject to confiscation and persons who may wish to defend confiscation proceedings.

Clause 20 of the bill will repeal section 9 of the Confiscation Amendment Act 2010, which was to insert new section 19BA into the Confiscation Act 1997 on 1 January 2012. This new section was to provide the court with power to defer a person's obligation to give a declaration of property if giving that information was likely to prejudice that person's criminal trial.

Clause 21 of the bill will amend section 49 of the Confiscation Amendment Act 2010 to repeal new section 36Q, which was to be inserted into the Confiscation Act 1997 on 1 January 2012, to provide for an equivalent power in relation to a person's obligation to give a declaration of property where that property is subject to a civil forfeiture restraining order.

As these provisions were to operate as a protection against self-incrimination, the repeal engages the right not to be

compelled to testify against oneself in section 25(2)(k) of the charter act.

Right not to be compelled to testify (section 25(2)(k))

Section 25(2)(k) provides that a person must not be compelled to testify against himself or herself or to confess guilt. In its application to criminal proceedings, this right encompasses the privilege against self-incrimination. The obligation to declare an interest in tainted property engages the protection against self-incrimination as there is potential for such information to be used against a person in a criminal proceeding, for example where a person has been charged with an offence and a restraining order is made. This is heightened by the fact that the Director of Public Prosecutions is the body charged with bringing both criminal and confiscation proceedings.

Sections 19BA and 36Q are being repealed due to concern that the right to apply to defer giving a declaration of property interests may result in persons making spurious applications to the court to defer their provision of a declaration of property interests. It is considered that this will hinder confiscation proceedings, and that unnecessary time and resources will be expended in defending such applications. While the repeal weakens the level of protection against self-incrimination in the scheme, I am of the opinion that there are still adequate safeguards in place to preserve the protection against self-incrimination in these circumstances.

Section 12 of the Confiscation Amendment Act 2010 inserts new section 19E into the Confiscation Act 1997 which will come into operation on 1 April 2012. This new section expands the scope of the existing protection against self-incrimination to include both direct and derivative immunity. This means that any information, document or other thing obtained as a direct or indirect consequence of making a statement in a declaration of property interests will not be admissible in evidence against that person except in a proceeding under the Confiscation Act 1997 or a proceeding for perjury. The act also inserts similar protections for civil forfeiture proceedings.

While a direct and derivative immunity should be sufficient in itself to preserve the privilege against self-incrimination, there is a fair trial concern regarding a situation where a person has been charged with an offence and is then questioned by the prosecution during the course of proceedings under the Confiscation Act 1997. While no direct or derivative evidence arising from a statement made in a declaration of property interests can be admitted in the subsequent criminal proceeding, there is the possibility that a parallel inquiry may occur, which can impact on the fairness of the criminal proceedings through the prosecution having the opportunity to obtain a declaration of property interests which may also be relevant to the concurrent criminal proceedings.

In my opinion, the nature of the information required by a declaration of property interests is such that provision of the information would be unlikely to incriminate the person, or provide the prosecution with any unfair forensic advantage. In any event, the existing protections at common law are sufficient to safeguard against any unfairness resulting out of such circumstances. The court has the power to prevent an abuse of power through any improper interference with the due administration of justice or contempt of court, which will prevent any residual forensic advantage being held by the prosecution in matters involving both confiscation and criminal proceedings.

Accordingly, I consider that this amendment is compatible with the right not to be compelled to testify in section 25(2)(k) of the charter act.

6. Test for exclusion from civil forfeiture

Section 49 of the Confiscation Amendment Act 2010 substitutes a new part 4 in the Confiscation Act 1997 that brings together and substantially re-enacts the civil forfeiture powers in that act. These amendments were due to commence on 1 January 2012.

Clauses 22 and 23 of the bill modify the above amendments to change the matters that a person must show in order to exclude an interest from restraint for civil forfeiture or a civil forfeiture order under sections 24 or 54 of the Confiscation Act 1997. The test for exclusion substituted by the Confiscation Amendment Act 2010 requires the applicant to satisfy the court, amongst other things, that the applicant did not have knowledge of the offence, was not wilfully blind as to the offence or did not condone or permit the offence. It is considered that such a test is flawed and will raise evidential difficulties in practice in defending an exclusion application. The bill substitutes the current test that currently exists in the Confiscation Act 1997 into the Confiscation Amendment Act 2010, which requires the applicant to satisfy the court, amongst other things, that the applicant was not, in any way, involved in the commission of the offence.

By changing the test for exclusion to require a person to prove a lack of involvement in the offence, this engages the right to presumption of innocence in section 25(1) of the charter act and the right not to be tried or punished more than once in section 26 of the charter act in the particular situation where civil forfeiture proceedings are brought against a person acquitted of an offence.

Right to presumption of innocence (section 25(1))
Right not to be tried or punished more than once (section 26)

Section 25 of the charter act provides that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law. Section 26 provides that a person must not be tried or punished more than once for an offence in respect of which he or she has already been finally convicted or acquitted in accordance with law.

The nature of the exclusion order provisions means that a court may be required to determine whether an applicant for an exclusion order (including a person acquitted of criminal charges) engaged in unlawful activity.

In my view, this does not infringe either the right to be presumed innocent or the right against double jeopardy.

The Victorian civil forfeiture proceedings are in rem civil proceedings, which means an application is made in respect of property, rather than being directed toward a particular person. The purposes of the scheme are remedial and preventative, as opposed to punitive, and the proceedings are not aimed at establishing the guilt of any individual. Any inquiry into the conduct of an individual only arises on the application for exclusion and the test requires an applicant to prove that they were not involved in the offence in any way, which is a different issue to whether the person had committed the offence.

I acknowledge that the European Court of Human Rights has taken a very broad view of the scope of the right to be presumed innocent in the European Convention on Human Rights. In *Geerings v. Netherlands* (2008) 46 EHRR 49, the court held that the right was engaged in forfeiture proceedings where the defendant had been acquitted of some, but not all, charges and the forfeiture scheme required the prosecutor to establish a prima facie case that the defendant had committed an offence.

In my view the scheme of the Confiscation Act is distinguishable from the Dutch forfeiture scheme considered by the European Court of Human Rights, which was more in the nature of in personam proceedings targeting specific persons and which required proof of a criminal offence. Further, I consider that the broader interpretation of the right by the European court is not appropriate to Victoria. In Australia, it is well established that an acquittal for a criminal offence does not prevent subsequent civil proceedings being issued against a person in respect of the same acts or conduct that was the subject of criminal proceedings. That is because different matters are at issue and different standards of proof apply.

Accordingly, I consider this amendment to be compatible with the charter act.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities Act 2006, because, to the extent that some provisions may limit human rights, those limitations are reasonable and demonstrably justified in a free and democratic society.

Hon. Matthew Guy, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Sex Work and Other Acts Amendment Bill 2011 implements a suite of reforms to the Sex Work Act 1994 and the Confiscation Act 1997, in line with government commitments made prior to the 2010 election.

The bill delivers on the government's commitments to make Victoria Police the lead agency for the enforcement of laws relating to the sex work industry to ensure that appropriate attention is paid to the removal of criminal elements, and to amend legislation regulating the sex industry to minimise and, where possible, eliminate any uncertainties as to enforcement responsibility.

The bill does this by amending the Sex Work Act to clarify the division of enforcement responsibilities between Victoria Police and Consumer Affairs Victoria.

Section 86(1) of the Sex Work Act currently provides that proceedings for an offence against the act may only be brought by the director of Consumer Affairs Victoria, a person authorised by the director, or a member of the police force. Section 26 of the act sets out the functions of the director of Consumer Affairs Victoria.

The bill amends section 86 of the Sex Work Act to make Victoria Police the lead enforcement agency for the enforcement of laws relating to the sex work industry, by providing that, subject to new section 86(1A), proceedings for an offence against the act may only be brought by a police member. New section 86(1A) provides that the director of Consumer Affairs Victoria may bring proceedings for an offence against a provision referred to in section 26(a), which is also amended by the bill.

Together, the amendments to sections 86 and 26 make it clear that Victoria Police is the only enforcement agency that can bring proceedings in relation to banning notices for street sex work under part 2A and planning controls on brothels under part 4, and to deal with illegal brothels through proscription orders under part 5 of the Sex Work Act. Victoria Police will also be the lead enforcement agency regarding offences under part 2 of that Act, though Consumer Affairs Victoria will retain powers to bring proceedings for offences against sections 11A, 17, 18A, 19, 20 and 21, as these are particularly relevant to the activities of businesses carried on by licensed sex work service providers.

Consumer Affairs Victoria will remain primarily responsible for monitoring the compliance of individuals licensed under the Sex Work Act. The bill ensures that Consumer Affairs Victoria retains powers to bring proceedings for offences relating to the licensing scheme for sex work service providers set out in part 3 of the Sex Work Act. It should be noted, however, that Victoria Police will have the sole power to enforce the offences of carrying on business as a sex work service provider without holding a licence, or assisting in the commission of such an offence.

In addition to the requirement that sex work service providers obtain a licence to operate their business under the Sex Work Act, planning schemes require those using or developing land for the purposes of a brothel to obtain a permit under the Planning and Environment Act 1987. It is an offence under section 126(1) of that act to use or develop land in contravention of a planning scheme or permit.

Local government will continue to have authority and responsibility for enforcing planning laws where brothels are operating in breach of planning requirements, for example where a planning scheme or conditions of a planning permit are being contravened.

However, as the lead agency for enforcement of laws relating to the sex work industry, Victoria Police should be able to take appropriate action where premises are being used to operate a brothel without the requisite planning permit. The bill therefore amends the Sex Work Act to provide police members with specific entry powers where there are reasonable grounds to believe that premises are being used for the purpose of the operation of a brothel where there is not in force, for those premises, the requisite planning permit. These entry powers are subject to tight restrictions.

Section 80 of the Sex Work Act is amended to clarify that an authorised member of the police force may apply to the

Magistrates Court for a proscription order under section 80 of the Sex Work Act on the grounds that premises are being used as a brothel without the requisite planning permit. Currently, a police member's ability to make such an application is restricted.

The bill also amends section 80 to clarify that evidence that may be taken into consideration by a court in an application for a proscription order includes evidence that the premises to which the application relates have been used for the purposes of the operation of a brothel during a period before the 14-day period to which the application relates. This removes doubt about the admissibility of such evidence in applications for proscription orders.

The bill delivers on the government's commitment to maintain and actively enforce the ban on street prostitution by extending the operation of the banning notice regime in part 2A of the Sex Work Act for a further two-year period. The Chief Commissioner of Police will be required to report data relating to the operation of the regime within three months of the end of each calendar year.

A further amendment made by the bill will ensure that the Business Licensing Authority must refuse an application for a licence to carry on business as a sex work service provider where the applicant has, at any time, been convicted of or found guilty of a disqualifying offence (namely, an indictable offence) that renders the grant of a licence to that person against the public interest, having regard to the nature of the offence and the date on which it was committed. Currently, an application may be refused if the applicant has been convicted of a disqualifying offence within the preceding five years.

The government also committed prior to the 2010 election to strengthen proceeds of crime legislation to provide for a wider range of offences relating to illegal sex work that will attract sanctions.

The bill delivers on this commitment by expanding powers under the Confiscation Act for forfeiture upon court order following a conviction. These powers are widened to apply to the offences of carrying on business as a sex work provider with an unlicensed partner, and various offences relating to the illegal advertising of sex work services under the Sex Work Act. The bill also expands powers in the Confiscation Act for automatic forfeiture following conviction, and civil forfeiture. These powers are expanded to apply to more serious sexual servitude offences under the Crimes Act 1958. The changes introduced by the bill ensure that authorities are better equipped to disrupt and deter illegal sex work activity and to deprive persons who engage in such activity of their ill-gotten gains.

The bill also amends the Confiscation Amendment Act 2010 to address specific practical concerns about the operation of amendments introduced by that act that relate to the timing of obligations for persons to give information about their interests in property that has been restrained for confiscation, and the matters that a person must prove to exclude their property from civil forfeiture proceedings. The bill makes minor amendments to the Confiscation Amendment Act to reinstate the previous requirements that applied in this regard.

Finally, the bill makes a number of consequential amendments to the Sex Work Act and Confiscation Amendment Act, and provides for transitional arrangements necessary as a result of amendments to the Sex Work Act and Confiscation Act.

I commend the bill to the house.

Debate adjourned for Ms MIKAKOS (Northern Metropolitan) on motion of Mr Leane.

Debate adjourned until Thursday, 17 November.

STATE TAXATION ACTS FURTHER AMENDMENT BILL 2011

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer); by leave, ordered to be read second time forthwith.

Statement of compatibility

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) 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 (charter act), I table a statement of compatibility for the State Taxation Acts Further Amendment Bill 2011 (the bill).

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

Overview of bill

The purpose of this bill is to amend the Duties Act 2000 (duties act), the Land Tax Act 2005 (land tax act), the Livestock Disease Control Act 1994 (livestock act), the Taxation Administration Act 1997 (TA act), the Payroll Tax Act 2007 (payroll tax act) and Valuation of Land Act 1960 (VL act). These amendments are aimed at clarifying the operation of Victoria's revenue laws and maintaining their currency to produce better outcomes for taxpayers.

The duties act is amended to clarify the starting point for calculating the eligible pensioner exemption and concession from duty to ensure that the same level of benefit is available for 'off the plan' purchasers and owner builders and to reduce the time period for the paying duty from 90 to 30 days.

The primary production land exemption in the land tax act is amended to ease the eligibility criteria for land which cannot be used for urban development, and clarify the application of the exemption in respect of land owned by trusts, corporate trustees, and joint owners. The land tax act is also amended to deem the manager of titles based time-sharing schemes to be the owner of the land for land tax purposes.

The payroll tax act is amended to limit the payroll tax exemption for charities to wages paid for work, which

supports the charitable purposes of those organisations, and clarifies the application of the maternity and adoption leave exemption in relation to part-time employees.

Consequential amendments are made to the TA act and land tax act in response to changes to the VL act, which give municipal councils the option to transfer to the valuer-general their responsibility for completing rating authority valuations. Finally, a number of minor technical amendments to the VL act are also made by this bill.

Finally, the TA act and livestock act are amended to provide for the administration and enforcement of livestock duty under the TA act.

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

This bill engages the following human rights protected under the charter act:

right to privacy and reputation; and

recognition and equality before the law.

The impact of the bill upon each of these rights is discussed in turn below.

Right to privacy and reputation

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

Clause 46 of this bill provides that the secretary of the Department of Primary Industries may disclose information obtained in relation to the administration of livestock duty to the commissioner of state revenue.

This information will generally relate to livestock agents or farming enterprises, which are not protected by the charter act. These provisions could nevertheless engage the right under section 13 of the charter act where the information relates to individuals carrying on these businesses as sole traders.

However, to the extent that this provision interferes with privacy, I consider that the interference is neither arbitrary nor unlawful. The circumstances in which the information can be disclosed are limited and clearly set out in the bill. The provision is not arbitrary because it ensures that the commissioner can administer and enforce livestock duty, thereby protecting the integrity of the funds used to pay compensation to farmers when livestock dies, or is ordered to be destroyed, on the outbreak of disease.

I therefore consider that these provisions do not limit the right to privacy.

Recognition and equality before the law

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

Clause 26 of this bill clarifies the starting point for calculating the pensioner concession from duty. The concession applies to reduce the duty payable by 'eligible pensioners' on the purchase of a principal place of residence. The pensioner concession is available to certain concession card holders including holders of the commonwealth seniors health card issued under the Social Security Act 1991 (cth). Qualification for the commonwealth seniors health card is dependent upon a person's age. 'Age' is a specified attribute under section 6 of the Equal Opportunity Act 1995. Therefore, this amendment engages section 8 because it amends a law that limits access to a benefit on the basis of qualification for the commonwealth seniors health card which requires a person to be at least over 60 years of age.

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

On balance, however, the limitations upon this right are reasonable and justifiable in a democratic society for the purposes of section 7(2) of the charter act, having regard to the factors set out below.

(a) What is the nature of the right being limited?

The prohibition on discrimination is one of the cornerstones of human rights instruments and this is reflected in the preamble to the charter act. However, as with all rights protected by the charter act, the section 8 right to equality before the law may be subject to reasonable limitations, pursuant to section 7 of the charter act.

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

The purpose of this limitation is to reduce the cost of downsizing for self-funded retirees. This limitation is important to ensure that older Victorians can access suitable accommodation within the communities in which they have formed connections and attachments, where they may not otherwise have been able to afford to do so.

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

Holders of a commonwealth seniors card are entitled to a duty concession resulting in less duty being payable on the purchase of a principle place of residence. However, the exemption or concession is available only once in a person's lifetime, and access to the benefit is subject to a number of other eligibility criteria, including that the property purchased must not exceed $750 000.

(d) What is the relationship between the limitation and its purpose?

There is a direct relationship between the limitation and the purpose of assisting self-funded retirees living within restricted means to downsize their homes whilst remaining in the communities that they have lived in during their working lives. It is expected that this will contribute to their quality of life and the transition into retirement.

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

There is no less restrictive means available.

For these reasons, I consider the limitation on section 8 of charter to be 'reasonable' in the circumstances.

Conclusion

I consider that the bill is compatible with the charter act.

Hon. G. K. Rich-Phillips, MLC
Assistant Treasurer

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

This State Taxation Acts Further Amendment Bill 2011 amends the Duties Act 2000 (duties act), the Land Tax Act 2005 (land tax act), the Livestock Disease Control Act 1994 (livestock act), the Taxation Administration Act 1997 (TA act), the Payroll Tax Act 2007 (payroll tax act) and Valuation of Land Act 1960 (VL act).

The Victorian government is committed to producing better outcomes for Victorian taxpayers. This bill supports this commitment by making amendments to update and clarify Victoria's revenue laws. These measures will make it easier for Victorians to comply with their taxation obligations and introduce greater equity and fairness to the tax system.

The duties act provides an exemption and concession from duty for eligible pensioners. Since being elected, this government has demonstrated its commitment to reducing the cost of living by increasing the upper limit for the duty concession from $440 000 to $750 000 and extending the availability of the exemption and concession to holders of commonwealth seniors health cards. This bill continues this reform by clarifying the starting point for calculating the eligible pensioner exemption and concession from duty. Consistent with current administrative practice, this amendment will ensure that the same level of duty benefit is available for 'off the plan' purchasers and owner-builders, providing greater equity in the application of the exemption.

This bill will also amend the duties act to reduce the time period for paying duty from 90 days to 30 days. The government is committed to building a more sustainable budget position for Victoria. This measure supports this commitment by bringing forward additional revenue into the 2011–12 financial year and providing the government with earlier access to funds which are used directly to benefit Victorians. It is an economically responsible measure that does not result in Victorians paying more tax — 85 per cent of duty is already remitted within 30 days. However, in recognition that some businesses may need to adopt new working methods and practices to implement this measure, the reduced period for paying duty will not commence until 1 April 2012.

In opposition, this government blocked moves by the former Brumby government to reduce the period for paying duty from 90 days to 14 days. Fourteen days did not allow enough time for banks and lawyers to prepare the documents necessary to transfer property and pay the required duty. Rural and regional lawyers were particularly disadvantaged by the previous government's proposal and it increased the risk of taxpayers being exposed to penalty and interest on late payment. This government has listened to these concerns and seeks to balance them against the community benefit of having use of this money earlier. A 30-day period for payment achieves this balance for all Victorians.

This bill amends the land tax act to deem the managers of titles-based time-sharing schemes to be the owner of the timeshare resort for land tax purposes. This amendment will allow the SRO to continue the administrative practice of assessing the managers of titles-based schemes rather than individual timeshare owners. This amendment is aimed at building a fairer and more equitable tax system by ensuring that managers of titles-based and non-titles-based schemes are treated the same way under the land tax act.

This bill also makes several other amendments to the land tax act aimed at improving the operation of the primary production exemption from land tax. This government is committed to improving housing supply and affordability. Therefore, to discourage land banking, land that is within greater Melbourne and in an urban zone must satisfy more stringent criteria to receive the primary production land tax exemption. These requirements are not, however, intended to apply to land that cannot be used for urban development as a result of planning restrictions. Accordingly, this bill amends the definition of 'urban zone' to ensure that certain parts of the urban zone can be excluded from these requirements in line with the intended operation of the exemption. This bill will also make a number of minor amendments aimed at clarifying the application of the exemption in respect of land owned by trusts, corporate trustees, and joint owners. Importantly, it clarifies that the exemption is available in relation to land held by trustees of certain discretionary trusts.

This bill makes a series of amendments to the TA act and the land tax act, in response to changes to Victoria's valuation system, which give municipal councils the option to transfer to the valuer-general their responsibility for completing valuations for rating purposes. These amendments, while minor, are essential to the integrity of the land tax system because they ensure that the SRO can use these valuations for the purposes of assessing land tax, and that taxpayers have the right to object to a land tax assessment that is based on a valuation made by the valuer-general under the new system.

This government is committed to fostering a stronger and more competitive Victorian economy by making it easier for Victorians to do business. This bill makes a contribution in this area by enacting further measures as part of the national program of payroll tax harmonisation.

This bill amends the payroll tax act to limit the exemption to wages paid for work, which supports the charitable purposes of those organisations. This amendment is made in response to the decision of the High Court in *Commissioner of Taxation v. Word Investments Ltd* which extended the common-law definition of charity to include organisations that conduct predominately commercial activities to fund their charitable objects or donate their profits to another charity. This decision had the unintended impact of extending the payroll tax exemption to wages paid for commercial activities. This amendment will restore the intended operation of that provision and will promote business productivity and competitiveness by ensuring that all businesses operating in

commercial markets in Victoria receive the same treatment under the payroll tax act.

This bill also amends the payroll tax act to clarify the application of the maternity and adoption leave exemption. Currently, the 14-week exemption period can be pro-rated to the equivalent of 14 weeks leave for full-time employees who take their leave at less than full pay, but the act does not provide equivalent treatment for part-time employees. To ensure consistent and equitable treatment of wages paid to full-time and part-time employees and in line with current administrative practice, this amendment will allow the 14-week period to be pro-rated for part-time employees on the basis of the wages that would have normally been paid for that period.

This bill will amend the TA act and livestock act to provide for the administration and enforcement of livestock duty under the TA act. The SRO and Department of Primary Industries jointly administer livestock duty and this amendment will ensure that the commissioner of state revenue can administer and enforce livestock duty in the same way as all other taxes and duties. This measure will help to protect the integrity of the scheme by ensuring there are appropriate systems in place to detect late payment and deter non-compliance through the imposition of penalty and interest on unpaid duty. In line with the intention of this scheme, any penalty and interest collected by the commissioner will be payable into the relevant livestock compensation fund, which are used to compensate owners affected by an outbreak of livestock disease.

Finally, this bill also makes several amendments to the VL act. These amendments are minor and technical in nature and are aimed at clarifying the operation of certain provisions as a result of the new valuation system.

I commend the bill to the house.

Debate adjourned on motion of Mr LENDERS (Southern Metropolitan).

Debate adjourned until Thursday, 17 November.

VICTORIAN INSPECTORATE BILL 2011

Introduction and first reading

Received from Assembly.

Read first time for Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) on motion of Hon. G. K. Rich-Phillips; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations), Hon. G. K. Rich-Phillips 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 (charter act), I make this statement of compatibility with respect to the Victorian Inspectorate Bill 2011.

In my opinion, the Victorian Inspectorate Bill 2011, as introduced to the Legislative Council, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The purpose of this bill is to establish the Victorian Inspectorate to provide oversight of the Independent Broad-based Anti-corruption Commission (IBAC). The bill provides the Victorian Inspectorate with functions designed to enhance IBAC's compliance with the Independent Broad-based Anti-corruption Commission Act 2011 (IBAC act) (when passed) and other laws, and ensure IBAC performs its duties and exercises its functions and powers in an appropriate and lawful way.

The recently introduced IBAC bill establishes IBAC and provides it with important anticorruption education and prevention functions. The government intends to introduce further legislation in the near future to provide IBAC with further functions, including complaints handling and investigation powers. Given the nature of IBAC's role, which the government intends will include investigating corruption, and the powers that will be required to fulfil those functions effectively, such as the power to summons witnesses and examine them under oath, and telecommunications interception, IBAC must also be subject to scrutiny by a body capable of robust and effective oversight.

IBAC will be overseen by two bodies: a joint house committee, which will be created by the IBAC bill, and the Victorian Inspectorate.

This bill sets out the functions and powers of the Victorian Inspectorate, allows for the appointment of an Inspector, and sets out the complaints handling and investigation powers and procedures for the Victorian Inspectorate to fulfil its functions. These functions and powers have been drafted with the IBAC's current functions in mind, and also with a view to providing the Victorian Inspectorate with the right framework for effective oversight of IBAC into the future as its complaints handling and investigation functions are established.

Human rights issues

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

Right to freedom of association (section 16 of the charter act)

Section 16(2) of the charter act states that every person has the right to freedom of association with others. This right protects the right of all persons voluntarily to group together for a common goal. It applies to all forms of association.

The right to free association reflects the freedom of a just society, and is essential to the exercise of other human rights, such as freedoms of movement, expression, religion and belief. The right is particularly important in a free and democratic society to ensure that a person's eligibility to participate in elections for public office is not restricted unjustifiably on the grounds of their membership of an

association. However, the right is not absolute and can be subject to reasonable limitations under section 7 of the charter act.

Clauses 14(2)(b), 17(10), (11) and (12), and 18(1)(d) of the bill engage the right to freedom of association.

Election to Parliament

Clause 14(2)(b) renders a person ineligible from being appointed as an Inspector if he or she is a member of the Parliament of Victoria or of the commonwealth or of another state or a territory. Clause 18(1)(d) provides that the Inspector will cease to hold office if he or she nominates for election for the Parliament of Victoria or of the commonwealth or of another state or a territory.

Restrictions on employment, business and community activity

Clauses 17(10) and (11) prohibit the Inspector from engaging in any employment, business or community activity or from entering into a contract to provide services, that may create an actual or perceived conflict of interest with his or her role. Subclause (12) requires the Inspector to seek the approval of the Governor in Council to apply for or hold any professional, trade or business licence (including a legal practising certificate under the Legal Profession Act 2004), and to conduct any trade, business or profession, or accept any other employment.

Nature of the limitation

The purpose of the limitations is to prevent actual or perceived conflicts of interest arising between the Inspector's activities outside of their role and the fulfilment of their public duties.

The limitations on the right are direct, proportionate and balanced with both the need to ensure public trust and confidence in the Inspector and therefore the Victorian Inspectorate, and also the need to ensure the independence of those roles. The limitation is reasonable, as it is not an absolute prohibition on employment, business or community activity. The limitation also mirrors a limitation placed upon the IBAC Commissioner in the IBAC act (when passed). The limitations are reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom. I consider there are no less restrictive means reasonably available to achieve the intended purposes.

Right to take part in public life (section 18 of the charter act)

Section 18 of the charter act holds 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. This includes the right to be elected in state elections.

Clauses 14(2)(b) and 18(1)(d) of the bill, discussed above, which prevent the Inspector from being a member of Parliament, limit the right to take part in public life. This right may be limited on objective, non-discriminatory and reasonable grounds. The limitation is in place to prevent actual or perceived conflicts of interest arising between the Inspector's duties, and duties and interests that would attach to the public office of being an elected member of the Parliament. This is particularly important given that the Victorian Inspectorate will be overseen by a joint house committee and that IBAC, the body that the Victorian Inspectorate will oversee, is intended to have a role in relation to parliamentarians.

The limitations on the right are direct, proportionate and balanced with both the need to ensure public trust and confidence in the Inspector, and also the need to ensure the independence of this role. The limitations are reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom. I consider there are no less restrictive means reasonably available to achieve the intended purposes.

Right to a fair hearing (section 24 of the charter act)

Section 24 of the charter act holds 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. It also holds that all judgements or decisions made by a court or tribunal in a criminal or civil proceeding must be made public, unless exceptions apply including that a law other than the charter act otherwise permits.

Section 24 deals with the right to a fair hearing, incorporating principles of procedural fairness. Procedural fairness concerns the extent to which the procedures of a hearing protect the rights of the parties, such as the right of a party to be provided a reasonable opportunity to present his or her case under conditions that do not place that party at a substantial disadvantage vis-a-vis his or her opponent.

The bill provides the Victorian Inspectorate with the ability to conduct investigations in order, amongst other things, to assess the conduct of IBAC and IBAC personnel (clause 9(2)(d)). At the conclusion of such an investigation, the Victorian Inspectorate is able to express an opinion, and to include such an opinion in a public report. To that extent, the Victorian Inspectorate's functions share similarities with civil proceedings. However, it is my view that for the purposes of the charter act, the Victorian Inspectorate is not a 'tribunal', and its investigation functions do not constitute 'civil proceedings'. That is because some key features that are inherent to those concepts are not present, namely, that the Victorian Inspectorate is not capable of making any binding determination as to the parties' rights or liabilities; and that there are not two 'parties' involved in a contest over rights and liabilities.

Nonetheless, the bill contains procedural safeguards in relation to investigations and reports which do accord procedural fairness in line with the principles contained in section 24 of the charter act, including that:

> the Victorian Inspectorate must notify IBAC of a decision to investigate IBAC, unless that notice would prejudice the investigation (clause 30(2));
>
> if the Victorian Inspectorate intends to include in a report a comment or opinion which is adverse to IBAC or any IBAC personnel, it must first provide that person with a reasonable opportunity to respond to the material, and fairly set out that defence in its report (clauses 36(2) and 38(2));
>
> the Victorian Inspectorate is prohibited from including in a report a finding or opinion that would prejudice a criminal investigation or proceedings or an IBAC investigation, or that a person should be prosecuted for,

or has committed, is committing or is about to commit, a criminal or disciplinary offence (clauses 36(3)–(5) and 38(3)–(5)).

Investigations conducted by the Victorian Inspectorate must be conducted in private, and recommendations made by the Victorian Inspectorate which are not contained in a public report must be made in private. Whilst section 24 of the charter act states that all judgements or decisions made by a court or tribunal in a criminal or civil proceeding must be made public, it is my view that this requirement is not applicable to the Victorian Inspectorate's investigation processes.

Aside from the premise that the Victorian Inspectorate is not a tribunal and the procedures do not constitute 'civil proceedings' for the purposes of section 24, as discussed above, conducting the investigation in private may be a necessary protection. It will protect those subject to the investigation from reputational damage from untested allegations, or from the risk of future prejudice if the subject matter of the investigation does later form the basis of a civil, disciplinary or criminal proceeding.

The Victorian Inspectorate will be able to publish its conclusions in a public report which will provide the opportunity for public scrutiny if it is appropriate in the circumstances. The provisions are an appropriate balance between the right to a fair hearing and other relevant rights such as the right to privacy and reputation (discussed below). In this way, the bill protects the right to a fair hearing in relation to possible concurrent or future civil or criminal proceedings. Further protections for the right to a fair hearing for such concurrent or future hearings are provided by clauses 36(3)–(5) and 38(3)–(5) which prohibit the Victorian Inspectorate from reporting in a way that would prejudice a criminal investigation, criminal proceedings or an IBAC investigation, respectively.

It is also of note that both the Victorian Inspectorate and the Inspector will be a public authority for the purposes of the charter act, and will therefore be obliged to act in accordance with the rights set out in the charter act, and to take human rights into account in making decisions, unless a statutory provision or other law requires otherwise (section 38 of the charter act). The Victorian Inspectorate will therefore be obliged to take into account the right to a fair hearing wherever it may be applicable insofar as such matters are not already provided for by the bill or any other law.

Privacy and reputation (section 13 of the charter act)

Section 13(a) of the charter act provides that individuals have a right not to have their privacy unlawfully or arbitrarily interfered with. The right to privacy concerns a person's 'private sphere', which should be free from government intervention or excessive unsolicited intervention by other individuals. An interference with privacy will not be unlawful provided it is permitted by law, is certain, and is appropriately circumscribed. An interference will not be arbitrary provided that the restrictions on privacy are reasonable in the particular circumstances and are in accordance with the provisions, aims and objectives of the charter act.

Section 13(b) provides that individuals have the right not to have their reputation unlawfully attacked. The expression 'unlawfully attacked' is not defined in the charter, but could mean a public attack involving untrue statements that are intended to harm the reputation of a person.

Clauses 22 and 26 of the bill enhance the right to privacy by requiring the Inspector and staff and consultants of the Victorian Inspectorate, respectively, to take an oath or affirmation that (amongst other things) he or she will not disclose, except as authorised by law, any information received in the performance of the functions or the exercise of the powers of the office.

In addition, if the Victorian Inspectorate makes a recommendation to IBAC that disciplinary action be taken against a member of IBAC personnel, that recommendation must be made in private (clause 35(1)).

Regulation-making power

Clause 42 allows the Governor in Council to make regulations to prescribe matters in relation to security checks for Victorian Inspectorate officers. It further allows for the making of regulations setting requirements for the disclosure and reporting of pecuniary interests by those officers, and for the compilation, maintenance and publication of registers of pecuniary interests of such persons. It also provides that such regulations may provide for the information collected pursuant to this clause to be included by the Victorian Inspectorate in its annual report.

Such regulations have the potential to require Victorian Inspectorate officers to disclose personal information. For example, regulations to enable security checks could require an officer to disclose personal or sensitive information to ensure that the officer or consultant is a fit and proper person to hold a position within the Victorian Inspectorate.

Any requirement that officers disclose personal information will be clearly linked to the purpose of conducting security checks to ensure the probity of officers appointed to the Victorian Inspectorate. As an additional protection, the Victorian Inspectorate, as a body established or appointed for a public purpose by or under an act, will be subject to the Information Privacy Act 2000 and will be required to hold any personal or sensitive information obtained securely and in accordance with that act.

In addition, Victorian Inspectorate officers may be required to disclose pecuniary information which could then be made publicly available on a register of pecuniary interests and by publication in the Victorian Inspectorate's annual report.

The requirement that officers disclose pecuniary interests is important in order to maintain the integrity of the Victorian Inspectorate and for its officers to avoid conflicts of interest or perceived conflict of interest. In many cases, that information will already be publicly available (for example, on registers of shareholder interests) and so will only engage the right to privacy in limited circumstances.

I consider that any interference with privacy occasioned by clause 42 will not be arbitrary, as the information which may be required of officers will be clearly linked to their fitness to undertake work within the Victorian Inspectorate, or alternatively will be necessary to determine if their private interests conflict with their public duties. For the reasons stated, I do not consider that clause 42 provides for the unlawful or arbitrary interference with privacy and there is therefore no limitation on the right to privacy under section 13 of the charter act.

Investigation powers

Under clause 32 of the bill, the Victorian Inspectorate in conducting an investigation has full and free access to the records of IBAC, and may require the IBAC Commissioner or other IBAC personnel to give the Victorian Inspectorate information, or to attend before the Victorian Inspectorate to answer questions or to produce documents. Clause 33 requires the IBAC Commissioner to give any assistance, and ensure that IBAC personnel give assistance, which the Victorian Inspectorate reasonably requires.

The powers of the Victorian Inspectorate to access documents and information of IBAC, and to require IBAC personnel to attend and answer questions or produce documents, will engage the right to privacy if personal or sensitive information is provided to the Victorian Inspectorate under these processes.

However, it is my view that this engagement of the right to privacy is not a limitation on the right and does not breach the charter. The purpose of the powers is to enable the Victorian Inspectorate to carry out its functions in relation to ensuring that IBAC is conducting its affairs in a lawful and appropriate manner. It is not the intent of the powers to enable the Victorian Inspectorate to access personal or sensitive information outside the scope of the investigation, although such information may be disclosed as a consequence of the powers. However, the application of the powers will be lawful and certain, applying in clearly articulated circumstances, and therefore not arbitrary.

The ability to seek information and the production of documents is an appropriate power for the role of the Victorian Inspectorate, and is comparable to other Victorian oversight bodies. Without such powers, the Victorian Inspectorate would not be properly equipped to achieve its objectives or undertake proper investigations. These powers will become even more crucial to the effectiveness of the Victorian Inspectorate when IBAC is provided with its own significant investigation powers, such as telecommunication interception powers, subject to commonwealth approval.

The Victorian Inspectorate's powers are appropriately circumscribed. The Victorian Inspectorate may only make use of or disclose information in accordance with its functions and powers under the bill. If the Victorian Inspectorate intends to, as a result of an investigation, make an adverse finding about IBAC or any IBAC personnel in a public report, it must first put that material to the relevant person/s, provide them an opportunity to respond, and set out their defence fairly in the report. Additionally, the Inspector and members of staff will be subject to requirements to keep any information obtained in the course of performing their functions confidential by virtue of:

> the oath which they will be required to take under clauses 22 and 26 (see above);
>
> the obligation on Victorian Inspectorate staff not to disclose information obtained in the course of their employment except in the course of the performance of their functions or the exercise of their powers in accordance with the law (clause 27);
>
> the fact that the Victorian Inspectorate will be subject to the Information Privacy Act 2000; and
>
> the confidentiality requirements that apply to staff of the Victorian Inspectorate by virtue of the relevant public sector code of conduct.

I consider that any interference with privacy occasioned by the Victorian Inspectorate's investigation and inquiry powers will be lawful, will not be arbitrary, and are appropriately circumscribed with the protections outlined above.

For the reasons stated, I do not consider that clause 32 of the bill provides for the unlawful or arbitrary interference with privacy and there is therefore no limitation on the right to privacy under section 13 of the charter act.

Reporting

Clause 36 enables the Victorian Inspectorate to make a special report to Parliament, including a report on the outcome of an investigation (clause 37).

Clause 38 requires the Victorian Inspectorate to make an annual report, including:

> details of IBAC's compliance with the bill and the IBAC act (subclause (1)(c));
>
> details of the comprehensiveness and adequacy of reports made to the Victorian Inspectorate by IBAC under this bill (subclause (1)(d));
>
> details of the extent to which action recommended by the Victorian Inspectorate to be taken by IBAC has been taken (subclause (1)(e)).

Reports made under clauses 36 and 38 could engage the right to reputation set out in section 13(b) of the charter act, because they could contain findings about IBAC officers which could impact on their personal or professional reputation. For example, the Victorian Inspectorate could make a finding that an IBAC officer had acted contrary to law, and report on that pursuant to clause 36, including a recommendation to IBAC that disciplinary action be taken. It could then report on IBAC's report back in relation to that recommendation in its annual report, in accordance with clause 38(1)(d).

However, a report made under clause 36 or 38 will be made in accordance with the law, and will therefore not be in breach of the charter act. The right to reputation is further protected by the requirement in clauses 36(2) and 38(2) that the Victorian Inspectorate provide any such adverse material to IBAC or relevant IBAC personnel prior to reporting, allow that person a reasonable opportunity to respond and fairly set out their defence in the report. In addition, the Victorian Inspectorate:

> may only conduct an investigation, including a hearing, in private;
>
> may only publicly report a recommendation that an IBAC officer be subject to disciplinary action if IBAC has failed to take appropriate action in relation to the recommendation (clause 35(1) and (2)).

The Victorian Inspectorate is prohibited from including in a report a finding or opinion that would prejudice a criminal investigation or proceedings or an IBAC investigation, or that a person should be prosecuted for, or has committed, is

committing or is about to commit, a criminal or disciplinary offence (clauses 36(3)–(5) and 38(3)–(5)).

Conclusion

For the reasons given in this statement, I consider that the bill is compatible with the Charter of Human Rights and Responsibilities Act 2006.

Richard Dalla-Riva, MLC
Minister for Employment and Industrial Relations
Minister for Manufacturing, Exports and Trade

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

This bill establishes the Victorian Inspectorate to oversee the Independent Broad-based Anti-corruption Commission (IBAC). The Victorian Inspectorate is a key feature of the government's integrity reforms that will ensure that IBAC is subject to robust oversight. The government has long been on the record about the importance of ensuring that bodies with significant powers are subject to appropriate scrutiny. Together with the joint house committee of Parliament established under the IBAC bill (the IBAC Parliamentary Committee), the Victorian Inspectorate will ensure that IBAC's use of its powers is both appropriate and proportionate.

An independent Inspector, which provides robust oversight, is a fundamental feature of anticorruption commission models across Australia. In developing the model for the Victorian Inspectorate, the government has drawn on interstate experience, as well as the extensive consultation conducted by a consultation panel led by the Honourable Stephen Charles, QC.

The need for robust oversight for bodies with significant powers was recently highlighted by the Ombudsman in his October 2011 report, *Investigation into the Office of Police Integrity's Handling of a Complaint*.

The Victorian Inspectorate will have broad-ranging functions to monitor the compliance of IBAC with its own act and other laws. In addition, the Victorian Inspectorate will have powers to investigate complaints, assess policies and procedures and make reports and recommendations. When IBAC is vested with investigation powers, a key role of the Victorian Inspectorate will be to oversee the use of those powers.

The Victorian Inspectorate has been created by a separate piece of legislation so as to be independent of the IBAC and to facilitate the inspectorate having a broader oversight role in the future. Initially, the Victorian Inspectorate will oversee IBAC and the Special Investigations Monitor (SIM) will continue to oversee the Office of Police Integrity (OPI). Once IBAC's investigation powers are operational it is intended that the Victorian Inspectorate will take over and build upon the SIM's powers — in addition to the inspectorate's IBAC oversight role — so that there will be a single body monitoring the use of special covert investigation and coercive powers by Victorian investigative agencies.

The government has recently introduced legislation to establish the office of the Public Interest Monitor to provide important checks and balances on the use of significant covert investigation and coercive powers in Victoria. It is critical that the Victorian community has full confidence that applications for, and the use of, covert investigation and coercive powers are subject to optimal safeguards and oversight. Together, the Public Interest Monitor, the Victorian Inspectorate and the IBAC Parliamentary Committee are designed to do just that.

This bill will enable an Inspector to be appointed, and to establish systems and processes for monitoring IBAC's investigation powers in readiness for when IBAC is vested with those powers.

The key aspects of the Victorian Inspectorate Bill 2011 are as follows:

Functions

The Victorian Inspectorate will:

monitor the compliance of IBAC and IBAC personnel with the law;

assess the effectiveness and appropriateness of IBAC's policies and procedures;

receive complaints about IBAC and investigate and assess the conduct of IBAC and IBAC personnel; and

make recommendations and reports.

This broad suite of functions will enable the Victorian Inspectorate to have oversight of the full range of IBAC's functions and operations, its internal policies and procedures, its adherence to its enabling legislation, the appropriateness of the conduct of IBAC staff in pursuing their functions, and IBAC's pursuit of its overall objectives.

The Victorian Inspectorate itself will be subject to oversight by the joint house committee — the IBAC committee.

The Inspector

The Victorian Inspectorate will be led by an Inspector, who will have responsibility for the strategic leadership of the organisation. The bill ensures the independence of the Inspector, establishing the role as an independent officer of Parliament not subject to the direction or control of the government.

The Inspector will be a person who is, was, or is qualified to be, a judge. He or she must not have held the role of Commissioner, acting commissioner, deputy commissioner or acting deputy commissioner of IBAC.

The Inspector will be appointed by the Governor in Council. Apart from the first appointment, the appointment of the Inspector will be subject to the approval of the IBAC committee, which will have a veto power. For the first appointment, the Premier will consult with the Leader of the Opposition.

Investigations

The Victorian Inspectorate will be able to investigate the conduct of IBAC and IBAC personnel, either in response to a complaint, or on its own motion. The Victorian Inspectorate will be provided with a broad jurisdiction to assess IBAC's exercise of its functions and powers, as well as powers to enable its investigations to be carried out effectively. The Victorian Inspectorate will have access to all the records of IBAC, and may investigate any aspect of IBAC's operations or conduct of IBAC personnel. IBAC will be required to provide all assistance to the Victorian Inspectorate that it reasonably requires. The jurisdiction is comparable to that of other independent oversight bodies including interstate inspectors, giving the Victorian public confidence that IBAC will be subject to effective and robust scrutiny.

The government intends to introduce further legislation that will provide the Victorian Inspectorate with functions and powers commensurate with the investigative powers intended for IBAC. This includes overseeing the use by IBAC of covert and coercive investigation tools, such as telecommunication interception warrants issued under the Telecommunications (Interception and Access) Act 1979 (cth). The government looks forward to further discussions with the commonwealth government to facilitate the Victorian Inspectorate being vested with access to material obtained under the commonwealth legislation.

Reports and recommendations

The Victorian Inspectorate will report to Parliament.

The Victorian Inspectorate will also be able to make recommendations to IBAC, either privately or through a written report to Parliament. The Victorian Inspectorate will be able to require IBAC to respond to its recommendations.

If necessary, the Victorian Inspectorate may recommend that further investigatory action be taken by another body such as Victoria Police.

The government will appoint an Inspector as expeditiously as possible. The establishment of the Victorian Inspectorate at the same time as the establishment of IBAC will enable the Victorian Inspectorate to monitor IBAC from the outset, and develop an integrated integrity model for Victoria with strong checks and balances from the start.

I commend this bill to the house.

Debate adjourned on motion of Hon. M. P. PAKULA (Western Metropolitan).

Debate adjourned until Thursday, 17 November.

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION BILL 2011 and VICTORIAN INSPECTORATE BILL 2011

Concurrent debate

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — By leave, I move:

That the second-reading debate on the Independent Broad-based Anti-corruption Commission Bill 2011 be taken concurrently with the second-reading debate on the Victorian Inspectorate Bill 2011.

Motion agreed to.

ADJOURNMENT

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I move:

That the house do now adjourn.

Government: appointment process

Mr LENDERS (Southern Metropolitan) — The matter I raise tonight is for the attention of the Premier. It goes to the fundamental issue of a ministerial code of conduct and when the Victorian community will have a clearer understanding of this government's so-called openness, transparency and probity. I asked a question today of Mr Hall about whether or not the Premier was in the chair in cabinet when his brother-in-law was appointed to the board of VicForests. Mr Hall would not answer my question, and I understand that was because presumably there is no code of conduct for ministers on this issue.

I draw attention to my reason for seeking an answer to my question as a matter of urgency. When the current government was in opposition, a mate of the then Premier — as he was described by the then opposition — Jim Reeves, was appointed to the Urban and Regional Development Authority, and there was a cacophony of claims about how inappropriate that was and that there needed to be more transparency. When James Cain, the son of a former Premier, was appointed to Major Projects Victoria there was a similar cacophony over how outrageous it was that he had been appointed because he was the son of a former Premier. What I am seeking from the Premier is a clear statement of what the issues are.

On the issue of the appointment of Jim Reeves no less than 12 members of the current cabinet got up in their

respective houses and waxed lyrical — as recorded in *Hansard* — about how terrible it was that he was appointed because he was a mate of the Premier. Among those 12 members was none other than the current Premier, Mr Baillieu, who — perhaps I need to get out more — on 135 occasions during a single speech on 20 March 2002 reflected on the inappropriateness of Mr Reeves having been appointed because he was a mate of former Premier Bracks.

The action I seek today from the Premier is a loud and clear statement of when it is appropriate to appoint not just a mate but a brother-in-law and when it is appropriate for a minister to answer in the house as to whether the Premier vacated the chair of cabinet when a family member was appointed to a certain position. I would particularly like him to clarify why it is okay for the Deputy Premier to take a Dorothy Dix question from the cabinet secretary and disclose that he abstained from a vote in cabinet because he had a personal interest but it is not acceptable for another minister to disclose whether the Premier vacated the chair when cabinet appointed his brother-in-law.

Footscray City Primary School: curriculums

Ms HARTLAND (Western Metropolitan) — My adjournment matter tonight is for the Minister for Higher Education and Skills on behalf of the Minister for Education. Footscray City Primary School is the only school in the western region of Victoria that offers the Steiner curriculum. This school community found out recently and abruptly that the government had decided to end the Steiner stream at the end of the year, with only seven weeks to go and without consultation.

This affects 280 children at Footscray City Primary School and their families. These students have already undertaken orientation for 2012. If the Steiner stream ceases, families in the western suburbs wishing to educate their children in the Steiner curriculum have no choice but to travel to Collingwood or beyond. Some families are from as far away as Werribee. Clearly that option would be logistically impossible for many. What choice do families have for their children's education?

A solution needs to be found to ensure that Steiner education remains an option open to families in the western suburbs. The process in relation to this issue to date has been very poor, and these families deserve better. Affected families deserve a hearing. Representatives of the school community have requested to meet with the minister. The action I ask of the minister is that he meet with school community representatives and together they find a solution so that families in the western suburbs can continue to educate their children in the curriculum of their choice.

Problem gambling: research

Mrs PEULICH (South Eastern Metropolitan) — The matter I raise is for the attention of the Minister for Gaming, Michael O'Brien. First of all, I would like to commend him for bringing forward the Victorian Responsible Gambling Foundation Bill 2011, which recently passed through this chamber and hopefully will see the establishment of an important flagship of the government's gaming policy and fulfil a promise made prior to the Victorian state election last year. Obviously the purpose of this body will be to tackle the prevention and treatment of problem gambling in Victoria.

I ask the minister whether he could take up with those in the Victorian Responsible Gambling Foundation — which is an Australian first — the issue of distinguishing between problem gamblers as a large pool or cohort and those who are addicted to gambling, who are compulsive gamblers. There is a difference, and that impacts on how programs are accessed in terms of waiting lists and so forth. Clearly people who are addicted or who suffer from a compulsion need prompter access than a problem gambler, whose gambling may have a much lower impact on their life or that of their family. To ensure that we can better target our programs, it is important for such research to occur.

I would also like to commend the minister on the current discussion paper on voluntary precommitment in Victoria, which is in stark contrast to the compulsory precommitment policy that has been fostered by the Gillard federal government. It is very important that vulnerable communities also have a say. Hopefully that sort of feedback can feed into not only our policy but also the Victorian Responsible Gambling Foundation to make sure that we have a whole suite of strategies, tactics and tools to address a very serious problem that not only impacts on the individual but has a much greater capacity to destroy families, relationships and lives including those of children. It often results in not only the breakdown of marriages and relationships but problems for children and also suicides.

It is really important, if we are serious about tackling addiction and compulsive gambling, that a further piece of research is undertaken to drill down to those who are in most need of the services and support that any government, and hopefully this coalition government, can offer.

Port Phillip Bay: beach renourishment

Mr JENNINGS (South Eastern Metropolitan) — I raise a matter for the Minister for Environment and Climate Change, and I will rely heavily on an article that appeared in the *Mordialloc Chelsea Leader* on 7 November. It relates to an issue of quite some concern about beach erosion. Members of this chamber, members of the community and people who live around the bayside areas would generally be aware of the significant churn in beach conditions across Port Phillip Bay. The sand movement throughout the course of the year is a bit like clockwork. In fact for half the year the sand migrates in a clockwise direction and for the other half of the year moves in an anticlockwise direction. That, combined with tidal variations and storm surges, has quite an impact on a number of beaches around the bay.

This is certainly the case in Mentone, the bay beach area that was referred to in an article in the *Mordialloc Chelsea Leader* this week. The article reports a prominent member of the local community, David Blanks, special projects manager for Mentone Life Saving Club, as drawing particular attention to this phenomenon and describing the beach cliffs at Beaumaris as under incessant attack for the reasons I have outlined to the house. The article indicates that he is concerned that, notwithstanding the beach renourishment works that have already been undertaken — sand was trucked there from Mordialloc Beach the last two years — a significant program is required. The article also describes Mr Mike Behnke, infrastructure and risk manager for the Department of Sustainability and Environment, as indicating that the area may be part of the beach renourishment program in the next 12 months or so.

I am not the only member of Parliament who is concerned about this matter. To his credit, Mr Thompson, the member for Sandringham in the other place, has drawn attention to this. He is said to have raised the matter with the environment minister to try to get a satisfactory result. The heading of the article 'Going, going, going…' may be a reference to me, because the minister Mr Thompson is said to have written to was me in my former role as Minister for Environment and Climate Change.

I assume that recent correspondence has been sent to the relevant minister, but in case it has not been, I demonstrate to Mr Thompson, Mr Ryan Smith, who is the Minister for Environment and Climate Change, and the local community that I am concerned about this matter by raising it for the minister's attention.

Coal seam gas: groundwater protection

Mr O'BRIEN (Western Victoria) — My adjournment matter is for the Minister for Agriculture and Food Security, who is also the Minister for Water. I know the minister will be aware of the growing issue in relation to the development of mining, in particular coal seam gas mining, in the eastern states of Australia. Victoria has a long history built on farming and the agricultural use of land, as well as a strong mining tradition. The coalition government will continue to work closely with both industries in our communities to protect the environment whilst delivering responsible and sustainable economic growth to benefit all Victorians.

One of the concerns of residents and land-holders stems from a fear that the development of mining in the eastern areas could contaminate or deplete underground aquifers. The minister has stated that if there is a risk to the supply and quality of Victoria's water, a proposal should not be approved to progress. I note there are currently no applications for coal seam gas production in Victoria.

I also note that on Wednesday this week — which is State Emergency Service Week, during which we honour the work of the VICSES — another series of severe storms lashed parts of my electorate and other parts of the state. I send my support — and I am sure all members do likewise — to the State Emergency Service and the communities that have been affected by yet another severe inundation.

In terms of aquifer issues in western Victoria, the Barwon Downs borefield, south of Colac, is an important aquifer that has been used several times as an alternative potable water source since its establishment 30 years ago. Used in conjunction with our water storages, it provides enormous flexibility during long dry periods. Equally importantly, it is a renewable resource that is replenished, or recharged, naturally.

Another important groundwater resource is the Dilwyn aquifer. This is a large underground water source which stretches across much of south-western Victoria and south-eastern South Australia and provides significant domestic stock resources. Further, Wannon Water extracts from the Dilwyn aquifer at Portland, Port Fairy, Heywood, Dartmoor and Port Campbell.

Groundwater is by far the world's largest source of fresh water. It is an estimated 400 times greater in volume than all the water in our lakes, reservoirs, streams and rivers. These hidden storages are increasingly seen as an alternative to surface water

supplies; indeed 1.5 billion people worldwide depend on groundwater for drinking. Because of its interrelationship with surface water, groundwater plays an important part in the environment, and accordingly it requires careful management, particularly in relation to the demands placed on it and the potential consequences. Also, because of its existence underground, it is often very hard to understand what is going on; within a short space of time you could have deep aquifers, perched aquifers and water resources at different levels.

At this point I should also mention that many farmers and other constituents in my electorate, including Mr Basil Ryan, have long advocated for a greater study of our groundwater potential in western Victoria and greater protection of these reserves as an asset that can facilitate proper settlement, which is one of the reasons these areas were first settled. It is in this period of flooding that we again appreciate that we have abundant water in western Victoria.

I ask the minister to advise the house on what action his departments are currently taking to assess our valuable groundwater reserves and aquifers.

Baiada Poultry: employment conditions

Ms PULFORD (Western Victoria) — My adjournment matter is for the attention of Minister Rich-Phillips in his capacity as the minister responsible for WorkCover. I have been provided with a statement made by the Vietnamese workforce at Baiada Poultry, Laverton, in which they have made very serious allegations. These workers are claiming that a particular manager at the company has undertaken a sustained and constant campaign of abuse and bullying over a number of years. Furthermore, the workers have indicated to me that they have raised their concerns with the manager in question and superiors on numerous occasions over a period of time, but management has failed to act.

In outlining their concerns, the workers paint a picture of a workplace where workers are given preferential treatment based upon their individual relationship with the manager in question. These relationships are built around a culture of bribes being paid for extra shifts and to ensure job security.

The PRESIDENT — Order! I need to establish that there are no legal proceedings associated with the matter that the member is raising and that there is no possibility of legal proceedings. I note that the member has not used names, and I appreciate that, but that individual cannot be identified by way of the member's contribution tonight in the event there are legal proceedings afoot. I am worried about the sub judice rule if there are legal proceedings, because the matters the member is raising are serious and would seem to me to constitute a possible legal case. I require that assurance, and if it is provided, I am happy for the member to continue on the same basis as she has proceeded thus far, as she has been judicious in phrasing her material. I need that assurance to allow the member to proceed.

Ms PULFORD — Yes, President, you have that assurance. I thank you for your advice on this matter.

There have been instances in this workplace of abusive and offensive language being used towards the workforce and of forcing workers who do not abide by extraordinary demands to take leave, sometimes without pay. This results in an environment where people are too scared to call in sick, as they are concerned that future shifts will be cut. There is a culture of distrust in the workplace and a great deal of rumour and innuendo, and there are accounts of verbal teasing, sexual gestures and suggestions of a sexual nature towards female employees. Even after more than 12 years in the union movement, the stories recounted to me about this workplace have left me shocked and stunned.

I ask the minister to seek urgent advice from WorkSafe about inspections, offences and claim data relating to Baiada Poultry and to provide this to me as well as take appropriate action in his role as the minister responsible for WorkCover.

The PRESIDENT — Order! I caution the minister that although Ms Pulford has sought that the information be provided to her, that might not be an appropriate course of action. I accept that the major request was for the minister to investigate this matter, and the minister will deal with that, but I would have thought it would be inappropriate for the findings of that investigation to be directed back to a member in this instance. I think it is more likely that proceedings would be initiated if some of the allegations that the member has mentioned are substantiated. I direct the minister not to give any undertaking to provide that information back to the member. It may well be that it is possible to report that action has been taken but obviously not to report the specifics of the matter because there are other issues afoot in relation to it.

Shire of Macedon Ranges: youth services

Mrs PETROVICH (Northern Victoria) — My adjournment matter is for the Minister for Youth

Affairs, and I rise to speak on the outstanding youth services in the Macedon Ranges shire and note that we look forward to further building on our solid base and outstanding work. The Youth Support program in Macedon Ranges shire is strong and includes its unique mental health training services, such as the Live4Life program that engages young people, teachers and families. The Live4Life program was recognised in the state government's showcase of programs focusing on youth initiatives in May this year.

Unfortunately the Loddon Mallee region is said to have doubled the rate of hospitalisation due to non-suicidal self-injury compared to the rest of Victoria. As I mentioned earlier, 120 13-year-olds in my electorate listed bullying as their most important issue, followed by peer pressure and family break-up. Where I live in the Macedon Ranges shire the Live4Life CyberLife pilot project is an excellent example of school and community partnership. It provides practical toolkits for parents, teachers and students from years 5 to 12 to enhance their interpersonal skills in an online context. It is the aim of the project to minimise the frequency and severity of cyberbullying incidents and to increase the resilience of those who may encounter them.

Recently our local paper noted year 8 students who acknowledged that they had learnt a lot from the Live4Life program and felt the students in their classes were more in synch with one another. Beyondblue's school education program SenseAbility, was piloted in five secondary colleges in Macedon Ranges shire for a national evaluation exercise.

It was under the Kennett government's Turning the Tide drug and alcohol strategy that the FReeZA program was established in Victoria in 1997. The FReeZA program is an innovative youth development program that provides opportunities for young Victorians to enjoy dance parties and other cultural, recreational and artistic activities in a smoke-free and well-supervised environment.

On behalf of my community I congratulate and thank the Macedon Ranges youth services team for its initiatives, passion, dedication and hard work and for knocking on my door when I first came into office.

I also congratulate the coalition government on its $400 000 support for the eisteddfod, which was announced by the Premier on 5 October. The boost to tourism and local businesses from competitors and families who travel throughout Victoria for these events is considerable. These grants ensure the viability of eisteddfods by assisting with the costs associated with the staging of these events. Investment in our youth is one of the very best investments any government can make, and I recommend that the Minister for Youth Affairs, Ryan Smith, take note of this exemplary work. I congratulate him on his initiatives and input in this area.

Information and communications technology: procurement process

Mr SOMYUREK (South Eastern Metropolitan) — I wish to raise a matter for the consideration of the Assistant Treasurer, Gordon Rich-Phillips. I refer the minister to the eServices panel and his recent so-called refresh process. I request that the minister explain why a number of very good Victorian ICT firms have missed out on the panel while 20 per cent of his newly refreshed panel are not available to take on work at the moment. In his press release of 31 October the minister claimed that the panel now has 368 suppliers, which is the largest number since its inception. However, this is misleading, because according to the website 72 of the suppliers are not available to take on work until further notice.

The ICT industry is painfully aware that the word 'refresh' is a euphemism for the botched tendering process. A number of outstanding Victorian ICT firms are currently providing services that are highly valued by Victorian government departments and agencies. Without flexibility regarding the mandatory provisions, those services will be denied to these agencies in the future and many fine Victorian ICT firms and professionals will be lost to New South Wales and Queensland in the process.

It is clear that this process is a sham, because Victorian ICT firms of excellence that are currently providing quality service to the Victorian government have been excluded, while 72 firms that are unavailable to actually do work have made it onto the panel.

Carbon tax: economic impact

Mr RAMSAY (Western Victoria) — The matter I raise tonight is for the Minister for Agriculture and Food Security, the Honourable Peter Walsh. Strangely enough, like my friend and colleague Mr O'Brien, I also wanted to raise an issue in relation to concerns that have been raised with me in relation to some exploratory work being done on coal seam gas. That aside, I would also like to seek advice from the minister about the possible impact the carbon tax legislation that was passed in the Senate this week will have on Victorian food producers and small businesses in the western region of Victoria.

I raise this matter not to debate a bill that is not being debated in this Parliament or to debate the ideology of reducing greenhouse gas emissions but to seek advice from the minister about the impact that the finetuning of the legislation will have on Victorian communities, including our farmers and small business owners, who will receive no compensation — and here I include accountants, fruit shop and milk bar owners and the like as well as the food processing industries that are dependent on electricity and are exposed with substantial increases in costs.

We know that farmers are exposed to indirect costs like power, fuel, fertilisers and freight costs, but the intensive industries will be hardest hit, given that electricity costs represent the greater proportion of business input costs. The Australian Farm Institute has estimated increases of $6000 to $7000 per year just in electricity, which equates to about 1 cent per litre, a $78 million tax to the industry or an increase of $14 000 per dairy farm in additional costs and/or a reduction of 25 per cent of operating profit.

The real sleeper issue here is that companies like Alcoa, which the opposition did not see fit to support in its request to extend its mining lease and which provides hundreds and hundreds of jobs — —

Hon. M. P. Pakula — We did so!

Mr RAMSAY — The opposition did not oppose it and did not support it.

Alcoa is a large philanthropic donor, but because of the costs of the carbon tax it will have to slowly withdraw funds it has donated to school programs like the Kids Foundation in Ballarat. With the passing of the 18 pieces of legislation under the Clean Energy Bill 2011, I ask the minister if he would join me and meet with the food producers and processors in my region, such as CRF foods, Midfield meat, Regal ice-cream, Happy Hens, Bartter's and Hardwicks, to name a few, and discuss how these companies can cushion the impact of this tax while continuing to remain export competitive with countries that have no carbon tax regime.

Rail: Clayton level crossing

Mr TARLAMIS (South Eastern Metropolitan) — Tonight I rise to raise a matter for the attention of the Minister for Transport. The action I seek is an urgent solution to the problem of the Clayton level crossing. This level crossing is in urgent need of a solution, as those opposite know all too well.

The Clayton level crossing is situated between the Monash Medical Centre and the Clayton shops on Clayton Road. This very busy road is a major thoroughfare. VicRoads figures show that about 22 000 cars use the crossing each day, with drivers and pedestrians spending 30 minutes out of every hour waiting for boom gates to be lifted during the morning peak hours. Last month Victoria Police labelled the crossing one of Melbourne's most notorious level crossings. The Department of Transport ranks the Clayton Road level crossing seventh on its level crossing priority list; it is one of Melbourne's busiest and most dangerous level crossings.

Apart from the frustration experienced by commuters with long waits at all times of the day, there is a serious issue with the crossing and its location. It is less than 1 kilometre from the Monash Medical Centre. In reference to the crossing, the Ambulance Employees Association of Victoria state secretary, Steve McGhie, recently stated in the *Waverley Leader* that, 'There's no question that if there's a life-threatening situation, avoiding a delay could be important to ensuring a good outcome'. Ambulance paramedics who experience lengthy delays in transporting critically injured patients to hospital are often forced to get around gates by driving through the intersection when the bells are sounding, the boom gates are down and the lights are flashing. For critical patients, this level crossing is a critical issue.

It is of such a concern that one of my Liberal parliamentary colleagues, Inga Peulich, raised the matter in this place when she was a member of the opposition. She even suggested that the government of the day ignore the advice of public servants and look at solutions contained in a detailed study undertaken by a student of transport, which, she said, and I quote directly from *Hansard*:

> … looked at some cheaper options for resolving those issues; I think it is worth having another look …

Currently, however, these cheaper options are not being considered by the government for the Clayton level crossing, nor are any options. The Clayton level crossing is left out of the list of the 13 grade separations at crossings announced by the government. Many of them are not to be completed during this term of government but are apparently being planned. The level crossing in Brighton, which is ranked no. 223 by the Department of Transport, and that in Polwarth — yes, Polwarth, the minister's own electorate — which is ranked no. 394, are priorities for this government, but the Clayton crossing is not a priority. It is ranked no. 7.

I therefore call on the Minister for Transport to take urgent action in relation to the Clayton level crossing, and I look forward to my colleague Mrs Peulich joining me in continuing to lobby for this outcome.

Gas: Wandong-Heathcote Junction supply

Ms BROAD (Northern Victoria) — I refer Mr Baillieu, the Premier, to his own words that were used prior to the last state election during a visit to Wandong. They were words that he circulated on a handbill in the communities of Wandong and Heathcote Junction which stated that a Baillieu government would:

> … ensure delivery of natural gas to Wandong-Heathcote Junction through the coalition's announced Energy for the Regions program if elected …

The action I seek from the Premier is that he live up to his own words and deliver natural gas to the people of Wandong-Heathcote Junction, because a promise is a promise.

Since the state election, residents of Wandong-Heathcote Junction have been left in the cold and in the dark in relation to the delivery of Mr Baillieu's promise. As matters stand, there are no funds in the state budget for the project. The Deputy Premier, Mr Ryan, has released a list of towns to be connected to natural gas, and Wandong-Heathcote Junction is nowhere on that list.

The local Liberal MP, Ms McLeish, the member for Seymour in the Assembly, has told the *North Central Review* that she is not able to provide a time line because one does not exist. Residents of Wandong-Heathcote Junction are most insulted by Ms McLeish's statements in the *North Central Review* about a tender process involving private gas companies. Residents know all about private tender processes because the Liberal Party criticised the former Labor government's tender processes for natural gas up hill and down dale prior to the last election. Yet now the Liberal Party is telling residents that a connection to natural gas depends on a tender process. Last week Jacinta Allan, the member for Bendigo East in the Assembly, and I met with local residents in Wandong, and they were understandably upset that the Premier is not delivering on his promise.

Residents who have been chopping wood for decades, who are not getting any younger, who cannot afford $150 a week for bottled gas and who are worried about exploding gas bottles in bushfires are not taking this lying down. They deserve an answer from Mr Baillieu on when he expects to deliver on his promise of providing natural gas to the people of Wandong-Heathcote Junction.

Rail: Williamstown North level crossing

Hon. M. P. PAKULA (Western Metropolitan) — The matter I raise is for the attention of the Minister for Public Transport and concerns the Williamstown North railway station pedestrian crossing — —

Mr Finn — Which you have never been to.

Hon. M. P. PAKULA — That is completely untrue, Mr Finn.

Mr Finn interjected.

Hon. M. P. PAKULA — Mr Finn! I have received a piece of correspondence from Mr Bill Jaboor, the chief executive officer of Hobsons Bay City Council. He has indicated that at a recent meeting the council resolved to write to the Victorian Rail Crossing Safety Steering Committee requesting the provision of funds for VicTrack to undertake the immediate installation of automatic safety gates at the pedestrian crossing on the north side of the railway crossing on Kororoit Creek Road near the Williamstown North railway station.

The catalyst for that was a recent accident involving a train and some cyclists. I am aware that the council has written to Tom Sargent, the chair of the Victorian Railway Crossing Safety Steering Committee, who is a very good man, and has in effect requested that Mr Sargant request the steering committee to give serious consideration to the pedestrian crossing on the north side of the crossing at Williamstown North station.

The action I seek from the minister is simple: I ask that he and his department give serious consideration to this request from Hobsons Bay City Council. It is important that that work be carried out at Williamstown North, so I ask him to give that serious consideration and provide me with any answer that he can about the outcome of that consideration.

Responses

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I have responses to three matters raised on the adjournment.

Mr Lenders raised a matter for the attention of the Premier with respect to the ministerial code of conduct. I will pass that matter on to the Premier, but in doing so I will make a couple of points because Mr Lenders seems to have forgotten his own words spoken in this

chamber when he was Leader of the Government. He would frequently stand up in this chamber and lecture members about his responsibility under his oath of office as a minister and under his oath of office as an executive councillor, yet now he seemingly expects Minister Hall, for some reason, to breach his oaths in order to provide information to Mr Lenders. I think we have a double standard here between what Mr Lenders used to do and what he now expects of ministers in this government.

Mr Lenders also raised the issue of the proposed appointment of Jim Reeves to the Urban and Regional Land Corporation a decade ago. I point out to Mr Lenders that the matters canvassed at that time, a decade ago, did not go to the question of whether someone was or was not in the cabinet room at the time that appointment was considered. As the inquiry by the select committee of this Legislative Council reported, it went to the issue of corruption of a process leading to the selection of a candidate.

The third point I make on the matter raised by Mr Lenders when he referred in question time to the appointment to that board of Mr Stoney, a former member of this place, is about the criteria by which Mr Stoney qualified for that job. There would be few members in this place with more experience, and I note that the person Mr Stoney replaces on that board is none other than one Monica Gould, a former member of this place, who has vastly less knowledge and experience of the forestry industry than Mr Stoney, who is replacing her.

The next matter was raised by Ms Hartland for the attention of the Minister for Education with respect to Footscray City Primary School and the Steiner program at that school. I will pass that on to the Minister for Education.

Mrs Peulich raised a matter for the Minister for Gaming with respect to the Victorian Responsible Gambling Foundation and requested that the foundation and the minister work to develop a suite of programs to address different intensities of problem gambling. I will pass that on to the minister.

Mr Jennings raised a matter for the Minister for Environment and Climate Change with respect to beach erosion in Mordialloc. I will pass that matter on to the current minister.

Mr O'Brien raised a matter for the attention of the Minister for Agriculture and Food Security with respect to coal seam gas extraction and the need for the minister to assess its impact on aquifers and groundwater in the western region.

Ms Pulford raised a matter for my attention in my role as minister responsible for WorkSafe Victoria. She spoke about a workplace where a number of allegations have been made around bullying matters and sought that I provide her with information about that particular workplace, its claims history and so forth. I say to Ms Pulford that it would not be an appropriate response for me to provide that information to her, but I will undertake that if she can provide me with details of the matters that have been raised with her, I will pursue them with WorkSafe Victoria.

Mrs Petrovich raised a matter for the attention of the Minister for Youth Affairs with respect to the Live4Life program in Macedon Ranges and how effective it has been for young people. She asked that the Minister for Youth Affairs be cognisant of the achievements of that program and its possible application elsewhere.

Mr Somyurek raised a matter for me in my role as Assistant Treasurer with respect to the e-services panel. Mr Somyurek seems to be the only one complaining about the e-services panel refresh. This refresh has put into the e-services panel a record 368 suppliers. This is the largest ever e-services panel in Victoria, with 180 additional firms added as a consequence of the refresh, including around 250 new categories of suppliers. We have the largest ever panel providing services to government. More than half of the panel are Australian SMEs (small and medium businesses), and the vast majority of those are Victorian SMEs. The panel provides a great opportunity for Victorian and Australian suppliers to contract for government, and it provides a depth and breadth of capability to government in order to ensure that we obtain best value for money through the procurement that the government undertakes in e-services.

Mr Ramsay raised a matter for the Minister for Agriculture and Food Security with respect to the impact of the carbon tax legislation on Victorian communities, particularly agricultural communities, and the broader impacts of that legislation and changes to that legislation. I will pass that on to the Minister for Agriculture and Food Security.

Mr Tarlamis raised a matter for the attention of the Minister for Public Transport with respect to a Clayton level crossing upgrade. I am very pleased that Mr Tarlamis is advocating for his electorate on these matters. If he had been in previous parliaments, he could have advocated to the previous government when

it had 11 years to do something about this matter but did not. Mr Tarlamis noted that Mrs Peulich has advocated on the matter of this Clayton level crossing, and I am sure that Mrs Peulich continues to advocate directly to the Minister for Public Transport, as she is a good representative of the electorate. But I will pass that matter on to the Minister for Public Transport.

Ms Broad raised a matter for the Premier with respect to Wandong and Heathcote Junction and the connection of natural gas. I will pass that on to the Premier.

Mr Pakula raised a matter for the Minister for Public Transport with respect to a pedestrian crossing at Williamstown North railway station. I will pass that on to the Minister for Public Transport.

The PRESIDENT — Order! The house stands adjourned.

House adjourned 6.57 p.m. until Tuesday, 22 November.