PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SEVENTH PARLIAMENT

FIRST SESSION

Thursday, 13 October 2011

(Extract from book 14)

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

By authority of the Victorian Government Printer

The Governor

The Honourable ALEX CHERNOV, AO, QC

The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

The ministry

Premier and Minister for the Arts	The Hon. E. N. Baillieu, MP
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
Treasurer	The Hon. K. A. Wells, MP
Minister for Innovation, Services and Small Business, and Minister for Tourism and Major Events	The Hon. Louise Asher, MP
Attorney-General and Minister for Finance	The Hon. R. W. Clark, MP
Minister for Employment and Industrial Relations, and Minister for Manufacturing, Exports and Trade	The Hon. R. A. G. Dalla-Riva, MLC
Minister for Health and Minister for Ageing	The Hon. D. M. Davis, MLC
Minister for Sport and Recreation, and Minister for Veterans' Affairs	The Hon. H. F. Delahunty, MP
Minister for Education	The Hon. M. F. Dixon, MP
Minister for Planning	The Hon. M. J. Guy, MLC
Minister for Higher Education and Skills, and Minister responsible for the Teaching Profession	The Hon. P. R. Hall, MLC
Minister for Multicultural Affairs and Citizenship	The Hon. N. Kotsiras, MP
Minister for Housing, and Minister for Children and Early Childhood Development	The Hon. W. A. Lovell, MLC
Minister for Corrections, Minister for Crime Prevention and Minister responsible for the establishment of an anti-corruption commission	The Hon. A. J. McIntosh, MP
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
Minister for Gaming, Minister for Consumer Affairs, and Minister for Energy and Resources	The Hon. M. A. O'Brien, MP
Minister for Local Government and Minister for Aboriginal Affairs	The Hon. E. J. Powell, MP
Assistant Treasurer, Minister for Technology and Minister responsible for the Aviation Industry	The Hon. G. K. Rich-Phillips, MLC
Minister for Environment and Climate Change, and Minister for Youth Affairs	The Hon. R. Smith, MP
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

CONTENTS

THURSDAY, 13 OCTOBER 2011

Thursday, 13 October 2011

The PRESIDENT (Hon. B. N. Atkinson) took the chair at 9.33 a.m. and read the prayer.

COUNTY COURT OF VICTORIA

Report 2009–10

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) presented report by command of the Governor.

Laid on table.

MAGISTRATES COURT OF VICTORIA

Report 2010–11

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) presented report by command of the Governor.

Laid on table.

PAPERS

Laid on table by Clerk:

Ballarat Health Services — Report, 2010–11.

Budget Sector — Financial Report, 2010–11, incorporating Quarterly Financial Report No. 4 for the period ended 30 June 2011.

CenITex — Report, 2010–11.

Central Gippsland Health Service — Report, 2010–11.

Chinese Medicine Registration Board of Victoria — Minister's report of receipt of 2010–11 report.

Coronial Council of Victoria — Report, 2010–11.

Crown Land (Reserves) Act 1978 —

Minister's Order of 6 October 2011 giving approval to the granting of a lease at Torquay and Jan Juc Foreshore Reserve.

Minister's Order of 10 October 2011 giving approval to the granting of a lease at Torquay and Jan Juc Foreshore Reserve.

Dental Health Services Victoria — Report, 2010–11.

East Grampians Health Service — Report, 2010–11.

Eastern Health — Report, 2010–11.

Forensic Leave Panel — Report, 2010.

Gambling Regulation Act 2003 — Report of the Gambling and Lotteries Licence Review Panel to the Minister for Gaming in Relation to the Invitation to apply stage for the grant of the Monitoring Licence, October 2011.

Maldon Hospital — Minister's report of receipt of 2010–11 report.

Mildura Cemetery Trust — Minister's report of receipt of 2010–11 report.

Planning and Environment Act 1987 — Notices of Approval of the following amendments to planning schemes:

Ballarat Planning Scheme — Amendment C119.

Campaspe Planning Scheme — Amendment C90.

Greater Geelong Planning Scheme — Amendments C164, C184 and C241.

Greater Shepparton Planning Scheme — Amendments C116 and C157.

Moira Planning Scheme — Amendment C68.

Portland District Health — Report, 2010–11.

Seymour District Memorial Hospital — Report, 2010–11.

Southern Health — Report, 2010–11.

Special Investigations Monitor's Office — Report pursuant to section 126 of the Police Integrity Act 2008, section 105L of the Whistleblowers Protection Act 2001 and section 61 of the Major Crime (Investigative Powers) Act 2004, 2010–11.

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

Victorian Assisted Reproductive Treatment Authority — Minister's report of receipt of 2010–11 report.

Victorian Health Promotion Foundation — Report, 2010–11.

Victorian Institute of Forensic Medicine — Report, 2010–11.

Victorian Pharmacy Authority — Minister's report of receipt of 2010–11 report.

Western Health — Report, 2010–11.

The PRESIDENT — Order! I cannot anticipate whether it will, but if Mr Davis's motion relating to setting the proceedings for the next Wednesday of meeting succeeds today, I indicate to members that the intention to make a statement will be in the first sitting week in November. If the motion does not succeed, then it will obviously apply in the next sitting week and obviously Mr Davis's motion will also be open to amendment. That needs to be borne in mind.

Mr Lenders — On a point of order, President, the opposition has not been informed that it is the intention of the government to debate that motion today. It is on the notice paper, but there has been no indication to us that there is an intention to debate it. We assumed it

would be debated on the next sitting Tuesday. The information I seek from you, President, is: is it the government's intention to debate that motion today?

The PRESIDENT — Order! I am not sure whether the government intends to proceed with that motion today.

Hon. D. M. Davis — On the point of order, President, it would be logical to debate the motion today given that that would provide the greatest amount of flexibility in terms of the house being able to predict its destiny. Alternatively, it could be debated on the next Tuesday, but I would be very happy to discuss it with the Leader of the Opposition if he wishes.

BUSINESS OF THE HOUSE

Adjournment

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

> That the Council, at its rising, adjourn until Tuesday, 25 October 2011.

Motion agreed to.

MEMBERS STATEMENTS

Carbon tax: legislation

Mr SCHEFFER (Eastern Victoria) — I congratulate the House of Representatives on the passage of the clean energy legislation. I congratulate the federal Labor Party, the federal Greens and the federal Independent MPs on their hard work in the face of an unrelenting, incoherent and reckless opposition campaign. They say that prophets are not recognised in their own land, and I suggest to the house that Prime Minister Julia Gillard is one such prophet. In years to come the achievement of Australia's first woman Prime Minister will be seen with a clearer perspective and will be more celebrated than it is today. The US publication *Atlantic*, in naming Julia Gillard as one of its Brave Thinkers 2011, along with Barack Obama, Steve Jobs and some remarkable individuals who have risked their lives for their beliefs, has paid this country's Prime Minister a great tribute.

The clean energy legislation is momentous and will enable this country to make a serious contribution to the global effort to reduce greenhouse gas emissions and to boost Australia's productive carbon pricing potential. Most people agree that human-induced greenhouse gas emissions, in particular carbon dioxide, contribute to climate change that harms the environment and the economy. Putting a price on greenhouse gas emissions that accounts for the damage that these gases do when industry releases them into the air, free of charge, is the most economically efficient way to foster innovation.

Future generations will be deriving energy from different sources and using it in ways we cannot yet imagine, in great part because of the courage of this Australian Parliament and because of the leadership of Prime Minister Julia Gillard.

Taiwan: national day celebration

Mrs KRONBERG (Eastern Metropolitan) — On Monday, 10 October, Taiwan's Double Ten Day, the republic celebrated the anniversary of the overthrow of the repressive Qing Dynasty by Dr Sun Yat-Sen, who went on to found the Republic of China, the first republic in Asia. He pledged to make a strong and prosperous nation and to bring democracy to the peoples' lives, equitable distribution of wealth and education for all. The travails the republic endured included its resistance of Japan's brutal imperialistic ambitions over China for more than eight years.

During the immediate post-World War II period the Republic of China was a founding member of the United Nations and contributed to the drafting of the Universal Declaration of Human Rights. However, in 1949, when the Chinese mainland was lost to the communists, the government of the Republic of China relocated to Taiwan.

Many sacrifices have been made by the Republic of China's national heroes over the decades in order to bring about the democracy that the people enjoy today. Taiwan has been transformed by the liberalisation of its political landscape since martial law was ended in 1987. All seats in the Parliament were opened to elections in 1992, and direct elections for president were introduced in 1996. President Ma Ying-jeou of the Kuomintang was elected in 2008.

At this momentous time, a time for celebration of the century past, whilst poised on the threshold of a future golden decade and a second century, we congratulate Taiwan, a country based on the foundation of the Republic of China and social reform. I most especially wish to congratulate the outgoing Director-General of the Taipei Economic and Cultural Office — —

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

Police: Geelong

Ms TIERNEY (Western Victoria) — A month out from last year's state election the Premier was quoted in the *Geelong Advertiser* as having said:

> There's still very much a law and order issue in Geelong and there's a shortage of police … We need more of them in the street …

That was on 1 November last year. At a community safety forum in Geelong in 2007, as reported in the *Geelong Advertiser* of 14 September 2011, Mr Baillieu said:

> You would have to have your head in the sand not to know that Geelong needed more police …
>
> We identified a shortfall of over 70. We have committed to provide that.

It has been almost one full year and the Baillieu government has provided hardly any police. In fact we got only 2 allocated to the Geelong region out of the 70 promised.

Honourable members interjecting.

The PRESIDENT — Order! I will interrupt Ms Tierney for just a moment. I ask members on my right to have their committee meeting outside. If it is just dissipating or they are not going to have it at all, I do not see why it was necessary to intrude on Ms Tierney's contribution. Ms Tierney to continue; my apologies for that.

Ms TIERNEY — After almost a year of this government, the people of Victoria have become accustomed to the fact that the coalition blatantly misled Victorians to win government. We only need to ask the teachers, nurses, police officers and low-paid public sector workers to verify this. But what is very alarming is this government's lack of commitment to law and order and adequate police levels. The *Geelong Advertiser* recently revealed that five stations throughout the greater Geelong area could close on certain days because of staff shortages. Officers from stations in Lara and the Bellarine Peninsula have to fill holes at 24-hour stations like Geelong and Corio, leaving stations in Geelong not staffed. People in Geelong are demanding answers from this government as to why the situation has escalated to this point and where are the 70 new police officers — —

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

Rugby World Cup: Wallabies

Mrs PEULICH (South Eastern Metropolitan) — Following the Wallabies historic Rugby World Cup quarter final win against the Springboks on Sunday, Australian Rugby Union is calling on all Australians around the world to unite as one behind the Wallabies as they prepare to face their old enemy, the All Blacks, on Sunday in Auckland. It is also asking members of Parliament to wear something gold on Friday as a demonstration of that support and unity. I for one certainly wish the Wallabies all the very best of luck and look forward to their great success.

Narre Warren North Primary School: Victorian Premiers' Reading Challenge

Mrs PEULICH — I also wish to congratulate Victorian school communities on taking part in the very successful Victorian Premiers' Reading Challenge. Across Victoria more than 211 000 students from prep to year 10 registered for the challenge, and by the time the challenge finished those students had read 3.8 million books. I attended the Narre Warren North Primary School recently to present Victorian Premiers' Reading Challenge awards to 52 children who had successfully completed the challenge, with one young student reading more than 200 books. Obviously the enthusiasm and support of parents, teachers and librarians is in large part a significant contributor to their success, and I congratulate the principal, Connie vanderVoort, who continues to provide wonderful direction and leadership to Narre Warren North Primary School.

Career Education Association of Victoria

Mrs PEULICH — I congratulate the Career Education Association of Victoria. I had the pleasure of opening its new facility the other day. It provides a very important service to Victorian careers teachers, students and other stakeholders in helping young people choose pathways for the future.

Former government: achievements

Mr EIDEH (Western Metropolitan) — What do Sunshine Hospital, the latest developments at Debneys Park in Moonee Valley and the Royal Children's Hospital all have in common? They are just a few of the many projects initiated by the former Labor government that have recently been opened or will be opened by Liberal government ministers — projects these very ministers, or their colleagues, attacked when in opposition but to which they are now happy to see their names attached. They are projects which a proud

Labor government created and the then Liberal opposition did not support, but now it is in government it seeks to claim them as its own — and there are more.

I congratulate the then Minister for Health, now Leader of the Opposition in the Assembly, Daniel Andrews, and former Premier Brumby on the Royal Children's Hospital and the Sunshine Hospital. I thank former Minister Pike, the member for Melbourne in the Assembly, for her many years supporting the poorest community in her electorate, the latest example being the fantastic playground area at Debneys Park. I also thank the federal government and the City of Moonee Valley for their support for that project, and I wonder when this government will do more than simply increase the number of speed cameras or open upgraded railway crossings in conservative electorates.

Soccer: Strengthening the World Game program

Mr ELSBURY (Western Metropolitan) — For many people across the western suburbs soccer is not a game; it is a way of life.

Mr Somyurek — Football!

Mr ELSBURY — Football? Okay. We will beg to differ on that one. The enthusiasm and community feeling this sport can generate is unparalleled. I was pleased to hear that four local clubs have been successful in receiving support through the government's Strengthening the World Game program. Lighting improvements will be made to the venues for the St Albans Saints Soccer Club, Altona City Soccer Club and Pascoe Vale Soccer Club, and the Essendon United Soccer Club will upgrade its change rooms.

Extrusions Australia Pty Ltd: Truganina plant

Mr ELSBURY — I was pleased to join the Minister for Manufacturing, Exports and Trade, the Honourable Richard Dalla-Riva, at the opening of Extrusions Australia Pty Ltd's new $11.5 million plant at Truganina on 22 September. This business expansion will provide 50 new jobs for this great manufacturing region.

Point Cook: recycled water

Mr ELSBURY — On 4 October I joined the Minister for Water, the Honourable Peter Walsh, at the official opening of a recycled water main in Point Cook. When this project is complete in two years time, six of the City of Wyndham's sportsgrounds and six schools will utilise this fantastic recycled resource.

Rail: pedestrian safety

Mr ELSBURY — In light of the recent event at Ginifer station I take a moment to plead with anyone who chooses to cross a railway line at any time to be aware of their surroundings, to listen to the signals, to take notice of the barriers that come down in front of them and to not try to race in front of any sort of train, whether it be an express train or one that is pulling out of or into a station.

Manufacturing: Victorian Competition and Efficiency Commission report

Mr SOMYUREK (South Eastern Metropolitan) — I rise to condemn the Baillieu government for failing to publicly release the final report of the Victorian Competition and Efficiency Commission into Victoria's manufacturing sector. The first draft of the VCEC report contained some toxic recommendations which, if adopted, would drive a stake through the heart of the Victorian manufacturing sector. Despite the opposition's call to rule out adopting these recommendations, the government has consistently refused to do so, creating a great deal of anxiety for the state's 300 000 manufacturing employees and the proprietors of 25 000 Victorian manufacturing businesses.

There is no reason why the government should be sitting on this report. It is in the interests of the Victorian manufacturing industry and the interests of the public for the report to be released. Before the election the government promised to be open, accountable and transparent. Sitting on this report demonstrates that the government's claims on this have been pure rhetoric and nothing else.

Information and communications technology: national broadband network

Mr SOMYUREK — I condemn the Baillieu government for attempting to sabotage the national broadband network (NBN) project by refusing to adopt opt-out legislation. The rollout of the NBN will deliver Victorians high-speed broadband, be they home users or businesses. The NBN promises exciting opportunities for videoconferencing, health, education and business. It is vital in maintaining Victoria's lead in the information economy. Tasmania was the first state for the NBN rollout, and it introduced opt-out legislation. The Victorian opposition, then in government, committed to introducing opt-out legislation.

Grampian Pyrenees Business Awards

Mr O'BRIEN (Western Victoria) — Last Friday I had the great pleasure of attending the Grampians Pyrenees Business Awards on behalf of the Deputy Premier, the Honourable Peter Ryan. These awards are held every two years, and Halls Gap was chosen as the venue for this year's dinner due to the economic and environmental impact of last year's September floods. The road from Dunkeld was recently reopened, so I encourage members to visit Halls Gap during springtime and help that community recover from the numerous events it has had to deal with.

I congratulate all the award winners, especially Waack's Bakery, which has outlets in Horsham, Stawell and Ararat. This is a true family business which emphasises the value of training its staff, with over 50 per cent of employees undergoing post-secondary training. I also congratulate Halls Gap regional zoo, which was the winner of two awards, being the outstanding product or service and making an outstanding contribution to tourism.

The business awards showcase the diversity of the Western Victoria Region and the established and new businesses spread throughout the Grampians and Pyrenees. Businesses nominated included an online stationery business based in Ararat, Australian Soy Candles, which was successful in the home-based business category, and Lake Bolac Eel Festival, which won the outstanding festival of the year.

I would also like to say that the host, the Northern Grampians Shire Council, particularly CEO Justine Linley and the mayor Ray Hewitt, did an excellent job. I encourage and thank Powercor for its continued sponsorship of the business awards.

Kelly Symons

Mr O'BRIEN — On a sad note I would like to pay tribute to Kelly Symons of Madigans Tea Room at Penshurst, who tragically passed away last weekend. She was a significant contributor to that town and will be sadly missed by her family and friends.

Carbon tax: economic impact

Mr BARBER (Northern Metropolitan) — I read overnight that Tony Abbott has declared that the 2013 federal election will be a referendum on climate change, and inevitably if he were to win that election we would get a double dissolution election in 2015, and I would say almost inevitably the 2014 state election would be drawn into that as well. If we are going to have three elections in three years, all of them being referendums on climate change policy, all I can say about that is, 'Thank you, thank you, thank you'.

To be a climate change denier requires an enormous mental effort, and therefore you suddenly find yourself denying certain other inconvenient facts — for example, that carbon pricing will have minimal impact on the vast majority of consumer goods, almost unnoticeable; that homes and businesses are already taking action to net out the effect of any increased price on their power bills; and that thousands of Victorians already have jobs that are directly supported by carbon pricing. By the time these elections come around, there will be thousands more and there will be three referendums in three years on the coalition's destructive anti-climate policies.

Noble Park Community Participation Awards

Mr TARLAMIS (South Eastern Metropolitan) — On 8 October I attended the Noble Park Community Participation Awards gala dinner dance held at the Noble Park RSL where five awards were presented to dedicated community volunteers for their outstanding contribution to the community. I was extremely humbled and honoured to join the City of Greater Dandenong mayor, Roz Blades, to present the awards.

The Rotary Club of Noble Park was the worthy recipient of the community award, for its leadership, support, advice and assistance to the local community. Brian Duggan received the sporting achievement award for his contribution to sport and recreation in the community through his work with young people, facilitating their participation in sport and recreation and providing outstanding leadership and mentoring. Steve Allender and Andrew Kampl were presented with the youth services award for their efforts in providing encouragement and education for up-and-coming youth leaders and ensuring they remain connected and engaged with their community in a meaningful way through active participation and engagement in community life.

The cultural and service award was befittingly awarded to Iris and Colin Robinson for their tireless efforts in promoting cultural endeavours, not only in the local Noble Park community but to a wider cultural audience, not to mention Colin's activities as town crier. And finally, the foundation award was awarded to Lyn Murray for her selfless dedication and lifetime commitment to building on the Struggle Town ethos on which Noble Park was founded.

I would like to make special mention of the members of the award judging panel — Jim Laidlaw, Helen Smith, Alf Goldburg, Roz Blades, Gaye Guest and John Meehan — for their efforts in selecting the award recipients from a large field of worthy candidates.

Finally, I would like to acknowledge the Noble Park RSL for its ongoing support of this and many other community activities and Gaye Guest for all her efforts in making this event the success that it was.

Newbridge: recreation facilities

Mr DRUM (Northern Victoria) — As many people would know, the small town of Newbridge in central Victoria was badly hit by the floods in February of this year. Part of the damage to the Newbridge community was that the recreation reserve was just about totalled. The clubrooms, which were used by the football club, the netball club and the cricketers, as well as the separate shedding that was used by the tennis club, were effectively destroyed.

It has been a long and hard-fought process to assess the damage and to get the insurance cleared up. All of a sudden this week the locals have been very happy to acknowledge that the full-scale demolition and clean-up is now under way. The local government, the Loddon shire, has been working very closely with the Baillieu government and the community in this process. I must acknowledge Ron Trimble, president of the Newbridge Football Club, and also Hedley Price, chairman of the recreation reserve.

The damage to the recreation reserve affected not only the sporting clubs in Newbridge but also the thousands of campers who descend on the recreation reserve at Christmas time and especially around Easter. It is a very popular spot, and hopefully with the new facility the Newbridge community will be able to go forward into the future.

Australian Labor Party: same-sex marriage policy

Hon. M. P. PAKULA (Western Metropolitan) — I rise to add my voice to that of the Victorian branch of my party regarding same-sex marriage. Anyone who has been married for any length of time will agree that marriage is a difficult compact. It is full of ups and downs, trials and tribulations and moments of great joy. It is not entered into lightly and not everyone succeeds at it, even with the best of intentions. If a gay couple wants to take that leap and make that commitment, I do not believe it is my right, the government's right or anybody else's right to tell them that they cannot. I know that many disagree, including many honourable members — some in my own party — but gay Australians are our friends, our neighbours and our work colleagues. They are in the army and the judiciary and the parliaments, and if they want to commit to each other for life, it is nobody's business but theirs. And for those who say we should focus more on other issues, I say resolve this one then. Ignoring it in the hope that it will go away is not going to work. Gay couples are living together right now, committing to each other right now, and I do not think it is too much for them to ask that they be allowed to call it the same thing that everybody else calls it: marriage.

Hospitals: bed numbers

Ms MIKAKOS (Northern Metropolitan) — This year's state budget was a failed opportunity for the Premier to explain to Victorians his vision of how he will invest in our hospitals, schools, transport and other important services. While in opposition the Premier spoke about growth and demand into the future and how this would place more pressure on health services and hospitals. He went so far as to say that this 'required real action now instead of talk and empty promises'. However, all that the Premier has delivered is talk and empty promises.

The Minister for Health, David Davis, also had a lot to say during last year's election campaign about the Baillieu government's commitment to delivering 800 hospital beds in its first term of government and 100 new beds this year, but now that the Baillieu government is in office it remains tight-lipped about just when and where these beds will be delivered.

The Australian Nursing Federation has raised concerns about hospitals closing beds only to reopen them down the track as new. Mr Davis has even suggested that these new beds may include patients receiving treatment at home rather than in hospital.

The Austin Hospital and the Northern Hospital are both situated in growth corridors and will need to expand in the future. News reports last week about the struggling emergency department at the Austin Hospital have highlighted the urgent need for more resources, and true to the Baillieu government's form, 37 of the Austin Hospital's maintenance crew workers were sacked last week as these jobs were outsourced to private contractors. Inadequate funding in this year's budget to service the growing needs of Victorian patients with no plan for Victorian workers is what we have come to expect from this government. A leopard never changes its spots.

CHILDREN'S SERVICES AMENDMENT BILL 2011

Introduction and first reading

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) introduced a bill for an act to amend the Children's Services Act 1996, the Education and Care Services National Law Act 2010, to make consequential amendments to other acts and for other purposes.

Read first time; by leave, ordered to be read second time forthwith.

Statement of compatibility

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) 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 Children's Services Amendment Bill 2011.

In my opinion, the Children's Services 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 Children's Services Amendment Bill 2011 makes various amendments to the Children's Services Act 1996 (the act) and the Education and Care Services National Law Act 2010 (the national law) that are necessary in preparation for the commencement of the national law. The act is being retained as certain children's services in Victoria will be outside the scope of the national law, and so will continue to be regulated under the Victorian children's services legislation.

The amendments in this bill ensure that children's services that are required to operate under the national law are not subject to two regulatory regimes (state and national), and clarify the relationship between the national law and the Victorian act.

Human rights issues

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

Various clauses within the bill amend sections of the act to add 'approved associated children's services' into the list of entities to which the sections apply. An 'approved associated children's service' is a service that provides children's services of a kind that will not be regulated under the national law. These services are called 'associated children's services' because they are linked with other education and care services.

All services in Victoria which will fall within the definition of 'approved associated children's services' are currently regulated under the Victorian act. When the national law commences, education and care services will be regulated by the national law; however, approved associated children's services will not. The amendments contained in this bill clarify the fact that certain services that are linked with (and operate out of the same premises as) education and care services that will be covered by the national law will still be subject to the Victorian act.

I note that several sections of the act that will be amended in this way in themselves engage charter rights. These include sections 36, 38 and 42A of the act, amended by clauses 42, 45 and 46, which provide for search, questioning, and information-gathering powers. However, as the amendments contained in this bill will not substantively affect the operation of those sections, nor result in the application of those sections to new bodies not currently covered by the act, I consider that it is unnecessary to assess those provisions for the purposes of this statement of compatibility. All the amendments do is clarify that the provisions they relate to will continue to apply to approved associated children's services.

Similarly, the schedule to the bill makes a number of consequential amendments to other acts which insert references to education and care services under the national law. These amendments do not expand the types of services that will be subject to provisions of the amended acts or change the operation of the amended provisions; rather, the amendments simply reflect a change in terminology to describe those services that is necessitated by the introduction of the national law. I have therefore not considered the amended provisions for the purposes of this statement of compatibility.

Where new clauses are inserted or substituted, however, or where an amendment changes the way in which a provision operates, I have assessed those amendments against the charter act. I discuss these provisions below.

Right to privacy

Section 13(a) of the charter act protects a person's right not to have his or her privacy, family, home or correspondence interfered with in a manner that is unlawful or arbitrary.

Clause 43 of the bill engages the right to privacy by replacing section 36A of the act with a new provision. New section 36A, like the existing provision, enables authorised officers to require certain persons to provide relevant information, answer questions or produce documents. The new clause also ensures that the provision will apply to associated children's services.

Most of the information obtained under the new section 36A is likely to be public rather than private in nature. To the extent that clause 43 will involve an interference with privacy, home or correspondence, such interference is lawful and is not arbitrary. The powers are clearly set out under the act, are necessary to monitor compliance with the act, and are limited to that purpose. I therefore consider this provision is compatible with the right to privacy under section 13(a) of the charter act.

Clause 53 of the bill also engages the right to privacy. Clause 53 replaces section 53B(1) of the act with a new

section which provides that the secretary may publish certain information regarding a children's service, including information about the name of the licensee or approved provider, the performance of the service in complying with its obligations under the act, and actions taken as a result of actions taken under the act in respect of the service.

Not all information dealt with under new section 53B(1) will be of a private nature. However, to the extent that the provision does relate to private information, any interference with the right to privacy will be neither unlawful nor arbitrary. The type of information that may be published is clearly specified, and the publication of that information serves the necessary purpose of ensuring that parents and other members of the public are able to make informed decisions regarding the provision of education and care services to their children. I therefore consider this provision is compatible with the right to privacy under section 13(a) of the charter act.

New section 25X, inserted by clause 29, also engages the right to privacy by providing that division 3 of part 3 of the act applies to applications to the secretary for an approval of new nominees and primary nominees. These applications concern approval of persons who will have management and control (or primary responsibility for the management and control) of an approved associated children's service in the absence of the approved provider. The application of division 3 of part 3 requires the secretary to determine if the person who is the subject of the application is a 'fit and proper person'. For the purpose of that determination, section 24 enables the secretary to require the person to submit to tests, provide references and reports, submit to medical and psychiatric examinations, and to provide results or reports arising from the examination.

This provision constitutes a prima facie interference with the person's right to privacy. However, in my view the interference is neither unlawful nor arbitrary. It applies only to persons who voluntarily seek to be approved under the regulatory regime, and it is necessary to enable the secretary to determine whether the person is an appropriate person to have responsibility for the management and control of an approved associated children's service. It serves the important purpose of providing children with such protection as is in their best interests, which is a right protected under section 17(2) of the charter act. For these reasons, I consider that new section 25X is compatible with the right to privacy under section 13(a) of the charter act.

Right against self-incrimination

Section 25(2)(k) of the charter act provides that a person charged with a criminal offence is entitled not to be compelled to testify against himself or herself or to confess guilt. This right has been held to apply to protect a charged person against the admission in subsequent criminal proceedings of incriminatory material obtained under compulsion, regardless of whether the information was obtained prior to or subsequent to the charge being laid.

Section 42A of the act engages this right by authorising the secretary to require that certain persons connected with children's services provide information or documents or give evidence before the secretary. Pursuant to subsection 42A(4), a person is not excused from producing the information, document, or evidence on the grounds that it may tend to incriminate the person. Under subsection 42A(5), a direct use immunity is granted to ensure that any answers or information provided in compliance with section 42A are not admissible in evidence against that person in any subsequent criminal proceedings.

Subclause 46(4) strengthens section 42A's compliance with section 25(2)(k) of the charter act by inserting a derivative use immunity in addition to the existing direct use immunity. The effect of the amendment is that any information obtained directly or indirectly because of an answer given or information provided by a person under section 42A cannot be used against that person in any criminal proceedings. This ensures that section 42A is fully compliant with the right against self-incrimination in section 25(2)(k) of the charter.

2. Consideration of reasonable limitations — section 7(2) of the charter act

Presumption of innocence

Section 25(1) 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 8(1) of the act provides that it is an offence to publish or cause to be published an advertisement for a children's service unless the children's service is licensed or approved under the act. Clause 7(2) of the bill substitutes section 8(1) of the act to enable the advertising of a service that is an 'approved associated children's service'.

Section 8(2) provides that it is a defence to a charge under subsection (1) if the accused proves that he or she took reasonable steps or exercised due diligence to determine that the children's service was licensed or approved under the act. Clause 7(3) extends this provision so that it is also a defence to a charge under subsection (1) if the accused proves that he or she took reasonable steps or exercised due diligence to determine that 'a service approval had been granted under the national law'.

Section 8, which is extended by clause 7 of the bill as described above, places a legal burden of proof on the accused. Whether a statutory presumption imposing a legal burden of proof is an unreasonable limitation on the right to be presumed innocent will depend on all the circumstances of a particular provision. This includes the nature of the matters to be proved by the accused, the seriousness of the offence and the punishment that may flow from a conviction. While the bill limits the right to be presumed innocent, I consider that the limitation is reasonable and demonstrably justified in accordance with section 7(2) of the charter act for the following reasons.

The risk that the provision may allow an innocent person to be convicted of the offence is low. The fact that the service is unlicensed and that it has been advertised by the accused must be proven by the prosecution, and if the accused has taken reasonable steps or exercised due diligence to ascertain that the service was licensed or approved, the defendant should be able to adduce evidence of those steps.

The elements of the offence and defence achieve an appropriate balance between the rights of the accused and the need to protect children in the care of children's services. The provisions support the legitimate objective of protecting the rights of children by ensuring that unlicensed or unapproved children's services are not advertised to the public, without disadvantaging persons who genuinely sought to ascertain

that the service was properly licensed or approved under the scheme.

An evidential onus is not a less restrictive alternative reasonably available to achieve the purpose of the provision. Once the prosecution has proved that the accused has advertised an unapproved or unlicensed children's service, the fact that the accused took reasonable steps or exercised due diligence to determine the status of the children's service is clearly within the knowledge of the accused and much more difficult for the prosecution to ascertain. It is more appropriate and reasonable for the accused to have to prove on the balance of probabilities that those steps were taken than it would be for the prosecution to prove beyond reasonable doubt that they were not. Taking into account the maximum penalty of 120 penalty units (which, currently, amounts to less than $15 000); the importance of what is at stake; and the extreme difficulty a prosecutor would face in establishing that the person had not taken reasonable steps or exercised due diligence in the absence of the presumption, I do not consider that the imposition of a legal burden goes beyond what is necessary and reasonable to achieve the purpose of the provision.

For these reasons, I consider that clause 7 of the bill is a reasonable limitation on the presumption of innocence in section 25(1) of the charter act.

Conclusion

In my view, for the reasons given above, the Children's Services Amendment Bill 2011 is compatible with the human rights protected by the charter act.

Wendy Lovell, MLC
Minister for Children and Early Childhood Development

Second reading

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — I move:

That the bill be now read a second time.

The Children's Services Act 1996 provides a robust and high-quality framework for the licensing and regulation of children's services in Victoria. The legislation is comprehensive in scope and outcome based in nature. The act seeks to rely on the use of principles to set standards for best practice, rather than seeking to depend upon detailed, prescriptive rules. This feature of the Children's Services Act 1996 has been widely recognised and has resulted in Victoria leading the development of the national law. Many of the substantive provisions in the Education and Care Services National Law 2010 are modelled on those contained within the Children's Services Act 1996.

Currently approximately 4100 children's services are licensed under the act. These services provide care or education for four or more children under the age of 13 years in the absence of their parents or guardians for a fee or reward, or while the parents are using the facilities or services provided by the proprietor of the service. Services provide a range of long day care, preschool (kindergarten), occasional care and outside school hours care children's services. Family day care services which provide a network of carers, each of whom provides care or education for up to seven children in their residences or approved venues, are also licensed.

In December 2009 the Council of Australian Governments agreed to a new National Quality Framework for early childhood education and care and outside school hours care services, replacing existing licensing and quality assurance processes. The new national law will regulate preschool (kindergarten), long day care, family day care and outside school hours care services in all Australian jurisdictions.

There are some services in Victoria that will fall outside the scope of the national law that will continue to be regulated under the Children's Services Act 1996 and Children's Services Regulations 2009.

These services (approximately 400 in number) include occasional care services, three-year-old activity groups, mobile services and early childhood intervention services. Most operate on an ad hoc, short-term or casual basis and consequently do not meet the conditions or the qualification requirements established under the national law.

The purpose of this bill is to modify the scope of services regulated under the Children's Services Act 1996 in response to these national reforms. The bill removes specific provisions relating to children's services that are governed by the national law, including preschool (kindergarten), long day care, occasional care, outside school hours care and family day care services. These amendments will ensure that children's services that are required to operate under the national law on 1 January 2012 are not also subject to the Victorian regulatory regime.

The bill will incorporate new provisions in the Children's Services Act 1996 to support providers who operate different service types at one location, where one type of service is regulated under the national law and the other operates under the Victorian children's services legislation; for example, a preschool (kindergarten) and an occasional care service at the same premises. These are known as 'associated children's services'.

Rather than having two separate service approvals, both service types can be subject to one service approval governed under the national law. However, all other aspects of the Victorian service will continue to be

regulated under the Victorian children's services legislation. These provisions clarify the relationship between the Victorian children's services legislation and national law, reduce regulatory burden and ensure that any unnecessary duplication is removed.

The bill will streamline requirements between the two systems. Educators who are assessed to be fit and proper under the national law will be automatically recognised as meeting the fitness and proprietary requirements under the Victorian children's services legislation. Similarly, educators who have been approved as certified supervisors and can be placed in day-to-day charge of a service under the national law will be recognised as undertaking corresponding functions as approved nominees under the Victorian children's services legislation. These amendments reduce duplication between the two systems and relieve the imposition of unnecessary regulatory burden.

Finally, the bill makes a number of technical and consequential amendments to the Children's Services Act 1996 and other relevant legislation to ensure accuracy and consistency of the reforms to the children's services sector.

The government is committed to ensuring that high-quality, safe, affordable services are available to children and their families. As the host to the national law, Victoria is proud of its significant contribution to the National Quality Framework which will ensure the same high-quality standards are met across Australia. This bill provides the mechanism to ensure that the Victorian children's services legislation will work in concert with the new national law to create a seamless transition to the new national system, without unnecessary duplication or an increase in the administrative burden.

I commend the bill to the house.

Debate adjourned on motion of Ms MIKAKOS (Northern Metropolitan).

Debate adjourned until Thursday, 27 October.

COMMERCIAL ARBITRATION BILL 2011

Second reading

Debate resumed from 15 September; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Hon. M. P. PAKULA (Western Metropolitan) — I am pleased to rise to speak on the Commercial Arbitration Bill 2011 and to indicate that the opposition will not be opposing the bill. This bill is a culmination of a process that commenced when the Standing Committee of Attorneys-General, colloquially known as SCAG, met — in fact it has been meeting for a number of years — in order to arrive at a uniform national commercial arbitration law. We had a briefing with the Department of Justice, and it was indicated to us that SCAG has been discussing this matter since the early 2000s in order to try to reach agreement on a model and that the agreement has been difficult to arrive at. In May of last year SCAG agreed that the new model law would be based on the United Nations model law on international commercial arbitration.

The national model law that has been developed by SCAG has some modifications contained within it to enable it to be more relevant to a domestic commercial arbitration regime. As a consequence of that national model law being created, new laws based on it have been introduced and passed by the New South Wales Parliament. A bill has also been passed by the Tasmanian Parliament, but it is yet to come into force. South Australia, Western Australia and the Northern Territory have bills before their parliaments at the moment, and Queensland and the Australian Capital Territory have undertaken to introduce legislation later this year.

The bill before the house contains a paramount objective — the fair and final resolution of commercial disputes by impartial arbitral tribunals without unnecessary delay or expense. I think anybody who has been engaged in any kind of commercial dispute would say that if such matters could be resolved by an arbitral process without necessity for the length and cost of court proceedings, they would take that option if they could.

This bill deals with the composition of arbitral tribunals, including matters such as how they might be selected and challenged and a default composition for an arbitral tribunal where agreement cannot be reached between the parties. Crucially the bill limits the circumstances under which the appointment or determination of an arbitrator can be challenged in court — and I will come back to the section 85 implications of that in a while. Logic would suggest that an arbitral process by definition needs to have some limitations placed on the ability of parties to challenge or overturn the arbitral outcomes; otherwise it is not an arbitration but a mediation.

At the moment it is considered that arbitration is not as effective as it might be in providing a solution, and an alternative to court processes, which is both cost effective and time effective. It has been considered by

SCAG that it is too easy to challenge the determinations of tribunals in the courts. The provisions which deal with that issue are contained in sections 12(6), 13, 34 and 34A of the bill. Importantly also, clause 27E of the bill imposes a presumption of confidentiality upon the parties to a proceeding. It is important for the confidence that all parties have in the arbitral process that there be a degree of confidentiality in the discussions and negotiations that inevitably occur in an arbitration — that there can be surety that some confidentiality will be attached to those discussions.

At clauses 17 and 17A the bill also allows tribunals to order interim measures, and clause 27D provides for a tribunal to exercise both mediation and arbitral functions in certain circumstances. It is important to note that clause 27D imposes some guidelines around, or some limits to, the ability of an arbitrator to act as a mediator, a conciliator or a non-arbitral intermediary. That is important, because often in a mediation parties disclose certain things which could potentially prejudice their position in an arbitration. It is therefore important that consent be provided and that there be an opportunity for an arbitrator, when acting as a mediator, to communicate with parties collectively or separately while treating information the arbitrator becomes aware of confidentially when appropriate. Clause 27D therefore places some appropriate limits on the capacity of an arbitrator to act in other capacities when performing those functions.

In regard to the section 85 implications, as the opposition, we do not lightly support legislation that ousts the jurisdiction of the Supreme Court, but in our briefing with the Department of Justice it was made clear to us that in order for an arbitral process to operate effectively and for it to in fact be an arbitral process rather than just a process involving mediation or an advisory process, then some ousting of the jurisdiction of the Supreme Court becomes required, otherwise parties could simply appeal endlessly an appointment of an arbitrator or a determination of an arbitrator, and the efficacy of the arbitral process would become unduly compromised. Whilst the opposition would not routinely or lightly support section 85 declarations in the context of this bill, we have formed the view that in this case it is not inappropriate.

I would like to make a few other points in commenting on this bill, the first of which is that the opposition argues that the government would have more credibility in its pursuit of alternative dispute resolution, arbitral outcomes et cetera in regard to this bill specifically if it had not earlier this year repealed the changes that the previous government made to the Civil Procedure Act 2010. I do not want to relitigate that debate, but the changes to the Civil Procedure Act 2010 that were passed by the Parliament in 2010 placed a range of modest, non-onerous obligations on parties to disputes to follow certain pre-action protocols when they were engaged in litigation.

As part of the changes made by it in 2011, the government removed those protocols and removed those modest obligations on parties to engage in those prelitigation procedures. For a government that is bringing forward a bill to improve the operation of commercial arbitration to remove from the Civil Procedure Act 2010 the prelitigation protocols that were passed just last year prior to their coming into effect shows a degree of cognitive dissonance. I think this bill and the changes to the Civil Procedure Act 2010 that were passed last year could have operated together in a way that would have taken more matters out of the court system and ensured that they would have been resolved expeditiously and more cheaply than they will be when this bill is passed.

It is probably also worth noting the irony of the Liberal Party, the government of the day, supporting in this bill a paramount objective of ‘fair and final resolution of commercial disputes by impartial arbitral tribunals’. That stands in stark contrast to the historical and ongoing antipathy of the Liberal Party to industrial disputes being settled in that very same way. For decades the Liberal Party has railed against the use of the Australian Conciliation and Arbitration Commission, which is now known as Fair Work Australia, and which in the interim was the Australian Industrial Relations Commission, in settling disputes between industrial parties as part of the ‘fair and final resolution of commercial disputes by impartial arbitral tribunals’.

We on this side of the house say that what is good for the goose is good for the gander. The resolution of disputes, whether they be commercial or industrial, by an independent arbitral tribunal is not just cost effective and timely but also common sense. If the government thinks that is appropriate for commercial disputes, it would be interesting to understand why it does not think it is appropriate for industrial disputes.

I might also say that the opposition strongly supports the opening of an Australian international disputes centre here in Melbourne. There has been a similar centre operating in Sydney since 2009. It is a centre which now operates commercially without the need for ongoing state government funding, but it did require state government and federal government funding to get it under way. We would say that likewise the Victorian state government will need to make a

contribution to get a similar centre under way here in Melbourne. The opposition is aware that the Law Institute of Victoria, the Victorian Bar and other organisations, including peak bodies of arbitration, are lobbying both the state and federal governments very strongly for the sort of seed funding that would be required to get a centre of that type under way here in Melbourne.

I think the New South Wales experience is instructive. The fact is that since that centre has been up and running it has been able to keep operating commercially without any ongoing government support. We strongly support efforts that are under way from these organisations to ensure that the Victorian government does its part to get an Australian international disputes centre up and running here in Melbourne so that Victoria does not fall behind New South Wales in this crucial area of the law.

Hon. D. M. Davis — On a point of order, Acting President, the member, as I understand it, was talking about industrial relations and a series of matters around that. This bill is actually about commercial arbitration. It is an entirely different matter, and I ask you to bring him back to the bill.

The ACTING PRESIDENT (**Mr Tarlamis**) — Order! There is no point of order. Mr Pakula is the lead speaker and is therefore awarded some latitude.

Hon. M. P. PAKULA — That is an extraordinary point of order by the Leader of the Government, given that about 3 minutes ago I had come back to the bill. I was simply making the point in passing during my contribution that the government's support for a commercial arbitration regime stood in contrast to its historic antipathy towards a similar arbitral regime in industrial matters.

Hon. D. M. Davis — The member was on a little detour.

Hon. M. P. PAKULA — It was a detour made in passing. I had returned to the highway some time ago. Perhaps Mr Davis was not listening.

Hon. D. M. Davis — That is the point; I was listening.

Hon. M. P. PAKULA — Perhaps Mr Davis is a bit slow then. Before I was diverted yet again by the Leader of the Government I had just made the point that we strongly support an Australian international disputes centre operating in Melbourne. We urge the government to provide, in cooperation with the commonwealth, the necessary seed funding to get a centre of that type under way here in Melbourne.

I think it is also worth putting on notice that the Law Institute of Victoria has, whilst supporting the principle of uniform commercial arbitration legislation, expressed concern about the fact that the model bill is based on the United Nations (UN) model law. We take that concern from the Law Institute of Victoria seriously. There is correspondence from Mr Danny Barlow, the former president of the Law Institute of Victoria, going back to March 2009, in which he says in part:

> The LIV considers that the complexity of the model law —

and in that respect he is referring to the UN model law —

> does not suit domestic arbitrations and should not be adopted as uniform commercial arbitration legislation in Australia.

I would simply make two points about that in reiterating the fact that the opposition will not oppose this bill. The first is, as I indicated earlier in my contribution, there has in fact been some modification or tweaking made to the UN model law in order to ensure that it is more relevant to a domestic commercial arbitration regime. Secondly, and equally importantly, I go back to the point I made at the outset which was that in fact SCAG had been trying to agree on a domestic model law without having to use the UN model law as a base right back to about 2002.

With the best will in the world I think it is right to say that at some point you have to bite the bullet. In the circumstances of SCAG not having been unable for some years to agree on a domestic version of the model law, introducing the UN law — appropriately modified or domesticised, if you like, so that it will deal with domestic commercial arbitration — is not inappropriate.

I end my contribution by indicating that the opposition will not oppose the bill and will wish it a speedy passage. We also support having an Australian national dispute centre up and running in Melbourne before too long.

Ms PENNICUIK (Southern Metropolitan) — The Greens will support the Commercial Arbitration Bill 2011. It replaces the existing Commercial Arbitration Act 1984 with legislation agreed to by the then Standing Committee of Attorneys-General (SCAG). That legislation is based on the model law, which is the United Nations Commission on International Trade Law Model Law on International Commercial

Arbitration, and uses the uniform clause numbering of the model law, as other jurisdictions have done.

The bill aims to be as consistent as possible with uniform legislation that has already been passed by the New South Wales Parliament and came into operation on 1 October 2010. It has been passed by the Tasmanian Parliament but is yet to come into operation in that state. I note that my Greens colleagues Ms Sylvia Hale and Mr Tim Morris also spoke in support of the bills presented in the New South Wales and Tasmanian parliaments.

Many of the provisions of the current bill are significantly different from those in the United Nations model law. Some of the minor differences are based on the application of domestic as well as international commercial arbitration processes. The Law Institute of Victoria has raised a number of issues about the bill. I do not intend to go into them in detail because there are a lot of them. I am presuming that the government speaker who will follow me, Mr O'Brien, is aware of the issues raised by the law institute and will address them in his comments. I will mention one or two of the more substantive issues the institute has raised.

Before going to those issues I refer to one of the interesting provisions of the bill. Clause 1AC provides that:

> The paramount object of this Act is to facilitate the fair and final resolution of commercial disputes by impartial arbitral tribunals without unnecessary delay or expense.

The law institute disagrees that the paramount object should always apply when arbitration is the dispute resolution mechanism that parties agree to. It considers that the ability of parties to tailor arbitration is one of the main benefits of arbitration and this will be eroded if the bill remains in its current form. I would be interested in the government's response to that position.

The law institute states that it would prefer that the clause ensure that sophisticated commercial parties are encouraged to reach agreement on how their commercial disputes are to be resolved, but in the event that such agreement cannot be reached a default position would apply. I note that in his second-reading speech the Attorney-General said:

> Stakeholders advocated for and endorsed the inclusion of a paramount objective clause, noting the absence of such a provision as a weakness in the existing uniform commercial arbitration legislation.

The point is worthy of clarification.

I refer to the Civil Procedure and Legal Profession Amendment Bill 2011 that was passed earlier this year and was referred to by Mr Pakula. The Greens supported the Civil Procedure Act 2010 that was introduced by the former government because it laid out certain procedures and protocols for parties by instituting alternative dispute procedures and processes for civil disagreements between commercial parties. I agree with Mr Pakula that it would have been good to have kept those procedures and protocols in place, particularly given that the government would have known that this bill was coming down the line. It had been a longstanding issue for the Standing Committee of Attorneys-General, and the same bill had already been passed in 2010 by the New South Wales Parliament, so I am sure that the Attorney-General knew this bill was coming down the line.

When the civil procedure bill was introduced we were at a loss to understand why those provisions were repealed by the government. Mr Pakula described it as cognitive dissonance, I think, but I would rather say that it was a lack of strategic vision to have taken those procedures out when they would have been very useful in the application and implementation of the bill before us now. Sometimes we are at a loss to understand how the left hand does not know what the right hand is doing, such as when provisions in certain acts that would be complementary and useful for the bill before us now have been removed by a bill passed only a couple of months ago.

As I mentioned, the Law Institute of Victoria has made quite a lot of comments on provisions of the bill, among them comments on the equal treatment of parties, the determination of rules of procedure, the language, hearings and written proceedings, the general duties of parties and the default of a party.

One of the main issues the law institute has raised is about clause 27D, and it relates to the settlement of disputes otherwise than by an arbitrator. This provision is modelled on the New South Wales section 27D, which is also headed 'Power of arbitrator to act as mediator, conciliator or other non-arbitral intermediary'. While the law institute agrees with the concept of mediation, as do the Greens, it raises the issue of the rules of mediation conduct set out in the act or by reference to mediation schemes. The key issue is that an arbitrator should be able to opt out of being the mediator, so that someone other than the arbitrator acts as the mediator.

This issue is raised because there is no guarantee that the arbitrator will want to act as the mediator, the arbitrator may not have the skills and experience

necessary to lead mediations, and the mediation could be turned into an early arbitration. The arbitrator could form views on the parties and their cases in mediation and may begin the arbitration with preconceptions after the mediation on the same facts. The issues raised by the law institute are important, and I hope that in his contribution Mr O'Brien, the speaker on the government side, will address those issues.

The law institute has commented also on former clauses 27F and 27N on confidentiality. It makes a point about court actions based on arbitration effectively waiving the right to confidentiality. That is another issue the government could look at.

Another matter I would like to comment on is the section 85 constitutional issue regarding limiting of the jurisdiction of the Supreme Court. This is a serious matter. For example, clause 5 of the bill allows the Supreme Court to intervene only in circumstances specifically provided for by this bill. This is in the interests of certainty. It is intended to maximise the extent of the court's jurisdiction and to strengthen the finality and authority of the arbitral tribunal decisions.

While I think it is a serious matter to limit people's access to the Supreme Court, I do take the point — and Mr Pakula made this point as well — that if the purpose of the whole regime being introduced by the Commercial Arbitration Bill 2011, modelled on the United Nations model law and introduced across the country, is for mediation and arbitration to actually lead to a final resolution of a matter, and if people felt that they could not participate in good faith in coming to a final resolution of a matter through arbitration and could always rush off to the Supreme Court, it would undermine the process that is being put in place by this bill.

Apart from some minor language and other issues that I have mentioned, those are the main issues that are raised by this bill. Certainly the Greens are always supportive of measures that are put in place legislatively or administratively to enable and encourage parties to sort out their disputes without recourse to the courts, which is expensive and time consuming. Putting in place the regime this bill aims to introduce is something we are very supportive of.

I also agree with Mr Pakula's comments about the need for seed funding for an international centre for commercial arbitration to be established in Melbourne, as has been done in New South Wales. Mr Pakula was interrupted by the Leader of the Government on this issue. I think the Leader of the Government had missed the point of that, which is that if quite an extensive new regime is being put in place by this bill not only in Victoria but across the country, it is worth the government investing some funds in the establishment of a centre to support it. As Mr Pakula pointed out, it would end up being self-funding but it would require some funding to set it up. That would ensure that the initial implementation of the legislation is successful and that the mediation and arbitration regime it puts in place gets off to a good start.

As I have said, alternative dispute resolution is always preferable to litigation ending up in court hearings in terms of cost, the time involved and the stress on the parties, and often the parties are more satisfied with a resolution that is the result of mediation and arbitration. Mediation can often be the preferable dispute resolution process in terms of the practical resolution of a dispute, particularly a civil or commercial dispute.

I would like to echo Mr Pakula's comments that the Liberal Party has often railed against the idea of mediation and arbitration in industrial disputes. Australia did have a world-leading industrial relations system headed by the federal Industrial Relations and Arbitration Commission, which was dismantled and destroyed, basically, by the Howard federal government's Workplace Relations Act 1996 and the WorkChoices legislation, but I have to say that the current Labor government has not fully reinstated that principle of mediation and arbitration at the federal level, and it would be good to see it do that.

Mr O'BRIEN (Western Victoria) — It is with great pleasure that I rise to speak in favour of the Commercial Arbitration Bill 2011. I note the other parties will not be opposing the bill. It is an important bill. It has had a gestation process through the various standing committees of attorneys-general, or SCAGs, that have deliberated on a successful model for Australia and in turn Victoria in relation to uniform commercial arbitration legislation, which in Victoria's case will replace the Commercial Arbitration Act 1984. This is an important bill which will facilitate the fair and final resolution of commercial disputes by impartial tribunals without unnecessary delay and expense if it be the will of the applicants to agree to an arbitration process.

In briefly responding to some of the points raised by Mr Pakula and Ms Pennicuik in their contributions, I should perhaps start with the suggestion by Mr Pakula that this bill and the coalition's support for it are somehow at odds with the stance the coalition took in relation to the amendments made earlier this year to the Civil Procedure Act 2010 via the Civil Procedure and Legal Profession Amendment Bill 2011, which

removed the requirements for compulsory mediation. Those requirements were introduced through the Civil Procedure Act 2010. They were not supported by the legal profession or by the current government when in opposition because they were compulsory mediation obligations. They were in effect procedures, generally in small debt recovery, for matters to be shunted down a route of alternative dispute resolution.

One thing that is very clear from a study of this bill — and it is a detailed bill — is that in most parts of the bill the provisions operate by the choice of the parties to engage in various aspects of the arbitration process outside the court system. That is in stark contrast to what was proposed in the 2010 legislation, being a compulsory mediation procedure in which it is very hard to require parties to come to an agreement by compulsion. Parties need to be able to do that by free will.

Perhaps that represents some of the philosophical differences between this side and the Labor-Greens alliance on these matters, because we believe in ultimate free choice and that the government and the courts should be there when the parties require them, rather than by compulsion. It was said that we have some cognitive dissonance in our position. I hope that clarifies that it is not our side with any dissonance on this issue. We are being entirely consistent in relation to this bill and the Civil Procedure and Legal Profession Amendment Act 2011.

Another point that was made in relation to the government's position was about industrial disputes. I do not want to divert debate on this important bill to discuss industrial disputes, but if you have a look at some of the opposition that has occurred over the long history of industrial regulation at a commonwealth level, you will generally find that the desire to go down the path of compulsory arbitration processes has been pushed by the Labor Party and the coalition parties have tended to support free choice. I note in relation to Fair Work Australia that its recent decision on youth awards, particularly for regional situations, was a fair outcome, and I ask the commonwealth government to comply with that, using Mr Pakula's phrase, 'What is good for the goose is good for the gander'.

Returning to other points made, in relation to the international dispute centre, which both Ms Pennicuik and Mr Pakula have supported, that is the proposal. It is something that is relevant to this bill in an important way in that this bill, as a commercial arbitration bill, really reflects the practice as a derivative of the more substantial practice in international commercial arbitrations.

The reasons for that, primarily, are twofold. Firstly, the domestic Victorian courts and legal system are world class and, as far as these things can be benchmarked, are among the finest common law civil procedure institutions in the world. That is one reason why it is not often that commercial disputes are taken up outside the court system in terms of domestic disputes in Victoria or even interstate. Our Australian legal system generally provides great certainty and a cost-efficient way of resolving disputes. That does not mean it is perfect and does not require reform and further consideration, but it also has had a commercial arbitration option for many years which parties can elect to be part of in a commercial dispute, and they have under the Commercial Arbitration Act 1984.

However, that has been regarded as somewhat cumbersome. This bill, by adopting the United Nations model law, will allow the Victorian jurisdiction to better align with the practice of international commercial arbitration. That will allow practitioners, parties and companies to adjust their business affairs to make things more efficient, fair and cost effective and hopefully will reduce red tape and increase productivity, which all parties acknowledge as an important economic imperative over the next few years.

With the international system, though, it is often the case with international disputes that international arbitration is far more frequently adopted as a means of resolving disputes, including shipping matters and trade disputes, which are often arbitrated in international arbitration agreements. That system is well understood and highly appropriate. It is therefore appropriate that the Victorian law better reflect and better model itself on the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration contained in *UNCITRAL Model Law on Electronic Commerce* and it takes into account the commonwealth International Arbitration Act 1974 — the commonwealth act — which in this bill has appropriate modifications for the domestic situation.

Ms Pennicuik raised some concerns that have been raised by the Law Institute of Victoria. I will comment on clause 27D when I go through the bill shortly, but in general terms the LIV's position — as I understand that position and I have based my understanding on advice rather than any direct discussion I have had — was to seek to continue to make amendments to the Commercial Arbitration Act 1984 and uniform arbitration acts across the country.

However, the view of the Standing Committee of Attorneys-General and the other players was that this process had been bogged down since about 2002 and

was not likely to produce a model law or uniform law for Australia and therefore, because of the importance of achieving consistency across the state and across the country, it was necessary to move to an international model law with some modifications that could allow this issue to be progressed.

Other bodies that have supported this bill include a range of eminent stakeholders, including the Chief Justice of the Supreme Court, the Victorian Bar, the Chartered Institute of Arbitrators and the Institute of Arbitrators and Mediators Australia, who have generally been supportive of the bill. I will deal with the other concerns in relation to clause 27D when I proceed through the bill.

Turning to the bill, I note that one of the other important features is that it does contain the paramount object, which has been referred to by Mr Pakula, so in a sense it has the general purposes in clause 1AA, which are:

> (a) to improve commercial arbitration processes to facilitate the fair and final resolution of commercial disputes by arbitration without unnecessary delay or expense; and
>
> (b) to make consequential amendments to other Acts; and
>
> (c) to repeal the Commercial Arbitration Act 1984.

But then it has this paramount object of the act, which is important in an interpretative sense. Clause 1AC says:

> (1) The paramount object of this Act is to facilitate the fair and final resolution of commercial disputes by impartial arbitral tribunals without unnecessary delay or expense.
>
> (2) This Act aims to achieve its paramount object by —
>
> (a) enabling parties to agree about how their commercial disputes are to be resolved (subject to subsection (3) and such safeguards as are necessary in the public interest); and
>
> (b) providing arbitration procedures that enable commercial disputes to be resolved in a cost-effective manner, informally and quickly.
>
> (3) This Act must be interpreted, and the functions of an arbitral tribunal must be exercised, so that (as far as practicable) the paramount object of this Act is achieved.
>
> (4) Subsection (3) does not affect the application of section 35 of the Interpretation of Legislation Act 1984 for the purposes of interpreting this Act.

That is an important paramount provision, which is an example of an instance where legislation can state its objects and purposes, which will be relevant to its interpretation by both courts and arbitral tribunals through the conduct of arbitrations.

In relation to other important clauses of the bill, clause 6 makes it clear that the functions of arbitration, assistance and supervision are to be performed by the Supreme Court, the County Court or the Magistrates Court if the parties so provide in the arbitration agreement. Again, in relation to a comment that has been made in the section 85 statement, this legislation does contain necessary limitations to the Supreme Court's jurisdiction.

The coalition also agrees with the comments of the other parties that this power to limit the Supreme Court's jurisdiction under the Constitution Act 1975 should be exercised very sparingly. However, the agreement to stand outside a court system and go to an arbitration is one of those examples where, provided it is done fairly and justly — which is what this bill seeks to ensure — it is appropriate in a sense to limit at times elements of the court's jurisdiction so that the parties' decision to move to a form of alternative dispute resolution outside the court system can be properly respected and there will not be unnecessary interlocutory appeals or other legal challenges to the basic decision of the parties to engage in the arbitral process at the various steps.

As I have said all the way through the clauses, most of them will not operate in terms of their procedures unless the parties freely determine that they should do so. That is an important aspect of providing structure to arbitrations but respecting that at all times it is the free choice of parties to engage in the process; however, once you engage in that process you do need a set of rules and regulations to regulate that process.

The bill has been well prepared, with very helpful notes along the way, including variations in the bill from the model law. I commend the various drafters of the bill for their preparation and their work in achieving this resolution on the bill. An important variation that I will go to briefly is in clause 10, which relates to the number of arbitrators. As I said, the parties are free to determine the number of arbitrators, but failing such a determination, the number of arbitrators is one. This is an example of a variation of the model law. Article 10.2 of the model law provides for three arbitrators if the parties do not determine the number of arbitrators.

The first thing we would say in justification of that variation is that it is obviously up to the parties to determine, but it is considered that one is, in a sense, in a better default position in terms of greater efficiency than having to pay for three arbitrators. One of the essential cost inhibitors of arbitration is the fact that the parties have to pay for the cost of the arbitration. They also have to pay for the costs of issuing in the courts,

but it is generally considered that your court fees are in a sense often cheaper than the cost of a commercial arbitrator who has that experience. That is an example of one of the variations. Acting President, you will be pleased to know that I will not go through each of these clause by clause, but that is an example of the sorts of variations that exist.

In terms of the arbitration agreements, clause 7 defines an arbitration agreement as:

> … an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

An arbitration agreement must be in writing, and 'in writing' has an expanded meaning to include electronic communications.

Clause 8 outlines the circumstances in which a court may be required to refer a dispute to arbitration if requested to do so by a party to that dispute. It will also enable arbitration to be commenced or continued while the issue is pending before the court. Then there is the composition of the arbitral tribunal, which is the tribunal that the parties agree to to undertake an arbitration; and clause 10 enables the parties to determine the number of arbitrators, as I have outlined.

Clause 11 allows the parties to agree on the process for the appointment of arbitrators, and clause 12 will oblige proposed arbitrators to disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence. This is important and is another example of justice not only needing to be done but also needing to be seen to be done in relation to allegations of perceived bias.

In terms of the jurisdiction of an arbitral tribunal, clause 16 makes it clear that an arbitral tribunal is competent to make a determination as to whether or not it has jurisdiction to arbitrate a commercial dispute. This clause clarifies that an arbitration agreement may be severed from the contract in which it is contained so that any determination that the contract is invalid will not mean that the arbitration clause itself is invalid. In terms of the conduct of the arbitral proceedings, a detailed list of matters in part 5 sets out the way that proceedings are conducted and includes processes in relation to the procedures to be adopted, the place of arbitration, the time of arbitration, the language to be used, the paperwork to be filed, the conduct of proceedings, legal or other representation and the taking of expert opinions.

Clauses 27 to 27J, which are partly the matters raised by the Greens — and I will refer to those shortly — enable a request to be made to the Supreme Court or another court agreed to by the parties under clause 6, by an arbitral tribunal or by a party with the approval of the arbitral tribunal for assistance in the following matters: the taking of the evidence, the issue of subpoena documents, the consolidation of certain arbitral proceedings and the admissibility of confidential information.

Clause 27D, on which the Law Institute of Victoria had a final query — in fact I am advised it is one of the matters on which some considerable time was spent in the negotiations between the parties — deals with the power of the arbitrators to act as mediators. There is an important flexibility in this measure and in arbitration regimes at times enabling an arbitrator to enter into mediation and confidential discussions. Often there may be a way to resolve a dispute that is outside the square and not squarely within the terms, and a mediation process can be appropriate. However, once the parties engage in mediation there can be matters disclosed that could prejudice further conduct of an arbitral hearing, as I think was outlined by Ms Pennicuik.

There were suggestions that there needed to be a compulsory conversion mechanism between a mediation and an arbitration so that if someone had not replied within a certain amount of time the mediator would become an arbitrator. Victoria has chosen to go with the New South Wales model. Again, there will be no compulsion; there will be an option. If all parties agree to have a mediator also act as an arbitrator, then that will occur, but it will not occur without that consent. That is another important way in which this bill allows the choice of the parties to engage in arbitration to be respected.

There is also disclosure of commercial information provided for in clause 27F, which again will be respected effectively by an opt-out arrangement. There is a power under clause 27G, of which those considering this matter should be reminded, which allows the arbitral tribunal in certain circumstances to make an order allowing a party to a proceeding to disclose confidential information, and in doing so it must give each party an opportunity to be heard.

In the end what we have done is follow the New South Wales model provisions in relation to these matters. We believe they are appropriate for the commercial arbitration regime, and we trust that in time they will meet the concerns of the Law Institute of Victoria, if they remain. I hope that answers Ms Pennicuik's

questions. If not, I am sure they can be taken up at a later stage.

Briefly, there are provisions in clause 34 which outline the circumstances in which the Supreme Court, or another court, may set aside an award on limited criteria. They include: incapacity; inadequate notice; if a tribunal has acted beyond its power or ultra vires, which is often the big question because that can be argumentative, but it is set out in clause 34 in an endeavour to make it clear; or on public policy grounds if, for example, the making of an award was induced or affected by fraud, corruption or breach of the rules of natural justice.

Further, clause 34A also enables an appeal to the Supreme Court, or another court agreed to by the parties, on a question of law if the parties have agreed prior to the commencement of arbitration that such appeals may be made and the court grants leave.

Finally, clauses 35 and 36 establish a framework for the recognition and enforcement of arbitral awards.

As I have said, it is model law. It will bring Victoria into line with the other states, assuming they all come on board. It has been done as a result of the hard work on the part of the drafters, and I commend their work and negotiations over many years. I commend the bill to the house.

Mrs COOTE (Southern Metropolitan) — It is an interesting exercise to follow a speaker as experienced as Mr O'Brien. He has, with great aplomb and understanding, succinctly put the government's position on the Commercial Arbitration Bill. I hope, as he suggested, that he has allayed some of the concerns raised by Ms Pennicuik in her contribution. A member with Mr O'Brien's ability, experience as a barrister and his life experiences in working with small business, particularly in his own electorate, shows the depth of the coalition government talent. That professionalism and experience came through in his presenting this bill, which in some respects is quite complex.

As Mr O'Brien said, this is model law, and it brings Victoria into line with other states. It repeals the previous Commercial Arbitration Act 1984 and replaces it with a new procedural framework designed to ensure that commercial disputes are settled fairly and expediently by impartial tribunals. This bill was agreed to by the Standing Committee of Attorneys-General and is based on the United Nations model law. It will ensure that commercial disputes are managed uniformly across Australia, providing certainty for Victorian businesses.

There are a number of important aspects of this bill. Mr O'Brien's clause-by-clause analysis explained in great detail the ramifications of this bill, so I will not repeat that. However, I will briefly summarise some aspects of the bill which will serve to provide greater flexibility to the parties involved.

The parties to a dispute may set the number of arbitrators who may arbitrate. The ability to set financial limits on the arbitration process will be provided, and time limits will be able to be set to prevent the process from becoming long and drawn out. Additionally, default positions are set out in the legislation covering these aspects in case the parties cannot reach an agreement. This will prevent the process from becoming bogged down in legal wrangling to the detriment of small businesses. I will come back to small businesses in a moment.

I am pleased to see that Mr Pakula has returned to the chamber. His contribution also showed a depth of understanding of the bill, notwithstanding the interjections when he strayed — a political detour I think is what he called it — and frolicked off into industrial arbitration rather than dealing with the bill at hand, which is dealing with commercial arbitration. But many of the points that Mr Pakula also raised — and I am pleased to know that the opposition is not opposing this bill — are in fact valid, which bodes well for business in this state.

In building on the point I mentioned about small businesses, it is important to ensure that there are efficient and effective business negotiations in Victoria. It is an important message to send to not only the rest of the state but in fact the rest of the world. The Baillieu government is sending a clear message with this bill that Victoria is open for business and is making laws that expedite business operations in this state.

The bill will ensure greater fairness in negotiations between large businesses in Victoria, but it will have a great impact on small businesses as well. All too often small businesses are at a disadvantage when they negotiate commercial disputes with large corporations, such as large retail outlets and owners, insurance companies, banks and so on. They simply do not have the time or the resources to defend long drawn-out negotiations, and they almost by default are forced to surrender. How often do we hear those sorts of stories anecdotally. If you delve into some business transactions, you can see that far too frequently large businesses, which have very deep pockets, grind through small businesses until they are simply out of resources, time and energy.

This bill will have great implications for thousands of small to medium size businesses, particularly in my electorate of the Southern Metropolitan Region. There is a huge number of information technology specialists in South Melbourne and the Albert Park electorate, and that number is growing. They are to be encouraged at every opportunity, and this legislation will help them in dealing with some of the negotiations that they may be forced to enter into. Then there are the small stall owners in places like the Prahran market and the South Melbourne market. They, too, need to have some surety that if they need to enter into negotiations with larger organisations, they have the support provided by this bill. Then we have the retail outlets in places such as Chadstone, and it is important to give them some surety as well. There are marine suppliers in Sandringham and Brighton, and the myriad retailers in strip shopping centres in places such as Hawksburn, Kew, Ashburton and Camberwell. Then there are the shop owners in places such as the Oakleigh mall. All these people are going to be affected by the outcome of this bill.

As I said, the bill shows that Victoria is open for business, that we are listening to businesses, both large and small, and responding to their concerns. The small businesses in my electorate will benefit from the introduction of this bill. I wish it a safe passage.

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.

I thank those who contributed to the debate.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! I am of the opinion that the third reading of this bill requires to be passed by an absolute majority, and I ask the Clerk to ring the bells.

Bells rung.

Members having assembled in chamber:

The PRESIDENT — Order! I am of the opinion, as the Acting President was, that the third reading of this bill requires to be passed by an absolute majority. In order that I may determine whether the required majority has been obtained, I ask those members who are in favour of the motion to stand in their places.

Required number of members having risen:

Motion agreed to by absolute majority.

Read third time.

ELECTRONIC TRANSACTIONS (VICTORIA) AMENDMENT BILL 2011

Second reading

Debate resumed from 15 September; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Hon. M. P. PAKULA (Western Metropolitan) — I rise to make a contribution on behalf of the opposition regarding the Electronic Transactions (Victoria) Amendment Bill 2011 and to indicate that the opposition will not be opposing the bill. We are back dealing with SCAG because this bill is also the result of an agreement reached at the Standing Committee of Attorneys-General meeting in 2007. The bill has the effect of bringing Victoria's legislation pertaining to e-commerce in line with international standards.

Many members of the house would have recently become even more well acquainted with electronic transactions of all forms now that we have entered the iPad era, and this device, amongst many others, makes it easier than it has ever been to make purchases online and to enter into agreements online. It is in many respects not the way of the future but the way of today. Similar legislation has already been passed by the commonwealth, New South Wales, Tasmanian and Northern Territory parliaments. Legislation has been introduced into the South Australian and Western Australian parliaments, and legislation is pending in both Queensland and the Australian Capital Territory.

The opposition was briefed on this bill by officials from the Department of Justice, and they indicated to us that a number of organisations had been consulted in the preparation of this bill including the Law Institute of Victoria, the Victorian Bar and various business organisations, all of whom were very supportive of the bill. I have to say that in taking its own soundings the opposition has not found any opposition to the bill either.

This legislation is in line with the United Nations Convention on the Use of Electronic Communications in International Contracts 2005. The effect of the passage of this legislation will be that this state's existing electronic commerce laws will be updated in respect of the use of electronic signatures, the way a party's location in the electronic environment is determined and the way that the time and place of dispatch and receipt of electronic communications is

determined. It will provide guidelines around the use of automated messages as those messages apply to the formation of contracts, and it will provide a legislative mandate as to when an offer becomes an invitation to treat in an electronic environment.

The bill allows for signatures to be provided electronically. Whether or not it is in place of a handwritten signature in a traditional transaction, the bill provides some certainty around the use of either typed names or electronically signed names. It provides default rules for the determination of the location of parties, but it does not stop parties from reaching agreement on contractual terms that alter the determination of that location in an electronic environment, so parties will still have the ability to clarify the jurisdiction of the contract. The bill does not take away from parties those rights, but it does provide some certainty in an environment where the parties have not specified the location.

The bill applies default rules regarding the determination of the time of dispatch and receipt of electronic transactions, and that is important because it helps to ensure that time limits are clearly established in certain circumstances — for instance, in regard to warranties, return policies and the like. Those sorts of issues can be less than clear in an electronic environment, and it is important that the statute book is effectively updated to ensure that even where the parties do not specify those matters there is a default situation that exists within the law.

The bill allows for automated messages to be used to form a contract. There are already a large number of electronic transactions that occur via automated messages, and in many cases the vendor never actually views a written contract. The bill also contains safeguards for input errors. For example, if a customer wanted to purchase two loaves of bread through a supermarket's online service but accidentally typed in 200 or 2000, they would be able to contact the vendor and adjust the contract. The bill clarifies the circumstances in which one of the parties to the contract is able to alter their initial electronic conveyance, if you like, in order to correct an error that has been made.

The bill extends the traditional invitation to treat rules that exist in contract law to electronic commerce. As I am sure Mr O'Brien knows, but for the benefit of other members, an invitation to treat consists of an offer by an indication of one person to another person of the willingness of the person making the offer to enter into a contract on certain terms without there being a necessity for further negotiations. It is important that in an electronic environment legislation helps to clarify when an invitation to treat has occurred, and this bill provides parties with more guidance in regard to that. The bill also provides that a proposal to form a contract, other than a proposal addressed to specific persons, is considered to be merely an invitation to treat, unless of course a contrary intention is clearly indicated by whoever is making that proposal.

In a nutshell this is not controversial or high-profile legislation, but it is important legislation that has been negotiated over a number of years by attorneys-general from around the country. It allows both consumers and vendors within Victoria to trade online with greater confidence and greater certainty about the legislative framework that oversees those transactions. During our time in office we as a government released a discussion paper that outlined the need to strengthen privacy legislation, electronic transactions legislation, e-consumer protection and the like, and over the course of many years we continually updated the relevant legislation as situations emerged and technology was enhanced to keep up with that pace.

This is the first piece of legislation that this government has had to introduce to do likewise, but as electronic transactions become more common and as technology is enhanced and becomes even more user friendly I have no doubt there will be a need for further updating of the relevant legislation to keep pace with those changes. This legislation is the first step in that direction by the new government. It is an important piece of legislation, and the opposition commends it to the house.

Mr BARBER (Northern Metropolitan) — The Electronic Transactions (Victoria) Amendment Bill 2011 is a result of agreements made at the Standing Committee of Attorneys-General and is a federally organised agreement that is being implemented by other jurisdictions. Recognising all of that and the other issues I am about to come to, the Greens will not be opposing the bill. The bill will assist electronic commerce transactions, which are becoming more and more diverse and commonplace in our society. Even I am ordering things over the internet now. I was dragged kicking and screaming to electronic banking; I was a late adopter in that area. Lately I have been chasing down various types of books and I have found that the only way to obtain them practically is via online booksellers. Despite the fact that these retailers have been around for about a decade, I have only just become a user of them.

The amendments contained in this bill are based on the United Nations Commission on International Trade

Law Model Law on Electronic Commerce. The bill has three main principles: one, non-discrimination in the treatment of transaction methods, which is just as well because the legislation is never going to keep up with the technology; two, that electronic transactions be treated the same in law as more traditional contract methods, and that is not as simple as it sounds and we may talk about it during debate on this bill; and three, that contracting parties have the ability to set or propose alternative terms and conditions. It is not every day that this Parliament enacts laws passed by the General Assembly of the United Nations, and I wonder why I am not hearing from those notorious one world government conspiracy theorists such as Mr Finn — —

Hon. M. P. Pakula — Or Mr Drum!

Mr BARBER — Mr Pakula nominates Mr Drum. Yet here is a real-life example, so you would think they would be railing, but they are not.

Invitations, offers and acceptances through electronic formats as well as the timing and jurisdictions in which these events occur will now be put beyond legal doubt, at least until the lawyers get hold of this new piece of legislation. The timing in the legislation is a default setting, so it can be altered by the parties through a contract. The time of dispatch occurs once the message leaves the computer, and the time of receipt occurs when the communication is 'capable of being retrieved'. The meaning of this phrase will no doubt be elucidated by a court down the line as to whether 'capability' is a potential, a statement of fact or perhaps knowledge of its receipt.

If we ever get around to putting artificial intelligence in our computers, then God knows what that will mean. Probably robots talking to robots, perhaps represented by robots in court. Who knows? We might see it in our lifetime. Mr O'Brien's former profession may be made redundant by technology.

The jurisdiction of the contract is deemed to be in the place where the originator of the communication has their business, and there is provision for a rebuttable presumption based on the party's publicly stated place of business. In the event that no place is publicly mentioned, it will be either the party's principal place of business or the place with the closest relationship to the transaction — it sounds as though there is plenty of earning potential for lawyers there too. Even the procedural issues on these sorts of expansionary terms could be a couple of days of hearings before they get to the substance of the matter.

Mr O'Brien interjected.

Mr BARBER — Mr O'Brien may have a second career down the line that could be even more profitable than this one, and I might seek some guidance from him when it comes time to make that change.

The final major change is the defining of an 'invitation to treat'. Traditionally this has been perceived as an advertisement or perhaps products placed on a shelf. The offer usually only occurs when the customer takes the product up to the counter or responds to the advertisement by ordering online. Once the purveyor accepts that offer, the contract is formed. This bill classes electronic communications that are generally displayed and not specifically addressed to a particular individual as an invitation to treat. I have absolutely no doubt that the challenges for jurisprudence to keep up with electronic commerce have only just begun, but I am glad to see this bill. When we get to the committee stage of the bill I will be seeking to ask a few brief questions of the minister as to how this might work in certain practical real-life examples. Mr Pakula at this point is falling about laughing and holding his sides. The legislation all seems fine when it is on paper; I would like to know though in relation to certain situations how this might work for an ordinary consumer.

Mr O'BRIEN (Western Victoria) — I am pleased to be speaking on the Electronic Transactions (Victoria) Amendment Bill 2011. It is another important piece of legislation which this government, through the very able Attorney-General, has promptly brought to the Parliament to consider, and I commend the other parties for their non-opposition to this bill and its speedy transition.

It is an important piece of legislation in a week that has seen the passing of one of the international pioneers of electronic communications, Mr Steve Jobs of the Apple corporation. He showed what can be achieved within a lifetime in terms of a commitment to quality, design and aesthetics but also innovation. In the field of electronic transactions innovation is often well ahead of governments, regulators, lawyers and other parties, and it is moving at an increasingly rapid pace. It is important that at times the law needs to catch up and clarify a number of matters that often already exist within previous fields but that need to be adjusted or confirmed in relation to electronic transactions. So it is with this piece of legislation. It does not seek to alter or adjust the law, but rather it seeks to confirm and clarify a number of important matters in relation to electronic transactions.

The pace of change in electronic transactions is also occurring in fields like online retail, which has

consequent flow-on effects for the hard economy or the non-IT economy in terms of provisions of goods. In this regard I pay tribute to a company in my electorate that received the Best New Business award in the Powercor Grampians Pyrenees regional tourism awards. That company is 75BC Office, an online printing and stationery business. It has an interesting story. Billy Cairns and Craig Lennie are immigrants from Scotland who settled in Ararat in 2004 and 2009 respectively and set up this company, I believe in its present formulation, within about a year. With over 16 000 quality products in stock they have been fulfilling orders, which they provide in a timely manner from their regional location. So it is the case with many other businesses that take advantage of the opportunities available to businesses via electronic transactions and associated commerce, warehouse and distribution services et cetera. Businesses might be in Ballarat, Geelong, Melton, Warrnambool or Bannockburn, but wherever they are they need to be regulated in relation to important matters such as time of dispatch of email, time of receipt and offer, and acceptance of a contract.

Those are the important matters that this bill seeks to touch on, and in doing so it seeks to clarify the circumstances in which a requirement for a signature will be taken to have been met in relation to electronic communication. It also seeks to substitute provisions relating to the determination of the time and place of dispatch and receipt of electronic communications and to provide for contracts that involve electronic communications, as well as making other miscellaneous amendments.

It is not a stand-alone bill but an amendment to the Electronic Transactions (Victoria) Act 2000, which came into effect on 1 September 2000, no doubt having survived the year 2000 bug, as it was then known. That act implements the United Nations Commission on International Trade Law Model Law on Electronic Commerce 1996, which was the model law. It encompassed a set of internationally accepted rules to remove legal obstacles and provide a more secure environment for electronic commerce, and that has been uniformly implemented by the commonwealth, states and territories.

That act implemented three important outcomes of the model law: the legal validity of electronic transactions, non-discriminatory treatment of different methods, and party autonomy to agree to alternative terms and conditions. It also removed impediments to the use of electronic transactions among government, business and commerce.

As outlined by Mr Pakula, this bill was developed following consideration by the Standing Committee of Attorneys-General, or SCAG, of the proposal to accede to the 2005 United Nations Convention on the Use of Electronic Communications in International Contracts, or simply the convention. This convention built on the model law, again with the purpose of facilitating international trade. It updated the model law in the light of further knowledge and developments in electronic commerce and addressed gaps arising since the model law was developed in 1996. Implementation of the convention through the bill will modernise Australia's law on e-commerce so that it will reflect internationally recognised legal standards, will enhance cross-border online commerce, will increase certainty for international trade by electronic means and thereby encourage further growth of electronic contracting, and will confirm Australia's commitment to facilitating electronic communications in international trade transactions as reflected in the various free trade agreements.

I will not go through the bill clause by clause, but there are some important definitions worth touching on which were also commented on by Mr Barber in his contribution. In terms of the addressee, clause 4 of the bill sets out the — —

Mr Barber interjected.

Mr O'BRIEN — In relation to any suggestion of it being a lawyers' picnic, that is certainly not the intention. The idea of all statutes is to seek clarity. Parties often enter into disputes, and the law should try to do its best to settle them. We say the definitions and provisions are clear within the legislation, but each factual circumstance always needs to be considered on its own merits.

These various definitions include the 'addressee of an electronic communication', which means a person who is intended by the originator to receive the electronic communication but which does not include a person acting as an intermediary. 'Automated message system' means a computer program or an electronic or other automated means used to initiate an action or to respond to electronic data communications. 'Place of business' means, in relation to a person, a place where the person maintains a non-transitory establishment to pursue an economic activity other than the temporary provision of goods or services out of a specific location, and in relation to a government, an authority of a government or a non-profit body, it means a place where any operations or activities are carried out by that government, authority or body.

In relation to electronic signatures, the bill establishes the general conditions under which an electronic signature is regarded as authenticated with sufficient credibility and enforceability. Relevant provisions are set out in clause 8, which amends section 9(1)(a) of the principal act. Signatures are used to perform a number of functions such as identifying a person's personal involvement in the act of signing a document, associating a person with the content of a document, associating a person with the content of a document written by someone else or endorsing authorship of a text. This clause also aligns the principal act with the convention by confirming that the notion of a signature does not necessarily imply a party's approval of the entire content of the communication to which the signature is attached.

The current act provides a flexible approach to the requirements of a valid electronic signature by providing that the method used should be 'as reliable as was appropriate for the purposes for which the information was communicated'. Clause 8 of the bill inserts a new paragraph that forms part of the reliability test which includes the phrase 'in the light of all the circumstances, including any relevant agreement'. This is always important to remember, because where circumstances can be adduced that shed light on what has ostensibly occurred — involving paper or even electronic communications — they always need to be taken into account. Under the parole evidence rule and other rules, however, preference will always been given to what has actually been transacted.

Mr Pakula touched on the invitations to treat provisions, which are set out in clause 12 of the bill which inserts new section 14B, entitled 'Invitation to treat regarding contracts'. This proposed section provides that a proposal to form a contract, other than a proposal addressed to specific persons, is considered to be merely an invitation to make offers unless the contrary intention is indicated by the person making the proposal. This will transpose the common-law notion of an invitation to treat into the electronic environment. I know there were contributions in the other place in relation to that; in particular, Mr Thompson, the member for Sandringham in the Assembly, went through the famous *Carlill v. Carbolic Smoke Ball Company* case, which set out in very great — —

Mr Barber interjected.

Mr O'BRIEN — Prior to offer and acceptance, Mr Barber. It set out the concept of the invitation to treat, which is — —

Mr Barber — The ad in the paper.

Mr O'BRIEN — Which is the ad in the paper, as Mr Barber says. You need an offer and acceptance, you need that to be communicated and of course you need intention to form legal relations. But these are matters that are well understood, and in relation to this bill they will now be better reflected in the electronic context.

In conclusion, this bill will update the legislative framework for electronic commerce in this state to reflect internationally recognised legal standards, will improve cross-border online commerce, will increase certainty for international trade through electronic means and will confirm Victoria's commitment to facilitating electronic communications in international trade transactions while supporting the growth of electronic contracting in this state, including among our wonderful online businesses.

Mr EIDEH (Western Metropolitan) — I would like to make a contribution on this Electronic Transactions (Victoria) Amendment Bill 2011. I find it incredible and yet also deeply curious when the Baillieu government seeks to rewrite history, to change the facts as we know them and to create a pretence about what does not exist. This is exactly what is taking place with the bill before the house. When members of the government describe this bill as critical to bringing our state out of the so-called darkness of Labor in government they are ignoring some incredibly important points.

This is an amendment bill. The principal act was a creation of Labor in government. The original act was in fact successful, but the pace of technology is such that what was appropriate a few years ago is now already out of date. I challenge anyone in the chamber to accurately predict where technology will be in five years time. Only people with the genius and vision of the late Steve Jobs could even have come close. I have been told that when one of the most well-known and respected businesses and service organisations in our state originally had the internet put to it as a business tool it regarded it as irrelevant, temporary and of no value to business. For two years it opposed the internet, but one solitary director worked hard to promote it and eventually, some 13 years ago, that organisation too joined the web.

Today the internet is a key part of its business, its marketing and its information services. We are all looking differently at information technology every day. However, this organisation was in the dark, as was the rest of Victoria, at the time the former Liberal government of Mr Kennett left office. There was no legislation of any relevance to protect consumers until the Labor government introduced the initial act in 2000.

That act was a boon to the information superhighway as far as business and online trading were concerned, but the pace of technology is such that change is already upon us.

The national broadband network (NBN) is being rolled out around the nation. It will bring Australia into the foreground of the information superhighway and make us a leader in business amongst nations around the globe. I have a successful history in business, particularly in logistics, and I strongly believe this to be a fact, as do most other senior businesspeople with whom I have discussed the NBN. It will be a boon to the state and the nation.

This bill is a key document that seeks to allow consumers and businesses to trade online with confidence. It seeks to take appropriate action that will reduce the ability of criminals to operate in this area, and that is something all members of this house would support without controversy. The Labor Party has a proven track record in supporting the positive growth of e-commerce, in strengthening business opportunities and in creating new avenues through which we can grow our state. That is why we are supporting this bill as a positive step forward, one which accords with what we initiated when we were in government. This bill has already been passed in other state jurisdictions, following the great tradition of successfully creating laws that can apply across the nation, which Labor in government has done so well.

We have to support our hardworking police to combat e-commerce fraud. This amendment is a good start, but we must all be honest and admit that the criminal mind will almost certainly force us to think of new strategies within a few short years. As those involved in fraud become bolder, we must become more strident in stamping out crimes based around information technology. I am not talking here about the pain caused by people hacking into our email accounts or websites, painful as such hacking can be.

I am sincerely hopeful that this legislation will stand for some time and that e-commerce will become safer and thus more attractive to our businesses and consumers — the people of our great state of Victoria. The future of the state depends in so many ways on technology, and we must work hard to keep up the pace alongside it. We support this amendment bill.

Mr ONDARCHIE (Northern Metropolitan) — I rise this morning to speak on the Electronic Transactions (Victoria) Amendment Bill 2011. This bill amends the Electronic Transactions (Victoria) Act 2000 and augments the current regime by acknowledging the use of automatic message systems in the formation of contracts, clarifying rules in relation to invitations to treat, and setting a determination of a party's location in an electronic environment and the time and place of dispatch and receipt of electronic communications and electronic signatures.

I cannot help but agree with Mr Eideh that technology has moved on at a rapid rate. Who would have thought 20 years ago that the most common form of communication in the world would be an Apple? Mr Eideh is right — technology has moved forward, and it is almost impossible to predict where technology will be in a few years. Mobile phones are no longer just mobile phones; they are in fact portable computers now, because we can do so much with them. I agree that technology has moved forward.

This amendment bill is based on the Model Law on Electronic Commerce 1996, which was developed by the United Nations Commission on International Trade Law. The United Nations Convention on the Use of Electronic Communications in International Contracts 2005 updates the model law in light of developments in electronic commerce. As a party to the convention, we are required to make amendments to commonwealth, state and territory electronic transactions legislation.

Mr Pakula referred to the Standing Committee of Attorneys-General, and he used an acronym for it that I will not use, because I find it somewhat distasteful. The Standing Committee of Attorneys-General released a public consultation paper in 2008. Following public support, a model bill to implement the obligations under the convention was drafted by the Australasian Parliamentary Counsel's Committee in 2009.

This bill provides a set of internationally accepted rules to remove those legal obstacles and provide a more secure environment for electronic commerce. As someone who has come from business, I can confirm for the house that most business is being transacted electronically these days. The days of sending sales representatives out to get contracts signed, which was an expensive use of rubber on the road, is being whittled back and done electronically. Mr Eideh's point was quite valid. I am delighted that today he almost said he supported the bill — he said he would not be opposing it! I would much rather that he had said he supported it.

This bill supports the government's commitment to promote an efficient and facilitative business environment. The ability to transact business electronically is an essential aspect of contemporary business practice. It enables businesses, members of the

community and of course the government to deal with each other via electronic means. It also provides that transactions taking place under a law of the jurisdiction will not be invalid because they are completed electronically. We just have to look at what happens in today's environment — tweeting, texting and emails. So many relationships are built electronically. I have to say for Mr Leane's benefit that tweeting is something one should pare back every now and then, because one makes statements about oneself when one tweets. We could go to Mr Leane's quite rancid views about the carbon tax, but we will let him off the hook just on this occasion.

Mr Leane interjected.

Mr ONDARCHIE — I am more than happy for Mr Leane to tweet, 'We are Geelong, the greatest team of all!', but I will leave that one with him.

This bill provides that transactions can be completed electronically, as I have said. In terms of business efficiency, it enables contractual dealings such as offers, acceptances and invitations to be conducted electronically. It recognises that in a business environment and a personal environment time is money. This is an efficient way of dealing with these transactions. The current act already provides for functional equivalence, which means electronic transactions should not be treated differently by law than those being conducted in the traditional way using traditional media. It provides for non-repudiation to prevent parties from denying that they sent or received particular information. We have all heard from time to time, 'I sent you an email', and we have all heard the response, 'I never got it'. This bill goes some way towards dealing with that, and it is to be commended.

I would like to be able to say that I have not seen Mr Leane's tweets, but tragically I did recently, and I could not help but agree with him about the farcical nature of the carbon tax.

This bill provides the clarification that the conduct of electronic transactions requires the prior consent of all parties involved. The implementation of the convention does not require significant changes to the current electronic transactions legislation, because the amendments are machinery in nature. Careful assessment has been undertaken to ensure that the amendments do not actually disturb settled contract law of domestic practice since the enactment of this act. It will have a low impact on business while modernising Australia's laws on electronic commerce to reflect internationally recognised standards and increase certainty for international trade. Australia is operating in a global market and a global environment with some significant international trading partners. This drives efficiency; that is a very important statement about what the Baillieu coalition government is all about — driving efficiency throughout this state. It is to be commended for that.

This bill refines default rules on electronic signature provisions for determining whether the method used is reliable. In that sense the electronic signature must be capable of identifying the signatory and indicating the signatory's intention for the information contained in the electronic communication. It provides clarity. It also revises default rules to determine time and place of dispatch and receipt of any electronic communication that apply in the absence of any alternative agreement on such matters.

The revised default rule for what we call the 'time of dispatch' provides that the time of dispatch is the time when the electronic communication leaves an information system under the control of the originator or the party who sent it on behalf of the originator. So there will be some time stamping applied to this, and it will be very clear when the transaction actually occurred. The revised default rule for the 'time of receipt' of the electronic communication is the time when the electronic communication becomes capable of being retrieved by the addressee at his or her designated electronic address. So it actually sets in place some very clear milestones and thresholds as to when this transaction occurs.

This bill preserves the principle that contracting parties should be free to agree on matters affecting the formation and performance of a contract between them. It modernises Victoria's laws on electronic commerce. It enhances cross-border online commerce opportunities. Once again it confirms Australia's commitment to facilitating electronic communications in international transactions. More than that, it increases certainty for international trade by electronic means and therefore encourages the future growth of electronic contracting in Victoria. That is what we are about: future growth in Victoria. We are about enabling. We are about efficiency and getting good value for our money. As the colloquialism goes, we are about getting 'the best bang for our buck' and creating jobs. This bill will help to do that by creating more efficiency in business. Those opposite are not keen to do some of those things in order to support business.

Mr Barber interjected.

Mr ONDARCHIE — It is interesting that Mr Barber interjects on this. It surprises me that he does

so, because even the Law Institute of Victoria, the Victorian Bar and businesses generally accept and support this legislation. I do not know why Mr Barber will not get behind this legislation.

Mr Barber interjected.

Mr ONDARCHIE — I say to Mr Barber we would like the Greens to be enablers and not disablers. We would like the Greens to be with us in moving Victoria forward. They should get out of the way if they cannot. This is about the progress of Victoria. It is not about taking us all the way back to chalk, slate and chisel. This is about efficiency. Mr Barber should get behind it because the Labor Party has and so do we. We would be keen for the Greens to get behind this legislation as well.

The Electronic Transactions (Victoria) Amendment Bill 2011 is well worth supporting. I am delighted that those opposite are supporting it. I am delighted that the opposition is getting behind it. As Mr Eideh says, the movement in technology will enhance business opportunities in Victoria. I know that, like me, Mr Eideh is keen to see the development and growth of Victoria. He is keen to see jobs growth as well. Like Mr Eideh, I commend this bill to the house.

Mrs COOTE (Southern Metropolitan) — This will be very quick. Rest assured I will be ready to complete my contribution after we have had question time, but this part of it will be about 1 minute in length.

Mr O'Brien interjected.

Mrs COOTE — As Mr O'Brien said, it will be a bit like an electronic transaction. It gives me great pleasure to talk about the Electronic Transactions (Victoria) Amendment Bill 2011. I listened with great interest to those who spoke before me, particularly Mr Ondarchie, whose contribution was very wide reaching. He explained in great detail some of the consequences that this bill will have for Victoria.

There is simply no doubt that e-commerce is going to be a challenge for all of us in this place and for Victoria as a community going forward. We have all heard the stories about small children who are able to use electronic devices very easily. In fact a whole generation is going to grow up using e-commerce in ways that we cannot even think about.

The PRESIDENT — Order!

Mrs COOTE — Already? That was quick.

The PRESIDENT — Order! It was an erudite performance, but it needs to be interrupted according to the standing orders.

Mrs COOTE — What a disappointment.

The PRESIDENT — Order! I am sure Mrs Coote will continue after question time.

Business interrupted pursuant to standing orders.

QUESTIONS WITHOUT NOTICE

Minister for Health: register of interests

Hon. M. P. PAKULA (Western Metropolitan) — My question is to the Minister for Health and Leader of the Government. I refer to the minister's update of his register of interests declaration and to the answers he gave in the house yesterday, and I ask: are any of the unnamed supporters referred to in the minister's declaration engaged in the health sector?

Hon. D. M. DAVIS (Minister for Health) — I stand by the answer I gave yesterday. I have made all the necessary declarations. Mr Pakula might like to ask Mr Holding, the member for Lyndhurst in the Assembly and a former minister, why he has not declared his financial support for the litigation involving Ms Lovell — financial support he received from the taxpayers of Victoria.

Supplementary question

Hon. M. P. PAKULA (Western Metropolitan) — I thank the minister for his answer and his attempt at deflection, but if the minister will not answer the question directly about whether those supporters are engaged in the health sector, can he perhaps outline what sector or sectors the unnamed supporters are engaged in?

Hon. D. M. DAVIS (Minister for Health) — I have made all the declarations that are required, and that is sufficient. I think the former minister should direct a question to his own former minister, Minister Holding. He might want to ask him whether he is prepared to put on the record the donations made to him by Victorian taxpayers. Why has he not put those on the register?

Footscray: central activities district

Mr ELSBURY (Western Metropolitan) — My question is for the Minister for Planning, the Honourable Matthew Guy. I ask: can the minister inform the house of what action the Baillieu

government is taking to improve security in our central activities areas and how this will help their growth in the new high-density residential hubs for Melbourne?

Hon. M. J. GUY (Minister for Planning) — I thank Mr Elsbury on this Loud Shirt Day. I am assuming that his lovely tie is a reflection of Loud Shirt Day, but it might be just Mr Elsbury's fantastic enthusiasm for his electorate that is also coming through today. Mr Elsbury and I joined Victoria Police and the mayor of the City of Maribyrnong recently to launch security cameras in the central activities area of Footscray.

Hon. M. P. Pakula interjected.

Hon. M. J. GUY — The City of Maribyrnong and the state government worked together in Mr Pakula's electorate — that electorate which he apparently knows so well from 30 kilometres away. We worked well to implement a new system of 31 security cameras for the Footscray central activities area so that Victoria Police has the ability to monitor the central part of downtown Footscray and provide fantastic, new, up-to-date Pinpoint Security facilities for that central activities area. Mr Elsbury and I were proud to be funding half of this project and launching this project recently for the state government with the mayor of the City of Maribyrnong.

This government is committed to getting our central activities areas going. We are committed to urban renewal in areas that are defined, so that people know where that change will occur. One of the key ways that needs to be done is by providing both passive and active security measures to make sure that people are safe and feel safe in areas where there will be greater population accommodation. The facilities program that Mr Elsbury and I were there to launch, with the City of Maribyrnong and the Victoria Police, is in fact the first that is being undertaken in a central activities area.

Those 31 cameras are working right now to lower the crime rate in central Footscray. They will be complementary to this government's policy for protective services officers (PSOs) on our railway stations. They will be absolutely complementary to the good work, the excellent work, that PSOs will do on our railway stations — the excellent work and the outstanding work that our PSOs can do and will do to keep people safe and to keep commuters safe. The provision of new security services, which we have launched in our activities areas, will make sure that the whole area of central Footscray, from the railway station through, will be an area for greater passive security and greater active security via our promise on PSOs, which is coming into effect, and of course this new program we have launched.

This government is absolutely committed to focusing on getting the central activities areas working. We are putting forward policies that are seeing greater development happening in defined areas, areas where we want greater high-density development to occur. We are also putting in place the necessary mechanisms to make sure that people are safe in those areas and that Victoria Police is resourced in those areas and has the ability to focus, via this new camera system, on crime that is occurring.

I pay tribute to the work of my department, the City of Maribyrnong and, importantly, Victoria Police, which is doing excellent work in Mr Finn's and Mr Elsbury's electorate to combat crime in downtown Footscray. It is excellent work, assisted by this government and the City of Maribyrnong, to make sure that Footscray will in the future be an outstanding place for urban renewal, pushed forward and advanced by the Baillieu government.

Minister for Health: register of interests

Hon. M. P. PAKULA (Western Metropolitan) — My question is to the Minister for Health and Leader of the Government. I refer to the minister's answer to the previous question and to his update on the register of interests declaration, and I ask whether any of the unnamed supporters that he refers to in his declaration are engaged in the aged-care sector?

Hon. D. M. DAVIS (Minister for Health) — I have made all the required declarations, but I do point out that the former Minister for Water, the member for Lyndhurst in the other place, has not made his declarations. He has not made the declarations he needs to make about the taxpayer funding of his private litigation. He needs to pay. He needs to be very clear about who is paying for his private litigation.

Supplementary question

Hon. M. P. PAKULA (Western Metropolitan) — I look forward to the minister's undertaking that all ministers in the current government will refuse to accept support from the VMIA (Victorian Managed Industry Authority). I look forward to that declaration by him, but I ask: can the minister at least provide the house with an unequivocal undertaking that none of the support that he describes in the register gives rise to a conflict or an appearance of conflict within the meaning of section 3(1)(e) of the Members of Parliament (Register of Interests) Act 1978?

Hon. D. M. DAVIS (Minister for Health) — I have made all the required declarations. To pick up Mr Pakula's preamble about Mr Holding, Mr Holding sought — —

Mr Viney — On a point of order, President, under the standing orders the minister is required to be responsive to the question. What he is doing is obfuscating, avoiding, blaming others and not being responsive to the question. I would ask that you instruct him to stop those practices and to actually be responsive to the questions that have been asked of him by Mr Pakula.

Hon. D. M. DAVIS — On the point of order, President, I was being directly responsive to the member's preamble.

The PRESIDENT — Order! This is a difficult one. Interestingly, Mr Davis does have some sanctuary in the fact that the preamble did open up the question. I have said before to members that in framing questions they can sometimes provide a pretty good escape route for a minister on an answer that they are looking for.

These are serious matters that are being put and raised in terms of the question. Mr Davis has relied strongly on declarations that he has made in accordance with the acts of the Parliament, and I think that is actually responsive to the question so far as the Chair is able to direct a minister. That might not be a satisfactory answer for the opposition and it might not be a satisfactory answer for others, but so far as the Chair is able to direct the minister, Mr Davis's reference to the actions he has taken is responsive.

In regard to the supplementary, I thought it was somewhat wider than the original substantive question. That was in my mind as it was posed, but nevertheless I let it stand. The minister still has some way to go in terms of his answer. He may well refer to further matters that were raised in that question put by Mr Pakula, but, as I said, the preamble did give Mr Davis some sanctuary.

Hon. D. M. DAVIS — In the preamble the member raised the question very directly of whether ministers in this government would access the VMIA for financial support when they were involved in some litigation. Of course it is quite appropriate for ministers undertaking their ministerial duties to have support where they make a statement or other matter in good faith. But in the case of Mr Holding, who was not undertaking his ministerial duties — he was outside his portfolio area, in a general frolic, attacking Ms Lovell, now the Minister for Housing, about a matter that was not factual — it would be very surprising to see a minister access public money to support a private litigation matter, as Mr Holding did. He accessed public money — —

The PRESIDENT — Order! Time, Minister.

Eye health: government initiatives

Mrs PEULICH (South Eastern Metropolitan) — My question without notice is also directed to the Minister for Health. I ask: can the minister inform the house of the importance of eye health in Victoria — —

Honourable members interjecting.

The PRESIDENT — Order! I have recognised Mrs Peulich and asked her to put her question to a minister. I do not think she needs assistance, and it certainly seemed to me that the issues being raised by members by way of interjection had nothing to do with her question. Mrs Peulich, from the top.

Mrs PEULICH — It is a very positive question to the Minister for Health, who is also the Minister for Ageing, Mr Davis. I ask: can the minister inform the house of the importance of eye health in Victoria and how the Baillieu government is supporting better eye health?

Hon. D. M. DAVIS (Minister for Health) — I thank the member for her question and for her interest in eye health, with today being World Sight Day. Approximately 80 per cent of vision loss in Australia is caused by five conditions, all of which increase in prevalence with age: age-related macular degeneration, cataracts, diabetic eye disease, glaucoma and uncorrected refractive errors.

The risk of getting serious eye conditions such as age-related macular degeneration and glaucoma increases dramatically if there is a family history of the disease. If you have a relative with macular degeneration, you have a 50 per cent chance of developing the disease yourself.

Locally, eye health is a critical issue for Victoria's ageing population. In 2009 vision loss affected almost 6 per cent of Victorians aged over 40, and 11 per cent of these people were blind. By 2020, without appropriate prevention and early intervention, it is projected that 200 000 Victorians over 40 will experience vision loss, of whom almost 30 000 are likely to go blind. This is a very serious and important matter that needs to be dealt with.

Research has demonstrated that people with vision impairment are twice as likely to have falls, three times as likely to suffer depression and are admitted to high-level aged-care facilities three years earlier than the population average. It is timely, as I say, on World Sight Day to look at these factors and to note the international recognition of vision issues and vision loss.

In Victoria, Vision 2020 Australia and the Vision Initiative are raising awareness about the importance of knowing your family history of eye disease. The message on World Sight Day is that Victorians should talk about eye health with their parents and grandparents. We need to talk to our families about these issues. Having all the facts is a powerful tool when it comes to tackling vision loss. Once glaucoma is diagnosed, for example, it can be managed with various treatment options. It really is as simple as telling people 'Save your sight — get tested'. Please do get tested. That is my message to the community today.

The government will also deliver $6 million per year to the Victorian Eyecare Service to provide pensioners with access to low-cost eye care and visual aids. The service is funded by the Baillieu government through the Australian College of Optometry. This commitment is in addition to the Victorian coalition's $165 million redevelopment of the Royal Victorian Eye and Ear Hospital — —

Mr Jennings — When's that happening?

Hon. D. M. DAVIS — It is happening, Mr Jennings; you just need to stay tuned.

I urge people to focus on discussing eye health with their families and understanding their family history of eye disease, and in this way eye health can be managed better and prevention measures can be instituted earlier.

Minister for Health: register of interests

Hon. M. P. PAKULA (Western Metropolitan) — My question is to the Minister for Health and Leader of the Government. In his declaration on the register of interests the minister says:

> Funds raised are subject to Australian electoral law and will be disclosed according to that law in the appropriate reporting period.

My question is whether the minister can tell the house if he is referring in that sentence to his own Australian Electoral Commission disclosure, the Liberal Party's AEC disclosure or the 500 Club's AEC disclosure?

Hon. D. M. DAVIS (Minister for Health) — These would be the disclosures that are relevant, and as I have said, I have made all the declarations that are required.

An honourable member interjected.

Hon. D. M. DAVIS — I suggest that Mr Pakula focus very directly on former minister, Mr Holding, the member for Lyndhurst in the Assembly, and his failure to put on record the up to $200 000 that may well have been spent by taxpayers on supporting his private litigation frolic.

Supplementary question

Hon. M. P. PAKULA (Western Metropolitan) — I again thank the minister for not answering the question about which disclosure we are talking about — whether it is his own, the party's or the 500 Club's. Can the minister at least tell the house whether the sentence in his declaration means that no matter who lodges it a federal declaration will be submitted which will identify clearly which supporters provided the minister with support as outlined in his declaration?

Hon. D. M. DAVIS (Minister for Health) — Declarations by the Liberal Party, the Labor Party or other political parties are a matter for them, and they will no doubt make those declarations. I have complied with every requirement under the act.

Honourable members interjecting.

Hon. D. M. DAVIS — What your party has not done is insist that former Minister Holding lodge the right report so that the tens of thousands of dollars of taxpayer money is there.

Hon. M. P. Pakula — Where's your support? Only Inga's backing you up.

The PRESIDENT — Order! The use of the member's Christian name in this matter, particularly by way of interjection, was inappropriate.

Hon. M. P. Pakula — I apologise.

Adult and community education: funding

Mrs PETROVICH (Northern Victoria) — My question is for the Minister for Higher Education and Skills, who is also the minister responsible for the Teaching Profession, Mr Hall. I ask: can the minister advise the house how the Baillieu government is supporting enhanced service delivery by local adult education providers?

Hon. P. R. HALL (Minister for Higher Education and Skills) — I thank Mrs Petrovich for her question and for her interest in adult education, a sector of education in Victoria that all of us share an interest in. I certainly welcome the opportunity to talk about it.

Much of the adult education sector is now branded under the Learn Local trademark, and I think that is an accurate description of what the sector is all about. There are some 320 Learn Local organisations scattered right across Victoria, and invariably in most cities, towns and hamlets across the state we have a Learn Local provider. It is an education sector that typically provides opportunities for some people who otherwise would not have such an opportunity to engage in both formal and informal education. It is also a sector that provides access to important programs for people who have a disadvantage to some degree or other.

One example was last Friday when I was in Moe. I was served afternoon tea by the clients of Moe Life Skills, which is an organisation based in Moe which provides services and training programs for people with disabilities. The reason I was visiting Moe Life Skills was to announce a grant of nearly $50 000 to establish a coffee bar at a local aged-care facility. The grant was to assist with the establishment of a facility whereby the clients of Moe Life Skills could learn some culinary skills and some skills in the retail area. It was also set up to provide a service which would be of great value to the residents of an aged-care facility in the town. I am proud to support the development of the synergies between those two and the mutual benefits gained by both the people involved in the aged-care facility and those with learning skills through the disability sector.

This grant was just one of some 84 grants that will be made available to Learn Local organisations under round 2 of the Adult, Community and Further Education Board Capacity and Innovation Fund grants. That round 2 funding totals $3.78 million and is spread across those 84 Learn Local organisations to provide worthwhile innovation programs so that people can benefit from the Learn Local organisation services. This comes on top of round 1 grants which totalled $4.2 million and were made available earlier in the year.

The adult, community and further education board needs to be commended for its foresight in making available of the order of $8 million in these two rounds of grant programs, delivering services which will enhance those programs and which our Learn Local organisations are able to provide on a needs basis to our local communities. The full list of those grant recipients will be on the Skills Victoria website within the next week. I encourage members to acquaint themselves with those grants and perhaps visit their Learn Local organisations to share in the joy of the grants and learn about the programs they offer.

Minister for Health: register of interests

Hon. M. P. PAKULA (Western Metropolitan) — My question is to the Minister for Health, who is also the Minister for Ageing and the Leader of the Government. I refer to the minister's approval of more than 100 persons to health and hospital boards in the time he has been a minister, and I ask: can the minister assure the house that none of those individuals have been donors to the Liberal Party or fundraising bodies associated with it?

The PRESIDENT — Order! I have some difficulty with this question. I gave a ruling not so long ago that matters related to party affairs were not under the jurisdiction of individual members of the party and that they could not be expected to know what the parties were doing. Decisions made by the parties were not necessarily within their ability to influence or direct in any way. This question goes directly to decisions relating to donations made to the party, and it is beyond the minister's opportunity to understand what the party's affairs might be in that regard. In my view he would not be in a position to provide a satisfactory answer to the house on this aspect. I invite Mr Pakula to reword the question.

Hon. M. P. PAKULA — Given that the minister has approved more than 100 persons to health and hospital boards in the time since he has been the minister, and given his refusal to name any of the supporters or members referred to in his declaration of interests, I ask the minister to explain to the house how the house can be satisfied that section 3(1)(e) of the Members of Parliament (Register of Interests) Act 1978 is being adhered to — that is, how can the house be satisfied that no conflict exists between the minister's public duty and his private interests?

Hon. D. M. DAVIS (Minister for Health) — As I said, I have made all the required declarations and have done that through the normal process in the register of interests, and the community can have full confidence in that. But where they cannot have full confidence is in Mr Holding, the member for Lyndhurst in the Assembly, who was the minister responsible for the Victorian Managed Insurance Authority at the time the VMIA decided to fund his private litigation. That is a public institution funding private litigation for the very minister who was then in charge of the VMIA. The VMIA gave the money to then Minister Holding.

Honourable members interjecting.

The PRESIDENT — Order! Obviously the noise level is unsatisfactory; the grand final finished two weeks ago, and it was a reasonable result. Nonetheless, we do not want to duplicate that activity here and that noise level was beyond the pale. These are serious questions, and the minister has the right to answer them as his entitlement in this place. I am sure the opposition is keen to hear those answers and consider what other actions it might wish to pursue in the house with respect to those answers. But I do not want a barrage of interjections from both sides. The minister has completed his answer.

Supplementary question

Hon. M. P. PAKULA (Western Metropolitan) — My supplementary question is quite simple. The minister has now been asked on numerous occasions to provide answers to questions about who the supporters were that provided him with funding, and he has used all manner of device to avoid answering them. My simple question to the minister is: why is he so determined not to answer this simple question?

Hon. D. M. DAVIS (Minister for Health) — As I have said, I have made all the required declarations.

Hon. M. P. Pakula — No, you have not.

Hon. D. M. DAVIS — I have. I have made all the required declarations. I have done that transparently. Mr Holding is an example of a person who has taken public money for a private activity and failed to declare it. He needs to come clean on how much he got from the VMIA when he was the minister responsible for the VMIA.

Maternal and Child Health Line: 20th anniversary

Mrs COOTE (Southern Metropolitan) — My question without notice is to the Minister for Children and Early Childhood Development, Ms Lovell. Can the minister inform the house of any milestones recently attained by the Maternal and Child Health Line?

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — I thank the member for her interest in this vital health service provided to new parents in Victoria — indeed to all parents in Victoria. In May this year I had the pleasure of advising the house of the Baillieu government's commitment to the Maternal and Child Health Line through the provision of $3.7 million to maintain the service capacity to more than 100 000 callers per year. This was a new commitment to this line. The former government was intending to let the funding for this vital service lapse as at 30 June this year. The $3.7 million that we committed to the Maternal and Child Health Line was part of the coalition government's $6.26 million commitment to parenting support and maternal and child health services that we allocated in our May budget.

Beyond this commitment of funding, 2011 has been an exciting year for the Maternal and Child Health Line. In July this year the service took its 1 millionth call. That is an amazing achievement and a testament to the value of this service that is offered to Victorian families. One million calls over 20 years is a lot of calls.

Recently I was privileged to attend the celebrations for the 20th anniversary of the Maternal and Child Health Line. I attended this with staff at Clayton, and the opportunity to celebrate this special occasion with the dedicated and professional people who make the Maternal and Child Health Line a success was truly a delight. In attendance at the celebration were the acting manager, Karen Mainwaring, but also the first manager of the Maternal and Child Health Line, Jeannette Nagorcka. Also in attendance were two staff who have worked with the line for the entire 20 years it has operated, Liz Ferguson and Seok Tin-Tan, who have given advice to a generation of Victorian families and vital health information for their children.

It is always important for us to realise that for most people the experience of being a new parent is exciting and joyful, but it can also be extremely stressful, and the Maternal and Child Health Line provides steady and enduring support for these new parents. I thank the staff who have provided this service over the past 20 years, and I look forward to celebrating many more milestones with the service in the future.

Minister for Health: register of interests

Hon. M. P. PAKULA (Western Metropolitan) — My question is to the Minister for Health. I refer the minister to all of the answers he has given today and his ongoing failure or refusal to answer the question about which supporters provided him with support. I wonder whether that might be because the minister actually does not know who the donors were. My simple question to the minister is: does he actually know which organisations donated the funds that were provided to support him; and if he does not know, how can he know whether in fact any conflict exists between his public duty and his private interests?

Hon. D. M. DAVIS (Minister for Health) — My answer to the member is exactly the same: I have made every declaration under all the requirements. I have met the requirements under the act. I have done that openly and fairly. Equally, I have to say it is about time that Mr Pakula dealt with former Minister Holding's clear conflict as the VMIA head or minister, awarding himself financial support so that he was able to defend himself in private litigation. I suggest that he go back to former Minister Holding and ask him to make a declaration of how much taxpayer money he got from the VMIA.

Supplementary question

Hon. M. P. PAKULA (Western Metropolitan) — The minister might not know or he might not be prepared to say, but the publicly available Australian Electoral Commission return of the Liberal Party and associated entities for 2009–10 does detail that Philip Morris, British American Tobacco and the Health Insurance Restricted Membership Association of Australia were all donors to the Liberal Party or its associated entities for the relevant reporting period. I ask: can the minister assure the house that none of the support that was provided to him came from those organisations?

Hon. D. M. DAVIS (Minister for Health) — As I understand it, party donations are a matter for the party, and I do not routinely check the Australian Electoral Commission website for Liberal Party donations. Mr Pakula might, but I do not. I have met all the requirements and honestly declared that I had support from the Liberal Party.

Ordered that answers given by Hon. D. M. Davis be considered next day on motion of Mr LENDERS (Southern Metropolitan).

Technology: Health Market Validation program

Mr DRUM (Northern Victoria) — My question is to the Minister for Technology, Richard Dalla-Riva, and I ask: can the minister inform the house how the Baillieu government is creating opportunities for the technology companies — —

Mr Lenders — On a point of order, President, Mr Drum addressed a question to the 'Minister for Technology, Richard Dalla-Riva'. If there has been a change of administrative arrangements, will the Leader of the Government advise the house?

Mr DRUM — President, that was my mistake. This question is for the Minister for Technology, Gordon Rich-Phillips.

The PRESIDENT — Order! I ask Mr Drum to put his question again, because I did not hear it the first time. I want to hear it the second time.

Mr DRUM — My question is to the Minister for Technology, Gordon Rich-Phillips, and I ask: can the minister inform the house how the Baillieu government is creating opportunities for technology companies to make Victoria more productive?

Hon. G. K. RICH-PHILLIPS (Minister for Technology) — I thank Mr Drum for his question and for his interest in the technology industry. The Victorian government is very supportive of developing the technology sector in this state. Whether it is biotechnology, whether it is ICT or whether it is small technology, we see a great role for technology industries in driving productivity in the Victorian economy. We see a great opportunity for the Victorian government to support the development of the technology sector both through building capability and through creating opportunities for Victorian technology companies.

Last week I was very pleased to launch the new $15 million Health Market Validation program to create opportunities for companies, particularly in the biotechnology sector, to work with government on developing new innovative solutions to issues and problems identified in the health sector in this state. The Health Market Validation program builds on the very successful small and medium enterprise (SME) market validation program, which has run since 2009 and which has created opportunities for specific problems to be identified and then for Victorian technology companies to be invited to propose solutions to those problems. It is envisaged that the Health Market Validation program will operate in the same way.

This year we will be providing an opportunity for health bodies in Victoria to identify problems within the health sector where a technology solution may be appropriate. We will be then providing an opportunity for Victorian technology companies to propose solutions to those problems by way of a feasibility study, which will ultimately lead to funding for successful technology companies to develop those solutions and provide them to the relevant health bodies.

The advantage of this program is that it will provide an opportunity to address, through a technology solution,

particular issues in the health space. It will also provide an opportunity for Victoria's innovative technology companies to develop their capability and commercialise their expertise. It is a great opportunity for the health sector, and it is a great opportunity for the technology sector. It builds upon the work undertaken in the SME market validation program, which has been a very successful pilot program in Victoria, and we look forward to further success with market validation programs within the technology space.

QUESTIONS ON NOTICE

Answers

Hon. D. M. DAVIS (Minister for Health) — There is one answer to a question on notice: question 673.

Hon. P. R. Hall — On a point of order, President, I seek your clarification on what I believe are some serious duplications of questions being asked as questions on notice. Members would be well aware that on Tuesday and Wednesday this week Mr Pakula collectively asked of the order of 3000 questions on notice, all concerning matters about lobbying firms. On 16 August in the Legislative Assembly Mr Pakula's colleague the member for Altona submitted the same questions, identical in nature apart from a spelling error in some of Mr Pakula's questions, where he had spelt 'manufacturing' incorrectly. What we have in this situation is of the order of 3000 questions asked in the Assembly which have now been duplicated in the Council. They are questions which go to exactly the same ministers.

I am required as part of my duties under the standing orders of this chamber to respond to those questions asked of me in the Assembly, as are each of my ministerial colleagues. What we are being asked to do on this particular occasion is to duplicate that effort of answering some 3000 questions. I suggest to you, given the nature and volume of questions being asked, that this is either an abuse of process or an unreasonable request in terms of requiring ministers to respond in duplication to these questions.

If you extend this and there is no limitation on duplications and asking the same questions, then in theory you could well have 127 members of the Parliament asking each single minister exactly the same question. That would be ludicrous. I currently think the nature of some of the questions on notice is ludicrous. Notwithstanding that, given the fact that in this particular instance over 3000 identical questions are being asked in both chambers and given the fact that the answers we provide in this chamber are printed in *Hansard* for all to see, I ask you to give consideration to the appropriateness of ministers being required to answer this volume of questions — in this case, twice.

Hon. M. P. Pakula — On the point of order, President, in his contribution Mr Hall talked about the work he is required to undertake answering these questions. What he does not mention is that every minister in the government has given exactly the same non-answer to every question. There is no work involved at all, because not only have ministers not provided answers but they have simply provided the opposition with a whole-of-government response which is identical in respect of every minister. They have not signed the answers either; they simply sign a cover sheet.

When the minister talks about the onerous nature of responding I might have some sympathy for that argument if each minister was giving serious consideration to the detail of the question, which is which lobbyists they met with, rather than simply providing a whole-of-government response which is non-responsive and which simply says that the government is looking to update the code of conduct. Mr Hall's argument might then have some resonance.

The other point is that there are different standing orders between the lower house and the upper house in regard to the time in which ministers have to provide a response. In addition, let me say it is clear the minister's point of order is simply a softening-up exercise for a change the Leader of the Government is intending to impose in regard to reducing the ability of the opposition to ask questions on notice — which the government is not answering anyway.

Mr Barber — On the point of order, President, I think Mr Hall was inviting you to perhaps rule out questions which he believed from having looked at them would be onerous to answer. I have not been able to find anything in the standing orders allowing a minister to refuse to answer a question or for you to rule out a question because the minister thinks it is onerous. Mr Hall might be thinking of the Freedom of Information Act 1982, where that provision does exist. Of course this government is increasingly employing every tool in the book to obfuscate the Freedom of Information Act 1982, but I believe there is nothing in the standing orders that would allow you to make such a ruling — if indeed that is what Mr Hall is requesting.

Mr Lenders — On the point of order, President, the thing I ask you to reflect upon is that regardless of how Mr Hall may see the operation of this Parliament, there

is a fundamental issue here which this point of order addresses, and that is the right of any member of Parliament to ask a question. Drawing into the point of order the issue that a question should not be able to be asked because it has been asked elsewhere goes to a fundamental gagging of the Westminster system. This is not a light matter; it goes to the autonomy and privileges of both chambers. We can go back to the tree of liberty at Runnymede if we want to go back that far. Going back to the Westminster system there is the principle that each house is autonomous, and for a member of one house — I will say in this case the Legislative Council — to be prohibited from asking a government minister a question because a person in another house asked the question, even if it was identical or even if it was multiple, transgresses that principle.

In response to the point of order, this is not just a matter about administration. This goes to the fundamental privilege of a member of this house to try to hold the executive to account, so in your consideration I would ask you to take that into account and not be swayed by any other arguments which are not fundamental to the principle.

Hon. D. M. Davis — On the point of order, President, picking up the point of order from Minister Hall and the other contributions, I accept the point made by Mr Lenders that the two chambers are autonomous — —

Mr Lenders interjected.

Hon. D. M. Davis — No, I am actually supporting Mr Lenders's point here. The chambers do need to be seen as autonomous and to have their own separate standing orders and so forth. Equally, Mr Hall's point is about common sense, and it would be very sensible for a number of members of the opposition to confer with a number of their colleagues and come to a sensible approach to this. Notwithstanding that, I think it would be helpful for you to reflect further on this.

Mrs Peulich — On the point of order, President, I listened very carefully and intently to Mr Hall, and I certainly concur with much of what Mr Davis has said. The question is how to address the issue of duplication without infringing upon members' rights or the autonomy of the respective chambers. It is an issue, given the voluminous number of questions on notice printed in the notice paper yesterday, which I think was about 2 inches thick. I believe you should indeed turn your mind to finding some practical solutions to address the issue of duplication.

The PRESIDENT — Order! I thank members for their contributions on the point of order. The only concern I had with the representations that were made was Mr Pakula's assertion that this was some sort of softening-up exercise. I do not accept that that is part of the process, and certainly it is fairly difficult to soften me up on these matters. I would suggest that it is not anything untoward in that sense.

I am mindful of some of the comments that have been made by the Greens in the past too about the value of questions on notice and the fact that they are considered in the questions that they put. One of the interesting things about Mr Hall's proposition is that it is more difficult for whomever is in government to provide considered responses in a timely fashion if in fact they are encumbered by a significant number of questions that represent duplication.

I am mindful of the fact that answers are published; therefore, where duplication occurs, there would seem to be some difficulty for a number of people, but nonetheless I will consider this. I am obviously not going to make any decision on this at this time. No doubt as part of my consideration I will take the views of a number of members into account. I think some of the points that Mr Lenders made are central to the issue, and from my point of view I have always believed that one of the crucial things about presiding officers is that they are in place to uphold the entitlements of every single member. Nonetheless, the common-sense argument also comes into it to some extent, but members can be assured that it will be given very careful consideration and that a number of inputs will be sought from various members in regard to any decision or any suggested path that I might recommend to the house and to members.

ELECTRONIC TRANSACTIONS (VICTORIA) AMENDMENT BILL 2011

Debate resumed.

Mrs COOTE (Southern Metropolitan) — I will start my contribution again given I had 1 minute before question time. It gives me great pleasure to speak on the Electronic Transactions (Victoria) Amendment Bill 2011. There can be no doubt that the electronic media has made a quantum leap in the past decade, in fact in recent times. We read in this morning's paper that these tablets or iPads are now going to be able to take messages and are going to outdate some of the hand-held devices that have been there in the past. Every day we hear and read about new technological advances that are going to enhance the daily activities

of our lives. A decade ago we could not have conceived of things such as Skype, iPads, BlackBerrys, iPhones and smart phones. These are now part of our daily lives and increasingly are going to become more important not only to how we live our lives but also to how we do business.

It was interesting to read a few days ago about Australia Post and the pressures that are being placed on Australia Post with parcel delivery. Parcel delivery now has overtaken what we knew as snail mail. People who were sending mail that used to go via the post are now doing so electronically, but to counterbalance that, we now have an issue where people are buying goods online; in fact shopping of all types is being done online, including grocery deliveries, and it would seem that now the post offices themselves have to put in place parcel lockers where people can access the parcels of goods they have purchased over the internet.

We are seeing a whole range of practical, pragmatic day-to-day exercises changing, and they are changing extremely rapidly. That is why it is encouraging to see a bill such as this before the house today.

This bill amends the Electronic Transactions (Victoria) Act 2000. According to the explanatory memorandum, the bill modernises Australia's law on e-commerce so that it reflects internationally recognised legal standards, enhances cross-border online commerce, increases certainty for international trade by electronic means and therefore encourages further growth of electronic contracting, and confirms Australia's commitment to facilitating electronic communications in international trade transactions as reflected in free trade agreements.

Not so long ago people used to be happy to fax transactions. I can remember the debate about whether a signature on a faxed document was going to be legally binding and whether in fact it would constitute a contractual agreement. However, we have come a long way since then. I think all members of this chamber have fax machines, but I would hazard a guess that many of us do not use those faxes at all because in this day and age the electronic medium takes precedence over the faxed transactions.

However, it is important that there is clarification around what constitutes a legal arrangement, particularly with internet transactions and electronic transactions — which is what this bill is dealing with — because these days many of the contractual partners on a document may live internationally or interstate, and it is important for us to be in line with the rest of this country and the rest of the world. That is what this bill ensures.

The bill is another example of the Baillieu government's impressive performance in information and communications technology. I remind this chamber that during the era of the successful Kennett government Alan Stockdale was appointed as the first ever Minister for Multimedia. He was also Treasurer at the time. He set the trend, he set the benchmark and he put Victoria on the map both nationally and internationally. Victoria has been at the forefront of the ICT business ever since. The Minister for Technology, Gordon Rich-Phillips, is going to enhance the progress of ICT for Victoria well into the future, and I know he will build upon the great success of his predecessor, Alan Stockdale.

As I said, this bill will determine the time and place at which a contract is made, and that will help to create legal certainty for parties to a contract. That is especially important in e-commerce where the signatories may be in different time zones in different parts of the world. It is important that the Australian and Victorian laws reflect international standards, as this gives both Victorian consumers and exporters confidence in their international e-commerce transactions. The model law on which the existing act is based was updated on 23 November 2005 by the United Nations General Assembly when it passed the United Nations Convention on the Use of Electronic Communications on International Contracts.

It is interesting to reflect on what the other states and territories are doing. Similar legislation to this bill has already been passed in the federal Parliament and in the New South Wales, Tasmanian and Northern Territory parliaments. The South Australian and Western Australian parliaments currently have a similar bill before them, and Queensland and the Australian Capital Territory are preparing legislation to be introduced into their respective parliaments. As I said, Victoria has always been at the forefront of e-commerce and technological advances that enhance business.

It is interesting to look at some of the statistics that have been around. Two reports have been produced within the past 12 months: one was produced by the Australian Communications and Media Authority, ACMA, and the other by Access Economics. Access Economics estimates that by 2009 the value of products purchased by Australian consumers was worth between $18.6 billion and $24 billion annually. ACMA quoted the Australian Bureau of Statistics estimates that the value of internet orders placed with Australian

businesses was $123 billion over the 2008–09 fiscal year.

Although the two reports were not comparing the same issue, it is interesting to note the discrepancy between their estimates, which is about $100 billion. The ACMA statistics talk about the value of internet orders placed with Australian businesses, and this would assume that it is Australian businesses placing internet orders with other Australian businesses or individuals placing orders with Australian businesses, but it also could mean that international businesses are doing e-commerce with Australian businesses.

I suggest to this chamber that this is going to be an increasing trend. Therefore it is even more important that we get it right here in Victoria so that international consumers who wish to do business via e-commerce with Victorian companies or businesses — large and small — will have a clear indication of the rules and regulations.

In Port Melbourne, which is part of the Southern Metropolitan Region and is where I have my office, there are 121 businesses and organisations affiliated with the Port Melbourne business association, 47 of which have web addresses. Many of the remainder either have email addresses or are takeaway food restaurants. I can see the time coming when you can email your request for takeaway food and it will suddenly, magically turn up. It is those sorts of opportunities that are available for businesses right across the spectrum, and particularly in Port Melbourne.

I know that within the electorate of Albert Park there is a precinct in South Melbourne that has become very much the IT centre in this state, and there are many businesses within that precinct that are doing some extraordinarily innovative work with information technology. They are certainly at the cutting edge and the forefront of the industry, as are the filmmakers within the precinct who are doing extraordinary work and are highly recognised for their work internationally. They are doing this work via e-commerce, and they are taking advantage of the business opportunities that are there.

There can be no doubt that some retailers have faced some challenges dealing with e-commerce in Australia. However, it would seem that there are people who have fabulous stock, even international brands, who are increasing their businesses because they are advertising and using e-commerce in a very innovative way.

We are going to see some extraordinary changes to the way we do business in this state, both privately and commercially. Victoria's businesses and e-commerce, with the help and assistance of the minister who has Victoria's businesses at heart and with bills such as this, will go from strength to strength.

Debate interrupted.

DISTINGUISHED VISITORS

The PRESIDENT — Order! Before the luncheon break I take the opportunity to acknowledge two people with us in the public gallery. You will have to forgive me for my pronunciation. Greek is not my specialty, and nor is Lebanese. The first is His Grace the Most Reverend Issam John Darwish, who is the Melkite Greek-Catholic Eparch of Australia and New Zealand. He has been in that office for some time in Australia — since 1996, as I understand it. We welcome you and congratulate you for the work you have done during the period you have served in that role, and we note that you are now moving on to another position.

We have the opportunity this day to also welcome the person who will fill that role going forward, and that is the Right Reverend Archimandrite Robert Rabbat. We welcome you to Australia. We lament that you are based in Sydney rather than Melbourne, but nonetheless we wish you well in your work.

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

ELECTRONIC TRANSACTIONS (VICTORIA) AMENDMENT BILL 2011

Second reading

Debate resumed.

Mr RAMSAY (Western Victoria) — I am pleased to be able to speak to and support the introduction of the Electronic Transactions Victoria Amendment Bill 2011. I congratulate the Attorney-General, Robert Clark, on the work he has done to bring this bill to both houses. It is another shining example of the extremely capable work the Attorney-General's department is doing to improve the legislation of the previous Labor government, which in this instance will reduce the costs of Victorian businesses and provide greater transaction efficiencies and greater security for those transactions.

I have had concerns over many years about the security of electronic transactions, bearing in mind that the international speed of doing business requires an

ongoing thirst for new technologies and the use of the electronic medium to do business is essential to remain competitive in the global landscape. For this reason it is important that a government continually show leadership in introducing legislation that gives confidence and certainty with a degree of flexibility to enable parties to trade. This is particularly important in the field of electronic commerce.

The uptake of electronic information, communication, education and business is breathtaking, and that has been the case in history from the stump-jump plough — which I am sure Acting President O'Brien will remember with fondness — to the iPad. Australia, per capita, is at the world's forefront with the uptake of and investment in new technologies such as electronic mediums. But the speed of these new technologies brings with it some risk, and we as legislators have a duty to protect and safeguard technology users, providing not only the opportunity for a greater competitive edge by reducing the cost of doing business and delivering more efficient and timely transactions but also the security and confidence needed in doing that business.

The principal act, the Electronic Transactions (Victoria) Act 2000, essentially provides that transactions taking place under a law of the jurisdiction will not be invalid simply because they are completed electronically. It also allows businesses and government — —

Honourable members interjecting.

Mr RAMSAY — Acting President, I can hardly hear myself speak, far less — —

The ACTING PRESIDENT (**Mr O'Brien**) — Order! There is a bit of conversation, but the member does have a loud voice, and I can hear him — I commend him on that voice! However, I would ask other members to be quiet. I think I heard a phone make a noise very briefly as well. Perhaps that was an electronic transaction!

Mr RAMSAY — The principal act also allows businesses and government to fulfil electronically dealings that involve the communication of written information, the provision of a handwritten signature, the production of documents and the recording or retaining of information. However, this act does have limitations with respect to e-trading, so this amendment bill was developed following consideration by the Standing Committee of Attorneys-General of the proposal to accede to the 2005 United Nations Convention on the Use of Electronic Communications in International Contracts.

The bill amends the principal act to update the electronic transactions regimes to align with the convention. In essence the implementation of the convention is intended to modernise Australia's e-commerce law so it reflects international legal standards; enhance cross-border online commerce; increase certainty for international trade, which should encourage further growth of electronic contracting; and confirm Australia's commitment to facilitating electronic communications in international trade transactions as reflected in free trade agreements.

It is pleasing to see that the opposition is supporting this bill. It is important that Victoria be given every opportunity to be competitive and to enhance and improve its productivity for the sake of its economic viability while at the same time reducing the costs of doing business. That statement is at the crux of the Premier's vision for this state, and it is pleasing to see that at least in this instance the opposition is being a willing partner with respect to this vision.

In summary, this bill will complement the Electronic Transactions (Victoria) Act 2000 and make some amendments relating to electronic laws, particularly with respect to electronic signatures and time and place of dispatch and receipt of electronic communications. It also defines when an offer is an invitation to treat. I do not intend to go through the detail, as I am aware of my limitations in legal dialogue, except to say that this is important, common-sense legislation that makes logical changes to Victorian law to bring it into line with law both around Australia and across a number of international jurisdictions. In concluding, I note no amount of legal pontificating from me will provide any further strength of argument, so I commend the bill to the house.

Ms CROZIER (Southern Metropolitan) — I have pleasure in rising today to speak on this bill. It is a straightforward bill that will make minor amendments to the Electronic Transactions (Victoria) Act 2000 — —

Mr Barber — You reckon it's straightforward, do you?

Ms CROZIER — It makes minor amendments, Mr Barber.

Mr Barber — But you reckon it's straightforward?

Ms CROZIER — You will discuss that in the committee stage, I have no doubt.

This bill will bring the current legislation into line with international standards, and in particular with the

United Nations Convention on the Use of Electronic Communications in International Contracts, which was adopted by the General Assembly in 2005.

Not only will this bill bring the current legislation into line with international standards but it will also allow for greater certainty in electronic transactions through compliance with those international legal standards. This will be of enormous benefit to Victorian businesses, no matter their size, and it will further encourage electronic contracting and transactions in Victoria, allowing Victorian businesses to compete both locally and within global markets.

As has been said by numerous members this afternoon and as we all know, e-commerce is conducted at a greater rate today than ever before, and as each year goes by it will continue to play a significant role in business and in community and government dealings. We have all been beneficiaries of technology and e-commerce in our day-to-day lives. Members have provided numerous accounts of such technology, whether it be internet banking or internet transactions involving the purchase of products from overseas. The pace of that technology is certainly a challenge for the user, but it also poses challenges for some businesses. Mrs Coote in her contribution reminded me of the many transactions conducted by Australia Post. That is a great example of how an organisation has had to adapt in a changing global communication market.

As technology advances, opportunity abounds, but along with the great opportunities of technology come the challenges faced by those engaged in e-commerce, such as security, legal or technological issues, which need to be addressed. This bill will establish clear legal parameters that will be in line with international standards, creating the legal certainty required by many businesses and individuals.

Amongst other things, this bill will enhance the legal certainty and commercial predictability of international transactions by clarification of electronic communications and the formation and performance of contracts entered into. For instance, it will ensure that a contract can still be legally effective if it is formed by an automated message. Mr Pakula in his contribution earlier today outlined that matter very effectively and gave some very good examples of how that could play out and how this bill will assist in those aspects of conducting e-commerce and e-transactions.

This bill will make things easier for businesses wanting to conduct transactions electronically. Electronic signatures are becoming more common in business transactions, and this bill will further clarify and refine rulings for determining whether the method used for an electronic signature is reliable.

I have spoken to a number of businesses across my electorate, as one does. Just recently I heard the concerns of a number of owners of small businesses in Oakleigh. Those business owners are concerned about the increasing costs of running their businesses, and anything that will ease the costs for small businesses and make them more efficient will very much be welcomed. In contrast, many of those small business owners expressed their concerns to me about the cost of the carbon tax and the additional costs that they will incur as a result. They say they will have to pass those costs on to the consumer or they may have to review their entire operation. That is something they are certainly cognisant of, and I think that whatever we can do to support small businesses should be done. In relation to the carbon tax, time will tell, but in the meantime this government is very much about supporting business.

This bill will make it easier for Victorian businesses to conduct their many transactions, and it will give certainty to business. Giving business certainty is a good thing; it creates opportunities, and that in turn is good for the overall Victorian economy and for Victorian employers, employees and consumers. This bill will enable Victorian businesses to do business locally or internationally in an efficient manner, and it will also recognise the growing significance of e-commerce and e-transactions that are part of the everyday lives of Victorians.

The Baillieu government is committed to providing opportunities for all Victorians as well as supporting and promoting an efficient and facilitative business environment. This bill will bring Victoria into line with the commonwealth and other states and territories that have also passed electronic transactions legislation consistent with the principal act that this bill refers to.

The government has sought consultation with a number of stakeholders — namely, the Law Institute of Victoria and the Victorian Bar — which are also supportive of this bill. I think we can say that there is great support for this practical measure. As I said at the outset, this bill will provide certainty and clarity for businesses, it will provide opportunities for businesses to conduct business in an electronic form and it will bring Victoria in line with international standards. We live and work in a truly global environment, and this bill will provide practical assistance to those conducting business in such an environment. With my short contribution, I commend the bill to the house.

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1

Mr BARBER (Northern Metropolitan) — I am sure the minister would agree that the government is significantly in the business of electronic transactions. It offers a whole range of services to customers online. Firstly, can the minister tell me if there has been an assessment of how many different government services are offered online and would be covered by this bill; and secondly, has there been an estimate of the cost of government complying with the new legislation?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I seek leave for Mr O'Brien to sit at the table.

Leave granted.

Hon. R. A. DALLA-RIVA — I am advised by the department that there has been no assessment made of the cost. I am also advised that this legislation was designed to achieve an update, and my understanding is that no government services will be further affected by this bill. That is my understanding, but I will seek clarification if I need to.

Mr BARBER (Northern Metropolitan) — I accept that there has been no assessment of the cost impact, but surely there must be an impact of this legislation on the government's own electronic transactions. There are zillions of them — for example, obtaining fishing licences online or purchasing a land certificate online. I was confused by the minister's last comment that this bill will not have an impact on the government's own transaction system. I presume he is not saying that the government is exempt from the act.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I said I would clarify it, and I am about to clarify it for Mr Barber. There are two points. The first point was that the model law was designed to provide a set of internationally accepted rules to remove legal obstacles to provide a more secure environment for electronic commerce. Our view is that it will remove additional red tape. The other point my advisers make is that a national impact assessment was made at the time of the meeting of the Standing Committee of Attorneys-General. As to whether that has been released, I am not sure. The advice is that it was with the commonwealth.

Mr BARBER (Northern Metropolitan) — Section 7(3) of the principal act, which sets up the general coverage of the legislation, states that:

> The regulations may provide that subsection (1) does not apply to a specified transaction or specified class of transactions.

That relates back to section 7(1), which states:

> For the purposes of a law of this jurisdiction, a transaction is not invalid because it took place wholly or partly by means of one or more electronic communications.

Has the government by regulation exempted any of its own transactions or specified classes of transactions from the principal act at any stage?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I am advised that the government has no intention to vary the regulations. The types of transactions within the regulations are currently wills and transactions or documents such as court documents requiring personal service. There is no intention to vary the current regulations that apply to wills and transactions or documents.

Mr BARBER (Northern Metropolitan) — I thank the minister very much for that most helpful answer. In my view the biggest single source of electronic transactions that will be covered under this bill — outside perhaps banking transactions, which we all understand and which are well regulated in themselves — would in fact be myki. When myki is up and running there will be 500 million transactions on it. In fact now that we will all have to touch on and touch off there will be probably 1 billion transactions associated with myki each year. As we move through the rest of the clauses in which I have indicated I am interested, I would like to ask the minister some specific questions about how this bill and act is likely to operate in practice. The bill itself makes perfect sense when you read it, but it is how it is used in real world situations that I think is the most important issue for us to address here today. As I said, myki will be the blockbuster of electronic transactions, at least as far as the government is concerned. I have no further contributions on clause 1.

Clause 1 agreed to; clauses 2 and 3 agreed to.

Clause 4

Mr BARBER (Northern Metropolitan) — Further on in the legislation reference is made to something called 'input error'. In clause 4, the definitions clause, there is no definition of 'input error', and I could not find a definition of 'input error' in the principal act either. Can the minister tell me whether I have missed something and there is in fact a definition of 'input error'?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I am just trying to find where this is within clause 4. It is probably staring at me, but I just cannot see it.

The DEPUTY PRESIDENT — Order! Can Mr Barber please give some clarification.

Mr BARBER (Northern Metropolitan) — There is no definition of 'input error' in clause 4, but input error is referred to later in the legislation.

The DEPUTY PRESIDENT — Order! Is Mr Barber seeking an explanation as to why there is not a definition in the definitions clause?

Mr BARBER (Northern Metropolitan) — Or perhaps in the principal act, but I have not been able to find one.

The DEPUTY PRESIDENT — I ask Mr Barber if the term is in another clause of the bill.

Mr BARBER (Northern Metropolitan) — Yes, it is on page 12, right at the top, where it states:

> If —
>
> (a) a natural person makes an input error in an electronic communication …

I am asking why that term, which appears later in the bill, is not defined anywhere.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The advice I have is that there is no definition of 'input error' in the legislation before the committee or in the principal act. The understanding I have is that it refers to the common meaning of an input error. The further advice I have is that it is intended to cover errors relating to inputting wrong data, such as unintentional keystroke errors. The safeguard encourages parties who transact by way of automated message systems to build in an opportunity for a party with whom they are transacting to correct input errors. Therefore that is where the common meaning of it comes in. However, this right to withdraw the portion of the electronic communication in which the input error was made is not a right to rescind or terminate a contract.

We can go into it a bit more in new section 14, inserted by clause 12, if Mr Barber wants to do that.

Mr BARBER (Northern Metropolitan) — That explanation tends to paint a fairly narrow description of what an input error might be. Clearly if I am on Coles online and I order 200 litres of milk, press the button and then realise that I have done something wrong and I ring Coles and say, 'I actually wanted only 2 litres of milk', then I will be able to access the provisions of this act. If the cat jumped on my keyboard or if I inadvertently left a form open and a child came in and started punching things into the form from my keyboard, I might be able to access it as well.

But with myki I input my data by touching on with my myki card. There are various provisions about how that operates. It is quite different, really, from keyboard strokes and the ability to extract from those strokes the meaning that I might have intended or my unintended strokes. When we come to that clause in the bill, I will be quite keen to discuss with the minister or elucidate for the committee exactly how this legislation will operate to protect consumers using myki.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I will just clarify that that will be discussed when we come to clause 12. It inserts new section 14D(2)(c) and (d), which on page 12 outline some aspects of input errors. I will wait until we get to that, and that might give some clarification on where we are heading.

Clause agreed to; clause 5 agreed to.

Clause 6

Mr BARBER (Northern Metropolitan) — This clause provides a regulation-making power, allowing the government to exempt certain classes of transactions. The minister explained fairly well in discussing the purposes of the bill that there was no intention of the government to exempt any class of government transactions, let alone myki, from coverage by the bill, so I think we can just let that answer stand for this clause as well.

Clause agreed to; clauses 7 to 11 agreed to.

Clause 12

Mr BARBER (Northern Metropolitan) — This clause inserts section 14D, which provides in subsection (2):

> If —
>
> (a) a natural person makes an input error in an electronic communication exchanged with the automated message system of another party; and
>
> (b) the automated message system does not provide the person with an opportunity to correct the error —
>
> the person, or the party on whose behalf the person was acting, has the right to withdraw the portion of the electronic communication in which the input error was made if —
>
> (c) the person, or the party on whose behalf the person was acting, notifies the other party of the error as soon as possible after having learned of the error and indicates that he or she made an error in the electronic communication; and
>
> (d) the person, or the party on whose behalf the person was acting, has not used or received any material benefit or value from the goods or services, if any, received from the other party.

The provisions of this bill cover not only the formation of a contract when I buy one item electronically. Recently via the online bookselling system I bought a copy of *Birds of East Africa*, a field guide. Not that I am going to go birdwatching in East Africa at any time in the future, but if I own a copy of this book, I can go in my mind. When I sign up to myki I am making little transactions every day in part performance of the contract. The people on the other side are also performing their part of the contract.

First of all, there are some real difficulties here. I imagine that my contract and the provisions of this bill relate to my relationship with myki. They do not relate to my relationship with Yarra Trams or another operator. The whole reason I am paying my myki fare in the first place is to get on a train. If they do not perform their part of the contract, I probably do not have any use for this legislation. The minister might be able to explain it to me differently. He might be able to explain that somehow there is some extra relationship between me, myki and the operator. The difficulty is that I will perform my part of the contract, which is to swipe my myki card, and the train operator may or may not perform their part of the contract, which is to bring on a train that I can ride on.

I have this relationship with myki through my card. It is quite clear that that is the use of an automated message system. Returning to clause 12, which I read from earlier, it is also quite clear that, at least as far as a myki touch-on station goes, there is no way for me to immediately correct the input error, if that is what it is, via that myki touch-on station. I can just touch on and I can touch off, and that is all I can do. I cannot communicate with the myki automated system, let alone people in the myki organisation, whoever they are, via the system.

This legislation is tailor-made for that sort of transaction. One would hope that I can call upon the rights that have not previously been available to me in relation to the formation or performance of a contract through electronic means. If they were available to me, they may have been available to me under contract law, but the intent of this legislation right now is to make them very clear. Mr O'Brien in his contribution said this was about making everything clear, and that would be a good thing if it were to happen. If I were able to read this section and know what my rights were in relation to input errors on myki, that would make things move more smoothly. It would make myki's job easier and it would certainly make my life easier.

The problem is that my relationship with myki is also governed via the myki ticketing manual. This is the same myki ticketing manual that yesterday I tried to have referred to the Scrutiny of Acts and Regulations Committee. The government has indicated it will vote that down. Your party, Deputy President, indicated it would support my motion, or at least that is what I have been led to believe, so it is possible that contradictory messages are being sent via the words in the myki ticketing manual and the provisions of this act. For instance, there is a section of the myki ticketing manual that deals with 'passback' and 'change of mind'.

> Passback is a time period following touch on or off, during which time a myki or short-term ticket presented at a myki reader will be rejected. This will prevent a customer inadvertently touching off (or on again) immediately.

It sounds sensible. If I am holding my myki card against a reader, it could touch me on and off or do it four or five times if I just left it lying there, and there is a procedure to stop that from happening.

There is also something called 'change of mind'. The manual says:

> Change of mind is a second time period beginning immediately after the end of the passback period (after touch on only). This will allow customers using a myki at a railway station to change their mind and touch off within the change of mind period without paying a myki money fare if they have not actually used a service.
>
> At a railway station with ticket barriers, a ticket may only be touched off on the paid area side of the barrier. If a customer touches on at a ticket barrier and does not pass through the barrier at the time the ticket is touched on, the customer will

> not be able to use the myki to touch on or enter through the barrier.
>
> At railway stations without ticket barriers passback is 30 seconds. At railway stations with ticket barriers passback is 5 seconds. At all railway stations change of mind ends 15 minutes after touch on.

So we have got our 5-second window where the machine will not inadvertently nick my money. We have got the 15-minute window where myki will let me change my mind and correct an input error or simply correct the fact that I turned up to the railway station and waited 15 minutes before an announcement came over saying there was not going to be any train and I said, 'Stuff this, I'm taking a taxi'. For either of those circumstances I can get my money back, but there is nothing else in the myki ticketing manual that suggests there is any other way for me to correct an input error.

I would like answers from the minister to a couple of questions. The myki ticketing manual is established under section 220D(1) of the Transport (Compliance and Miscellaneous) Act 1983. That is stated in the front of the manual under the section called 'Legal status and application'. I would like to know if transactions governed by these rules, which were created under section 220D, are in fact covered by the electronic transactions legislation and the bill that we are dealing with. Since this bill was created later than the original section 220D, does that mean that the provisions of the bill would override anything in the transport legislation should there be any inconsistency?

The DEPUTY PRESIDENT — Order! I am left wondering, with the detail Mr Barber goes into on these things, whether he ever reads a novel or he just reads train timetables, myki guides and bird books.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — On the advice I have, the new part 2A on transactions will apply to myki ticketing transactions because electronic transactions are what it applies to. I asked whether it was similar to that ad — I think it is a Visa ad — that is currently on, where people are tapping on and somebody comes along with cash and bumps the whole line. This is the same thing, where the transaction with the Visa card or the myki card — or whatever kind of electronic transaction it is — is believed to be occurring and going through the normal process either to the bank or to the agency.

The issue will then be — as Mr Barber rightly pointed out earlier, and the reason I was seeking guidance — that new section 14D in relation to input error needs to be read in the context of the entirety of new part 2A. With the indulgence of the Chair, I will go through each of the proposed new sections to fill in the gaps if that is what Mr Barber requires, and that may explain the reasons.

New part 2A provides for additional provisions applying to contracts involving electronic communications. The intention is that new part 2A will be applicable to both domestic contracts and contracts with an international aspect. However, part 2 of the principal act will remain applicable to transactions undertaken pursuant to a law in Victoria. These amendments align the electronic transactions regime with the convention that we have spoken about, preserving the rights of parties to agree to their own alternative arrangements.

New section 14A provides that new part 2A applies to a contract where either some or all parties are located within Australia or elsewhere and whether the contract is for business purposes, for personal, household purposes or other purposes. New section 14A preserves the principle that contracting parties should be free to agree on matters affecting the formation and performance of a contract between them.

It is important that we then refer to the myki terms of use that Mr Barber has raised, and on page 104 those terms talk about the way the Transport Ticketing Authority (TTA) deals with transactions and records in the absence of a manifest error. It goes to the point about errors and says:

> TTA may adjust the card account or card balance retrospectively if TTA reasonably believes that either of them is incorrect.

It is already within the terms.

New section 14B in the bill, the invitation to treat regarding contracts, provides that a proposal to form a contract, other than a proposal addressed to specific persons, is considered to be merely an invitation to make offers unless the contrary intention is clearly indicated by the person making the proposal. This provision reflects a common-law distinction between an offer, where the offeror has indicated a willingness to be bound by and an invitation to treat, whereas a statement invites the making of offers or further negotiations. The intention of the provision is to transpose the common-law notion of an invitation to treat into an electronic environment to confirm that a trader who advertises goods or services on the internet — which this could be, as Mr Barber outlined earlier — or through other generally accessible communication systems or open networks is considered to be inviting those who access the site to make offers

unless there is a clear indication by the trader of an intention to be bound.

New section 14C provides for the use of an automated message system for contract formation. It confirms that the absence of human intervention on behalf of one of the other parties to a contract does not itself preclude valid contract formation. This provision does not enable an automated message system to interfere with agreement to terms of a contract; it merely confirms that an automated message system can agree to form a contract.

New section 14D, as we indicated earlier, contains a safeguard providing a right to withdraw the portion of an electronic communication containing an error. This safeguard encourages parties who transact by way of automated message systems to build in an opportunity for a party with whom they are transacting to correct input errors. As I indicated earlier, 'input error' is intended to cover errors relating to inputting wrong data such as unintentional keystroke errors, or as Mr Barber pointed out, the cat walking across the keyboard. However, this right to withdraw the portion of the electronic communication in which the input error was made is not a right to rescind or terminate a contract. If members look at the myki terms of use — although I am not a lawyer by profession — they seem to indicate that this applies unless it is a manifest error.

The bill further provides that the right to withdraw an affected portion of an electronic communication has a narrow application and there are conditions for withdrawal to provide equitable limitations, to serve to limit abuses by parties acting in bad faith and to provide a fair basis for the exercise of the right of withdrawal. The conditions are outlined in terms that the party must notify the other party of the error as soon as possible after having learned of an error, as stated in the bill in proposed section 14D(2)(c). Proposed section 14D(2)(d) provides that the right applies if the party has not used or received any material benefit or value from the goods or services, if any, received from the other party. Furthermore, Australian laws concerning restitution and unjust enrichment provide remedies in circumstances where a benefit has been received at the expense of the purchaser and it is unjust for the vendor to retain the benefit.

In terms of new section 14E and the application of the act in relation to contracts, new section 14E(1) clarifies that the provisions contained in part 2 of the act are also applicable to contracts involving the use of electronic communications. This confirms that, for example, default rules such as time of dispatch and receipt are applicable in determining the time of dispatch and receipt of an electronic communication relating to a contract.

New section 14E(2) clarifies the applicable law where different provisions or jurisdictions could potentially operate. An electronic communication that falls within the scope or provisions of part 2 of the act will not be governed by the provisions in part 2A. For example, electronic communication relating to a contract that is established under the law of another state or territory, such as a contract for sale of goods in a particular state, will be covered by the part 2 equivalent of that state's electronic transaction legislation rather than by this part 2A.

Mr BARBER (Northern Metropolitan) — I understand that new section 14A is about contracts. I understand that new section 14C says that a human can form a contract with a machine. I understand that under new section 14D if I want to rescind part of my transaction, I have to do it fairly quickly. The problem I have, though, is at proposed section 14D(4), where it says:

> The consequences (if any) of the exercise of the right of withdrawal of a portion of an electronic communication under this section are to be determined in accordance with any applicable rule of law.

It could be the general contract law, but in this case what concerns me is that it could be in fact section 220D(1) of the Transport (Compliance and Miscellaneous) Act 1983, which gave the people down at the Department of Transport the right to write whatever rules they want. Effectively, by the provisions in their rules that I have pointed to, I could contract myself back out of my right to withdraw. This becomes quite confusing. It is confusing on three levels. First of all, we do not know what an input error would represent. Secondly, we can only do it if we have not received the service or any part of the service. We do not know what that service is, because the service is actually getting on a train, and myki could argue, 'That's nothing to do with us if the train didn't show up'.

Thirdly, proposed section 14D(4) then says:

> The consequences … are to be determined in accordance with any applicable rule of law.

It is telling me I have the right to withdraw but that the consequences of that withdrawal, like saying, 'Give me my money back', depend entirely on what the Department of Transport chooses to put into the myki ticketing manual; and what it chooses to put in there is all that stuff about 'passback' and 'change of mind', which seems to anticipate that those are the only real

options I have to get back out of it taking my money. It is also quite concerning that there is that section in the myki terms of use — I think this is actually an unconscionable term — that says:

> TTA's records are, in the absence of manifest error, conclusive of the amount of value on the card and any other matter in relation to the card account or the card. TTA may adjust the card account or card balance retrospectively if TTA reasonably believes that either of them is incorrect.

I could have five witnesses to the fact that I did everything right, but if myki's computer says I did it wrong, then that means I did it wrong, and I signed an agreement that said I would accept that unconscionable term. Now the thing about unconscionable terms is that they are the sorts of things that no-one would sign if they had a choice, but we protect people from contracts even where they sign up.

I was hoping to find that this legislation we are passing might protect us from this particularly unconscionable section of myki guidelines made under section 220D, but the minister has not been able to reassure me of that. If he can reassure me that proposed section 14D(4) does not actually allow the myki ticketing manual to overrule my right to call up and have my balance restored, then I ask him to tell me.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — There were three parts to the question from Mr Barber. He said he did not think I had explained 'input error'. I thought I had. The other issue that Mr Barber had was in relation to section 220D of the Transport (Compliance and Miscellaneous) Act 1983. If you look at page 20 of the explanatory memorandum, you will see that it says in the third paragraph:

> New section 14E(2)(a) provides that part 2A of the principal act does not apply to a contract if part 2 is applicable. The intention of this is to provide that an electronic communication related to a contract that is communication "for the purposes of a law of Victoria", that is, within the scope of part 2, will not be governed by the provisions in part 2A.

Then it says:

> For example, the relevant provisions of part 2 will apply to an electronic communication related to a contract governed by Victorian law. This is intended to provide for a singular provision to be applicable.

The clarification I have obtained since Mr Barber's long explanation would seem to be that in the case of part 2 of the legislation, which I have not read of late, the potential would be — —

Mr Barber — That 220 would rule.

Hon. R. A. DALLA-RIVA — That 220D may rule, but I will just make sure that is right.

The advice I have is that it would. It is a hypothetical, but in the sense of drilling down to where Mr Barber is going, that is where it would be. Then I guess you would have to go to the myki terms of use to determine what was considered. But I think one of the great things about lawyers is you will never get a straight answer, because there are obviously issues like what is a 'unilateral mistake' and the like. I am not a lawyer, and obviously contract law is complex so we can go on for ever, but specifically on that issue, that is where it is.

Mr BARBER (Northern Metropolitan) — The minister could also have pointed me to page 19 of the explanatory memorandum, where it says:

> New section 14D(4) clarifies that while the safeguard intends to preserve the effects of the contract as much as possible, it does not intend to assert any undue influence with well-established notions of contract law. The conditions of withdrawal or avoidance of electronic communications affected by the errors that occur in any other context than those provided for in section 14D are to be determined by other applicable legislation and the common law.

The other applicable legislation here is clearly, as the minister has informed me, section 220D of the Transport (Compliance and Miscellaneous) Act 1983. What we have just demonstrated is that this bill that we have brought forward today — an extremely straightforward bill, as Ms Crozier referred to it — after a considerable amount of interrogation, does not apply and does not offer any significant additional protection to what will be, perhaps outside the banking system, the single largest source of electronic transactions in the state of Victoria, and that is the myki system. The government has kept itself well and truly covered here, so that section 220D and anything that is published at any time through the myki ticketing manual, including retrospectivity, will not be any further protected in my view by this legislation. I think that is a great shame.

I would have liked to have seen the myki ticketing manual rewritten, first of all to take out that very unconscionable term about the TTA being able to make new rules that are retrospective any time. Secondly, I would have liked to have seen the legal status and application section of the manual redrafted to make some reference to the electronic transactions act, but why would it inform consumers of their rights?

In my mind that 'passback' and 'change of mind' section of the manual should also be changed to advise people that they do have the opportunity and the right to correct an error in the event of an error occurring in any of their interactions with the myki system, whether it be

readers, purchasing machines, top-up machines or through the website. But good luck to them in correcting an error when elsewhere we read that the TTA's records are always going to be conclusive, even when it makes a mistake. Even if you have a photograph of changes that you are making on the computer screen or at the myki top-up machine, it really is a very unsatisfactory approach that the government has taken. Perhaps it was inadvertent because it never really, as the minister told us, did an analysis of which of its electronic transactions would have to be brought up to speed with this new legislation. It is depressing, but there it is. There is nothing more I can really say about this legislation.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I will conclude by thanking Mr Barber for the committee stage, but I point out again that the myki terms of use are fairly explicit in relation to the capacity to retrospectively adjust the card account or card balance if the TTA reasonably believes that either of them is incorrect. It also specifically places on the record in relation to its terms of use the capacity for complaints. It says here:

> A complaint in relation to the card or card account may be made by contacting TTA —

at the website —

> or by calling 13 myki … If a complaint in relation to the card is not resolved by contacting TTA, the public transport ombudsman provides a cost-free, independent and accessible dispute resolution scheme.

It goes on to say that the public transport ombudsman is available at ptovic.com.au or by calling 1800 466 865. Again, as the member rightly points out, I have indicated this is contract law, and I am advised by my legal adviser next to me that it is very complex. You, Deputy President, would understand that, so I want to make it clear — without making it sound as if it is all one way — that there are obviously quite significant terms of use in the myki document.

Mr BARBER (Northern Metropolitan) — Here is the thing: public transport is an essential service. If this were electricity or water or gas or housing, you would have a whole set of rights. We do not allow people in those areas to enter any contract they want. There is always a whole series of statutory protections in relation to those essential services, and what we have had confirmed here today is that public transport is not like that. It is simply that the contract is whatever the department says it is under section 220D, and if there is a mistake, it is your problem. Even if it is the department's mistake, it is still your problem to correct it or in some way fix the situation to its satisfaction before you can get on public transport to go to work.

I do not find that a very satisfactory state of affairs, hence the motion I moved yesterday asking that this particular section of the act be examined by the Scrutiny of Acts and Regulations Committee. It appears to offend a whole series of principles that we normally put under instruments or subordinate legislation, but there is some dispute about what a ticketing manual is in this case. Even when it is their mistake, it is still your problem, and this is a problem that has arisen since myki has been introduced.

Under the old system you paid your money, you got a ticket and you established your rights; you could get on then. They already had your money, you already had your ticket and you just had to go and get on the train. Under this new system they have got access to your money, but before you can make use of what you think are your rights under the contract you have to keep threading the needle and meeting other requirements that they might put in front of you. If there is any dispute about it, you have to make a claim using their records. There was no room for dispute under the old system, because you had already bought your ticket.

I have heard government members come into this chamber and talk about the problems with myki in the past tense as if it is all sunshine now that the new government is in and it has taken over and resolved that myki is going to continue. The government has not resolved this aspect, and it has not, it seems, come to grips with the very different balance of power that is established through this myki electronic transaction system as opposed to the old system of 'buy a ticket; now you are ready to ride', nor has it taken any opportunity here to protect people's rights on what no doubt will be the single largest source of electronic transactions within the one entity — certainly for the government as a whole, leaving out the banking sector.

The DEPUTY PRESIDENT — Order! There was almost a movie line there — 'What we have here is a failure to communicate' — but we seem to have a position from Mr Barber in relation to the bill not doing what he thinks it ought to do and the minister saying, 'Contract law is very complex'. I am not sure where we go from there, but I assume that we will move to the adoption of clause 12.

Clause agreed to; clauses 13 and 14 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Motion agreed to.

Read third time.

DRUGS, POISONS AND CONTROLLED SUBSTANCES AMENDMENT (PROHIBITION OF DISPLAY AND SALE OF CANNABIS WATER PIPES) BILL 2011

Committed.

Committee

Clause 1

Mr JENNINGS (South Eastern Metropolitan) — One of the issues that became quite a vexed issue in the second-reading debate — far beyond my expectations of the vexatious nature of the debate — was whether this bill will deliver what it purports to. My question relates to the bill's purpose and goes to how great an expectation the government has that this bill will provide for the prohibition of the sale and supply of cannabis water pipes and components. The nub of my question is: does the government have any advice or any belief that these items are available to be purchased online by consumers not only in Victoria but also nationally and internationally, given that there is a recognised internet trade in these items?

Hon. D. M. DAVIS (Minister for Health) — I thank the member for his question. It is worth briefly reviewing the purpose of the act, which is to provide for 'the prohibition of display, sale and supply of cannabis water pipes and components'. It also restricts the display for sale of hookahs. This will implement an election commitment made in January 2010 by the then Leader of the Opposition, the Honourable Ted Baillieu, to ban the sale and display of bongs through the amendment of the primary act.

The bill obviously seeks to ban the display and sale of cannabis water pipes and bongs, to ban the display, sale and supply of bong components and bong kits and to limit the display for sale of ornamental hookahs to no more than three in a retail outlet or market. That is the background. The legislation restricts the sale of bongs within Victoria, including internet sales that occur in Victoria.

Mr JENNINGS (South Eastern Metropolitan) — The act purports to provide for the prohibition of these items. What does the minister understand the meaning of the phrase 'provide for the prohibition' to be?

Hon. D. M. DAVIS (Minister for Health) — I think that is essentially what it does. That is exactly the plain English meaning of those words.

Mr JENNINGS (South Eastern Metropolitan) — The plain English understanding, as I understand it, is that if it provides for the prohibition, it means that there will not be any in existence for sale and supply. Will the minister now try to convince the committee that in fact it will have that outcome?

Hon. D. M. DAVIS (Minister for Health) — Of course the bill bans the sale of bongs and related products. There have been other bans of illicit drug paraphernalia. Since the ban on ice pipes came into force in August 2010, more than 3000 ice pipes have been seized by Consumer Affairs Victoria product safety inspectors across Victoria. Since July 2010, two charges have been laid for the sale and display of cocaine kits that related to similar steps. It is true to say, to give the member a point, that even though things can be banned, people do breach the law. Then there would be prosecutions, and I have no doubt the member will want to talk about that later.

Mr JENNINGS (South Eastern Metropolitan) — I am sure the minister is mindful in his responses that, if push comes to shove and these provisions are challenged in the Supreme Court, whatever he says to me and to the committee can be used as evidence before the Supreme Court, and that is one of the reasons it is something we have to be careful about. In his answer to my previous question — that is, two questions back — the minister indicated that the bill covers internet sales of these items. Can he explain to the committee how it does that?

Hon. D. M. DAVIS (Minister for Health) — The plain words of the act are clear.

Mr JENNINGS (South Eastern Metropolitan) — My reading of the bill is that the words 'internet sales' do not appear in the bill.

Hon. D. M. DAVIS (Minister for Health) — The word 'sale' appears. The legislation restricts the sale of bongs within Victoria, and that includes internet sales that occur.

Mr JENNINGS (South Eastern Metropolitan) — My question is: how does it do that?

Hon. D. M. DAVIS (Minister for Health) — To respond to the member, the plain words indicate it.

Mr JENNINGS (South Eastern Metropolitan) — No, they do not, because internet sales are not explicitly mentioned within the provisions of the legislation. The minister has accepted the fact that the bill covers internet sales, but internet sales are not mentioned in the bill; sales are. I concede the point quite happily and voluntarily that the effect of this piece of legislation will be to restrict the display and ultimately the sale of these items in a retail outlet, but I am asking the minister a specific question: what actions will be undertaken under the auspices of this bill that will limit the availability of these items for internet sale purposes — that is, the ability of someone to buy them on the internet? How will the head of power be exercised within Victoria on those people who sell these items via an internet sales mechanism?

Ms HARTLAND (Western Metropolitan) — When I had my briefing I was told the bill would not ban internet sales, so I am quite intrigued by the difference I am hearing.

Hon. D. M. DAVIS (Minister for Health) — I am happy to answer both points. If members read the purpose clause, they will find that the 'prohibition of display, sale and supply of cannabis water pipes and components' seems to include the sale. It is not narrowed in any way.

Ms HARTLAND (Western Metropolitan) — I was very specific in the briefing I had. It was a specific question I asked, and I was told the bill would not be able to ban internet sales because they come under commonwealth law.

Hon. D. M. DAVIS (Minister for Health) — I am informed that during the briefing, which I accept I was not present at — I am relying on advice — the question was about international internet sales, and the point is that they are international rather than in Victoria.

Ms HARTLAND (Western Metropolitan) — Someone in Victoria will still be able to access the sale of a bong quite easily by going to the internet, so internet sales of bongs will not be stopped by this legislation.

Mr JENNINGS (South Eastern Metropolitan) — That is my belief as well, because the bill is silent. The minister has not taken the opportunity to indicate how this would relate to either commonwealth law or international law or to indicate what actions would be undertaken under the head of power of this act. My belief is, until the minister can convince me otherwise, that apart from creating a culture that says bongs are not wanted in Victoria, there is absolutely no mechanism within the act or under the act that would prevent internet sales from occurring.

Hon. D. M. DAVIS (Minister for Health) — The point I made is that the words in the purpose clause include the 'prohibition of … sale'. Obviously Victoria can pass laws only for Victoria; that is the nature of jurisdiction.

Ms MIKAKOS (Northern Metropolitan) — I would like to make the point I also made during the second-reading debate, which is that during the course of the debate the other day I went to a computer here in the chamber and put the word 'bong' into Google. There were many available purchasing options that came up, including on eBay. The minister needs to concede that this bill, as I said on Tuesday, is a false comfort to Victorian parents that somehow the government is banning bongs. We know that young people use the internet a lot more than we do and that they will be able to get onto the internet and immediately find numerous suppliers of bongs overseas.

Hon. D. M. DAVIS (Minister for Health) — I thank Ms Mikakos for her question. I am pleased she has mastered the use of the internet; that is pleasing to see. I indicate that the bill bans the sale of bongs in Victoria and sends an important message. The banning of the sale of bongs will help to reduce the uptake of cannabis use by Victorians. Reducing the sale and visibility of an apparatus that is likely to be used in the consumption of illicit drugs sends a clear message to the community and to retailers that cannabis is an illegal drug and that its use can be harmful. This sends an important message, and the government will not be deterred from sending that message.

Ms HARTLAND (Western Metropolitan) — I had not thought of the element of eBay. How will the government monitor sales on eBay and stop people from selling bongs on eBay? Will the government have an eBay bong committee or other kind of supervision? I do not use eBay, and it was only when Ms Mikakos mentioned it that I suddenly realised it is another avenue that this bill does not seem to cover.

Hon. D. M. DAVIS (Minister for Health) — I thank the member for her point. It will be policed on a complaints basis, but I make the point that we are dealing with the passage of the bill. The details of policing will be a matter for the police; we do not

necessarily tell the police precisely how they should go about policing particular laws. The bill sends an important signal, and it is one that most in the community will want to see.

Ms HARTLAND (Western Metropolitan) — My question was not answered. Messages are fine, but we have brought up the issue of internet sales. It is quite easy for young people to access the internet; eBay is presumably also accessed in Victoria. I know that when former Democratic Labor Party member Mr Kavanagh brought in his private members bill about bongs, as Ms Mikakos said, when we did the internet searches it was easy to find kits and apparatus that any 14-year-old was going to be able to access and buy. That is my problem with this bill: it is a symbolic message, and it is not addressing the real issue if people can buy these apparatuses this easily. The minister does not seem to have an answer about how that is going to be dealt with.

Hon. D. M. DAVIS (Minister for Health) — As I said, the government did have an answer, in the sense that I read out some figures a moment ago about the impact of the previous government's steps in similar or analogous areas, and that has had an effect. It has had some impact, and I believe this bill will have some impact as well.

Ms HARTLAND (Western Metropolitan) — That is not the question I asked. I asked: how is the government going to stop people being able to buy bongs online or on eBay?

Hon. D. M. DAVIS (Minister for Health) — There are many laws passed in this Parliament, and they send a signal to the community and are enforced by the police as the police can enforce them. This law will be no different. It will make it illegal for retailers, including market stalls, to display, sell or supply bongs in the course of commercial activity. The bill will also ban the display and sale of bong components and parts and bong kits to stop retailers simply disassembling the bong and selling it in a kit form. It will send a very clear signal in this area. It is true that activity which will require policing can occur in a number of areas. In many areas police will seek to enforce the law in the best possible way that they can. That is a matter for them to undertake.

Mr JENNINGS (South Eastern Metropolitan) — On that point, is the minister aware of any conversations that may have taken place or that he thinks may have taken place already between the department officers who have constructed this bill on behalf of the government and the police on the way in which these provisions could best be made effective, particularly in light of the path that the minister has gone down with his expectation — even though it was not explicit in the bill — that internet sales would be covered by this legislation?

Hon. D. M. DAVIS (Minister for Health) — I indicate that discussions have occurred with the police. I am informed that the police are happy to enforce this piece of legislation if it is passed by the chamber. Equally, as I understand it, the indication from the bill and the information that I have is that this will lead to banning the sale of these components, as we have discussed.

Mr JENNINGS (South Eastern Metropolitan) — Is part of the police's happiness in relation to the additional resource allocation that has been given to police in order to undertake these activities?

Hon. D. M. DAVIS (Minister for Health) — I am informed that police will undertake these activities within their existing resources.

Ms MIKAKOS (Northern Metropolitan) — Further on this clause, one concern that I have raised is the need to educate young people about the risks associated with cannabis use. I take this opportunity to ask: is the government planning an education campaign targeting young people to inform them about the risks of cannabis use?

Hon. D. M. DAVIS (Minister for Health) — There will be enhanced programs on cannabis education. I am informed that the Department of Health is currently working with the Australian Drug Foundation on the development of a cannabis education strategy to complement the legislation. The targeted campaign will be developed to inform young people, their parents and their peers of the risks associated with cannabis use, including the physical, mental and social impacts.

I note that throughout the second-reading debate on this bill, members on both sides of the house referred to those impacts and the evidence. The campaign will target young people in the 13 to 18-year-old age bracket, both within the school setting and outside, with a focus on 15 and 16-year-olds, as this age bracket has the highest rates of current use. It will also target parents and adult and peer influences who could potentially supply cannabis or be influential in the decision-making process for a young person. The campaign will utilise relevant health, community, welfare and youth services and networks to deliver information on cannabis use. The campaign will

develop marketing and creative communication strategies, and it is expected to utilise a range of media, including evidence-based online and printed materials. I think the target date for the campaign is February 2012.

Mr JENNINGS (South Eastern Metropolitan) — I am pleased to hear that work is being developed. Is the minister aware what funding has been made available to support that campaign?

Hon. D. M. DAVIS (Minister for Health) — I am informed that $300 000 has been allocated.

Ms HARTLAND (Western Metropolitan) — On that matter, my office has spoken to YSAS, the Youth Support and Advocacy Service, and its representative said that whatever campaign occurs really needs to be a peer-to-peer type campaign. What thought has been given to who would actually run this? Also, I would have to say that $300 000 sounds like a very small amount of money if you want to convince young people across Victoria not to use cannabis.

Hon. D. M. DAVIS (Minister for Health) — As I think I indicated — and I will refer to some notes I have here — the campaign will also target parents and adult and peer influences of young people who could potentially supply cannabis or be influential in the decision-making processes of a young person. I am informed that $300 000 is the amount allocated.

The DEPUTY PRESIDENT — Order! Is there anything further on clause 1?

Ms HARTLAND (Western Metropolitan) — I have a number of questions, which I raised in my speech yesterday and on which I have conferred with Mr Davis, about the assertions made in the speech of Ms Wooldridge, the Minister for Mental Health, with respect to ambulance attendance. It was stated there were 887 ambulance attendances resulting in hospital admissions. I would like to know what other drug or alcohol usage was involved in those admissions. That seems a very high number of admissions for just cannabis. I would have thought they were poly-use admissions, but in her speech Ms Wooldridge said the admissions were related just to cannabis.

Hon. D. M. DAVIS (Minister for Health) — I am happy to respond to Ms Hartland on that. There is a paper entitled *Trends in Alcohol and Drug-Related Ambulance Attendances in Melbourne 2009–10* that arose from a project completed by Eastern Health and the Turning Point Alcohol and Drug Centre, which provides quite innovative data all round and is very helpful in building up a picture. It is true to say that we would always like more information. On page 1, in its summary, the paper indicates that in 2008–09 there were 814 attendances where cannabis was involved and in 2009–10 there were 887; that is a 9 per cent change in the period recorded there. I note that on page 21 there is a cluster of further data — and I am happy to make this available to Ms Hartland if it is helpful — which indicates that other drugs are often involved. I think Ms Hartland is quite correct in the points she has made about poly-drug use and that there are in fact many cases of cannabis usage that involve the parallel usage of other drugs. I think the data would support the contention that there is often more than one drug involved.

That in no way diminishes the importance of doing work on this particular drug. I know the minister is developing a drug and alcohol strategy more broadly, and the issues that surround poly-drug use and the impact of a range of drugs will be canvassed through much of that.

Ms HARTLAND (Western Metropolitan) — I understand that, but what I am concerned about is the Minister for Mental Health saying there were 887 ambulance admissions for cannabis when the library brief indicates that at least 61 per cent of those were alcohol related and were not just cannabis-related admissions. I am not quite sure why the minister has made that statement.

Hon. D. M. DAVIS (Minister for Health) — It is not admissions; it is actually attendances. I think I am pointing the member to the same data, and we are agreeing there are often cases where multiple drugs are involved. As I said, in my view that in no way diminishes the importance of doing work on particular drugs and sending important messages on those. I accept the complexity of multiple drug usage and the challenge it provides more broadly; hence my pointing the member to the drug and alcohol strategy that Minister Wooldridge is developing.

Ms HARTLAND (Western Metropolitan) — I know I am probably overstepping the bounds slightly, Chair, but I think there is an important point to be made here. While the government is trying to send a message about cannabis, it is quite clear that most hospital admissions are because of tobacco and alcohol. I think we are confusing the two, and I do not think the government is doing enough about tobacco and alcohol. I think it is going for the easy law and order fix rather than the health fix.

Hon. D. M. DAVIS (Minister for Health) — I am going to agree with Ms Hartland on a number of points and say there is more the government needs to do. I do not think Minister Wooldridge would disagree with that for one moment; nor would the cabinet. We have a lot of work to do. I think the minister has made some announcements about alcohol policy in the last few days, and I know she is seeing the totality of drug and alcohol use as part of the work she is doing with this strategy. Whether or not I agree with every point Ms Hartland has made, I do not disagree with part of what she is saying in that there is a broader problem. I do agree with her about the importance of tobacco and alcohol use. That does not mean we should not do work elsewhere as well.

Ms HARTLAND (Western Metropolitan) — I will finish with this comment. I always find it interesting that we never really seem to focus on tobacco and alcohol. We are always happy to ban what we see as illegal substances or the equipment that goes with them, but I have never heard a government yet wanting to ban tobacco or alcohol. Those drugs are much more damaging than the drugs this bill refers to. They are drugs, and we never seem to make that connection.

Hon. D. M. DAVIS (Minister for Health) — Perhaps I may have to slip back into my own portfolio, with the indulgence of the Deputy President, to make a slightly broader comment in response to Ms Hartland's points about tobacco use. I do think we have a very good record of all-party support for tobacco control measures. Some have come through this house. Mr Drum's contribution here in the last Parliament was supported by the Greens, the Liberal Party and The Nationals at that time. There was also the point-of-sale legislation that came through the lower house. The government was very pleased to implement that point-of-sale legislation on 1 January, and the process of enforcing that is still progressing. I am probably pushing the indulgence of the Deputy President, but the point I am trying to make is that I agree with Ms Hartland on many of the broader parameters.

Clause agreed to; clauses 2 and 3 agreed to.

Clause 4

Mr JENNINGS (South Eastern Metropolitan) — I would like to give the minister the opportunity to go beyond the section 80T definition of a bong component. The bill states that it is 'an item for use or that is intended for use as part of a cannabis water pipe'. Can the minister outline to us what items could possibly be covered by that definition?

Hon. D. M. DAVIS (Minister for Health) — I am aware of the definition of a cannabis water pipe which is contained in clause 4 of the bill. I draw the member's attention to that. I am happy to make available to the member the library research notes that include a photograph of a bong. He might find it helpful to examine those notes.

Mr JENNINGS (South Eastern Metropolitan) — It is not helpful enough, because I want to know what items could fall within that definition. As the minister would be aware, as we go through the bill there are sanctions that will apply to retailers if they display any of these individual bong components in a retail outlet. It is essential for retailers to know what is on the list.

Hon. D. M. DAVIS (Minister for Health) — As I understand it, the definitions are laid out in proposed section 80T, which is inserted into the principal act by clause 4. If the member would like me to, I will read them out, but they are on pages 2 and 3 of the bill, and they are the definitions. If the member wants a visual representation, I could provide that for him as well.

Mr JENNINGS (South Eastern Metropolitan) — I am not sure what level of cognitive dissonance we have between what I am saying and what the minister is answering, but earlier I read to the minister the definition of a 'bong component', which is on page 2 as part of proposed section 80T. Subsequently, I asked the minister what individual items could be bong components. It is important for us to know, for a retailer to know and for an enforcement officer to know what that enforcement officer will have on their list of items that may fall within this provision. We need to know what items the police officers of the state of Victoria will be required to seize if they see them in retail outlets.

Hon. D. M. DAVIS (Minister for Health) — Talking of cognitive dissonance, 80T refers to a bong component. As I have laid out for Mr Jennings, it is exactly what the clause say it is.

Mr JENNINGS (South Eastern Metropolitan) — I was not actually describing the dissonance as being all one way. It may well be that I am failing to articulate a question. I think I am doing a reasonable job. The question is clear. From the minister's answer, it seems to me that he is not clear about the question. Let me try to assist in moving on. Could these items contain various elements that look like a hose, a test-tube, a Bunsen burner or some other object that could be used or intended to be used for the purpose of constructing a cannabis water pipe?

Hon. D. M. DAVIS (Minister for Health) — I think the member understands what a bong component is, and I think the community understands what a bong component is. I have no doubt that the police and retailers understand that a bong component is an item for use or that is intended for use as part of a cannabis water pipe. As I have said, I am happy to make a visual representation available if that is helpful, but I do not perceive that there will be any difficulty in people understanding what these items are.

Mr JENNINGS (South Eastern Metropolitan) — How can the minister be confident that this will not be a confusing item? If I was an enforcement officer, if I was charged with the responsibility of enforcing the provisions of this legislation that the minister is hoping to pass through the Parliament, I might have a great deal of difficulty identifying, from the definition, what grounds I am on in seizing an item and imposing an infringement notice on a retailer, because I, at this point in time, even though I am 54 years old, do not have the confidence, as a result of my life experience, to know what that means. I can assure the minister that his illustration will not assist me.

Hon. D. M. DAVIS (Minister for Health) — The definition of a bong component provides for the parts of the bong. Bong components are not normally used in other items. I do not believe the community will find it difficult to understand what a bong component is. I do not believe the police will find it difficult to understand what a bong component is. It may be that the visual representation will not help the member. I accept that that might be the case, but it was provided because it was thought that it may have been of assistance.

Ms HARTLAND (Western Metropolitan) — When we were doing the research for Mr Kavanagh's bill last year — and I think this is getting to the question that Mr Jennings is asking — we came across online services actually referring to bong kits as things like 'hot salad dressing'. They would come in kits, but they had entirely different names and pieces to what this looks like. It would be quite difficult at times to assess whether a particular piece is going to make up a bong kit. We were quite surprised by the number of names they were given.

The DEPUTY PRESIDENT — Order! For the benefit of Hansard, when Ms Hartland used the words 'what this looks like' I suspect she was referring to a picture contained within the parliamentary library research brief on this bill.

Mr SCHEFFER (Eastern Victoria) — I have just looked up a website by googling the word 'bongs'. The website is offyatree.com.au. Under a section called 'Spare parts' it identifies cones, stems, connectors, chambers, grommets and bases as elements of these units. Perhaps that might assist the minister in coming to an answer to Mr Jennings's question about what a bong might consist of.

Ms MIKAKOS (Northern Metropolitan) — On the same point I would also like to add that I took great exception to the minister's answer that these components are not used for any purpose other than as a component in a bong, because as we heard during the course of the debate on Tuesday a garden hose can very easily be converted into a bong. Does this mean that if a retailer were to take a normal garden hose and cut it up into small pieces so it could be used as part of a bong, that would then constitute a bong component? I would not have thought that a garden hose is ordinarily part of a bong.

Hon. D. M. DAVIS (Minister for Health) — With regard to Mr Scheffer's contribution, whilst I would not want to advertise any such site I do not think there is any difficulty in understanding what is going on here.

Mr JENNINGS (South Eastern Metropolitan) — I do not have anything else on bong components; let us leave bong kits quite alone. I am happy to move on to cannabis water pipes, the definition of which falls immediately underneath 'bong kit' in the bill. A cannabis water pipe is defined under new section 80T on page 3 of the bill. I will foreshadow my interest to the minister. There is quite a difference, as the minister would appreciate, in the enforcement sanctions of this bill. There is a difference between how a cannabis water pipe is treated, which is completely banned, and how a hookah is treated, which is not completely banned but is limited in its availability or certainly its ability to be displayed. So there is very different treatment from one item to the next.

My question relates to the definition of 'cannabis water pipe'. I could almost accept that the first part, part (a), makes sense to me. But I would like the minister to tell me whether the item that is described as a 'cannabis water pipe' could in practice be used to smoke tobacco or substances consisting of tobacco, molasses, fruit, herbs or flavouring or a combination of any or all of the above.

Hon. D. M. DAVIS (Minister for Health) — I think we understand that many of these devices can be used in a range of ways. I am not in any way seeking to

suggest that that is not the case. If the premise of what the member is saying is that devices like the cannabis water pipe can be used for a range of different purposes, he is almost certainly correct.

Mr JENNINGS (South Eastern Metropolitan) — Therefore, does the opposite apply? Is a hookah able to be used to smoke cannabis?

Hon. D. M. DAVIS (Minister for Health) — I think the answer is also yes. However, generally hookahs are used by particular groups for smoking products containing tobacco and a sweetener, so therefore completely banning the sale of hookahs would disproportionately impact on those community groups.

Mr JENNINGS (South Eastern Metropolitan) — In effect what we are saying is that we are banning one item because it can be used to smoke cannabis and other scented tobaccos, yet we are maintaining a legal standing for another item that can also be used for scented tobacco and/or cannabis. I think the minister would understand why that might be conceptually difficult. Ultimately it is the substance that you put in these items that makes the act illegal, not the items themselves.

Hon. D. M. DAVIS (Minister for Health) — I think the member understands the purpose for which this government is bringing in this legislation, and that is to ban bongs and send a clear signal about the impact of cannabis.

Mr JENNINGS (South Eastern Metropolitan) — Yes. In fact when I started my second-reading debate contribution I gave the minister the benefit of the doubt that his intentions were laudable and that his mandate was clear, but I did have concerns about whether the minister was giving a clear signal. I will feed back to the minister that at this moment in relation to the definitions of these two items, the cannabis water pipe and the hookah, he is not giving a clear signal. In fact I would suggest that the minister is sending a very confused signal and message — one that will be not only difficult to enforce but difficult for the community to understand in terms of the distinction between one item and another.

Hon. D. M. DAVIS (Minister for Health) — I do not think it is difficult to distinguish between a bong and a hookah. I accept that different products can be used in these different items. Nonetheless the government is sending an important signal by banning bongs and regulating these matters in this way. We may have to agree to disagree and wait and see the effect of this legislation if it is passed. I accept that the government has a clear mandate, as the member himself has outlined. I believe this legislation will make a difference, as does the government. The need to send a clear signal is strong.

Mr JENNINGS (South Eastern Metropolitan) — I hope that through this the government can give a clear signal, but at the moment I fear it will not be able to do so.

I have concerns also about what paragraph (b) in the definition of cannabis water pipe means, so I will read it. It states:

> cannabis water pipe means a device —
>
> …
>
> (b) that is intended to be used as a device referred to in paragraph (a) —

which is a cannabis water pipe, and we are not arguing the toss about that, but it goes on —

> but is not capable of being so used because it needs adjustment, modification or addition —
>
> but does not include a hookah.

I find that clause very confusing. I ask the minister to explain to me what that means. As he would clearly understand, paragraph (b) becomes the reason the sanctions clause will not apply to the items covered in that paragraph. They sound to me like cannabis water pipes that are currently not functioning and need an adjustment to make them function. Is that the case?

Hon. D. M. DAVIS (Minister for Health) — I think the member may be confused because he has read this in isolation. I think he needs to read the full thing. It might be worth putting the whole set of paragraphs in a clear sequence. The bill states:

> cannabis water pipe means a device —
>
> (a) capable of being used or intended to be used for the purposes of introducing into the body of a person cannabis or other drugs of dependence by the drawing of smoke or fumes resulting from heating or burning the cannabis or other drug through water or another liquid in the device, commonly known as a "bong"; or —

and this is the paragraph that the member quoted in part —

> (b) that is intended to be used as a device referred to in paragraph (a) but is not capable of being so used because it needs adjustment, modification or addition —

but does not include a hookah.

The next line defines hookah, stating:

hookah means a fully assembled device —

(a) used for smoking a substance consisting of tobacco, molasses … whether the substance contains all or any combination of them, by the drawing of smoke or fumes resulting from heating or burning the substance in the device through water or another liquid in the device; and

(b) that has one or more openings and one or more flexible hoses, each with a mouthpiece through which the smoke or fumes are drawn;

I think those paragraphs have to be read together. They are connected by a semicolon, so I think they are an entity.

Mr JENNINGS (South Eastern Metropolitan) — Notwithstanding my failing eyesight, I can read, and I understand English. Now, after the minister has taken the opportunity to read that whole sequence to me, I would like him to explain to me what paragraph (b) means. It states:

… that is intended to be used as a device referred to in paragraph (a) but is not capable of being so used because it needs adjustment, modification or addition …

Hon. D. M. DAVIS (Minister for Health) — It continues, just to explain to the member, 'but does not include a hookah'. That is intended to mean the kits.

Mr JENNINGS (South Eastern Metropolitan) — I know what 'but does not include a hookah' means. I do know that the paragraphs are the item, but what does paragraph (b) mean?

Hon. D. M. DAVIS (Minister for Health) — It refers to kits.

Mr JENNINGS (South Eastern Metropolitan) — Why does it refer to kits? In fact there is a separate definition which we did not waste any time on, that of 'bong kit', the definition before this one. So paragraph (b), according to what the minister has just said, would be the definition of a bong kit.

Hon. D. M. DAVIS (Minister for Health) — As I am informed, it is an extra safeguard to make it clear that it includes those points.

Ms MIKAKOS (Northern Metropolitan) — I want to make one brief comment, and that is that a law is good only if there is certainty. I put it to the minister that the explanation he has just given the committee of what paragraph (b) in the definition of a cannabis water pipe means is not clear. It does not seem to suggest at all that it is a bong kit.

In relation to the definition of a hookah, the public's common understanding is really important to make this legislation workable. Again, when I put the word 'hookah' into Google, pictures came up that were illustrations of items that I understand to be bongs. In the common understanding of the public, a hookah is something that may look like a bong, so I argue that these definitions seem entirely unclear and completely unworkable. I consider that what has been put up in the legislation is a complete smokescreen.

Hon. D. M. DAVIS (Minister for Health) — It will not surprise the member that I disagree with her and that I consider the definitions to be quite clear. I believe that members of the community do understand what a bong is, what a bong kit is and what hookahs are. The definitions relate to the common definitions in a very sensible way, and the community will understand them. There will be education programs, as outlined earlier. I am not sure whether the member was in the chamber when the committee talked about that. I believe that members of the community understand quite well what these things are.

Mr JENNINGS (South Eastern Metropolitan) — Without necessarily adding to the imagery and the metaphors, if not the puns, that my colleague has put on the record, I tend to agree with Ms Mikakos's interpretation of the definitions.

Continuing with the definitions, from the answers given by the minister to matters raised previously in the committee, the definition of 'retail outlet' includes more than is listed in clause 4, which is:

(a) a shop;

(b) a market.

The minister has indicated to the committee that it covers internet sales as well. I do not know whether the minister is intending to add to the definition by an amendment or is relying on the Supreme Court of Victoria taking his word for it, as given to the committee. Beyond internet sales, are there any other potential retail outlets or opportunities for retail sales that now may be part of the scope of this legislation?

Hon. D. M. DAVIS (Minister for Health) — Again, I think we will have to agree to disagree on some points. In terms of the use of 'sale' in the purpose clause of the bill, which we dealt with a little earlier,

with the indulgence of the Deputy President, I think 'sale' means exactly what it says.

The DEPUTY PRESIDENT — Order! I am not sure why the minister needed my indulgence for that.

Mr JENNINGS (South Eastern Metropolitan) — The definition we are talking about is that of 'retail outlet', not 'sale'. My question relates to the definition of 'retail outlet'.

Hon. D. M. DAVIS (Minister for Health) — I am indebted to Mrs Coote for handing me the *Macquarie Dictionary*, which defines retail as 'the sale of commodities to household or ultimate consumers, usually in small quantities'. I think what a retail outlet is is well understood by the community.

Mr JENNINGS (South Eastern Metropolitan) — I have put it to the minister specifically. He has already mentioned earlier in his contribution in the committee that it included internet sales. I have put it to him specifically in the committee again that it included internet sales, and he has not refuted it. He gave me a definition from the *Macquarie Dictionary*, and in my interpretation of what he has just said, internet sales are clearly within the scope and the expectation of this piece of legislation. So that was a point well made by the minister!

The next issue I want to raise relates to proposed section 80U, under the heading 'Offence to display cannabis water pipe, bong component or bong kit in retail outlet'. Given that Mr Scheffer provided an answer earlier in the committee stage to the question of what the relevant components of a bong might be, and those included a grommet, I ask the minister the question, using the example of a grommet: if a police officer goes into a store and sees a grommet on display, does that then mean that this sanction could apply to that item?

Hon. D. M. DAVIS (Minister for Health) — I make the point that the community understands very well what these devices are, and the legislation in its totality makes it clear what these devices are. A person must not sell a cannabis water pipe, bong or the like or the components of those where they clearly are components of those. I think the community will understand these points; it will be clear, and the enforcement of that will be straightforward and done in the normal way.

Mr JENNINGS (South Eastern Metropolitan) — I suggest to the minister that it is not clear. It is crystally not clear. This provision provides an opening for sanctions to be applied to the selling of common-usage items, whether that be selling a grommet, whether it be selling a hose, whether it be selling parts of a hose or whether it be selling a test-tube. I am not sure what the implements are, but I am sure there are a whole range of common-use items that could potentially be roped in within this provision, which would be subject to exactly the same sanction. Exactly the same penalties apply to each of these individual items as apply to a fully assembled water pipe. My point to the minister is that in practice the police would require some guidance, support and assistance in enforcing this provision, which is wide open and could potentially be breached at Bunnings each and every day of the year.

Hon. D. M. DAVIS (Minister for Health) — I appreciate the member's viewpoint. The proposed section does indicate that a person must not display a cannabis water pipe in a retail outlet, must not display a bong component in a retail outlet, must not display a bong kit in a retail outlet and must not sell a cannabis water pipe. I am making myself clear here. I do not believe the community will find it difficult, nor do I believe the police will find it difficult.

Mr JENNINGS (South Eastern Metropolitan) — Not for the first time we have discovered that the minister is one of the most optimistic members of the Parliament. He has been on that theme today, so let me just keep him in that optimistic vein.

Let us move on to proposed section 80W, under the heading 'Offence to supply cannabis water pipe, bong component or bong kit in course of carrying out commercial activity'. What are the circumstances by which the minister expects this section and these sanctions to apply? What is 'carrying out commercial activity'?

Hon. D. M. DAVIS (Minister for Health) — It is quite clear what commercial activity is. I think it means exactly what it sounds like and what it means in normal discourse in common English. That would mean that you cannot sell a cannabis water pipe or a bong component in the course of carrying out a commercial activity, such as, for example, an offer or some such arrangement related to something else.

Mr JENNINGS (South Eastern Metropolitan) — Does the minister mean it is a trade or a barter?

Hon. D. M. DAVIS (Minister for Health) — It might be a strictly commercial activity as laid out, where there might be a component or another item that is being sold and this might be sold with it, so members can see a whole manner of things that could come

under the ambit of commercial activity. Bongs and the other items listed would not be able to be part of that commercial activity.

Mr JENNINGS (South Eastern Metropolitan) — Like a spa or something?

Hon. D. M. DAVIS (Minister for Health) — Or it might be T-shirts or a range of other items. It means you could not sell this item and attach a bong or a water pipe or other equipment to it. If there is a commercial activity, a bong cannot be added to it.

Mr JENNINGS (South Eastern Metropolitan) — The purpose of this is that the government is trying to prevent a contrivance such as going and buying a packet of matches and getting a bong as my free gift for buying the packet of matches. Is that the story?

Hon. D. M. DAVIS (Minister for Health) — I think the member has got the idea there. The commercial world is very inventive, and we could spend some time going through a long list of things, but I think it is a plausible and reasonable point.

Mr JENNINGS (South Eastern Metropolitan) — I congratulate the minister on one of the clearer clauses, as it turns out.

The next one I am interested in is proposed section 80X at page 6 of the bill. It is headed 'Display for sale of hookahs in retail outlet'. We have already well and truly established that there is a pretty fine line between one form of implement and another, and it really relates to what goes into the implement that affects whether it is banned or whether it is restricted for display. Why has the government decided that the display should be limited to three? What is the internal logic and consideration of that?

Hon. D. M. DAVIS (Minister for Health) — The decision of the government to limit the display for sale of hookahs is about reducing the visibility of apparatus used to consume tobacco and to limit the exposure to the general public, particularly young people, by reducing visibility, similar to the limitations applied to tobacco products. It tends to de-normalise these items and may discourage uptake and use. Limiting the display of water hookahs stops bong shop retailers from removing bongs from display and replacing them with a large number of hookahs. It will act as a mechanism to restrict the option of bong shop retailers displaying and selling a large number of bongs by labelling and promoting them as hookahs. Any retailer, for example a tobacconist or grocery store, which currently displays or sells hookahs will continue to be able to do so but the number to be displayed will be restricted. This restriction does not apply to cafes that hire out hookahs for use on site.

I note that Queensland currently bans the sale and display of bongs but limits the display of hookahs to three. Queensland is a model in this step, and it may be instructive for the member to see that there is a clear basis for the decision.

Mr JENNINGS (South Eastern Metropolitan) — I can understand that concept. Is there any intention or any ability in this bill for the broadening of the effect of this provision to make sure that retailers do not have a small display cabinet in the front room but a cavernous display cabinet in the back room?

Hon. D. M. DAVIS (Minister for Health) — The advice is that it is three for display. It does not matter how they move it or cut it, it is three.

Mr JENNINGS (South Eastern Metropolitan) — That is on display, but what about if there are 100 in the back room?

Hon. D. M. DAVIS (Minister for Health) — Display means display; that is the point.

Mr JENNINGS (South Eastern Metropolitan) — Rather than hold the committee up much longer, I am interested in the very lengthy provisions under clause 4 for proposed section 80ZA, which is headed 'Seizure of cannabis water pipes, bong components or bong kits'. From proposed section 80ZA the bill moves to proposed section 80ZB headed 'Retention and return of seized items' and proposed section 80ZC, which gives the Magistrates Court the ability to extend the period for which these seized items may be retained.

The net effect of these provisions in proposed sections 80ZA, 80ZB and 80ZC is to say that the police can confiscate these items, hold them for three months and get an extension of three months, but the inbuilt assumption in these provisions is that the items will be returned by the police. Why is that the case?

Hon. D. M. DAVIS (Minister for Health) — I am informed that the material would be returned if the reason for seizure no longer exists, as is outlined in the last two lines of proposed section 80ZB(1).

Mr JENNINGS (South Eastern Metropolitan) — The issue is that the last two lines that I have just reread on the minister's direction state, 'if the reason for its seizure no longer exists'. What are the reasons that may no longer exist? My inbuilt assumption is that it is the

intention of the Crown to actually seize these items and destroy them and make them not available for sale or for further use. But these provisions are saying, 'We'll take them. We'll give them back to you. And if we don't give them back to you within three months, we'll go to a court to get an extension so we can take longer to get them back to you'. Whilst the minister is checking out what those reasons are that may no longer exist, I ask: is it not the intention for them to be seized and effectively destroyed?

Hon. D. M. DAVIS (Minister for Health) — I would imagine that prosecutions would occur and that would have consequences. If there is no prosecution proceeding for some reason — it may be because of evidence or for other reasons — they would no longer be required.

Mr Jennings — That is the answer, is it?

The DEPUTY PRESIDENT — Order! Is Mr Jennings pursuing the question further?

Mr JENNINGS (South Eastern Metropolitan) — If that is the limit of the response that the minister is providing, it stays very unclear to me. I am sure the issue will be tested subsequently, and I am pretty sure about what the real intention of these seizures is. The cumulative effect of the fact that these items will be potentially returned to their owner, who presumably had the intention to sell them — otherwise the police would not have seized them in the first place — will be that once they are returned they could be available for sale again. Given that the ability to prevent internet sales has been clearly established as being on a wing and a prayer, the effective delivery of the intention of this bill must be seriously brought into question.

Clause agreed to; clause 5 agreed to; clause 6 agreed to.

The DEPUTY PRESIDENT — Order! That concludes the consideration of the bill. I advise members that during the course of the debate — and I would like the minister's attention — some commentary was made about a member who asked questions. I did not pull the member up at the time, but I think the committee stage is better served without that kind of commentary so that we are able to progress through the legislation in as rational a way as we can. This is not a second-reading debate where people make political points. The Minister for Health is looking at me quizzically. I am referring to a comment from him. I did not pull him up at the time because I thought it was not going to help. I am pleased we were able to move on from that and deal with the bill in a more professional manner.

Hon. D. M. DAVIS (Minister for Health) — Just one point there, Deputy President. I think it was a good committee stage. We have covered a large range of topics, and certainly I think the interaction has been friendly across the chamber as we have worked through the intricacies of these devices and the points that surround them. I want to thank the members who have contributed to the debate. I think most have found it not only edifying and interesting but enjoyable.

Reported to house without amendment.

Report adopted.

Third reading

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

That the bill be now read a third time.

In doing so I thank members for their contributions. In conclusion, it is instructive to indicate that Victoria will now come much more into line with a number of other states — Queensland, New South Wales, South Australia and Western Australia — in having banned the sale and display of bongs; hookahs have been banned in South Australia and limited in Queensland to a display of three, which is parallel with the Victorian legislation that we are dealing with here; and Western Australia and New South Wales have the ability to exclude prescribed water pipes in their relevant legislation. These are significant steps, and the government is pleased to have taken them with the support of the chamber.

Motion agreed to.

Read third time.

VICTORIAN COMMISSION FOR GAMBLING AND LIQUOR REGULATION 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 Victorian Commission for Gambling and Liquor Regulation Bill 2011.

In my opinion, the Victorian Commission for Gambling and Liquor Regulation 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 bill establishes the Victorian Commission for Gambling and Liquor Regulation (the commission), which will assume responsibility for functions under Victoria's gambling and liquor licensing legislation. The commission will replace the existing Victorian Commission for Gambling Regulation (VCGR), the director of liquor licensing (DLL) and the liquor licensing panel. The bill amends the Gambling Regulation Act 2003 (GRA) and the Liquor Control Reform Act 1998 (LCRA) to enable the commission to exercise regulatory functions under those acts, and also makes consequential amendments to the Casino Control Act 1991 and the Racing Act 1958.

Human rights issues

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

Right to privacy

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. An interference with the right to privacy will therefore only limit the right and require justification under section 7(2) if the interference is unlawful or arbitrary. An interference with privacy is considered arbitrary if there is no good reason or an improper reason for the action.

(1) Disclosure of information

Various clauses within the bill engage the right to privacy by requiring the disclosure of certain information in defined circumstances. Clause 21 requires a commissioner and the chairperson of the commission to disclose any interest he or she has in a matter being considered by the commission. Clause 33 provides that the commission may require a person (who in the opinion of the commission is a 'regulated person') to disclose information, produce records, or appear before the commission and answer questions for the purposes of it conducting an inquiry. Part 3 of the bill deems the commission to be a board appointed by the Governor in Council, with the effect that division 5 of part I of the Evidence (Miscellaneous Provisions) Act 1958 applies to its inquiries. This provides the commission with the power to call as a witness any person whom the commission considers can give evidence relevant to the subject matter of an inquiry, and to require the witness to give evidence and produce documents under oath. Clause 43 provides that gambling and liquor inspectors must possess an identity card which must be produced, on request, to persons affected by the performance of the functions of the inspector.

It is likely that the information disclosed under these provisions will, in some circumstances, constitute personal information. However, to the extent that the provisions interfere with privacy, I consider that the interference is neither arbitrary nor unlawful. The circumstances in which information must be disclosed are clearly set out in the bill, and the provisions serve the important purposes of: (1) ensuring that commissioners' decisions are not marred by perceived or actual conflicts of interest; (2) ensuring that the commission can seek all relevant information and make properly informed recommendations following its inquiries; and (3) ensuring that gambling and liquor inspectors are accountable for their actions when performing functions under the bill. These in turn serve the broader purpose of ensuring the liquor and gambling industries are properly regulated. I therefore consider that these provisions do not limit the right to privacy.

(2) Provision of photographs, finger prints and palm prints

Clause 41 provides that the commission may require a person under consideration for appointment as a gambling and liquor inspector to consent to having his or her photograph, finger prints and palm prints taken. The photograph or prints may be referred to the Chief Commissioner of Police, who may use them to assess and report back to the commission on whether the person under consideration is of good repute.

I accept that the requirement that a person provide photographs, finger prints or palm prints may engage the right to privacy. However, I consider that any interference with privacy caused by the taking of the photograph or prints is neither unlawful nor arbitrary. The taking of photographs or prints in this manner is at the lower end of intrusiveness into a person's privacy, both in terms of the intimacy of the information revealed and the duration and invasiveness of the process by which the information is collected. Further, the information is taken for the important purpose of ensuring that only persons of good repute are appointed as gambling and liquor inspectors. Further, I note that the bill provides an important safeguard by ensuring that the information is kept no longer than necessary for the purposes of the inquiry into the person's character, and requiring that it be destroyed no later than six months from the date it is received. I therefore consider that clause 41 does not limit the right to privacy.

(3) Restrictions on employment and association

The right to a private life has been held in Europe to include a right to establish and to develop relationships with other people, especially in the emotional field, for the development and fulfilment of one's own personality. Further, broad measures banning individuals from employment have been found to limit the right to private life where they affect an individual's ability to develop relationships with the outside world to a very significant degree and create serious difficulties for them as regards the possibility to earn their living.

Clauses 12, 31 and 44 of the bill may engage this right by prohibiting certain persons from being employed by or

significantly associating with various people involved in the gambling industry. For example, to be eligible for appointment, a commissioner or inspector cannot have been employed or significantly associated with a key operative, a bookmaker, or a commercial raffle organiser, in the two years prior to appointment (clauses 12 and 44). Additionally, a commissioner cannot be employed by or significantly associated with any of those persons for two years following the end of their appointment as commissioner (clause 31(2)). Restricted persons and inspectors also cannot be employed by those persons in the two years following the end of their appointment unless the commission otherwise approves (clauses 31(3) and 44). Clause 31(4) further provides that it is an offence for a key operative, bookmaker or commercial raffle organiser to breach these restrictions on employment and association.

These clauses may interfere with the right to privacy by restricting the type of relationships persons involved in the commission can form with persons involved in the gambling industry for a specified period before, during and after their term with the commission. However, I consider that any such interference is neither arbitrary nor unlawful. The restrictions are clearly set out in the bill, apply only to particular persons and for limited periods, and are necessary to ensure that the commission's functions in regulating the gambling and liquor industries can be performed free from any perception of bias or conflict of interest. I therefore consider that these provisions do not limit the right to privacy.

Clause 56 may also engage the right to privacy by inserting a new section 93D into the LCRA. New section 93D provides that if grounds for disciplinary action exist in relation to a licensed venue, the commission may disqualify a range of persons associated with managing the venue from holding managerial positions or financial interests in licensed venues for a specified period. The commission may also order that a person is disqualified from being employed by a licensed club or any person who holds a licence or BYO permit.

Although these powers may engage the right to privacy by prohibiting the affected persons from taking part in certain types of employment, in my opinion, the powers are neither unlawful nor arbitrary. The powers are limited to employment in a specific industry, only extend for a specified period, and are not of a kind that will give rise to social stigmatisation. They are necessary to ensure that the commission can effectively discipline persons who are involved in, or responsible for, matters giving rise to grounds for disciplinary action. Further, in exercising powers under new section 93D, the commission will be acting as a public authority and so must act and make decisions in accordance with section 38 of the charter act.

For these reasons, I consider that any interference with the right to privacy is neither arbitrary nor unlawful, and that the right in section 13(a) of the charter act is therefore not limited by this provision.

Freedom of expression

Section 15(2) of the charter act provides that every person has the right to freedom of expression. Under section 15(3), special duties and responsibilities attach to the exercise of the right, and it may be subject to such lawful restrictions as are reasonably necessary (a) to respect the rights and reputation of other persons; or (b) for the protection of national security, public order, public health or public morality.

The right to freedom of expression may be engaged by clause 33, discussed above, which enables the commission to require persons to produce information and documents and to appear before the commission to answer questions for the purposes of an inquiry. This is because the right encompasses a right not to express oneself. However, to the extent, if any, that clause 33 interferes with the right to freedom of expression, I consider the interference to be a lawful restriction that is reasonably necessary for the protection of public order, public health or public morality. The clause ensures that the commission can seek all relevant information and make properly informed recommendations following its inquiries. This in turn serves the broader purpose of ensuring the liquor and gambling industries are properly regulated. I therefore consider that this provision does not limit the right to freedom of expression.

Right to a fair hearing

Section 24(1) of the charter act provides that a person who is a party to a civil proceeding has the right to have the proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. 'Civil proceeding' has been interpreted as encompassing proceedings that are determinative of private rights and interests in the broad sense, including administrative proceedings.

It may be that 'civil proceeding' includes the decision-making, internal review and appeal procedures referred to under various provisions of the bill. I note that in assessing such provisions for compliance with the fair hearing right, the decision-making process as a whole, including avenues for review and appeal, must be examined.

One provision that engages the right to a fair hearing is new section 172A of the LCRA, inserted by clause 63, which provides that a person whose interests are affected by a decision of the commission under the LCRA may only appeal to the Supreme Court on a question of law. The bill also removes VCAT's review jurisdiction over various decisions in the LCRA (see clauses 66, 67 and 68). However, the right to a fair hearing does not necessarily require that an appeal body have jurisdiction to review a decision on its merits. The extent to which an appeal body must have such jurisdiction depends on the quality of the original decision-making process itself.

In this case, I consider that the decision-making procedures under the bill are strong. Significantly, the bill provides that persons affected by decisions in contested licensing applications, disciplinary matters, and inquiries into the amenity of a particular licence or BYO permit must be given notice and given an opportunity to be heard prior to the making of a decision likely to affect them (see new section 47(3) of the LCRA, inserted by clause 54; new section 92 of the LCRA, inserted by clause 56; and new section 94A, inserted by clause 57). The commission must take into account any submissions made by those parties before making its decision.

An exception to this is new section 96B, inserted by clause 58, which enables the commission to suspend a licence for up to five days even where the commission has not given the licensee an opportunity to formally show cause why the licence should not be suspended. However, the commission may only do so where the commission believes on reasonable grounds that the licensee has engaged in conduct that would

constitute grounds for disciplinary action, and where there is a danger that a person may suffer substantial harm, loss or damage because of a licensee's conduct. Further, although no formal 'show cause' process must be complied with, the clause still requires the commission to notify the licensee of their intention at least 48 hours before issuing a suspension notice, and to consider any response made by the licensee in making its decision (see new section 96B(2)).

The bill also provides that a range of decisions made by a single commissioner or employee of the commission can be subject to internal review (new division 2 in part 9 of the LCRA, inserted by clause 62). In addition, there is a general right to receive reasons for decisions made under the LCRA, although I note that there is a limited exception to this where reasons contain confidential or personal information (new sections 150 and 154, inserted by clause 62). Further, the bill explicitly provides that the rules of natural justice apply to the commission in conducting disciplinary inquiries (clause 25(3)). Finally, those persons affected by decisions made under the bill also have the option of seeking judicial review.

Having considered the decision-making procedures in the bill as a whole, and the review procedures available, I have concluded that the bill does not limit the right to a fair hearing in section 24(1) of the charter.

Right to be presumed innocent

Section 25(1) of the charter act provides that a person charged with a criminal offence has the right to be presumed innocent until proven guilty according to law. This right is engaged by part 3 of the bill.

Part 3, discussed above, deems the commission to be a board appointed by the Governor in Council, with the effect of applying division 5 of part I of the Evidence (Miscellaneous Provisions) Act 1958 (the act). This enables the commission to call witnesses to appear before it and to produce documents, and to require a person to be sworn in to give evidence. Under section 16 of the act, it is an offence for a person to fail, without reasonable excuse, to appear and give evidence or produce documents as required, or to refuse, without reasonable excuse, to be sworn in or to answer a question touching the subject matter of the inquiry. Section 20 of the act provides that where, in the opinion of the commission, a person has been guilty of an offence against section 16, the chairman of the commission may certify the facts to a law officer. The law officer may apply to the Supreme Court for an order calling upon the person to show cause why he or she should not be dealt with for the offence under the act, which carries a maximum penalty of 15 penalty units or three months imprisonment.

In my view, the requirements in sections 16 and 20 that a person have a 'reasonable excuse' for failing to comply with the commission's requirements and 'show cause' why he or she should not be dealt with for the offence under the act do not transfer the legal burden of proof. Once the defendant has adduced or pointed to some evidence, the burden is on the prosecution to prove beyond reasonable doubt the absence of the exception raised. Furthermore, the burdens do not relate to essential elements of the offences and are only imposed on the accused to raise facts that support the existence of an excuse or reason why the matter should not be dealt with as an offence. Therefore, section 25(1) is not limited.

Freedom of association

Section 16 of the charter act provides that every person has the right to freedom of association with others, including the right to form and join trade unions. The right extends to both formal and informal associations formed to further common interests, and in some jurisdictions it has been held to extend to the right to associate with any other individual, regardless of whether there is a common purpose (although I note that this approach to the right has not been uniformly adopted across all jurisdictions).

As discussed above under my consideration of the right to privacy, clauses 12, 31 and 44 of the bill restrict the type of relationships persons involved in the commission can form with persons involved in the gambling industry for a specified period before, during and after their term with the commission. These provisions may therefore limit the right to freedom of association. However, I consider that any limitations imposed by the bill on the right to freedom of association are justifiable in accordance with section 7(2) of the charter act.

The right to freedom of association is an important right which is indispensable for the existence and functioning of democracy. However, international jurisprudence has recognised that the right can be justifiably limited for a range of reasons, including for public order, public health and public morals. Here, the right is being limited for the important purpose of ensuring that the commission remains independent from the gambling industry, and ensuring that it can conduct its regulatory functions free from any suggestion of bias or conflict of interest. The restrictions extend, at most, for two years before and after a person's involvement with the commission, as well as during their appointment. Further, should they wish to be employed by or significantly associate with persons involved in the gambling industry in the two years following their term with the commission, it remains possible for former gambling and liquor inspectors and authorised persons to seek the commission's approval to do so. The restrictions are therefore well tailored to their purpose, do not go further than necessary to ensure they can achieve the desired ends, and overall are a demonstrably justifiable limitation on the right to freedom of association.

Conclusion

For the reasons set out above, I consider that the Victorian Commission for Gambling and Liquor Regulation Bill 2011 is compatible with the rights protected in the charter act.

The Hon. Matthew Guy, MLC
Minister for Planning

Second reading

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I wish to advise that clauses 70 and 74 of the bill were amended in the Legislative Assembly on the advice of the chief parliamentary counsel. The amendments ensure that references in the Gambling Regulation Act 2003 to the Victorian Commission for Gambling Regulation are repealed as the bill replaces this body with the new Victorian Commission for Gambling and Liquor Regulation. I move:

That the second-reading speech be incorporated into *Hansard*.

Motion agreed to.

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

That the bill be now read a second time.

Incorporated speech as follows:

The Victorian Commission for Gambling and Liquor Regulation Bill 2011 delivers on the government's election commitment to create a new integrated regulator of liquor and gambling in Victoria. The bill will create the Victorian Commission for Gambling and Liquor Regulation, and the new commission will assume all regulatory functions, duties and powers of the Victorian Commission for Gambling Regulation, the director of liquor licensing and the liquor licensing panel.

This reform is not a merger, a rebranding or a restructure. This reform seeks to create a new, modern, world-class regulator for liquor and gambling in Victoria.

The regulation of liquor in Victoria badly needs reform. Liquor licensing should be a relatively straightforward process. It ought to be consistent, transparent and fair. It should reflect the community's expectation that liquor is made available and regulated responsibly. There ought to be proper opportunities for the views of affected parties to be heard by licensing decision-makers. Instead, liquor regulation has suffered from confusing layers of bureaucracy.

The coalition government is taking action to address these issues so that industry and the community can once again have confidence in Victoria's system of liquor regulation.

Liquor licensing will benefit from a move to a collegiate approach, modelled on the Victorian Commission for Gambling Regulation. The new body will take advantage of the natural synergies that exist between gambling and liquor. A commission structure will facilitate better decisions through the development of commissioners with intimate and expert knowledge of liquor and gambling issues.

The Victorian Commission for Gambling and Liquor Regulation will be an independent statutory authority. The commission will undertake licensing activities, promote compliance with and detect breaches of the relevant gambling and liquor legislation. The commission will also inform and educate industry and the public about the commission's regulatory practices and requirements.

Part 1 of the bill sets out the purpose of the act and provides for its commencement. Part 1 also empowers the minister to issue decision-making guidelines to the commission which may provide guidance to the commission about the government's policies and objectives relating to liquor and gambling. This provision will enable the minister to provide general policy guidance to the commission. However, it gives no power to direct the commission on the determination it should make in any individual matter.

Part 2 of the bill provides for the establishment of the new regulator as a statutory body corporate, with powers, functions and duties as provided in the Liquor Control Reform Act 1998, the Gambling Regulation Act 2003 and the Casino Control Act 1991 and other relevant acts.

The commission's functions will be to undertake licensing activities, promote and monitor compliance and detect and respond to contraventions of gaming and liquor legislation.

The commission will also have the function to provide advice to the minister on the regulatory functions of the commission and the operation of liquor and gambling legislation.

The commission will perform a complementary education function to the Victorian Responsible Gambling Foundation, albeit one with a different focus. The Victorian Responsible Gambling Foundation will provide information and advice that enables individuals and organisations to effectively engage in the processes regarding the provision of gambling, while the commission's education function will aim to increase public and industry knowledge of its regulatory practices and requirements.

Part 2 also provides that the Victorian Commission for Gambling and Liquor Regulation will be comprised of a chairperson, to be appointed by the Governor in Council, and provides for other commissioner appointments, including deputy chairpersons, and delegation of the commission's powers. Commissioners will be appointed on the basis of possessing appropriate qualifications, such as relevant business experience.

The bill will require the commission to have regard to any relevant decision-making guidelines issued by the minister under part 1 when exercising a power, duty or function.

Part 3 of the bill gives the commission the general authority to investigate matters or to conduct an inquiry relevant to the powers, duties and functions of the commission in the regulation of gambling and liquor laws. The minister may also refer a matter for inquiry to the commission relating to gambling or liquor regulation.

Part 4 of the bill will create an integrated role of 'gambling and liquor inspector' and empower the chairperson of the commission to appoint suitable persons to the role. The bill will impose on former inspectors a two-year period of restraint regarding their post-commission employment. Gambling and liquor inspectors will be authorised to exercise the powers currently conferred on inspectors under the gambling and liquor legislation.

The bringing together of gaming and liquor inspections is a practical common-sense reform. Every one of Victoria's more than 500 gaming venues must have a liquor licence, so it is illogical that the compliance and education functions of regulators must be delivered separately for a venue's gaming and liquor activities. The current distinction between liquor and gaming inspectors can lead to ineffective outcomes. For example, a liquor inspector could attend a venue and observe a gaming attendant illegally paying out winnings of more than $1000 in cash, rather than by cheque as required by the legislation. But beyond making a phone call, the inspector can take no action. Likewise, a gaming inspector could observe liquor being served to an intoxicated patron and cannot respond.

The creation of the role of gambling and liquor inspector will empower the current crop of inspectors with additional training and skills. Inspection and compliance activities will become more efficient and effective. Venues will be able to deal with a single inspector. The government expects that these natural synergies will enable better use of regulatory resources, leading to improved education and compliance outcomes for the Victorian community, as well as industry.

Part 5 of the bill provides for powers to make regulations. Part 6 of the bill provides for savings and transitional provisions.

The bill makes several substantive amendments to the Liquor Control Reform Act 1998.

The first of these amendments is that where a liquor licence application has been objected to on the grounds of either amenity or misuse and abuse of alcohol, the commissioner who decides that application must, unless exemptions apply, hold a public hearing giving the applicant and each objector a reasonable opportunity to be heard. The bill will repeal the provisions creating the liquor licensing panel and the functions performed by the panel will be assumed by the commission. The government regards the liquor licensing panel as having limited utility as, while it receives submissions from interested parties concerning contested liquor licensing applications, it cannot make decisions on those applications. All public hearings on licensing matters will now be before the decision-makers.

The second of these amendments harmonises the disciplinary powers of the commission across the gambling and liquor regimes. The new commission will be empowered to take appropriate enforcement action as the bill will vest the existing disciplinary powers under the Liquor Control Reform Act 1998 in the new commission rather than in the Victorian Civil and Administrative Tribunal.

The third amendment will introduce an internal merits review process for liquor licensing decisions. The bill provides that three or more commissioners, excluding the original decision-maker, can, on application, collectively conduct a merits review. The bill will remove the current review jurisdiction of VCAT in these matters. Original decisions made by the commission, that is three or more commissioners sitting as a group, will be appellable to the Supreme Court on a point of law.

The transfer of disciplinary actions and reviews to the new commission provides the rigour of collective decision making by a body with specialist knowledge of the regulated industries. This structure will also provide continuity and consistency in decision making that will enhance industry and public confidence in regulatory processes.

The bill provides for robust and transparent decision making on matters of public interest through collective decision making by three or more commissioners and a draft determination process. It is expected that the commission, that is three or more commissioners, will generally only make an original decision where the application involves highly complex or contentious issues or where the legislation expressly reserves powers to the commission.

The commission will have the capacity, under its statutory discretion to regulate its own procedure, to issue a draft determination prior to making a final decision. This will enable parties to make submissions to the commission before the determination becomes final.

Any person who is affected by a decision of the commission made under the Liquor Control Reform Act 1998 will also have a right of appeal to the Supreme Court on a point of law.

The bill will introduce provisions enabling the commission to seek injunctive relief from the courts for contraventions of the Liquor Control Reform Act 1998. Having the capacity to seek injunctive relief will be an additional enforcement tool that can be used by the commission.

The bill will also amend the Liquor Control Reform Act 1998 to clarify two evidentiary matters in proceedings under that act.

First, the bill will insert a provision to deem that, for the purposes of the act, evidence relating to certain factors including violent behaviour, drunkenness and vandalism (whether occurring inside or outside a licensed premises) in itself constitutes evidence of detraction from or detriment to the amenity of the area in which the licensed premises are situated.

Second, the bill will insert a provision to allow a person who applies to the commission under part 6 of the act to rely on evidence that has been relied on in previous proceedings under part 6 of the act, notwithstanding that the evidence has been the subject of an order or ruling by VCAT or the commission in those previous proceedings.

The bill will amend the Gambling Regulation Act 2003 to repeal the provisions creating the Victorian Commission for Gambling Regulation and the office of executive commissioner.

The integration of the administration of liquor and gambling in Victoria will facilitate a reduction in the regulatory burden of businesses that have both liquor and gaming licences. It will deliver a robust, effective and expert decision-making process that will facilitate more rigorous and predictable decision making for businesses and the wider community.

This is a landmark moment in the history of liquor and gambling regulation in this state. Today we leave behind the tired, confused mess of the past. This reform will restore the confidence of industry and the community and take Victoria forward to a new era of efficient and effective regulation and compliance.

I commend the bill to the house.

Debate adjourned for Hon. M. P. PAKULA (Western Metropolitan) on motion of Mr Lenders.

Debate adjourned until Thursday, 20 October.

CHILDREN, YOUTH AND FAMILIES AMENDMENT (SECURITY OF YOUTH JUSTICE FACILITIES) BILL 2011

Introduction and first reading

Received from Assembly.

Read first time for Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) on motion of Hon. G. K. Rich-Phillips; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Hon. W. A. LOVELL (Minister for Children and Early Childhood Development),

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 Children, Youth and Families Amendment (Security of Youth Justice Facilities) Bill 2011.

In my opinion, the Children, Youth and Families Amendment (Security of Youth Justice Facilities) 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 the Children, Youth and Families Act 2005 (act) to allow for improved security measures at youth justice centres.

Amendments to the act will enable searches of people upon entry, on exit and within youth justice facilities. New provisions setting out powers and functions in relation to seizure of certain articles will also be inserted, replacing existing provisions in the act and the Children, Youth and Families Regulations 2007 (regulations). Existing offences which prohibit particular actions which compromise security will be amended. The bill will also insert a new secrecy provision into the act, aimed at protection of security information about youth justice facilities.

Human rights issues

There are a number of rights which are engaged by the bill. These are:

privacy;

freedom of expression;

property rights;

humane treatment when deprived of liberty;

the rights of children and families; and

children in the criminal process.

Search powers

Division 3 of part 5.8 of the act is to be amended to allow:

formal searches (via electronic or mechanical device or detection dog) and frisk searches of all people wishing to enter and exit a facility (clause 7 of the bill, which inserts new section 488A into the act);

the power to require any person within a facility to submit to a formal or frisk search on reasonable grounds if necessary in the interests of the security or good order of the facility (clause 7 of the bill, which inserts section 488AB into the act);

retention of the existing power to strip search a detainee (clause 7 of the bill, which inserts section 488AC into the act); and

retention of the power to search any part of the youth justice facility or any thing within it for the security or good order of the facility or the detainees (clause 7 of the bill, which inserts section 488AB into the act).

Search powers, particularly searches of persons, engage the right to privacy. Further, depending upon the circumstances and manner in which they are carried out, searches of young people detained in youth justice facilities have the potential to engage a number of other rights including the right to humane treatment when deprived of liberty (section 22), the rights of children (section 17) and the rights of children in the criminal process (section 23). This is particularly so in respect of strip searches. However, I consider that the powers in the bill are compatible with these rights having regard to: the circumstances in which searches may be conducted; the safeguards imposed; and the fact that they will be conducted by persons who are public authorities and therefore bound to act compatibly with those rights having regard to the individual circumstances.

Search powers in youth justice facilities are necessary to preserve the security and good order of the facility and to minimise the introduction of contraband, including drugs, weapons, mobile telephones and other articles, into the facility. Exclusion of contraband assists in maintaining the safety and security of detainees, staff and visitors and in promoting the rehabilitation of detainees.

In some circumstances it will be necessary to strip search detainees. This is authorised by section 488AC only where it is necessary to do so in the interests of the security or good order of a youth justice facility, or in the interests of the safety or security of the detainee or any other person in the facility. These powers do not extend to searches of body cavities (section 488AC(2)). Ordinarily a strip search would involve no physical contact with the detainee. However, where the person refuses to cooperate it may be necessary to use force. Section 488AC authorises the use of reasonable force, if necessary.

The bill contains a number of safeguards to protect against searches being conducted in a manner that would be incompatible with human rights. These include:

the requirement that frisk and strip searches be conducted by an officer of the same sex as the person being searched (section 488AD(1));

the requirement to inform persons other than detainees of: the authority to search; that he or she may refuse the search; and the consequences of any refusal (section 488AD(2));

procedural requirements with respect to giving the person an opportunity to produce contraband (section 488AD(3));

requiring that strip searches be conducted in the presence of another officer, but in such a way that the detainee is not in view of that officer (section 488AD(5)); and

requiring that searches be conducted expeditiously and with regard to the decency and self-respect of the person searched (section 488AD(6)).

In addition to complying with any procedural safeguards in the bill, officers will have to comply with additional

safeguards that may be incorporated in the regulations and operations manual, which are currently under review. Further, strip searches may be conducted by officers only. It is not possible to exhaustively prescribe all the particular circumstances which may fall within the scope of the powers, or the exact manner in which searches should be conducted. However, officers and other persons authorised to conduct searches pursuant to section 482B will be public authorities and will be bound to act compatibly with rights pursuant to section 38 of the charter act, having regard to the particular circumstances.

Restrictions upon communication — free expression

The bill imposes some restrictions upon communication with detainees. Communication is restricted by provisions in section 501 of the act. Clause 10 adds a further offence with respect to communication with persons on temporary leave. The communications are only prohibited where the communication threatens the security of the facility or any person (section 501(1)(ab)) and a person can only be charged with an offence against this provision if the person has first received a warning under section 501(4).

While these restrictions engage the right to free expression in section 15 of the charter act they are clearly reasonable and necessary, and fall within the restrictions that are expressly permitted by section 15(3).

Seizure of contraband — property rights

The right to property in section 20 of the charter act is engaged by the provisions allowing for the seizure of certain articles or things found during a search (clause 8 of the bill which inserts new division 3A – seizure into the act). Although seizure is already allowed for in the act and regulations, it is intended to clarify that the existing provisions apply to staff belongings, as well as those of detainees and visitors.

When carrying out a search under division 3A of the act, officers may seize any article or thing which they believe on reasonable grounds jeopardises or may jeopardise the security of the facility or the safety of persons in the facility. Seized objects must be dealt with in the manner described in new sections 488GA, 488GB and 488GC, which could include disposal in accordance with section 488GD, returning, or dismantling the object.

As seizure will occur in the circumstances and in accordance with the procedures set out in the legislation, the interference will occur in accordance with the law and there is no limit on the right to property.

Conclusion

I consider that the bill is compatible with the charter act because the rights which are engaged by the bill are unlikely to be limited. If any rights are limited by the bill in individual circumstances, to the extent that those rights are limited, those limitations will be reasonable and demonstrably justified in a free and democratic society.

Hon. David Davis, MP
Minister for Health

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 government is committed to improving the security of Victoria's youth justice centres and the safety and security of all Victorians across the state.

The Children, Youth and Families Amendment (Security of Youth Justice Facilities) Bill 2011 will create a critical legislative foundation for key security improvements at Victoria's youth justice facilities.

The Baillieu government made a number of election commitments about the state of law and order in Victoria and enhancing community safety.

This bill honours our commitment to analyse the security and management of the Parkville youth justice precinct and implement appropriate responses including upgrading the security of the site. This bill will improve the legislative framework and is a key component of all the security enhancements which are under way.

In 2010, under the Brumby Labor government, the Parkville precinct was the subject of two reviews: one by Mr Neil Comrie, following the escape of six young boys from the Melbourne Youth Justice Centre in May 2010; and an Ombudsman's own motion investigation in October 2010 following a whistleblower's allegations about conditions at Parkville.

Both reports were highly critical of the security arrangements; the conditions at the Parkville precinct; and the services provided to young people in custody.

Both reports identified multiple security deficiencies and made numerous recommendations to better minimise the likelihood of escape and improve safety at the Parkville precinct.

A number of these deficiencies have been addressed through the installation of closed-circuit TV around the precinct, enhanced surveillance and supervision of night operations, improvements to the physical fabric of the site, and improved monitoring to prevent staff misconduct and improve their compliance with operational policies and procedures.

However, there are limits to enhancing the security platform at Parkville without the legislative changes as set out in this bill. These amendments are required for a number of reasons.

Firstly, there has been a changing client profile in our youth justice facilities. Over the past decade, there has been a marked shift towards more violent offending among young people in custody. Violence against persons comprised the majority of all primary offences in custody in 2010: 83 per cent compared to 23 per cent in 2000.

Secondly, there has also been an increase in the average age of young offenders, which combined with the increase in violent offending has significantly increased risks to the staff, clients and the community and heightened the need for youth justice centres to operate off a strong security platform.

Thirdly, the most significant security improvement at the Parkville precinct site is the creation of a $5 million single-point-of-entry building, which is currently being constructed. However, without these legislative changes, officers will not be able to perform their functions properly and the intent of the Comrie recommendations will not be met.

This bill provides the legal authority to make key changes in practice around security, including:

Search provisions

Clearly establishing the right to search all people (staff, detainees and visitors) before entry and exit.

This will prevent people from entering the facility without a security clearance and confirmation of their identity, and will tackle the introduction of contraband (including drugs, solvents, knives and lighters) by staff, visitors and detainees.

As it currently stands, there are some provisions in the Children, Youth and Families Act 2005 (the act) to search visitors, detainees and objects within a youth justice facility. However, the act is ambiguous in relation to searching staff.

The proposed amendments will enable security officers to search everyone upon entry and exit of a youth justice facility. Once inside the facility, searches will only be conducted where the officer in charge considers they are necessary for the security and good order of the facility or for the safety of detainees or staff.

The bill will establish more clearly the manner in which searches should be conducted.

Upon entry to a youth justice facility, officers will inform any person entering a youth justice facility of their authority to search the person and any article or thing accompanying the person. Clear signage and verbal communication will ensure that people entering the centre are informed about what constitutes contraband and what items are permissible to bring into the centre.

The bill will also require all officers conducting searches to do so with regard to the decency and respect of the person being searched. Frisk and strip searches, if required, will be conducted in private and will be carried out by officers of the same sex of the person being searched.

Security offences

This bill will create new security offences and boost penalties for adult offenders in order to improve the security within and around the facilities.

Existing provisions of the act will be amended to more closely reflect section 32 of the Corrections Act 1986 (the corrections act), so that it will be an offence for a person who is not authorised to do so to:

enter or attempt to enter a youth justice centre;

communicate or attempt to communicate with a detainee in contravention of a clear order from the secretary;

take or send or attempt to take or send certain things in and out of the youth justice centres.

It will also be an offence for a person who, without being authorised to do so, communicates with or attempts to communicate with a detainee while they are on escorted leave from a youth justice centre in a way which threatens security.

It is proposed that Victoria Police will be the authority responsible for enforcing these security offences.

The act is also being amended to reflect the corrections act penalties for adults who commit any of the above offences.

The penalties for persons aged 17 and under will remain the same.

Secrecy offences

The third set of amendments in this bill involve a new provision to protect confidential and sensitive information relating to security arrangements at youth justice centres.

The government is introducing a provision similar to the secrecy provision in the corrections act which will make it an offence for a person who holds a particular position, such as an officer of a youth justice centre, to use confidential information which was gained by being in that position in a way which is not authorised.

This provision will not prevent information sharing for professional purposes and/or when it is in the best interests of the detainee.

Conclusion

In summary, these amendments to the Children, Youth and Families Act 2005 provide a sound legislative framework to build a stronger security platform at Victoria's youth justice facilities.

The provisions extend search powers and create additional offences to the extent necessary to uphold the security and good order of youth justice facilities and to protect the broader community, detainees and staff.

They ensure that the act is consistent with the principles of youth justice to facilitate rehabilitative outcomes for young people and a safer community for all.

President, the Baillieu government is acting decisively to improve security at youth justice facilities. It is an important part of the government's community safety initiatives.

I commend the bill to the house.

Debate adjourned on motion of Ms MIKAKOS (Northern Metropolitan).

Debate adjourned until Thursday, 20 October.

CRIMES AND DOMESTIC ANIMALS ACTS AMENDMENT (OFFENCES AND PENALTIES) 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 Crimes and Domestic Animals Acts Amendment (Offences and Penalties) Bill 2011.

In my opinion, the Crimes and Domestic Animals Acts Amendment (Offences and Penalties) 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 bill amends the Crimes Act 1958 to create new offences relating to the death or endangerment of life of a person caused by a person failing to control a dog.

The bill also amends the Domestic Animals Act 1994 to increase penalties for offences under that act and creates a new offence relating to the transfer of ownership of restricted breed dogs.

Human rights issues

1. Prohibition on transfer of ownership of restricted breed dogs

Clause 18 inserts new section 41K into the Domestic Animals Act 1994 which provides that a person must not sell, give away or otherwise transfer ownership of a restricted breed dog. New section 41K(3) provides for an exception if the owner has died and the person sells, gives or otherwise transfers the dog to the husband, wife, domestic partner, parent, child or sibling of the owner of the dog who is of or over the age of 17 years. If an owner dies and has not transferred the dog to a family member pursuant to new section 41K(3), the dog will be seized or surrendered to a pound, and ultimately destroyed. The restriction does not operate to prevent the dog from being temporarily placed in a boarding kennel or care of another person.

This provision engages the right to property in section 20 of the charter act.

Right to property (section 20)

Section 20 of the charter act provides that a person must not be deprived of his or her property other than in accordance with law. Although the term 'deprived' is not defined in the charter act, it is likely to include the disposition or destruction of property, as well as the substantial lessening of the value of property. The restriction on transfer of restricted breed dogs arguably can result in a substantial lessening of their value as, prior to these amendments, owners were permitted to sell restricted breeds to another person who was not a minor. The amendments also will result in the destruction of a restricted breed dog when the owner dies and was unable to transfer it to a family member pursuant to the exception in new section 41K(3).

A deprivation of property is permitted if the powers which authorise the deprivation are conferred by legislation or common law, are confined and structured rather than arbitrary or unclear, and are accessible to the public and formulated precisely. In my opinion, this provision does not limit section 20 due to a number of reasons.

Any seizure and destruction of a restricted breed dog will only occur in the confined situation of where an owner dies and has failed to transfer the dog to a family member pursuant to new section 41K(3). The restriction is not arbitrary, as there is a real and pressing public order justification in preventing restricted breed dogs from being freely transferred to others in the community. Restricted breed dogs pose a significant public safety risk. Prohibiting the transfer of restricted breed dogs allows councils to more effectively account for the locations of such dogs in the community and ensure that the important obligations of owners are being complied with.

Since heavy restrictions were implemented on restricted breed ownership on 11 December 2007, it has been widely publicised in the community that restricted breed dogs pose a danger to community safety and are a controlled animal. It was the clear intention of the Domestic Animals Amendment Act 2010 that no new restricted breed dogs be introduced into Victoria after 1 September 2010, and that any restricted breed dogs residing in Victoria prior to this date be registered. It is otherwise illegal to possess an unregistered restricted breed dog in Victoria. I conclude that any deprivation of property which may result under this law will be reasonable, as given the existing restrictive regulations; any owner of a restricted breed dog would not have a reasonable expectation of a lasting freedom to transfer or dispose of this controlled animal at will. Finally, the exception that permits an owner to transfer the restricted breed dog to another family member means that this restriction is a proportional measure to achieve the aim of preventing the further proliferation of restrictive breed dogs in the community.

I conclude that this provision is compatible with the charter act.

Conclusion

I consider that the Crimes and Domestic Animals Acts Amendment (Offences and Penalties) Bill 2011 is compatible with the charter act because although some provisions do engage the property right, these provisions do not limit this right.

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:

This bill will strengthen the laws protecting the public from dangerous and restricted breed dogs and is the second phase of the government's response to the tragic killing of little Ayen Chol last month.

The Crimes and Domestic Animals Acts Amendment (Offences and Penalties) Bill 2011 amends the Crimes Act 1958 and Domestic Animals Act 1994.

The new Crimes Act 1958 offences will apply where a person's failure to control their dog results in the death of a person or endangers the life of a person.

The offences will apply to attacks by dangerous, restricted breed or menacing dogs, as defined in the Domestic Animals Act 1994. These are dogs that are subject to specific restrictions in the DAA because they are either considered inherently dangerous, they have already rushed at, bitten or attacked people or animals, or they have been trained to guard, attack or bite.

The first offence is that of failing to control a dog resulting in death. This offence will apply where an owner, or person in charge, of a dangerous, restricted breed or menacing dog fails to keep the dog under control, and the dog kills a person. The owner or person in charge of the dog will be criminally liable if a reasonable person would have realised that the failure to keep the dog under control would expose either the person who was killed or another person to an appreciable risk of death. The maximum penalty for the offence will be 10 years imprisonment.

The second offence is that of failing to control a dog endangering life. Under this offence, an owner or person in charge of a dog will be criminally liable if, without lawful excuse, they were reckless as to whether the dog was under control. This will cover cases where a dangerous, restricted breed or menacing dog places a person's life in danger, whether or not a death actually results. The maximum penalty for this offence will be five years imprisonment.

Both of these offences are very serious. They are similar to existing Crimes Act offences such as dangerous driving causing death and reckless conduct endangering life. They have been modified to reflect the special focus of these offences in dealing with a failure to properly control a dangerous, menacing or restricted breed dog that kills someone or places their life in danger.

The general public are entitled to expect high fines to either discourage or punish owners of dogs that are a danger to community. The bill will increase penalties for dog attack offences and will make offences and keeping requirements for restricted breed dogs the same as those for dangerous dogs. Offences relating to the keeping of dangerous dogs, restricted breed dogs and menacing dogs will be increased. A menacing dog is a dog that has already rushed or bitten. It is imperative to control these dogs once they have been aggressive to ensure they do not become a dangerous dog.

In an aim to further limit the ownership of existing restricted breed dogs that may be kept after 30 September 2011 the bill will prohibit the transfer of ownership of such dogs upon death of the owner to any person other than immediate family. Otherwise they must be surrendered to the council for destruction.

A registered restricted breed dog that can be kept is required to be desexed, microchip identified, recorded on the Victorian declared dog registry, housed under specific containment requirements and only allowed to be walked off property while on a leash and if wearing a muzzle.

The public of Victoria has made it clear that they are concerned about these dogs and want them to be clearly identifiable. The bill will provide a requirement for a restricted breed dog to wear a prescribed collar. Currently only declared dangerous dogs are required to wear a warning collar in public. Requiring a declared restricted breed dog to also wear a warning collar will make these dogs identifiable to the public. If a member of the public sees a dog that is a pit bull out without such a collar they can report it to the council for further action.

I commend the bill to the house.

Debate adjourned on motion of Mr LENDERS (Southern Metropolitan).

Debate adjourned until Thursday, 20 October.

ENERGY LEGISLATION AMENDMENT (BUSHFIRE MITIGATION AND OTHER MATTERS) 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 Energy Legislation Amendment (Bushfire Mitigation and Other Matters) Bill 2011.

In my opinion, the Energy Legislation Amendment (Bushfire Mitigation and Other Matters) 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 main purposes of the bill are:

(a) to amend the Electricity Safety Act 1998:

(i) to require the major electricity companies to make bushfire mitigation plans for the whole supply network, not just those previously classified as 'at risk';

(ii) to create an offence for carrying out building work that will make a building unsafe when connected to an electricity supply;

(iii) to make further provision for compliance audits by Energy Safe Victoria;

(iv) to enable seizure of items under powers of entry;

(v) to provide that prosecutions can be commenced within three years after the commission of an offence; and

(vi) to make other technical amendments.

(b) to amend the Victorian Energy Efficiency Target Act 2007:

(i) to create an offence of knowingly creating an incorrect certificate or a certificate that does not comply with the requirements of this act;

(ii) to clarify the circumstances in which the Essential Services Commissioner may refuse to register a certificate;

(iii) to expand the grounds for suspension of accreditation, and enable the Essential Services Commissioner to revoke accreditation;

(iv) to provide for additional enforcement mechanisms; and

(v) to make other technical amendments.

(c) To amend the Gas Safety Act 1997 to enable seizure of items under powers of entry and make other technical amendments.

(d) To amend the Electricity Industry Act 2000 and the Gas Industry Act 2001 to cap wrongful disconnection payments in certain circumstances.

Human rights issues

Seizure of items under powers of entry

The bill will make amendments to enable the seizure of items on land or premises when a search is conducted under division 3 of part 11 of the Electricity Safety Act 1998 and division 3 of part 5 of the Gas Safety Act 1997. The seizure may only occur when an officer or inspector has a reasonable suspicion that the item may be evidence of the commission of an offence, and either the landowner has given written consent to the entry (having been informed that they are consenting to both the search and potential seizure of items) or a search warrant has been issued by a magistrate.

Section 13(a) of the charter act protects individuals' right not to have their privacy, home, family or correspondence unlawfully or arbitrarily interfered with. While search and seizure powers may engage the right to privacy, in this instance the bill only amends each act to make it clear that items may be seized. Under the existing provisions, the purpose of the entry and search powers is to find particular things that may be evidence of the commission of an offence. The amendment does not constitute any additional intrusion into the privacy of the individuals subject to a search, and where the power is properly exercised, any intrusion that occurs is neither unlawful nor arbitrary.

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:

The bill makes a number of amendments to the Electricity Safety Act 1998, the Gas Safety Act 1997, the Victorian Energy Efficiency Target Act 2007, the Electricity Industry Act 2000 and the Gas Industry Act 2001.

The bill assists in delivering on the government's commitment to reduce the risk of bushfires started by electricity infrastructure as part of this government's commitment to implementing the recommendations of the 2009 Victorian Bushfires Royal Commission.

The bill amends the Electricity Safety Act 1998 to improve the operation of the bushfire risk mitigation obligations in the act that apply to major electricity companies. It extends the obligation to mitigate bushfire risks to the whole of their supply networks, rather than just their at-risk supply networks. Energy Safe Victoria, the safety regulator under the act, has advised the government that the current distinction in the Electricity Safety Act 1998 between an at-risk supply network and other parts of a supply network of major electricity companies is unworkable due to the fluid nature of the boundaries between low-risk and high-risk areas of electricity supply networks.

These amendments support the implementation of recommendation 34 of the 2009 Victorian Bushfires Royal Commission that 'the state amend the regulatory framework for electricity safety to strengthen Energy Safe Victoria's mandate in relation to the prevention and mitigation of

electricity-caused bushfires and to require it to fulfil that mandate'.

The bill also amends the Electricity Safety Act 1998:

(a) to extend the powers of Energy Safe Victoria to require audits of compliance with electric line clearance plans and responsibilities;

(b) to prohibit the carrying out of building works that make electrical installations unsafe; and

(c) to improve the operation of Energy Safe Victoria's powers of entry, search and direction.

The amendments in the bill to the Victorian Energy Efficiency Target Act 2007 will strengthen the powers of the Essential Services Commission as the Victorian energy efficiency target scheme regulator, to impose sanctions on accredited persons who consistently fail to comply with the requirements of the act for the creation of certificates and the carrying out of activities, and thus undermine the achievement of the target. The amendments include:

(a) giving the Essential Services Commission expanded powers to suspend or revoke the accreditation of an accredited person;

(b) empowering the Essential Services Commission to impose conditions or restrictions on their accreditation;

(c) giving the Essential Services Commission a new power to require accredited persons to obtain independent audits of their compliance with the Victorian Energy Efficiency Target Act 2007; and

(d) strengthening and clarifying the operation of the offence provisions in the Victorian Energy Efficiency Target Act 2007 applicable to the creation of certificates by accredited persons.

The bill aims to implement the government's election policy commitment of ensuring that the Victorian energy efficiency target scheme has safeguards in place to prevent rorting that undermines efforts to deliver energy efficiency.

The amendments to the Victorian Energy Efficiency Target Act 2007 in this bill are the first step to achieving this commitment to clean up the operation of the Victorian energy efficiency target scheme.

An independent review of the whole legislative scheme is being undertaken in accordance with section 76 of the Victorian Energy Efficiency Target Act 2007 and is due to be completed by 31 December 2011. Amongst other things, the review team is considering:

(a) the types of qualifications or skills needed to be eligible for accreditation;

(b) what matters should disqualify a person from being granted accreditation; and

(c) the level of penalties under the Victorian Energy Efficiency Target Act 2007.

Once the outcomes of this review are known, the government will consider whether further amendments to the act are necessary to ensure that the scheme achieves its worthy objective of promoting the reduction of greenhouse gas emissions through energy efficiency measures.

The coalition government is committed to easing cost of living pressures and taking practical steps to protect the environment. With this goal in mind, the government is doubling the annual greenhouse gas emissions reduction target under the Victorian energy efficiency target scheme. From 2012 the target is to cut greenhouse gas emissions by 5.4 million tonnes per year for three years, doubling the previous three-year target of 2.7 million tonnes per year. We will also extend the scheme to energy efficiency activities in business premises.

The bill includes amendments to the Electricity Industry Act 2000 and the Gas Industry Act 2001 to cap the level of wrongful disconnection payments to be made to retail customers, in accordance with recommendations of the Essential Services Commission contained in its January 2010 report.

The Electricity Industry Act 2000 and Gas Industry Act 2001 require retailers to pay $250 for each day that a residential or small business customer remains wrongfully disconnected from the supply of electricity or gas. These arrangements are known as the wrongful disconnection scheme. The scheme operates when a customer is incorrectly disconnected from the supply network at the instigation of their retailer for failure to pay their bill. Retailers are required to go through a rigorous procedure for contacting a customer who is in arrears and to then establish payment arrangements with the customer, before any disconnection may be instigated. If these procedures are not followed, the scheme applies to compensate the customer for the inconvenience caused by the disconnection. However, retailers have been required to pay a number of very large payments to some customers. The potentially large payments available under the scheme seem to act as a disincentive to customers contacting their retailer in a timely manner to reinstate their connection.

In 2009, the Essential Services Commission undertook a review of the wrongful disconnection scheme. Following public consultation, the commission recommended that the payment of $250 per day be retained. The commission also recommended that where a customer does not contact their retailer within 10 business days following the disconnection, the retailer's liability should be limited to an aggregate payment of $3500. If a customer makes contact with their retailer within the 10 business days, but remains wrongfully disconnected, the retailer's liability will continue to accrue at $250 per day until reconnection. The commission noted in its report that there is support for the scheme to be constructed in this way from consumer advocates, and the energy and water ombudsman.

Finally, the bill amends the Gas Safety Act 1997 to clarify the operation of the offence of supplying or selling unaccepted or unlabelled appliances and the search and seizure powers in the act.

I commend the bill to the house.

Debate adjourned for Mr TEE (Eastern Metropolitan) on motion of Mr Lenders.

Debate adjourned until Thursday, 20 October.

EXTRACTIVE INDUSTRIES (LYSTERFIELD) 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 Extractive Industries (Lysterfield) Amendment Bill 2011.

In my opinion, the Extractive Industries (Lysterfield) 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

This bill amends the Extractive Industries (Lysterfield) Act 1986. That act ratifies an agreement between the state and Boral Resources (Vic) Pty Ltd (the agreement), in which the state grants an extractive industry lease and an extractive industry licence to Boral Resources (Vic) Pty Ltd on terms set out in the agreement.

The purpose of this bill is to give legislative effect to amendments to special conditions attached to the extractive industry licence, which have been agreed to by Boral Resources (Vic) Pty Ltd and the Department of Primary Industries, the Department of Sustainability and Environment, Parks Victoria and Knox City Council.

Human rights issues

This bill does not raise any human rights issues. Boral Resources (Vic) Pty Ltd does not have human rights because it is a private corporation, and only persons have human rights (section 6(1) of the charter act). In my view, the bill also does not affect any other person's existing rights.

Conclusion

I consider that the bill is compatible with the charter act because it does not raise a human rights issue.

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:

The government is committed to making the best use of Victoria's resources in a way that is compatible with the economic, social and environmental objectives of the state.

This bill will further that commitment. It will amend the Extractive Industries (Lysterfield) Act 1986 which is an act that gives the force of law to an agreement between the state and Boral Resources (Vic) Pty Ltd (Boral) with regard to a stone quarry in Lysterfield. The amendments improve the environmental performance of the quarry while also improving the commerciality of the operation.

The bill referentially amends the special conditions as set out in schedule B to the extractive industry licence attached to the Extractive Industries (Lysterfield) Act 1986. These amendments have been made after extensive consultation between Boral and Parks Victoria, Knox City Council, the departments of primary industries and sustainability and environment, and the local community.

Such consultation has meant that all of these parties have agreed on a new approved working proposal that outlines how the quarry will be developed into the future. The amendments within the bill give effect to the new approved working plan and approved working proposal. The new plan creates a smaller quarry footprint than the current design. It also retains approximately 10 hectares of dense native forest and creates one rather than two lakes at quarry closure. The new plan will also result in the centre of the quarry operations being moved further from residential areas to the north of operations and reduce the quarry's visual impact. Finally, the new plan produces approximately 8 hectares of flat land suitable for public use that is not provided by the current design.

In addition to these improvements, the bill will also amend the referral requirements that the minister responsible for the Extractive Industries (Lysterfield) Act 1986 will have to follow before approving any further variations to the approved plan. The minister now has to make appropriate referral to all relevant agencies, which include Parks Victoria, the Knox City Council and the departments of primary industries and sustainability and environment.

The bill amends when a new working plan should be submitted by Boral. Rather than being required annually, a new working plan shall only be required when requested by the minister. This makes the Extractive Industries (Lysterfield) Act 1986 compatible with all modern work authority conditions.

The standard to which any new fencing on the licence area must be constructed will also be amended. This amendment will ensure that fencing complies with the relevant Australian

standard or any updated relevant standard if the relevant Australian standard should change.

The bill will also formalise the current operating hours of the quarry. Boral has been operating under these hours since 2006, after having made an annual application which was approved by both the Department of Primary Industries and the Knox City Council (the local municipal council). This amendment will reduce administrative burden on the state, Knox City Council and on Boral.

Amendments will also be made to the special conditions in order to make all of the conditions consistent with the new plans. A constraint on pit depth that is inconsistent with new development plans is removed, and a mechanism to control the maximum water level in the lake is inserted.

The bill also amends the timing of reclamation so that reclamation commences within two years of the terminal faces being reached at the surface of the proposed lake. This replaces a clause which did not logically address the timing of reclamation and could have resulted in double handling of overburden under the new working plan.

The bill will make changes to the species of native trees of local provenance that are required to be planted as part of the quarry site's rehabilitation. The changes to the future vegetation mix are based on the results of a flora and fauna survey completed by Ecology Australia in 2005.

Amendments will also be made to the degree of water reticulation required to be installed when these native trees are planted to optimise survival. The requirement for reticulation is amended to be based on need, rather than made compulsory.

Finally, the bill adds a clause requiring more detail about a preclosure plan from the licensee to be provided to both the departments of primary industries and sustainability and environment before 2030. The licensee has to consult with these departments with respect to a water management plan and a schedule regarding the remaining rehabilitation.

The timing of this submission is to allow time for the departments to review the suitability of the landscape proposal and for preparation of an alternative plan if necessary.

I commend the bill to the house.

Debate adjourned on motion of Mr LENDERS (Southern Metropolitan).

Debate adjourned until Thursday, 20 October.

GAMBLING REGULATION AMENDMENT (LICENSING) 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 Gambling Regulation Amendment (Licensing) Bill 2011.

In my opinion, the Gambling Regulation Amendment (Licensing) 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 bill contains a number of measures to ensure a smooth transition into the new licensing arrangements for the Victorian gambling industry post 2012. Under the new arrangements:

(i) holders of a venue operators licence bid directly for 10-year gaming machine entitlements which, from 16 August 2012, will authorise venues to possess and operate gaming machines;

(ii) a new monitoring licence for the monitoring of gaming machines will be issued for a period of 15 years;

(iii) a single 10-year keno licence has been issued; and

(iv) a single stand-alone 12-year wagering and betting licence has been offered.

The bill implements the government's pre-election commitment to ban lobbyists from the gambling licensing processes. It also contains measures to:

(i) identify the monitoring legacy system for the purpose of transitioning into the new monitoring arrangements;

(ii) reduce the regulatory burden on public lottery licensees by removing the supervision requirements for lotteries drawn by a random number generator;

(iii) better protect the integrity of the racing industry by enabling the Victorian Commission for Gambling Regulation (the commission) to suspend the registration of a bookmaker or bookmaker's key employee pending the outcome of criminal proceedings; and

(iv) make minor amendments to the Gambling Regulation Act 2003 (the act) to improve the operation of the act.

Human rights issues

The bill has been assessed against the charter act and engages specific rights provided in that act. The charter act applies to protect the specified rights and freedoms of persons. A 'person' is defined as a 'human being' under section 3 of the

charter act. Consequently the charter act does not apply to a corporation. Under the act, holders of a venue operators licence, gaming operators licence, or the monitoring licence (including any applicant for those licences) must be bodies corporate. Provisions in the bill that apply to venue operators, gaming operators and the monitoring licensee will not engage the charter act.

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

The bill engages the following rights under the charter act:

(i) freedom from forced work (section 11);

(ii) right to privacy and reputation (section 13);

(iii) freedom of expression (section 15);

(iv) property rights (section 20);

(v) right to a fair hearing (section 24); and

(vi) right to a presumption of innocence (section 25).

I now consider these rights, together with the provisions of the bill that engage these rights.

1. Section 11 — freedom from forced work

Section 11(2) of the charter act provides:

(2) A person must not be made to perform forced or compulsory labour.

Under section 11(3)(c) of the charter act, 'forced or compulsory labour' does not include work or service that forms part of normal civil obligations.

The Human Rights Committee of the United Nations (HRC) has considered the meaning of 'normal civil obligations' in the context of article 8 of the International Covenant on Civil and Political Rights (ICCPR). The HRC has expressed the view that to qualify as a normal civil obligation, the labour in question must, at a minimum, not be an exceptional measure; must not possess a punitive purpose or effect; and must be provided for by law in order to serve a legitimate purpose under the ICCPR (see *Faure v. Australia* (2005)).

Clause engaging section 11

Clause 32 inserts new section 3.8.10, which provides that the minister or an authorised person may make a reasonable direction to a specified person to provide assistance to the minister or authorised person to effectively exercise a power under new section 3.8.8. These directions may include a direction to the person to find and gain or arrange access to specific information. It is a defence to a charge of failing to provide the necessary assistance if the defendant does not know how to, or is not able to, provide the assistance required under the direction. A defendant is not able to provide the assistance required under the direction if the defendant is unable to do so because of his or her terms and conditions of employment or engagement.

This provision engages the freedom from forced work because it requires a person to perform work for the state. However, the limitation is in the course of the specified person's normal civil obligations and would thus not limit the right under section 11 of the charter act. This is because the power is in relation to a task which would ordinarily be performed by the person related to his or her employment. The provision's purpose is to facilitate the exercise of lawful powers. It is not punitive or exceptional. Therefore, the provision does not limit the freedom from forced work.

2. Section 13 privacy and reputation

Section 13 of the charter act provides:

A person has the right —

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

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

The secrecy of personal information lies at the heart of the privacy right because of its relevance to the choices or circumstances of an individual's personal life over which he or she is responsible or autonomous.

Clauses engaging section 13

The bill contains the following provisions that require disclosure or scrutiny of information by the state:

(i) Clause 9 will enable the commission to consider whether the applicant for a venue operator's licence is of sound and stable financial background.

(ii) Clause 26 provides that the commission may require a venue operator who submits a linked jackpot arrangement for approval to provide any additional information that the commission considers necessary for that approval.

(iii) Clause 28 provides that the commission may require the monitoring licensee to provide any additional information or material that the commission considers necessary to decide whether to make an approval.

(iv) Clauses 30 and 31 provide that the minister may, subject to any conditions that the minister thinks fit, disclose any information to a pending applicant for monitoring licence, which was acquired by the minister in response to the minister's written direction. Under the current sections 3.7.6A and 3.7.6B of the act, the minister may give a direction to the gaming operator or monitoring licensee (respectively) to provide any information or document (or class of information or document) in the possession and control of the gaming operator or monitoring licensee, and in the opinion of the minister relates to the kind of things that the monitoring licensee will be authorised to do under the monitoring licence and the minister considers is relevant to an invitation or proposed invitation to apply for the monitoring licence.

(v) Clause 32 inserts new section 3.8.7, which provides that on being served a notice, a person the minister reasonably believes is a legacy system owner must give the minister or an authorised

person and their assistants access to the business premises occupied by that person and, if that person is a gaming operator, every associate of that operator who is not a legacy system owner. The new section also provides for access to a legacy monitoring system, other assets (including equipment and software) and documents.

(vi) Clause 32 inserts new section 3.8.8, which provides that on serving an access notice, the minister or authorised person may do certain things, including searching the premises and inspecting or examining assets.

(vii) Clause 32 inserts new section 3.8.5, which provides that the minister may direct a person who the minister reasonably believes owns a legacy monitoring system (or part thereof) to provide any information or document (or class thereof) within the possession or control of the person which, in the opinion of the minister, relates to the matters specified in new section 3.8.5(1)(b). The minister may then disclose this information or documents to the commission, the monitoring licensee, monitoring services provider or any other person if the minister is of the opinion it is in the public interest to do so.

While the applicant for a venue operator's licence, venue operators, monitoring licensee and pending applicants for the monitoring licence are all bodies corporate and thus not protected by the charter act, these provisions could nevertheless engage the right under section 13 of the charter act. This is because the information required by the state might relate to the financial or personal affairs of associates (in the case of new sections 3.8.7 and 3.8.8) and persons employed by or connected with applicants, pending applicants, venue operators or the monitoring licensee. In such cases, persons' right to privacy and reputation will not be interfered with, because accessing, obtaining, considering and disclosing that information would be done pursuant to lawful powers under the act. The obtaining, considering and disclosing of the information would also not be arbitrary because these powers may only be exercised in certain specific circumstances and for limited purposes.

3. Section 15 — Freedom of expression

Section 15(2) of the charter act provides:

(1) Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Victoria …

(2) Special duties and responsibilities are attached to the right of freedom of expression and the right may be subject to lawful restrictions reasonably necessary —

(a) to respect the rights and reputation of other persons; or

(b) for the protection of national security, public order, public health or public morality.

The right to freedom of expression is broad. It is not restricted to communicating one's own views and ideas; nor is it limited to freedom of political expression. The right at section 15(2) includes the freedom from forced expression.

Freedom of expression may be restricted where that restriction is lawful and reasonably necessary for the protection of the public order. 'Public order' is not defined in the charter, but may be understood as referring to the sum of rules which ensure the peaceful and effective functioning of society or part of society. The requirement that a restriction be 'reasonably necessary' requires consideration of whether the restriction is necessary for, and proportionate to, achieving their protective functions.

Clauses that engage section 15(2)

The bill contains the following provisions that engage the freedom of expression:

(i) Clause 38 requires a permit-holder to notify the commission of a relevant change in its situation. Under section 5.7.3 of the act, a permit-holder may be a natural person.

(ii) Clauses 47, 55, 59 and 66 prohibit lobbying with respect to the application process for the monitoring licence, wagering and betting licence, lotteries licence and the keno licence, respectively. Clauses 49, 57, 61 and 68 prohibit lobbying with respect to the amendment process for the monitoring licence, wagering and betting licence, lotteries licence and keno licence, respectively. These provisions will collectively be referred to as the 'lobbying provisions'.

(iii) Clause 32 inserts new section 3.8.9, which provides that the minister, by written notice, may require a specified person to attend before the minister and answer questions about the legacy monitoring system or specified monitoring information. New section 3.8.9(4) defines who are specified persons for the purposes of that section.

(iv) New section 3.8.5 provides that the minister may direct a person who the minister reasonably believes owns a legacy monitoring system (or part thereof) to provide any information or document (or class thereof) within the possession or control of the person which, in the opinion of the minister, relates to the matters specified in new section 3.8.5(1)(b).

(v) Clause 32 inserts new section 3.8.11, which provides that a person must not assault, obstruct, hinder, threaten, abuse, insult or intimidate the minister or an authorised person when the minister or authorised person is exercising or attempting to exercise a power.

(vi) Clause 50 provides that the secretary may, by notice in writing, require a person who the secretary considers may become an associate of an applicant for the monitoring licence, to provide certain information.

These provisions do not limit the freedom of expression in section 15(2) of the charter act. The provisions are lawful and are reasonably necessary to protect the rights and reputation

of other persons or to protect the public order for the following reasons.

Clause 38 engages the right to freedom of expression by compelling permit-holders to provide information to the commission. The commission may specify in writing the kinds of changes for which the commission must be notified under section 5.7.17 of the act. Failure to notify the commission of the specified changes may incur a penalty.

The compelling of information under clause 38 is authorised by clear statutory power. The information that is required to be provided to the commission will be clearly stated and circumscribed in writing by the commission; it will be prospective, known by the permit-holder to which it applies and be capable of compliance.

The compelling of information is reasonably necessary to protect the public order. The purpose of this provision is to allow the commission to monitor and regulate associates of permit-holders, in order to investigate their suitability for participation in the gambling industry and thus ensure that the gambling industry is free from criminal influence. It is necessary for the commission to be aware of the persons who are associates in order to achieve this purpose. It is also proportionate to this purpose because requiring the permit-holder to provide that information is the least intrusive mechanism by which the necessary information can be obtained.

Clause 38 is therefore a lawful restriction on the freedom of expression reasonably necessary for the protection of the public order and is thus compatible with section 15 of the charter act.

The lobbying provisions engage the right to freedom of expression by prohibiting professional lobbyists from undertaking lobbying activities with respect to the licensing award or amendment process. A 'lobbyist' is defined to mean a person or organisation who carries out lobbying activities on behalf of a third-party client or whose employees conduct lobbying activities on behalf of a third-party client. A 'lobbying activity' means contact with a government representative for the purpose of influencing a decision or thing to be done by the minister or secretary under a licence award or amendment process.

The limitation on freedom of expression is a lawful restriction that is reasonably necessary for the protection of public order. It will be authorised by clear statutory powers under the act. The contact which is prohibited and the purposes for which the contact are made are clearly circumscribed in legislation, are prospective in operation and capable of compliance.

The limitation is reasonably necessary for the protection of public order. The purpose of the limitation is to protect the integrity of the gambling licensing process. The provisions aim to ensure that decisions made with respect to the licensing of gambling activities are transparent and free from undue influence. This is necessary to protect the public order because the award of gambling licences is an essential component of Victoria's gambling industry. The gambling industry in Victoria provides significant employment for Victorians, it raises substantial revenue for government and funds community assets, as well as sporting activities and social and welfare organisations in Victoria.

The restrictions are proportionate to ensuring the integrity of the licensing process and thus protecting the public order because they are limited to a specified class of contact with government representatives. The provisions prohibit only the types of contact which may adversely affect the integrity of the licensing process.

The consequences of breaching the prohibition on lobbying is also proportionate to the objective of ensuring the integrity of the licensing process. Where a lobbyist undertakes prohibited lobbying activities on behalf of a third party client, the minister may refuse to grant or amend the licence. Other means of achieving this objective, such as through including a criminal offence to lobby, may not be proportionate to this objective and may thus not be 'reasonably necessary' for the purposes of section 15(3) of the charter act.

For these reasons, the lobbying provisions do not limit the freedom of expression under section 15(2) of the charter act.

In the case of new sections 3.8.5, 3.8.9 and clause 50, these provisions engage the freedom of expression under section 15(2) of the charter act because they compel a person to express information. However, they do not limit this freedom because they are lawful restrictions reasonably necessary for the protection of the public order.

They are lawful because they are authorised by clear legislative powers. They are also limited in scope to specific matters; in the case of new sections 3.8.5 and 3.8.9, the legacy monitoring system or specified monitoring system information. Both 'legacy monitoring system' and 'specified monitoring system information' have clear legislative definitions. They therefore do not permit questioning on, or provision of, matters unrelated to the legacy monitoring system or specific monitoring information. In the case of clause 50, the information is limited to that information specified in the notice and is relevant to the consideration of the application.

These restrictions are reasonably necessary to protect the public order because the restriction facilitates a legitimate objective of identifying the monitoring legacy system and its functions to enable the monitoring licensee to perform its statutory functions. Under the act, gaming machines cannot operate in Victoria unless they are connected to an electronic monitoring system. The legacy monitoring system records all gaming machine data and significant events in real time. It also reports on gaming revenue, enabling taxation payments to be calculated and verified by the commission. The monitoring licensee will have the statutory function of performing these monitoring services from 16 August 2012. Identifying the monitoring legacy system and its functions facilitates the smooth and continued conduct of gaming in Victoria from 16 August 2012 as well as compliance with statutory requirements. It therefore protects the public order.

The restrictions are also reasonably necessary to protect the public order because clause 50 facilitates the secretary's performance of his or her functions with respect to the licensing process, which is required under the act.

The restrictions are also proportionate to protecting the public order because it is limited in scope. Only a limited class of persons are 'specified persons' under new section 3.8.9. Only certain classes of persons are subject to a direction under new section 3.8.5 and only then with respect to specific types of information. Only those persons who the secretary considers

may become associates of the applicant will be subject to the requirement under clause 50: 'associate' is specifically defined at section 1.4 of the act and so the class of persons who would be subject to clause 50 can be objectively ascertainable.

For these reasons, new sections 3.8.5, 3.8.9 and clause 50 do not limit a person's freedom of expression.

New section 3.8.11 is a lawful restriction that is reasonably necessary to respect the rights and reputation of the minister and authorised persons and complies with section 15(3)(a) of the charter act. The limitation is authorised by law and is reasonably necessary to ensure that the minister or authorised person is able to exercise their powers under the act without hindrance. The assault, obstructions, hindrances, threats, abuse, insults or intimidation that is prohibited under this new section would offend the minister's or authorised persons' right to liberty and security of the person under section 21 of the charter act, as well as the right to privacy and reputation under section 13 of the charter act. It follows that new section 3.8.11 is compatible with the freedom of expression under section 15 of the charter act.

4. Section 20 — right to property

Section 20 of the charter act provides:

> A person must not be deprived of his or her property other than in accordance with law.

The right to property in section 20 is broad and 'property' is not defined in the charter act. 'Property' would include a right or interest that is regarded as property under Victorian law. Contractual or statutory rights may also be proprietary rights for the purposes of section 20 of the charter act.

Clauses that engage section 20

New section 3.8.8 gives the minister or authorised person powers, including to:

(i) inspect, examine or test the legacy monitoring system and other assets, equipment and software;

(ii) make copies or take extracts from documents; and

(iii) remove, or arrange the removal of, documents for so long as the minister considers reasonably necessary in order to copy the document or take extracts from the document.

New section 3.8.8 may deprive the associates of their right to use their property while the minister or authorised person exercises his or her powers under new section 3.8.8. However, any deprivation of property in such circumstances would be authorised by law and therefore would not limit the right to property under section 20 of the charter act.

New section 3.8.5, which has been described above, may also deprive a person of his or her information and documents and would thus engage section 20 of the charter act. However, as with new section 3.8.8, any deprivation of property in such circumstances would be authorised by law and therefore would not limit the right to property under section 20 of the charter act.

Clause 35 provides that the commission may suspend the registration of a bookmaker or bookmaker's key employee where the bookmaker or bookmaker's key employee has been charged with a relevant criminal offence. A bookmaker may be a natural person or a body corporate under section 4.5A.2(1) of the act while a bookmaker's key employee must be a natural person under section 4.5A.3(1) of the act. Being registered as a bookmaker confers statutory rights on a person and may thus be seen as property for the purposes of section 20 of the charter act.

Clause 35 does not limit the right to property under section 20 because any decision to suspend a registration would be in accordance with law and also subject to review.

5. Section 24 — right to a fair hearing

Section 24(1) of the charter act provides:

> (1) A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

The charter act does not define 'tribunal'. In *Kracke v. Mental Health Review Board & Ors* (General) [2009] VCAT 646, Justice Bell held that the right to a fair hearing in section 24 of the charter act can include civil proceedings of an administrative character (at [418]).

The commission exercises administrative powers in determining whether or not to suspend a bookmaker's or key bookmaker's employee registration. The commission is an independent statutory authority constituted under the act. Clause 35 requires the commission to give notice in writing before the suspension can take place. A bookmaker or bookmaker's key employee whose registration has been suspended may also seek review of a decision to suspend a registration to the Victorian Civil and Administrative Tribunal.

For these reasons, clause 35 is compatible with section 24(1) of the charter act.

6. Section 25(1) — presumption of innocence

Section 25(1) of the charter act provides:

> (1) A person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

Clause that engages the presumption of innocence

Clause 35, described above, is compatible with section 25(1). That clause allows the commission to suspend a registration on the basis of a charge, without a formal finding of guilt first being made. In *Sabet v. Medical Practitioners Board of Victoria* [2008] VSC 346, Justice Hollingworth considered that section 25(1) of the charter act would not apply to disciplinary proceedings in which no finding of guilt is made (at [176]). Clause 35 does not require the commission to make a finding of guilt; nor does it prevent the commission from having due regard to the presumption of innocence in making a decision to suspend registration. For these reasons, clause 35 does not engage the presumption of innocence.

New section 3.8.10 engages the presumption of innocence in section 25(1) of the charter act. It provides that in a prosecution for an offence against new subsection (4), it is a

defence if the defendant does not know how to, or is not able to, provide the assistance required under the direction. A defendant is not able to provide the assistance required under the direction if the defendant is unable to do so because of his or her terms and conditions of employment or engagement. New section 3.8.10 limits the presumption of innocence because it places the onus of proving certain matters on the defendant.

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

While new section 3.8.10(5) limits the presumption of innocence under section 25 of the charter act, I consider that the limitation is demonstratively justified for the purposes of section 7 of the charter act, taking into account all relevant factors, including:

(a) the nature of the right;

The presumption of innocence is not absolute. It may be subject to reasonable limitations.

(b) the importance of the purpose of the limitation;

The limitation serves the important purpose of enabling an effective prosecution and thereby a sufficient mechanism to ensure compliance with a lawful direction to the person. It is necessary that persons directed to provide reasonable assistance comply with a direction to give full effect to the objectives of the provision.

(c) the nature and extent of the limitation;

The limitation requires the defendant to prove that he or she does not know how to, or is not able to, provide the assistance required. Therefore, the defendant will possess knowledge of the factual basis for establishing the defence and thus it would be impracticable to require the prosecution to bear the full burden of excluding the defence.

(d) the relationship between the limitation and its purpose; and

The purpose of the limitation is to ensure compliance with a direction, while ensuring that a person who would not be able to provide reasonable assistance is not subject to criminal penalties. The limitation is necessary and proportionate to achieve this purpose because the person is best placed to know what was his or her knowledge, ability and employment requirements and thus establish the existence of the defence.

(e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

There are no other less restrictive means reasonably available to establish the defence. For the reasons given above, it would not be reasonable for the prosecution to establish the defence. It is also of note that the direction must be reasonable under new section 3.8.10(4).

Conclusion

I consider that the bill is compatible with the charter act because it raises human rights issues but it does not limit human rights incompatibly with the charter act. The bill is compatible also because, while it reasonably limits the right to the presumption of innocence, that limitation is demonstrably justified in a free and democratic society for the purposes of section 7(2) of the charter act.

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 Victorian gambling industry will next year undergo a significant change.

From 16 August 2012, there will be a new venue operator model for Victoria's gaming industry. Venue operators will have direct control over their gaming operations and will be more accountable to their communities. There will also be a new independent monitor to oversee the integrity of gaming machine transactions. Under the new arrangements, a 10-year keno licence and a 12-year wagering and betting licence will come into effect.

The dates on which these new industry arrangements will commence are rapidly approaching.

Since taking office in November 2010, this government has worked diligently to facilitate a smooth transition from the existing gambling licences arrangements to the new arrangements. The government recognises that it is essential to ensure that the arrangements are put in place as soon as possible so that venues can consolidate their plans and further prepare for the new industry structure.

This bill is an essential component of establishing the new gaming industry arrangements in the lead-up to 2012. The bill will further enhance and strengthen the legislative framework needed to support the transition of the Victorian gaming industry and to assist in providing more certainty to venue operators as they prepare their businesses for gaming beyond August 2012. It will make a number of technical amendments to provide for a more efficient and effective framework for regulation under the Gambling Regulation Act 2003.

The bill will also deliver on the government's election commitment to ensure that Victoria's licence awarding and amendment processes have the highest levels of integrity and probity. This government made a commitment to legislate to expressly prohibit lobbying activities in respect of the process for the award or amendment of any gambling or wagering licence.

The bill will send a clear message to interested parties who intend to engage a lobbyist to influence the outcome of a licensing decision, that such lobbying has no place in the licensing process.

I now turn to the main provisions of the bill.

The bill will allow a venue operator to sell or dispose of gaming equipment during the industry's period of preparatory action in the lead-up to August 2012. This will give greater flexibility to venue operators who have a business need to possess or dispose of their gaming equipment during the transition period; for example, where they have transferred their gaming machine entitlements due to their financial circumstances having changed prior to 2012.

The bill will also introduce measures to strengthen the regulatory ability of the Victorian Commission for Gambling Regulation with respect to linked jackpot arrangements and electronic monitoring systems. The bill contains procedures by which venue operators apply for the commission's approval of linked jackpot arrangements or variations to those arrangements. Linked jackpots involve a pool of player funds and so it is necessary that the commission is able to review and approve how the linked jackpot will be operated, even where changes are made to an existing approved linked jackpot arrangement.

Under the act gaming machines must be connected to the electronic monitoring system in order to operate.

The electronic monitoring system will enable the monitoring licensee to conduct monitoring with respect to gaming machines in Victoria. The bill enables the commission to test the electronic monitoring system to determine whether or not to approve its use, as well as in other circumstances, such as to ensure compliance with the act.

Protecting the operational integrity of the monitoring system is of significant importance to gaming. This bill provides measures to protect the security of the electronic monitoring system by prohibiting a person from interfering with the system.

Currently each gaming operator is responsible for monitoring their own conduct of gaming to ensure that it is compliant with their obligations under the act. The gaming operator's monitoring systems — the legacy system — record all gaming machine data and significant events. The legacy system currently plays a key role in the conduct of gaming. It is possible that it may play a role in the transition to the post-2012 arrangements. It is therefore necessary that the state is aware of what comprises the legacy system as well as other information relevant to the legacy system, which will assist in facilitating transition into the new monitoring arrangements. To that end, the bill enables the minister to obtain information relevant to the legacy system.

The bill also improves the operation of the Roll of Manufacturers, Testers and Suppliers to ensure that it appropriately reflects the post-2012 gaming industry structure.

Only certain persons whose backgrounds have been suitably checked can be listed on the roll and be authorised to perform functions with respect to gaming machines.

The bill will amend and extend the provisions relating to the roll to provide that:

> persons who intend to supply gaming machines or restricted gaming components also have the clear authority to acquire them for the purposes of supplying them to venues;
>
> new applicants for listing on the roll will apply to be conferred the functions and powers available under one or more of the three new roll divisions, making the function of the roll more relevant to the applicant and to the new regulatory environment; and
>
> the integrity and probity measures associated with persons being listed on the roll are enhanced.

The bill makes a number of amendments to give greater clarity and certainty to provisions related to the monitoring licence. The act currently provides that the monitoring licensee does not incur any liability for an act or omission in the provision of monitoring services except for the liability that is set out in the commercial agreement entered into between the state and the licensee at the time of the issue of the licence. The bill will clarify the intended scope of the limitation of the monitoring licensee's liability to ensure that the limitation only applies where the licensee's acts or omissions in the provision of monitoring services cause a gaming machine not to operate. The bill will also clarify the intended operation of the monitoring services provider provisions and the circumstances in which the monitoring licence can cease.

It is essential that the legislative framework for the gambling industry fosters the highest standards of probity and integrity.

One of the ways in which this bill will assist in doing so is by banning professional lobbyists from engaging in lobbying activities with respect to the award or amendment of any gambling or wagering licence. This is consistent with the findings of the Gambling and Lotteries Licence Review Panel, chaired by Ron Merkel, QC, in its report of 9 October 2007 to the Minister for Gaming in relation to the public lottery licensing process. 'Lobbyist' and 'lobbying activity' are defined in the bill.

The consequences of not complying with the prohibition are significant. If the minister is satisfied that an applicant for a licence has engaged a lobbyist to carry on a lobbying activity, the minister can refuse to grant the applicant the licence. The minister can also refuse to consider an application to amend a licence if the licence-holder has engaged a lobbyist to undertake lobbying activities for or on behalf of the licence-holder. This provides a strong disincentive to engage in lobbying activities that could compromise the integrity of the licensing process.

Gambling licences are lucrative assets that the state issues and manages on behalf of the people of Victoria. It is crucial that the gambling industry, investors and all Victorians can have confidence that gambling licences in this state are issued and amended within a strict probity and integrity framework.

This particular amendment is necessary to ensure that the unacceptable conduct of the former government is never repeated. Reviewing the process to award the lotteries licences, the Gambling and Lotteries Licence Review Panel found that the former government provided certain lobbyists with inappropriate access to sensitive licensing documents. This conduct seriously compromised the integrity and probity of the process and damaged confidence in the state to handle these matters appropriately.

This bill will remove the incentive for gambling licence applicants to hire third-party lobbyists in an attempt to

improperly secure an advantage in a process that should treat all applicants fairly.

The bill enhances the integrity of the gambling industry in other ways. It will implement the racing integrity commissioner's recommendation that there be a power to suspend the registration of a bookmaker or a bookmaker's key employee where the bookmaker or bookmaker's key employee has been charged with a relevant criminal offence. If subsequently found guilty of a relevant offence, the bookmaker or bookmaker's key employee would be subject to disciplinary action by the commission, which can include cancellation of their registration.

The bill allows the commission to consider whether an applicant for a venue operator's licence is of a sound and stable financial background before making a decision whether to grant a licence. It also removes the requirement for the commission to supervise lottery draws conducted by random number generator. Lotteries conducted by the drawing of balls will continue to be supervised. This measure reduces the regulatory burden on public lottery licensees while maintaining the integrity of the system. The commission will continue to be able to approve and inspect the system. It can also require lottery draws conducted by random number generator to be conducted in accordance with the procedures approved by the commission.

In addition, the bill also enables the commission to refuse an application for a minor gaming permit on public interest grounds.

Recent media reports have raised the possibility of a raffle being conducted in Victoria that offers in-vitro fertilisation treatment as a prize. The government believes this type of prize is inappropriate and could encourage vulnerable people to gamble beyond their means.

Encouraging people to gamble as a way to access fertility treatment, or any other medical services, is not consistent with responsible gambling principles and raises a range of ethical issues. Under existing legislation, the commission has no power to refuse such an application.

This bill will provide the commission with the means to refuse a minor gaming permit application where it considers the proposed activity is offensive or contrary to the public interest and will help to ensure that irresponsible raffles or other minor gaming activities cannot be conducted in Victoria.

In summary, this bill further strengthens the legislative framework for transitioning into the new post-2012 licensing arrangements and builds on the government's commitment to restore probity, integrity and responsibility to the forefront of gambling regulation in Victoria.

I commend the bill to the house.

Debate adjourned for Hon. M. P. PAKULA (Western Metropolitan) on motion of Mr Lenders.

Debate adjourned until Thursday, 20 October.

EMERGENCY MANAGEMENT LEGISLATION 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, I make this statement of compatibility with respect to the Emergency Management Legislation Amendment Bill 2011.

In my opinion, the Emergency Management Legislation 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 bill will:

(a) implement recommendations 11 and 54 of the 2009 Victoria Bushfires Royal Commission (VBRC) final report to clarify the functions and powers of the Minister for Police and Emergency Services, and to enable the chief officer of the Country Fire Authority to delegate the power to issue fire prevention notices;

(b) amend the Fire Services Commissioners Act 2010 (FSC act) to address two unintended consequences of the FSC act, which implemented recommendation 63 of the VBRC final report;

(c) amend the Victoria State Emergency Service Act 2005 (VICSES act) to address some technical difficulties that the Victoria State Emergency Service (VICSES) has encountered since the introduction of the VICSES act. The bill will amend the VICSES act to:

(i) broaden the powers available to the VICSES director of operations to enable him or her to issue directions to individual VICSES members and any other persons who voluntarily place their services at his or her disposal;

(ii) clarify the power available to the authority to issue standing orders;

(iii) broaden the powers of delegation granted to the authority and to the director of operations;

(iv) provide the authority, rather than the director of operations, with the relevant powers to deal with the registration of VICSES units and, of its own motion, to register a group of persons as a unit, as well as to remove the need to consult with a DISPLAN coordinator before establishing a unit;

(v) replace all references to the position 'director of operations' with 'chief officer, operations';

(d) amend the Emergency Management Act 1986 to modernise certain terminology, broaden the definition of 'emergency' and allow the transfer of control functions in emergencies, other than a fire or major fire.

Human rights issues

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

There are no human rights protected by the charter act that are relevant to the bill.

Conclusion

There are no human rights protected by the charter act that are relevant to the bill.

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 emergencies faced by Victoria in the last few years have been extraordinary in their scale and impact. The coalition government supports all of the recommendations made by the 2009 Victorian Bushfires Royal Commission in its final report and is committed to implementing each of them, as well as to supporting the emergency services in effectively carrying out their responsibilities in emergency response.

The Emergency Management Legislation Amendment Bill 2011 delivers on these commitments by seeking to implement recommendations 11 and 54 of the royal commission's final report and making a range of amendments to enable the emergency services to carry out their statutory obligations more efficiently.

The bill will implement recommendation 11 by amending the Emergency Management Act 1986 to remove the title of coordinator in chief of emergency management from the Minister for Police and Emergency Services and clarify that the minister is not responsible for operational matters in relation to emergency management. The bill will clarify that the Chief Commissioner of Police, as State Emergency Response Coordinator, has primary responsibility for keeping the minister informed during an emergency. Once the bill is enacted, the *Emergency Management Manual Victoria* will be amended so that it accords with these amendments.

The bill will also implement recommendation 54 of the royal commission's final report by amending the Country Fire Authority Act 1958 to enable the chief officer of the Country Fire Authority (CFA) to delegate the power to issue fire prevention notices. To enable appropriate arrangements to be put in place, the bill provides for this amendment to come into operation on a day to be proclaimed but no later than 31 December 2012.

It is important to emphasise that, notwithstanding this amendment, primary enforcement responsibility for fire prevention notices will remain with council's fire prevention officers. The CFA's role, even with the chief officer's new delegation power, will continue to be that of a 'safety net' if a municipal fire prevention officer fails or refuses to issue a notice following a request by the chief officer to do so.

The bill will also amend the Fire Services Commissioners Act 2010 to address two unintended consequences of that act. The bill will clarify that the fire services commissioner's responsibility for managing the state control centre 'on behalf… all emergency service agencies' extends to all agencies that may use the centre in response to emergencies, and is not limited to the CFA, Victoria State Emergency Service (VICSES) or Metropolitan Fire and Emergency Services Board (MFB).

Further, the bill will amend the Emergency Management Act 1986 to enable the fire services to enter into agreements for the provision of mutual aid in relation to fires, other than a major fire. Currently, the Emergency Management Act 1986 only provides for the transfer of control of response activities and appointment of assistant controllers for major fires.

The bill will also amend the Emergency Management Act to modernise certain terminology, including replacing references to 'DISPLAN' with 'state emergency response plan' and expanding the definition of 'emergency' to include 'contamination' and 'act of terrorism, whether directed at Victoria or a part of Victoria or at any other state or territory of the commonwealth'.

Further, the bill will amend the Emergency Management Act to enable the agency having the overall control of emergency response activities to transfer control functions to another agency during non-fire emergencies, similar to that currently available for major fires.

The bill will amend the Victoria State Emergency Service Act 2005 (VICSES act) to address a number of technical difficulties that VICSES has encountered since the introduction of the VICSES act in 2005.

Currently, the VICSES director of operations has the power to direct the emergency operations activities of registered units. However, VICSES members often need to perform functions in their capacity as individuals, rather than as part of a registered unit. The bill will enable the director of operations to issue directions to individual VICSES members, and any persons who voluntarily place their services at the disposal of the director of operations, either individually or as members of any agency.

While the Victoria State Emergency Service Regulations 2006 provide that a member's non-compliance with a standing order constitutes grounds for disciplinary action, the VICSES act and regulations do not expressly authorise the making of such orders. The bill will address this anomaly by amending the VICSES act to allow the authority to issue standing orders and require all individual VICSES members to comply with any such order that might be made.

The bill will broaden the powers of delegation of the VICSES authority and director of operations to provide that they may make delegations in favour of any person, similar to the existing power of delegation of the VICSES chief executive officer. This amendment will allow delegation to volunteers or persons from other emergency service organisations, where circumstances require that this occur.

The bill will make other minor technical amendments to the VICSES act, including renaming the position 'director of operations' to 'chief officer, operations'. This will achieve greater consistency with the description of similar positions in like organisations such as the CFA and MFB.

We must not be complacent about the future threat of natural disasters in Victoria. The Victorian Bushfires Royal Commission highlighted the shared responsibility for community safety and the government is committed to implementing all 67 of the recommendations in the commission's final report and to supporting the emergency services in responding to emergencies to better protect the people of Victoria.

I commend the bill to the house.

Debate adjourned for Hon. M. P. PAKULA (Western Metropolitan) on motion of Mr Lenders.

Debate adjourned until Thursday, 20 October.

BUSINESS OF THE HOUSE

Standing orders

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

(1) Standing orders 4.01(1) and 5.02(2) be suspended to enable the Council to meet on Wednesday, 26 October 2011 at 7.00 p.m. and the order of business on that day will be —

Standing committees (if meeting)

At 7.00 p.m.	Messages Formal business Questions Answers to questions on notice Members statements General business at —

Honourable members interjecting.

Hon. D. M. DAVIS — Which would you like, 10 or 11?

Mr Lenders — It is your motion.

Hon. D. M. DAVIS — I am offering you the choice.

Mr Lenders — Nice offer.

Hon. D. M. DAVIS — To continue:

At 11.00 p.m.	Adjournment (up to 20 members); and

(2) Standing order 4.06(1) be suspended to the extent necessary to enable the President to interrupt business at 11.00 p.m. that day.

This motion clearly relates to the Wednesday of the next sitting week, which is the day of the Queen's visit to Melbourne. The Assembly has made a decision to sit at 7.00 p.m., and we as the government believe it is appropriate for this house to parallel that. I am conscious that it is a day of general business, and we are seeking to accommodate the opposition and the non-government parties to the maximum possible extent. There will be a number of functions across the day through a series of different events, as I understand it, and a number of members of both chambers will be involved in those. I am also happy to indicate on the record that if the opposition requires additional time on Thursday night, we are happy to deal with those matters informally with the opposition to the extent that we will deal with government legislation and seek to reach an accommodation so that additional time for the opposition can be found on Thursday evening following the passage of government legislation.

This is a reasonable step. It is obviously a unique circumstance. The Royal Children's Hospital will be opened by the Queen when she is in Melbourne, and a number of members of this house and the other house will be involved in that and other events being held on the day. This is an attempt to accommodate question time. I say to Ms Pennicuik that I am not sure I want to do the full list of events, because as I understand it, there are still some decisions to be made around those events, but I am informed that there are indeed three or four events in total that are likely to be events that the Queen attends.

The intent of the motion is simple: to make sure that we have question time and the opportunity for formal business, but also to provide an opportunity for the opposition to have as much of its normal period of non-government business as is reasonable. As I say, the government is prepared to work with the opposition through Tuesday and Thursday to seek to pass pieces of legislation and accommodate the opposition with some additional time on Thursday if that is able to be achieved.

Mr LENDERS (Southern Metropolitan) — As I rise here this afternoon to say I am gobsmacked is an understatement. We have the Leader of the Government coming in here oozing insincerity once again, coming into this place and for the second time this week moving to amend standing orders to basically take away the right of the opposition and the third party to scrutinise government. Let us make this unequivocally clear for the second time this week.

Let me chronicle what has happened this week. On Monday we had a discussion with the government about what its plans for the week were. Its representative was mute — there was no mention of this. On Tuesday evening a senior member of the government approached me with a proposition: 'The Queen is coming. Can we accommodate that?'. I will give the government 2 out of 10 for at least alerting us. That was the start of a process of, 'How could we accommodate the opposition?'. I put it back quite clearly to the government that from our perspective while it was not, 'Why on earth does the Parliament have to be suspended so government members can frock up, put on their hats or frockcoats or whatever and go to an opening?', in the end if the Queen of Australia is opening a hospital, I am sure the Premier could go and get paired. I am sure if the health minister asked, he could go and get paired, but why on earth do we need to close down the Parliament?

The proposition I put back to the government was, 'If that is important to you and you want to sacrifice government business, there are a number of propositions. Firstly, you could simply switch Wednesday and Thursday, so Wednesday becomes a government business day. We would object to question time and the adjournment going because they are the opposition's opportunity to scrutinise, but if you want to compress your legislation and negotiate it, fine'. That is one option.

Another is we work out some exchange of time so we do not minimise the general business time, and we do not wish to go beyond 10.00 p.m. because we have a strong view in this place about orderly working hours and, I guess, the health of staff and members in this process. We put it to the government: 'You manage it; we will accommodate it', but what we got back from the government was, 'No, we do not want to do that; we would rather do what the Assembly is doing'. This is another form of kowtowing and forelock tugging — 'We will do what the Assembly is doing'.

The Assembly negotiated based on the Assembly standing orders, which are quite different from the Council's, and worked out an agreed formula. The Assembly does not mind sitting until 11.00 p.m. I am not averse to hard work, but I would rather do hard work when my brain is functioning and my staff are not being run into the ground.

We suddenly realised that the Assembly has forfeited the government's matter of public importance. The Assembly has agreed to a formula in which there is no diminution of the opposition's ability to scrutinise legislation. There is no diminution of any of that, but it sits for an hour longer. In talking of negotiations with parties, the opposition put back proposals that would have enabled the government to deal with its important outcome — presumably scoffing down the cucumber sandwiches, frocking up, wearing the hats and all going off to see the Queen opening what is, I might add, an iconic Labor hospital.

But leaving that minor detail aside, what do we get from the government? We get this oozing insincerity from the Leader of the Government. I will just remind the house of what he said. He said, 'We are such reasonable people, will we go to 10.00 p.m. or 11.00 p.m. on Thursday?'. He will not engage in conversation, he gets others to attempt to do it and then in the house says, while moving a motion, 'To accommodate you we will go to 10 o'clock on Wednesday'. What does that mean? It means one less hour of general business, and he thinks that is accommodating the opposition. Then, oozing insincerity again, he said, 'We will give you some time on Thursday if you are good boys and girls'. Basically, if we get through all the legislation, on Thursday night we can have a couple of hours at the end of the day to do our stuff.

It is no coincidence that on this day Mr Pakula put on a notice paper a motion that would hold the same Mr David Davis to account for basically misleading this house over disclosures. Let us not for one moment — —

Mr Koch — Rubbish.

Mr LENDERS — Mr Koch may say 'Rubbish', but just reflect on this week. You have a leader who slavishly gets 21 people to jump whenever he says 'jump' on every single motion to shut down this house. We have the lions of democracy opposite who in opposition talk about rights and motions, and every time Mr David Davis pulls his 20 strings 20 people jump — so 21 people leap to their feet. How the meek leap to their feet to do what he tells them! What is this all about? So he can go to a hospital as Minister for Health and not face scrutiny for his activities in not

complying with the law of this state and for breaking his oath as a minister.

Members opposite say I am exaggerating things, but that is what is happening in this house in Victoria today. That is what the members opposite are complicit in. Scrutiny of the executive government has to take second place to Mr Koch and his colleagues going to the Royal Children's Hospital and these other 'secret functions' that Parliament is not allowed to know about. These secret functions are so important that we are not allowed to know about them. We have to hear from Mr David Davis, 'Trust me, they are important', and so because of the secret functions involving the palace we have got to close down the Parliament and not scrutinise him.

I say to Mr Koch: forget democracy, forget any form of scrutiny, because going and eating some cucumber sandwiches, wearing your best clothes and going to meet the Queen is more important than scrutiny.

Let me say to Mr David Davis, without lecturing him on royalty, that even if he wears his frockcoat, his top hat and his best smile, I am sure the Queen will not remember him among the thousands of provincial ministers she has met over her lifetime. She will not remember Mr Davis, so I am not sure why he is going.

Mr Koch interjected.

Mr LENDERS — I do not expect her to remember me, Mr Koch. I believe my job is to be in here scrutinising government on that day, not waiting around in my best clothes and eating cucumber sandwiches. What is the irony of all this? The irony is that we get these lectures from those opposite saying that ministers are so busy being ministers that they cannot answer questions on notice — they cannot do all these things because they are so busy being ministers.

I accept Mr David Davis could be at the opening of the hospital because he might well reflect on what a great hospital it is and the great effort of Steve Bracks as the then Premier and Bronwyn Pike, the member for Melbourne in the Assembly, as the then Minister for Health in conceiving it, and of John Brumby as the following Premier and of Daniel Andrews, the Leader of the Opposition in the Assembly, as the following Minister for Health in delivering it. He might learn something and appreciate it.

I have no objection to Mr David Davis going to a function at the hospital, and we would spare him to go. My issue is that the other five ministers could perhaps sit at their desks here and do some of their job, such as actually facing some scrutiny. But no, the importance of being seen near the Queen, eating the cucumber sandwiches and of getting their photos taken while dressed up is greater than facing scrutiny.

Let us go to the starting point of where this comes from. I am sure we will hear phrases like 'another rabid Labor republican', 'class warfare', 'hates it all', but what I would say to the house is if this government wants to show respect to the monarch, like people did pre the media age when the monarch came to town, it should prorogue the Parliament and get the Queen to come into the Parliament and give a speech. That is what used to happen under Henry Bolte. That is how you show respect.

Let us just think through where this government's obsession with wearing funny hats and frocking up and eating cucumber sandwiches has gotten to with the monarch coming to town. Whenever the monarch goes to town in London, does the Parliament close because she is opening a hospital? No. If the Governor-General, the Queen's representative, comes to Melbourne, does the Parliament close so that Mr Davis and his friends can all dress up and go to a function? No. If the Governor comes to town, do we close the Parliament? No. Suddenly, this has to happen.

Let us go back to what is being proposed by Mr Davis, the man who is setting the scene for shutting down scrutiny. His main physical activity is learning how to pull 20 strings at once so that his compliant colleagues all rush in and vote every time he wants to shut down the place. Let us look at what he is proposing. He cannot even draft it well. He is saying that late on Thursday night, if we are good boys and girls, we might be able to discuss some general business, but only if we are really good and if all his government business goes through.

Mr Koch interjected.

Mr LENDERS — Actually, Mr Koch, I tell you unequivocally that we never shut down the Parliament so that we could put on funny clothes and meet the Queen. We never shut down the Parliament and never shut down general business. In fact we have swapped these items before.

Hon. D. M. Davis — We closed the whole place down just to accommodate you because you needed to go and deliver the budget.

Mr LENDERS — I take up Mr Davis's interjection that this house did not sit on the Tuesday budget day when I was Treasurer. He is correct; it did not. What I say to Mr Davis is this — —

Mr Elsbury interjected.

Mr LENDERS — You were not in the place, Mr Elsbury. How about letting people who were reflect on it? At the end of 2007 when the sitting dates for 2008 were being proposed, with four months notice we circulated suggested sitting dates and asked whether there were comments. There was a question, 'Why is that day different?', and all parties agreed. It was in the hands of the house at that time to vote one way or the other. That was discussion and negotiation. It was quite different to now, when the discussion and negotiation are, 'We have 21 votes. We're not even going to talk to you. We'd prefer to do what the Assembly does'. Mr Davis expects us to roll over like his parliamentary party does and say, 'Tickle our belly, Mr Davis', but we are not going to do that.

If Mr Davis thinks that 10 months into government he will continue to wind back the rights of the Legislative Council, he is foolish. No matter how many times the government has 21 votes to 19, they will not always be there at Mr Davis's time and convenience. When things matter to Mr Davis, opposition parties have the ability to slow them down. Relying on the government's 21 votes, assuming Mr Davis's 20 colleagues stick with him for the four years — and history shows that does not always happen — is a foolish way to work with people. Let me lecture Mr Davis, which I know he does not like: that is a foolish way to work with people. There will be times when Mr Davis requires cooperation. All governments find, including ours in the 55th Parliament when we had the numbers, that a government cannot use its numbers consistently; it requires cooperation. It took us a while to learn that, and I suggest that Mr Davis learn it sooner rather than later.

What we have here is a badly drafted motion. We are told on Mr Davis's assurance that, if we are really good, we might get some time on Thursday to discuss our general business. If we are really good, he will be keen to accommodate us. We will not have to sit until 10.00 p.m. on Wednesday, so we lose even more general business. We are not allowed to know when the opening is or what else is going on. Then we get a motion that says standing committees are meeting first. We have no faith in anything Mr Davis says, because the structure of Tuesday's debate on closing down this house was that, if any standing committee is meeting, it takes precedence. I have no faith in Mr Davis or in the government's three chairs of legislation committees not to rort this. Short of him coming into this house, hand on heart, and saying in front of witnesses and written down that the chairs will not do that and that this will be given precedence and 4 hours will be allocated to make up for the time on Thursday, I just do not believe him. That is what has happened in this house.

There is no goodwill. On the government side Mr Davis gets up again and again when it suits him and talks with oozing sincerity about bipartisanship and negotiation when he wants something. Then, as soon as he does not want something, he ruthlessly pulls those 20 strings and his colleagues jump to their feet.

Mr Elsbury interjected.

Mr LENDERS — Yes, Mr Elsbury, you jump to your feet and follow without independent thought. There has not been an exception to that. When the Labor Party or the Greens seek to scrutinise or ask the reasonable question, 'Can we deal with legislation in a legislation committee?', we get told, 'No'. If we seek to refer something to a reference committee, we are told, 'No'. The only things we ever look at are pet projects of Mr Davis. I foreshadow that my colleague Mr Leane will move an amendment that puts clearly into place that general business will take precedence on Thursday, because that at least, by resolution of the house, would give us some assurance that our general business could be dealt with.

We are not giving grief to the government's legislative program. This evening we could have. We could have not given leave for any of the seven bills to be introduced and second read, but we gave leave. This morning when Ms Lovell came to us to say there was a piece of legislation she wanted to introduce, we gave leave. We do that because that is what cooperation is about, and the government gives us leave on Wednesday to move around on general business. That is cooperation. There are rules; there is discussion. However, what we are seeing here is a shifting of the sands and the arrogance of the government making a determination based on its priority.

Let us not kid ourselves. The government's priority is to be able to enjoy a series of royal events, sight unseen except for an untimed hospital opening, such that it closes down the Parliament. Its idea of negotiation is to seek at the last minute to have a discussion — in fairness, we tried to make this work and set criteria — which in the end was, 'This is what we'll do; yes, we might tweak a little around the edges'. But the government does not get the fundamental point that the Legislative Council is not just a legislative sausage machine. The Council has rights, and scrutiny by opposition is something that is cherished.

It is not unique to this government to find that inconvenient — I would be a hypocrite to say anything

to the contrary — but this is crossing a line, where the executive government unilaterally shuts down scrutiny. When we were first in government and we had the numbers in this place we at various times interfered in general business. Philip Davis, then the Leader of the Opposition, made it quite clear that there were certain rules. We came to understand that we did not amend, for example, opposition motions and reverse them, which we were doing, and that that was just not the way you do it and how you go. We were doing those sorts of things. We understand that these are part of the discussion.

What we have here that is so different is that David Davis has decided it is unimportant. Using his 21 votes he is going to move the program around to suit him. The argument about matching the program to the Legislative Assembly is such a furphy. Government members will dutifully vote with Mr Davis to shut us down, as they always do — when he pulls the 20 strings they will all do it — but I genuinely say to them to think it through. Why is it so important to go through the pain of shutting down a Parliament? What is the leader doing when he cannot even negotiate his way through this?

The opposition seeks to be reasonable. What we are saying is that we can work with the government on this, but the answer we continually get is, 'It is my way or the highway'. If Mr Davis does that in the government party room, it is government members business, but he is not going to do it in the Legislative Council. Government members can vote with him every time they like to shut the show down, but they have three years and two months more to go and they cannot rely on their 21 votes, because history shows that probably in more parliaments than not, someone breaks ranks. It is not a good way to operate.

I also say to government members that they might get some invites to go to see the opening of the Royal Children's Hospital. Again, if the government came to us with a serious proposition and said, for example, 'The opening is at 4.00 p.m.; can we give notice and move for a break at 4.00 p.m.?', we would say yes to that. If the government said to us, 'We need to pair the Minister for Health', we would say yes to that. This is part of the frustration on our side of the house. There is none of that.

Mr Koch interjected.

Mr LENDERS — There is none of that, Mr Koch. It is just 'my way or the highway'. That is just not the way to work; this is a Parliament. The right to vote in Parliament is one for which in parts of the world today people are literally dying; they are dying for the right of Parliament to assemble. In some places people literally have to go through mobs to get into chambers. We do not have that situation, but we cherish this Parliament. Those opposite may mock and think it is terribly funny because they are part of the 21 — —

Mr Ondarchie interjected.

Mr LENDERS — If Mr Ondarchie does not get that going to a social function is less important than going to a Parliament, then I genuinely suggest that he ought to reflect. If it is that important to the government to recognise the role of the monarch — and she is the Queen of Australia and Queen of Victoria — they could do what Henry Bolte would have done. That would have been to invite her into that chair in this house to make an address to the house and then go on to open the hospital. But, no, we do not do that.

Mr Ondarchie interjected.

Mr LENDERS — I suggest that Mr Ondarchie look at the Westminster system. If the Premier of Victoria asked the Queen of Australia to open this Parliament, I think he might be surprised. If he stopped tugging his forelock and thinking of his frock and top hat and thought of himself as an elected MP, he might be surprised. If he actually looked at what happens in commonwealth countries and in the UK, he might be surprised. If he stopped tugging his forelock, he would be surprised. He will be bald soon if he keeps on tugging it.

What we are getting is a proposal from the government. We have tried to show reason. I cannot but comment on the lecture we got in question time on Tuesday from Mr Dalla-Riva about how the coalition understood productivity and we did not. Let us have a look at the productivity of this. What value will 128 MPs have milling around the Royal Children's Hospital and the other secret functions? What value will that add to the state of Victoria? I know what it will do. I will wait for the FOI application on how many shucked oysters were shoved down throats; the FOI application on costing for the extra seats in the marquee, the extra red carpet, the attendants and the ushers and for the security bill.

I note with interest that it costs $10 000 an hour for the Parliament to sit extra hours. It is a pity Mr Hall is not here, because one extra sitting hour of the Parliament would pay for a Victorian certificate of applied learning (VCAL) coordinator one day a week for one year. Let us think through the priorities of this government. Mr David Davis flippantly moves motions, but government members have a choice: they could have a

VCAL coordinator in a school for one day a week for one year, or they could extend the sitting of this house for 1 hour. That is before you even start on the cost of the cucumber sandwiches, the champers, the shucked oysters, the fascinators, the frockcoats and all the rest of it.

Mr Finn — This is the fourth time we have heard this speech!

Mr LENDERS — Mr Finn may have heard this speech, but he will hear a lot more of this speech, because we are not about to roll over like he does for Mr David Davis several times a week and say, 'Please tickle my tummy'. Mr Dalla-Riva gave us a lecture about productivity. I suggest that he get the Victorian Competition and Efficiency Commission to do a review of this Parliament — he might be pleasantly surprised. It boils down to the fact that a royal visit is far more important than scrutiny of the executive. It is an absolute joke.

What we are being asked to do today is to vote on this motion. The government genuinely believes that we will happily agree when it says, 'Let us get rid of 4 hours of scrutiny and we can give a teeny-weeny bit of it back if the opposition promises to expedite the government's legislative program'. The government asks us to do this on short notice. Where we have got to in this place with the Leader of the Government is that nobody on his own side, let alone this side, believes what he says or knows what he says or thinks he is even predictable; members do not know where they stand. When opposition members say, 'Let us find some gap for these festivities', all we are told is, 'Trust me'. We are told to trust the man who 10 times a day in question time will not answer questions, the man who says, 'Trust me, there are secret royal events that are so important we cannot tell the opposition about them. Let us shut down the Parliament and do that'. That is what he asked us to do.

It is a ludicrous proposition. If someone from our side had come forward and presented this to the house, we would rightly have been laughed out. When the 20 strings of government members are pulled and they loyally vote as Mr David Davis directs them, those 20 people ought start reflecting on what a sham process this is.

Let me recap the negotiation process: on Monday when we discussed what was happening this week there was no mention of this proposal. The opposition knew the debate on sessional orders was coming, but there was no mention that we would be asked to effectively shut down in the following sitting week.

Notice of the motion was given and a negotiation process started. We were informed by the government this morning what the agenda for today was, and we were told there were four things on the agenda. The four things we were told about — and as Opposition Whip Mr Leane will corroborate this — were the three pieces of legislation and a government motion on the south-eastern suburbs and a carbon tax. That is what we were told this morning about the government business program.

When our Whip approached the government and when I asked the Leader of the Government 'When is this debate?' as we were trying to organise what we were doing this morning, we were told, 'It is logical that it would be today'. It is logical that it would be today, but this morning we were told four things would be discussed, and that was not one of them — and government members wonder why they do not get goodwill in this chamber!

Mr David Davis smirks like the Spartan archer who, from a distance and in a cowardly and sneaky fashion, tries to control events. In any adult professional relationship when people make mistakes they usually have a bit of mea culpa about it — but not here. No, it is the opposition's fault — we should have thought of it because it is logical. I do a lot of things, but I do not read Mr David Davis's mind. I daresay if I could penetrate his mind, I would not understand it anyway — I do not think any of his colleagues do — as it is pretty murky and opaque in there.

What option are we left with on this side? In the presentation of the speech we were told if we want to cut our hours because we do not want to go past 10 o'clock at night, we can do that, and if we are really good boys and girls, we might get a chance to speak late on Thursday — —

Mr Viney — If all the bills are done.

Mr LENDERS — If all the bills are done. Under such a scenario an opposition is not left with many alternatives. We can either do what the 20 members of the government party room do — that is, roll over and say, 'Tickle my belly, and when you pull the string I'll jump' — or we can stand up. We on our side will determine whether we vote for or against this. We know rule 21-19 — it is clear it is going to happen — so Mr Leane will move an amendment to give precedence to general business on Thursday, and if that is carried, we will not oppose the motion. If Mr Leane's amendment is rejected, we will oppose the motion.

We will undoubtedly get the spiel from the next government speaker about all the important legislation we have to debate. If going to meet the Queen in secret functions is more important than the Parliament, fine, but we can come back on Friday. Friday is a sitting day, so we can deal with government business on that day.

I await with great interest the next speaker from the government to learn whether it will accept Mr Leane's amendment that general business take precedence on Thursday for the hours that will be lost by this motion going through.

Ms PENNICUIK (Southern Metropolitan) — I start my contribution on Mr Davis's motion by saying that the Greens understand that the visit of Queen Elizabeth II to Victoria next sitting Wednesday is an important occasion and more important for some Victorians than for others. Personally I would like to see Australia become a republic; however, as Mr Lenders said, at the moment Queen Elizabeth II is the Queen of Australia and is represented by the Governor-General federally and by other vice-regal representatives in the various states. Her visit is an important occasion and it will involve formal occasions and members of Parliament — that is a given — and in particular the Premier, the Leader of the Opposition and the leader of the Greens, who could be invited to attend such formal events.

I asked Mr Davis if he could detail the formal occasions that require the suspension of business next sitting Wednesday, 26 October, from 9.30 a.m. to 7.00 p.m. I asked that because I think we should know, but also because it is a significant thing to suspend the Parliament for virtually a whole day and we should put on the record why that is happening. All we know is that Queen Elizabeth II will be here, some events will occur and we therefore have to suspend business for basically the whole day — that is what we are being told.

In discussions subsequent to my asking Mr Davis it has been conveyed to me that no-one is quite sure what the occasions are. Mr Lenders has asked whether the Queen is going to be invited to address the Legislative Council. Will she be invited to address the Legislative Assembly? Perhaps. Is there going to be a reception for the Queen in Queen's Hall, which would be appropriate, or will there be a reception with the Queen at Government House, which would obviously be appropriate and the usual thing that would happen?

For the record, the reason I asked, too, is that I think it is very important for this sort of motion — one involving the suspension of standing orders that results in the loss of virtually a whole day of sitting — that the reasons for it be outlined. At the moment the reason is just the general reason that the Queen will be here so everybody will be involved. It is difficult for me to see how everybody is going to be involved all day. If we had been told there was going to be a reception for the Queen at Government House from 10.00 a.m. until midday and that everyone was invited, I would think that would be pretty reasonable. We have suspended the house for an hour or two on equivalent occasions during the time I have been in this Parliament. There would not be any objection to that. It is difficult to believe, however, that every member of Parliament will need to be free for the whole day to attend functions, activities or events at which the Queen is going to be. That is where I am struggling with this. I can see a formal reception we might all go to.

The opening of the children's hospital has been mentioned. Are all 128 members of Parliament going to be invited to attend that in a formal capacity? I would have thought probably not.

Mrs Peulich — Would you go?

Ms PENNICUIK — Mrs Peulich interjects. It is not about whether I would go; it is about whether it would be appropriate for 128 members to attend the opening of the hospital. I would have thought you would have the Premier, perhaps, the Minister for Health and perhaps some others, such as the Leader of the Opposition, but I do not know that you would have 128 members there. It would not be appropriate. We are struggling to understand this motion about the business of this house.

This is by coincidence and not by design of Mr Davis; there has been no nefarious design on the part of Mr Davis that the day concerned should be 28 October. It is by coincidence, as I said, that this day is concerned. I concede therefore that it is not Mr Davis's fault that it is our business day that is concerned. I have made the point that I am not sure that we have to adjourn until 7.00 p.m. on that day, affecting every single one of us, and I think all members understand that point.

I would like to return to the issue of consultation, which Mr Lenders robustly addressed in his contribution. Ever since the start of this Parliament I have had conversations with Mr Davis, with Ms Lovell, with Mr Koch and with other members of the government, indicating to them that we are always willing to cooperate and work in a cooperative manner and always willing to discuss things beforehand. Only this morning, only 5 minutes before the Children's Services Amendment Bill 2011 was introduced into this

Parliament and by leave second read, was I informed of that. I did not kick up a fuss. I said, 'Of course we'll grant leave for that to be second read so that it can be on the record, because it is being introduced into this house and everyone can familiarise themselves with it' — though it is being adjourned for two weeks rather than one to give us more time, since we have only the one week between the two sitting weeks. Likewise on so many other issues we have said we are happy to cooperate.

I would also like to say that I have said to many members of the government, including the Leader of the Government, that I think, as Mr Lenders said, that while the government has the numbers it should not use those numbers simply to get its will without first trying to come to a consensus position.

This motion could have been worded better so as to be more flexible. That could have been done with a bit of discussion beforehand, as has been the case with many other motions that have come from Mr David Davis, like the one on sessional orders we spent a long time debating on Tuesday. I raised with Mr Davis before the debate on that motion that I thought there were other issues that could be addressed in a cooperative way through sessional orders.

The point I am making is that the government can continue in this way, but it is not a good way for the government to acquit itself. We can either continue along in this manner for the next three years or not continue along in this manner. It is incumbent on governments to not only govern in the way they want and to have their agenda and the election promises they are always talking about fulfilled through legislation but to uphold good faith operations in the chambers, to set an example of how Parliament should work in a cooperative way and to respect the rules and conventions of Parliament, spoken and unspoken. I get distressed when I see some things happen which I do not believe should happen.

With that in mind, I should also say to be fair that Mr Rich-Phillips talked to us about the motion yesterday, but that was not a long time before today; he could have done that a little bit earlier. I will also concede that Mr Rich-Phillips gave an undertaking that if we did not finish general business on Wednesday, we would have time on Thursday. We have time — we have until 10.00 p.m. — and if we do not finish the general business that we and the government would like to finish, we could sit on Friday. There is no reason we could not do that, considering that we have taken out the whole of 26 October for Queen-related functions. There are many things we could do. There is nothing stopping us from sitting on the Friday if that is the case.

I would like to believe the verbal undertaking Mr Rich-Phillips gave us yesterday — and I understand he also gave an undertaking to the ALP — and which Mr Davis repeated in his address will be honoured. If the government says it is going to do that, I believe it will. That is part of cooperation. There is room for us to finish general business as long as there is cooperation in addressing general business items, which is another issue that Mr Lenders raised — we are not getting time to debate our general business items as we should. That is something that is also about cooperation and agreement in terms of how many members are able to speak on general business items. I do not want to prosecute that argument now.

This could have been handled better. I do not think the case as to why we need to be absent for a whole day is a strong one. If there are particular members who need to be at functions, say, after lunch on 26 October, there could be pairing arrangements for those members to go hither and thither to attend those events also attended by the Queen — the unknown events.

Mr Drum — They wouldn't pair for COAG; why would they pair for the Queen?

Ms PENNICUIK — It is about cooperation, Mr Drum, which is what I am talking about now. That could have been arranged, rather than suspending the sitting of Parliament for the full day. Unless Mr Davis can convince me in his summing up, I am not convinced that is needed. That goes to paragraph 1 of the motion.

The second part of the motion is that we continue to 11.00 p.m. on the Wednesday. I understand Mr Davis has included that in the motion because he is anticipating general business. I would like to reiterate what I have always said in this chamber — I do not believe we should sit past 10.00 p.m. unless there is an urgent matter before us.

Hon. D. M. Davis interjected.

Ms PENNICUIK — Mr Davis said, 'Even if we start at 7.00'. I have already said I am not convinced of the need for us to wait until 7.00 p.m. to reconvene on the Wednesday. Even if we do, we still have Thursday and a guarantee from the government that some general business could be held over until Thursday, and we still have Friday. I would not like to set a precedent of continuing until 11.00 p.m. when there is not an urgent motion before the house. If there is an urgent motion before the house, as there has occasionally been, I think

with cooperation people would agree. If there is not an urgent motion before the house, there is plenty of time in the week for us to get through the business before us, be that general or government business.

I am concerned about the motion being the way it is, because it leaves us in a position where we cannot support it. That does not mean we do not support the need for some suspension of the business of the house to accommodate the Queen's visit and a reception where all members might be present, or another arrangement involving the pairing of particular members who may need to be present at particular events later that day. I do not think Her Royal Highness is expecting us to give up the whole day's business just because she is here. I am sure she would not be expecting that. She would be happy with our attendance at a reception for a cup of tea and a cucumber sandwich, and then we would resume our work for the day. I am sure that is what she would expect us to do.

I hope I have made it clear that I think there are ways to accommodate the visit of the Queen, which is an important thing for the people of Victoria, but I do not think this motion is the way to achieve it.

Mr LEANE (Eastern Metropolitan) — I would like to speak briefly on Mr Davis's motion and move an amendment which enshrines the amount of time for general business that will be available to the non-government parties on Thursday, in accordance with my understanding of what had been indicated by a senior minister to the Leader of the Opposition. I had a conversation with the Leader of the Government this morning, and when I said he would need to indicate that there will be time on Thursday for general business I was concerned, because I was left with a lot of weasel words and a sense of misunderstanding. I received the response that if we get through all the bills, we might be able to find some time for general business at the end of Thursday, which I understood was not the substance of the conversation between Mr Lenders and the minister, who originally approached him about this situation.

My amendment enshrines that there should be some general business on the Thursday.

I move:

That after subsection (2) insert:

(3) Standing order 5.02(3) be suspended and that on Thursday, 27 October 2011, the order of business will be —

Messages
Formal business
Members statements (up to 15 members)
General business (for 3 hours)
At 12 noon questions
Answers to questions on notice
Government business
Adjournment (up to 20 members).

This amendment will deliver what was indicated to us to be the desired outcome of allowing people to attend functions on the Wednesday. With a view to cooperation, we believe this amendment should be honoured. My concern is that Mr David Davis's motion only affords us general business on the Wednesday. The way general business has been going — really for the whole term of this Parliament, but for the last few months in particular — is that government members have been lining up one after another to give quite lengthy contributions on the first item, which leads us to a point where the non-government parties are lucky to get through one of the items they have listed for general business. The way things are going, the time allocated to us on Wednesday could be taken up by one heartfelt Bernie Finn contribution.

I put this on the record yesterday, but in previous weeks when the Government Whip and Minister Lovell have come to me and asked for speakers to be dropped from lists on bills so that bills could go through, I have been more than happy to do that in the spirit of cooperation. I stated in a contribution on Tuesday on a previous David Davis motion that we understand the government has a mandate to get its legislation through. We understand that, and we are prepared to cooperate. Unfortunately I now feel like a bit of a mug.

Mr Finn — Not for the first time!

Mr LEANE — And probably not for the last time, Mr Finn. But there has been no reciprocal cooperation to assist the non-government parties to get through their items of general business. In this new spirit of cooperation, I particularly ask for that to happen.

Returning to why I have moved this amendment, Ms Pennicuik said that if the government has said to her that there will be general business on Thursday, then she believes it will happen. I have to say — and it is probably only directed at the Leader of the Government — we do not believe that is what would happen. We have been through a period of time where we have been in a position where we basically cannot take the Leader of the Government's word on anything when it comes to the business program in this house. I therefore feel that we have to move this amendment. If this amendment is passed, we will support Mr Davis's motion and we will all experience a different type of Wednesday in a sitting week.

Mr VINEY (Eastern Victoria) — In speaking on the motion and Mr Leane's amendment, I come to this debate with reasonable knowledge of the history of how this place has worked over the last three parliaments, having had the role of managing the government business program. As Mr Lenders said, in that time, particularly when Mr Philip Davis was the Leader of the Opposition in the Council, we learnt some things about how general business and the cooperation of the Parliament is dependent on many things other than just the numbers. There are many mechanisms and devices that are available to members of the house and political parties to, if you like, mess with the business program in one way or another.

Obviously the bluntest mechanism for doing that is what this government has used repeatedly in its first 10 months — that is, using 21 votes to get through whatever it wants in order to avoid scrutiny and to close down various things. We saw this at the beginning of this week when we had 21 votes reduce the capacity of the non-government parties to use general business.

On Wednesday of this week we saw government member after government member get up and speak on one of the opposition's motions, which had the effect of preventing the consideration of other motions that we wanted to get to on that day. These are tactics that governments can use and the government uses them.

Mrs Peulich interjected.

Mr VINEY — Mrs Peulich should just listen for a bit. I am not preaching fire and brimstone here; I am talking reasonably calmly.

We recognise that the government can do those things. It can use its numbers, it can use the forms of the house to have government member after government member get up and filibuster and fill up time so the opposition cannot get to other items. But this place works best when there is a degree of cooperation. This place is about the contest of ideas and about making sure that there is a process of scrutiny. It is about the fact that we can all walk away from here at the end of a parliamentary week knowing that we might not have won particular votes or arguments but that we have had the opportunity as representatives of our communities to express views, to hold the government to account if you are in opposition, or if you are in government to talk up and talk about your agenda, your program and what you are trying to achieve.

If we are going to make this place work as a democratic institution, where through peaceful, democratic means we deal with the contest of ideas in a logical way, it is important that there be some degree of cooperation. As Mr Lenders said, when we had a majority in this place it took us a little bit of time to get our heads around that concept; that is absolutely the case. There were times when we made mistakes and we proposed amendments to general business items. But we learned, partly through discussion with Mr Philip Davis, that that probably was not the best way to handle general business.

I can advise all members here that while I was manager of government business and Mr Lenders was Leader of the Government there was not an occasion when we deliberately and consciously messed with the non-government parties' general business program. We did not do that. It is true that we did not agree with making all of Wednesday about general business, and we had a debate about that. But once it happened, it happened. However, we never messed with the program. We never tried to cause the non-government parties difficulty in getting through their program and any motions that they wanted to deal with in general business.

When I was manager of government business and Mr Lenders was Leader of the Government there were many debates. We did not have a majority in the house and there were many debates that were uncomfortable for us, but we allowed those debates to occur; we did not use devices to try to mess with them. This week we have had three occasions where the government has messed with the non-government parties' general business program.

The first happened on Tuesday when sessional orders were introduced, to which we strongly objected. The second instance was during the general business debate yesterday when government member after government member got up and spoke at length, with no time limits, about a motion that the non-government parties had disposed of in terms of their debating position. This prevented the non-government parties from dealing with other items that they wanted to deal with on that day.

Today we have a third occasion with the government proposing to mess with the next sitting Wednesday. The government may well have legitimate reasons for proposing to change the next sitting Wednesday, but it is doing so without proper consultation or appropriate consideration of the impact that that will have on the non-government parties.

In his amendment Mr Leane has proposed a simple device to at least make that better and more palatable, although we still have difficulty with the mechanism

and the method by which this has occurred. I remind the house that I remember occasions — and I cannot remember whether it was in the last Parliament or the one before — when in general business programs there were important motions proposed by the non-government parties. There were other events on during those occasions, and there was agreement to not put any of those motions to votes until later in the day. The debate was had and then was adjourned just before the vote; then when all members were available to conduct the vote, the motions were formally put.

There has always been cooperation, and there are many mechanisms by which we could have facilitated the visit to Victoria of Her Majesty the Queen. We could have facilitated those things in many ways and using many devices, but there was no consultation. We did not need to have this debate, and we could have sat down and worked out a program where we could all have walked away and been quite comfortable with it.

Earlier there was some discussion about the Royal Children's Hospital and whether or not it is a Labor project. As a former Parliamentary Secretary for Health and Parliamentary Secretary for Innovation and Industry I sat on a committee made up of many people in the health sector, in the research sector, in the university sector and in a whole range of areas who worked in Parkville and who considered a whole lot of things about the development of that Parkville precinct, including the location of the children's hospital. I can say that the people behind that project were Labor government ministers, Labor government Premiers and, in my case, a Labor government parliamentary secretary. It is reasonable for the opposition to remind the house that it was in fact a Labor government project, and we are very proud of it and we will always stay proud of it.

Precious few of those kinds of projects have come out of the government now that it has come into office. I am not sure that there are in fact any of that size, scale or importance. We are proud of it, and we will stand by that pride because we believe it is a great project for Victoria. We are more than happy that the Queen will open that, as she opened the original one when she was here — in 1952, I think. I am not sure what year it was.

Mr Finn interjected.

Mr VINEY — I was born in 1954, so if it was 1952, it was before my time too. We are proud of that project and we are proud of that hospital.

An honourable member interjected.

Mr VINEY — It was 1954? Okay. So I ask all members of the house to favourably consider Mr Leane's sensible amendment, and I just remind the government that a bit of cooperation would have been much more effective in getting an outcome here tonight that could have sent us all home at about 5 o'clock instead of having this debate here. But, no, there was not that cooperation, so we have ended up where we are now.

I will finish by saying that one of the things I learned as manager of government business when Mr Lenders was Leader of the Government was that those devices that all parties and members have to mess with programs can come back and bite you. One of the things that I remind government members of is that when they undertake the kind of tactic that they did yesterday in filibustering on one general business item so that the house could not get to others, they might find that there will be an occasion when the opposition pays government members back on that. They might find that there is an occasion when the opposition decides that it wants to use some parliamentary tactics that will not be comfortable for the government and will not allow the government to get through what it particularly wants to get through by certain times and dates. That is the way this works unless we have cooperation.

Cooperation is not a one-way street. Cooperation is not the opposition agreeing to what the government asks it to do. Cooperation is both sides working together. What we are seeing constantly in relation to general business matters is that there is no cooperation. There is no respect for the general business program of the non-government parties. That has been demonstrated three times this week. It is pushing the boundaries for government members to come to the opposition and say, 'We want your cooperation because we need it, but we're not going to support you and give you cooperation with your program'.

I suggest that government members might like to think about the processes and tactics that they are using to mess with the programs and opportunities of the non-government parties in this house to hold the government to account, which is a critical part of making sure that all of us maintain confidence in the operations of this place.

Hon. D. M. DAVIS (Minister for Health) — I will make just a few points in reply. We are talking about a significant day when the Queen will visit and attend a number of significant events here in Victoria. I understand in my own portfolio of health that there will be the opening of the Royal Children's Hospital. I am informed that there will be a number of other events,

although I do not have the precise timing and details of those in complete and final outline. In that sense, the most sensible course is to make sure that members of the Parliament are able to attend the various activities that will take place across the day.

Equally, the government has sought to be entirely reasonable about this. We have negotiated with the non-government parties and the — —

Mr Lenders — You did not speak to anyone on our side.

Hon. D. M. DAVIS — I let Mr Rich-Phillips — —

Honourable members interjecting.

Hon. D. M. DAVIS — Mr Rich-Phillips had a conversation with Mr Lenders and with Ms Pennicuik, and others have — —

Honourable members interjecting.

Hon. D. M. DAVIS — There actually was a discussion about this. We have sought to largely mirror the Assembly in terms of time, because I think it is something that should reasonably be done as a whole-of-Parliament approach. On that day what we are proposing is that general business will be the predominant item. We will frankly seek to accommodate the non-government parties on the Thursday and to do that in a way that is reasonable and ensures that the time that they are able to debate non-government business is roughly equivalent to what would be the case normally. It might not be at the precise time that would have been chosen, but nonetheless this is the series of events. For example, Ms Pennicuik made it very clear that the date of the Queen's visit is not of our choosing. In that sense, members of the lower house have come to their accommodation. We have sought to come to an accommodation here. Mr Lenders, in his typical angry style, is unable to engage in a reasonable negotiation and come to a reasonable point.

Mr Viney made a number of points about events across this week. I think he has misunderstood a number of those key points. We have made a change to standing orders with the introduction of sessional orders. I know he did not agree with that, and that is perfectly understandable. Mr Viney has a very different recollection of non-government business in the last Parliament. In the last Parliament, on many occasions the list of items of non-government business that non-government parties sought to debate was not completed, and on many occasions the then government put speakers on to make their points. In the case of yesterday's debate, it was on an important disallowance motion relating to wind farm planning arrangements. The government has made major commitments and implemented its election promises on those issues, and the attempt by Mr Tee to disallow that had a significant impact on government members. Government members were prepared to make the arguments in favour of those, and that is democratic. It was a very important item for government members, in particular country government members. It also concerned — —

Mr Viney interjected.

Hon. D. M. DAVIS — Mr Viney may not have connected the dots, but in the last two sitting weeks there have been debates about energy-related motions at the time when the carbon tax has been debated in Canberra. Yesterday, as he well knows, the carbon tax legislation was passed in the lower house in Canberra. Clearly that was a significant moment. I reserve the right for government members to put their case — —

Mr Viney — On a point of order, Acting President, the carbon tax and the passage of the carbon tax legislation in the federal Parliament is definitely not before the Chair at the moment. This is a motion about the next sitting Wednesday. The carbon tax is definitely not before the Chair, so the minister's comments have to be out of order.

Hon. D. M. DAVIS — On the point of order, Acting President, I am responding directly to the points Mr Viney raised about the next sitting Wednesday. I am responding to the points that he raised in the debate.

The ACTING PRESIDENT (**Mr Ramsay**) — Order! I will rule on Mr Viney's point of order. I ask the minister to refer back to the right of reply.

Hon. D. M. DAVIS — I think it is important to put on the record a direct response to some of Mr Viney's commentary, and I have done that. I do not seek to go further on that; I think members understand the points I have made.

I am happy to make this commitment on the record about the period from 8 o'clock until 10 o'clock after dinner on the Thursday night. I am happy to provide a guarantee that the non-government parties have that time, in addition to the time on the — —

Honourable members interjecting.

Hon. D. M. DAVIS — I am just trying to be quite clear. If you want to talk about cooperation on ministerial councils, I have always provided support.

Mr Lenders — No, we are pairing you — —

Hon. D. M. DAVIS — I appreciate that, and that is an example of the cooperation — —

Mr Lenders interjected.

Hon. D. M. DAVIS — Maybe you could bring that motion on.

Honourable members interjecting.

Hon. D. M. DAVIS — When I had the conversation with Mr Lenders about pairing for the ministerial council meeting, I had no idea what motions he would be moving on this day or the next day.

Mr Lenders interjected.

Hon. D. M. DAVIS — I am sorry. I did not know that, as the member would well know.

Mr Lenders — You can let us have Thursday morning, then. That fixes the problem.

Hon. D. M. DAVIS — We have indicated that.

Mr Lenders — You are a coward. You will not face us.

Hon. D. M. DAVIS — We will use that period on Thursday night — —

The ACTING PRESIDENT (**Mr Ramsay**) — Order! I have ruled in relation to Mr Viney's point of order, and I think I have given him some leeway with respect to the issue around the carbon tax. But actually calling someone what I personally find a quite offensive name — I suspect the minister does also, but I will leave it up to him how he takes that — and taking into account the amount of interjections from this corner the minister is not able to appropriately reply to the debate on the amendment moved by Mr Leane. I ask members to stop the interjections and allow the minister to complete his reply. Then we can vote on the amendment, which is what the member actually asked for just a short time ago.

Hon. D. M. DAVIS — I will heed your point, Acting President. I do not propose to say a lot more. I am just trying to make it very clear to the chamber that the government is prepared to be reasonable and to work this through. I make the point that that Wednesday is a non-government business day. We are proposing to have question time, and the time for non-government business, and together with the period on Thursday evening that would provide very close to the same amount of time as is normally allocated to non-government business. That is a significant contribution. We obviously have legislative challenges to deal with as well, and we are prepared to — —

An honourable member interjected.

Hon. D. M. DAVIS — The government parties have sought to be as reasonable as they can be on this. We are very much aware that it will be a unique day. We look forward to the finalisation of the details of the Queen's visit, and we will communicate those details to members of this house and the other house. We will make sure that there is appropriate representation at those functions.

These points are not party political points; they are beyond party politics. I therefore seek the support of the Council for this motion. I make the point that we will not support Mr Leane's amendment, but we look forward to working with the opposition in the next sitting week to make sure that it gets as much non-government business time as possible.

House divided on amendment:

Ayes, 17

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

Noes, 20

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

Pair

Darveniza, Ms	O'Brien, Mr

Amendment negatived.

Debate interrupted.

DISTINGUISHED VISITORS

The PRESIDENT — Order! Before I proceed to the substantive motion, I indicate to the house that in the gallery this afternoon is one of the most famous

men in the history of Victoria, the Consul General of Chile, Diego Velasco von Pilgrimm, who when acknowledged on a previous occasion actually spoke from the gallery, to his eternal embarrassment. He is a very good friend of Victoria, and we welcome him.

He is not the most important person in the gallery this afternoon, nor is my colleague Mr Smith. I also extend a very warm welcome to Monica Zalaquett Said, who is a member of Parliament in Chile. Accompanying her is Marta Chalhub, who is a director with the external affairs ministry. We welcome both of them to the Parliament of Victoria this afternoon, escorted by the Consul General, who is remarkably silent this afternoon.

BUSINESS OF THE HOUSE

Standing orders

Debate resumed.

House divided on motion:

Ayes, 20

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

Noes, 17

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

Pair

O'Brien, Mr	Darveniza, Ms

Motion agreed to.

ADJOURNMENT

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

That the house do now adjourn.

Questions without notice: answers

Mr LENDERS (Southern Metropolitan) — The issue I raise is for the attention of the Premier and it is regarding commitments he made during the leaders debate in the lead-up to the election last year. The action I seek is for the Premier to implement those commitments.

I refer the house to a quote from the leaders debate on 5 November 2010 when Josephine Cafagna asked:

> Accountability is very much about answering questions, not much of that happens in parliamentary question time … will you tonight give a commitment to changing the rules of the Parliament so that ministers are forced to answer questions asked in the people's Parliament?

Mr Baillieu replied:

> Josephine, I could not agree more. Question time in the Parliament has really become a farce, and I make that commitment. I'm happy to do that. It is important that Parliament actually occupies a clear role in our democracy, and I think any visitor to Parliament now would know that Dorothy Dixers are really a waste of time, and they will know that ministers never answer, and for all the Premier can engage in hyperbole about freedom of information, this government is a government of secrecy, they don't answer questions in Parliament, they hide information and Victorians are worse off for it. It is an example of being out of touch.

Mr Baillieu had succinctly and with foresight described what the Parliament would be like under his premiership. Ms Cafagna then asked:

> So you commit to changing the standing orders of Parliament?

To which Mr Baillieu replied:

> I believe the standing orders should be changed. I believe there should be widespread reform of Parliament in order to engage the community and in order for our democracy to work effectively.

The action I seek from the Premier is for him to actually deliver on what he promised on 5 November 2010 and to make this Parliament accountable, to get rid of Dorothy Dixers and to make ministers answer questions.

Local government: funding

Mr RAMSAY (Western Victoria) — I wish to raise a matter for the attention of the Minister for Local Government, Mrs Jeanette Powell. The minister has alerted local governments to a deplorable funding scenario that has come straight from the fickle sham that is the Gillard federal Labor government in Canberra. The federal government has seen fit to increase funding to the Victorian Grants Commission

by a miserly 0.36 per cent. This amount is a disgrace and is barely a shadow compared to the consumer price index increases that confront every local government budget.

The commonwealth has dumped on local governments right across the state of Victoria. Those local governments provide every Victorian ratepayer with essential services, including roads, maternal and child health services, home help, Meals on Wheels — I could go on — that they require to get through every day. In contrast the Victorian Baillieu government saw the vital need to support the state and its councils and delivered not a slap in the face but a huge helping hand in the shape of a billion-dollar Regional Growth Fund. How is it that one government can see a desperate need for support and another, the federal Labor government, can only deliver penny pinching? At this rate the value of the general purpose grants are estimated to become 0.5 per cent of the commonwealth government's total taxation revenue by 2012–13. However, had the Gillard government maintained the — —

The PRESIDENT — Order! I ask the member to give me some guidance as to how this matter relates to the jurisdiction of the minister. In other words, as I understand it, the member's concerns are about the federal government. The minister he has directed the issue to is not responsible for the federal government's administration of this area. Can the member advise me of what he is doing?

Mr RAMSAY — I am aware that when I made my last adjournment speech you, President, mentioned that you thought what I said was more of a statement than a question to the minister, but thankfully you allowed me to complete my previous adjournment matter. This adjournment matter refers to the recent announcements in relation to money allocated to the Victorian Grants Commission. I will pose my question, which is in the fourth, fifth and sixth paragraphs of my notes and is about what the Minister for Local Government will do to help local councils in relation to this gap in funding. It is about what action the minister can take to help those ratepayers, particularly in those smaller towns that I will identify. There are a number of questions in this adjournment matter that I will raise for the attention of the minister, if I am allowed to proceed.

The PRESIDENT — Order! That is fine. I will let the member proceed. The member has obviously understood the area of my concern. I have a concern with the explanation — that is, the member has a number of questions to put to the minister when during the adjournment debate there is the opportunity to ask only one question. It is not a multiple-choice question. I ask the member to wrap up the action or question he is putting to the minister into a single point.

Mr RAMSAY — With the President's indulgence, the questions I have are actually the same question. I wanted to raise them in a number of different ways.

As I was saying, at this rate the general purpose grants are estimated to be 0.5 per cent of the total federal government's taxation revenue by 2012–13. For councils like Ballarat City Council, which wants to borrow $40 billion to redevelop its civic hall site, this money is vital. Any council across Victoria could look at the pittance that is this federal government funding and wonder how it is going to do the job it is required to do. Ratepayers will now have to fund the shortfall.

I ask the Minister for Local Government what impact this will have on local rates. I would like to know what action the minister can take in light of the commonwealth withdrawing support from local governments and leaving towns like Beeac, Skipton, Rokewood, Garvoc, Avoca, Kyneton, Ararat and Meredith, which are in my region, to struggle even further.

This week the commonwealth Parliament voted to hit these people even harder by heralding the introduction of the Gillard carbon tax. I ask the Minister for Local Government whether she will request an explanation from the federal government as to why it is that local governments have been financially assassinated just at a time when they really need more help, not less.

Victoria's local councils will need to breathe in and hold their purse strings very tightly. Councils decide which projects they can afford. It is their role and their duty to provide services for their ratepayers. On behalf of ratepayers across my electorate of Western Victoria Region, I ask the Minister for Local Government to determine whether the Gillard federal Labor government has put Victorian ratepayers at the mercy — —

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

Skills training: i-STEP program

Mr SOMYUREK (South Eastern Metropolitan) — I raise a matter for the attention of the Minister for Higher Education and Skills concerning the continuation of the industry skills training and employment program, otherwise known as i-STEP. During the 10½ months or so that I have been the shadow minister for manufacturing I have visited many manufacturing enterprises, and the message that I have

consistently gotten back from these manufacturers and in fact the manufacturing industries' peak bodies is that the skill shortage is a key issue in the manufacturing sector. Skills training and employment are drivers of manufacturing, and certainly the skills shortage is a big issue in the Victorian manufacturing sector.

The i-STEP program is managed by the NORTH Link business network. It is a program that was established to assist in ameliorating this problem. The i-STEP program was established by the former government in 2010 in order to link job seekers with employers in key industries that were experiencing serious skill shortages. In other words, the program is beneficial for both job seekers and employers. The program benefits job seekers by providing invaluable assistance to job seekers who have difficulty entering the job market. The program also benefits employers by making it easier for them to recruit the right people to their organisations and therefore increase productivity and profitability.

In terms of outcomes, the i-STEP program appears to have the runs on the board. During the short time that the program has been operational it has identified more than 130 vacancies and assisted more than 80 job seekers to obtain employment. Given the importance of skills for the future of our manufacturing sector and given the decent outcomes achieved by this program in the relatively short time that it has been operational, I ask the minister to continue to fund the i-STEP program so that it can continue to achieve good results for both employers and job seekers.

Member for Altona: seniors information booklet

Mr FINN (Western Metropolitan) — I wish to raise a matter for the attention of the Minister for Health. It concerns an information booklet that has been distributed throughout some sections of Western Metropolitan Region, particularly centred on Altona. Most of us would be aware of these sorts of directories that contain long lists of local organisations, health services, local government involvement, telephone numbers and addresses. They can be very helpful. Indeed I am sure most members, like me, have used them from time to time. It is much easier in most instances, particularly in times of emergency, to reach for a directory of this nature than it is, for example, to hit the internet or go the old-fashioned way of opening a phone book.

It is good that people go to the trouble of ensuring that community members are informed of what services are available to them when they need them. My concern with this particular directory is that whilst it has a number of hospitals and community health centres listed with addresses and telephone numbers quite clearly shown, there is one hospital that is listed — the Royal Women's Hospital — as being located at 132 Grattan Street, Carlton. My understanding is that the Royal Women's Hospital has not been at Grattan Street in Carlton, nor has the telephone number of 9344 2000 been operational, for some time — it would have to be close to two years.

My very great concern is that any of the women in the area, particularly older women as this is a seniors information booklet, may in the course of needing medical attention believe — mistakenly as it seems in this case — that this is the place to go for some support and medical attention. The people who put these sorts of directories together need to make absolutely sure that the information they are putting out is right. Obviously there are many thousands of these booklets that have been distributed over a wide area. It is not a cheap exercise by any stretch of the imagination, and it is even worse when one considers that this booklet was put out by the member for Altona in another place, Jill Hennessy.

I ask the Minister for Health to ensure that the women of the Altona electorate, particularly senior citizens, are protected from this sort of misinformation, however deliberate or otherwise it might be, and to ensure that they have access to the Royal Women's Hospital and other appropriate health services when and where they need them.

Western suburbs: trucks

Ms HARTLAND (Western Metropolitan) — My adjournment matter tonight is for the attention of the Minister for Roads, Mr Mulder. It is in relation to the growing truck problem in the western suburbs and the community's efforts to communicate with the minister on this issue. The residential streets in the west are already choked with trucks. Trucks clog the streets and are dangerous for drivers, cyclists and pedestrians alike. They pollute the air, are noisy and keep people awake at night, and because of all these impacts and more the community is greatly concerned. The community also has solutions for how these concerns can be addressed.

This problem is not going away; in fact it continues to worsen. Freight moving through our neighbourhoods is set to double within 10 years. This will mean double the number of trucks on our streets unless dramatic action is taken. Truck numbers increased every year under the Labor government, and when in opposition the Liberal Party was very critical of this failure to curb growing

truck numbers. Now in government the minister has an opportunity to turn this trend around. The first action the minister must take is to meet with the community members who are affected by this problem every day of their lives.

In March this year the Maribyrnong Truck Action Group requested a meeting with the minister. The minister declined. In the coming week the minister will receive an invitation to meet with a newly formed community group known as the Westgate Ramps Coalition, of which the Maribyrnong Truck Action Group is a member. The Westgate Ramps Coalition is working on solutions to the growing truck problem, specifically the building of ramps so that trucks can access Melbourne's port from the West Gate Freeway without driving on residential streets. The action I ask of the minister is that he accept this invitation to meet with representatives of the Westgate Ramps Coalition, hear their concerns and proposals, and work with the group to deliver solutions.

Alzheimer's disease: research funding

Ms MIKAKOS (Northern Metropolitan) — My matter tonight is for the Minister for Ageing. According to a study commissioned by Alzheimer's Australia and undertaken by Access Economics entitled *Caring Places — Planning for Aged Care and Dementia 2010–2050*, which was published on 1 July last year, dementia cases will grow in number from about 65 000 to over 245 000 in Victoria alone by 2050. It is the leading disability in Australians aged 65 and over, with sufferers from Alzheimer's disease representing 70 per cent of all dementia cases.

During the campaign leading up to the last state election Labor committed $15 million to the Mental Health Research Institute so that it could work with Prana Biotechnology to support critical research to advance a drug treatment for Alzheimer's disease. Prana's research received strong praise from leading scientists, including Professor Sir Gustav Nossal, who was quoted as saying that Labor's funding commitment 'will help to ensure that what could be one of the greatest ever Australian medical discoveries stays here in Victoria'. That quote is from a Mental Health Research Institute media release published on 5 November 2010. Labor's commitment was also warmly welcomed by many aged-care industry leaders, including National Seniors Australia, Aged and Community Care Victoria and Alzheimer's Australia.

The action I seek is that the minister follow Labor's lead in committing to fund this world-leading research for the thousands of Victorians, Australians and people around the world who would benefit from it.

Blade Electric Vehicles: ministerial visit

Mr DRUM (Northern Victoria) — My adjournment matter is for the Minister for Manufacturing, Exports and Trade, Richard Dalla-Riva. I recently had the opportunity to visit the Blade automotive company in Castlemaine, which manufactures electric vehicles. The owner of the company, Mr Ross Blade, has been building this business over a number of years and is currently using a Hyundai body to build cars that are powered by electricity and run by a new type of battery that not only has additional power but also can be recharged quicker than the type of batteries previously used. It has a battery that can run for longer, so these vehicles run for a greater distance on the highway and around town before they need to be recharged. It has batteries in it that last longer than other batteries. Once they have finished their use as a vehicle battery, they can be taken out and used to store photovoltaic power for an additional number of years.

These advancements have positioned Blade well within the electric vehicle industry. However, in the opinion of Blade, the industry itself is not in the business of encouraging a new entrant in the electric vehicle industry. A number of roadblocks have been put in front of Blade as it has tried to promote and showcase its product, and there are a few examples of a lack of support from the previous Labor government. The company realises that it is not as well thought of within the Labor Party as, say, something like Better Place, but it is convinced it can play a serious role in the electric vehicle industry.

Blade would be keen to show its product to the minister if he were able to find time to visit its Castlemaine workshop. Therefore I request that the minister take advantage of this invitation and visit Blade in Castlemaine so he can see what the company has to offer and consider the opportunities that would be presented not only to Blade but also to regional Victoria if this industry were able to be fitted into its projected growth lines.

Prisons: health care

Ms PENNICUIK (Southern Metropolitan) — My adjournment matter is for the attention of the Minister for Corrections. The Ombudsman tabled his report *Investigation into Prisoner Access to Health Care* on 30 August 2011. The Ombudsman reported serious health issues in prisons and 'grossly inadequate' access to health care for prisoners. This is particularly

disturbing in light of the fact that many recommendations in the Ombudsman's 2006 report entitled *Conditions for Persons in Custody* have still not been implemented.

There are serious health concerns for people in prison, with very high levels of mental illness and communicable diseases and inadequate care available. In 2006 the Ombudsman recommended a comprehensive communicable diseases policy for prisons be implemented and that condoms and dental dams be available in prisons, but they are still not available in most prisons. In addition to profound concerns for people in prison, the Ombudsman stated that 'untreated mental health issues can adversely impact on the greater community when offenders are released', and that 'improving the health of prisoners has important public health consequences'.

Transport and arrangements for prisoners to access medical appointments is very poor. Many regional prisoners are reluctant to travel to Port Phillip Prison or to the Dame Phyllis Frost Centre for secondary medical care, because if they leave their regional prison, they risk losing their beds and employment and access to rehabilitation programs.

The Ombudsman recommended better access to services for regional prisoners, including a regional secondary medical facility or sourcing medical care closer to regional prisons. The ability of prisoners to contact Justice Health and the health services commissioner is highly limited and responses are not timely. Because prisoners rely solely on prison health services, it is critical that they have a proper complaints process, just as everyone in the general community does.

Finally, it is clear that increases in the number of people in prison — in particular, the rise of 17.8 per cent between 2005 and 2009 — mean that medical services generally are now insufficient to meet the needs of prisoners. The abolition of home detention and the possible introduction of mandatory sentencing will inevitably increase Victoria's prison population further. People in prison have the right to access reasonable medical care and treatment under section 47 of the Corrections Act 1986, and the right to be treated with humanity and respect under section 22 of the Charter of Human Rights and Responsibilities Act 2006.

My request to the minister is that he address this issue by ensuring the timely implementation of all the Ombudsman's recommendations and undertake, jointly with the Minister for Health and the Minister for Mental Health, to report annually regarding progress on the Ombudsman's findings and recommendations until at least 2021.

Torquay: secondary college

Ms TIERNEY (Western Victoria) — My adjournment matter is for the Minister for Education, Martin Dixon, and it is in relation to the Torquay secondary school. The *Surf Coast Times* recently revealed that the Department of Education and Early Childhood Development is currently 'locked in a fierce battle with the landowner over the price of the land — a dispute that is likely to end in court proceedings'.

Before I go further it must be noted that this is a stand-alone secondary school being built from scratch. This government promised it would be in operation by term 1 of 2013. The government set aside $8.4 million for the school site in this year's budget, yet the land prices suggest that the parcel of land the government has identified will cost significantly more. Considering that it has not attained the site, let alone put infrastructure in place, it seems very unlikely that the Baillieu government will come good on its promise to the families of Torquay that students will be learning at the new facility in term 1 of 2013. If the Baillieu government does not come good on its commitment to the students of Torquay, there will be no shortage of finger-pointing at the Premier and the Minister for Education, let alone the member for South Barwon in the Assembly, Andrew Katos.

The action I seek is for the minister to give an absolute commitment to the people of Torquay that the new secondary school will be ready for students on the first day of the first term in the 2013 school year.

Responses

Hon. M. J. GUY (Minister for Planning) — I have written responses to adjournment matters raised by Mr Barber on 30 June; Ms Hartland on 18 August; Mr Lenders on 30 August; Mrs Peulich on 1 September; a very good man, Mr Finn, on 13 September; Mr Ramsay on 14 September; Mrs Petrovich on 14 September; Mr Ondarchie on 15 September; Mr Somyurek on 15 September; and Mr Drum on 15 September.

On the matters raised tonight, I will refer Ms Tierney's matter about the Torquay secondary school site to the Minister for Education, Martin Dixon.

The Leader of the Opposition, Mr Lenders, asked questions of the Premier about parliamentary operational changes, and I will refer those to the Premier for his response.

I will refer Mr Ramsay's matter in relation to some funding issues to the Minister for Local Government, Jeanette Powell.

I will refer Mr Somyurek's matter in relation to the i-STEP program to the Minister for Higher Education and Skills, Peter Hall, who will respond on his own behalf.

I will refer Mr Finn's matter about the Labor member for Altona in the Assembly and her knowledge of where the Royal Women's Hospital apparently is to the Minister for Health, Mr David Davis.

I will refer Ms Hartland's matter in relation to meeting with the Westgate Ramps Coalition and the meeting it has obviously asked the minister to attend to the Minister for Roads, Terry Mulder.

I will refer Ms Mikakos's matter in relation to funding for research on issues for the aged to the Minister for Ageing, Mr David Davis.

I will refer Mr Drum's matter in relation to automotive industries, electric vehicles and others things to the Minister for Employment and Industrial Relations, Richard Dalla-Riva, for him to respond to.

I will refer Ms Pennicuik's matter in relation to some Ombudsman's report issues and issues associated with prisons to the Minister for Corrections, Andrew McIntosh. I conclude my remarks.

The PRESIDENT — Order! The house stands adjourned.

House adjourned 6.43 p.m. until Tuesday, 25 October.