PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SEVENTH PARLIAMENT

FIRST SESSION

Thursday, 13 December 2012

(Extract from book 20)

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

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

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

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

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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.

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

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Assembly — Clerk of the Parliaments and Clerk of the Legislative Assembly: Mr R. W. Purdey

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FIFTY-SEVENTH PARLIAMENT — FIRST SESSION

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The Hon. P. R. HALL

Deputy Leader of The Nationals:
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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
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Hall, Hon. Peter Ronald	Eastern Victoria	Nats	Somyurek, Mr Adem	South Eastern Metropolitan	ALP
Hartland, Ms Colleen Mildred	Western Metropolitan	Greens	Tarlamis, Mr Lee Reginald	South Eastern Metropolitan	ALP
Jennings, Mr Gavin Wayne	South Eastern Metropolitan	ALP	Tee, Mr Brian Lennox	Eastern Metropolitan	ALP
Koch, Mr David Frank	Western Victoria	LP	Tierney, Ms Gayle Anne	Western Victoria	ALP
Kronberg, Mrs Janice Susan	Eastern Metropolitan	LP	Viney, Mr Matthew Shaw	Eastern Victoria	ALP

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THURSDAY, 13 DECEMBER 2012

Thursday, 13 December 2012

The PRESIDENT (Hon. B. N. Atkinson) took the chair at 9.34 a.m. and read the prayer.

CONDOLENCES

Hon. Richard Strachan de Fegely

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

> That this house expresses its sincere sorrow at the death on 27 November of the Honourable Richard Strachan de Fegely and places on record its acknowledgment of the valuable services rendered by him to the Parliament and people of Victoria as a member of the Legislative Council for Ballarat Province from 1985 to 1999.

Many of us in the chamber knew Dick de Fegely and knew him very well. He was a gentleman, a person of great integrity, a person who contributed mightily to this place and his electorate. His links into the community were remarkable, and that was very evident at the funeral held at Point Lonsdale last week. I was honoured to attend that funeral with the Premier, Minister Lovell and a number of others who were determined to pay tribute to Dick de Fegely's work over so many years.

Dick de Fegely was born on 15 October 1928 in Ararat, Victoria. He married Ruth, and they had three magnificent sons, who spoke at the funeral and paid great tribute to Dick with humour and honesty, illustrating Dick's very down-to-earth and grounded approach to life.

He was a person who grew up through hard times, worked on the land, made a success of the land and contributed mightily to his community. He was a member of the Victorian Farmers Federation and the Ararat Rural Fire Brigades Group. He played a great role in the foundation of the fire brigade groups in his district. At the Chalambar Golf Club he was a key mover in building the club and making it what it is today. He contributed over a long period to the management of that club. He also made a great contribution, in the time that I remember, to the University of Ballarat council. He understood the importance of education for Victoria's future, he understood the importance of education for rural and regional communities and he was prepared to advocate very strongly for his community in that respect. I pay tribute to his legacy in that regard.

Many of us will remember — no doubt the President, Peter Hall and Philip Davis will remember, as do I — the approach he adopted in the chamber: he was a gentleman and a person of great integrity, and he was fondly regarded on all sides of the house. He was listened to in the party room. Dick de Fegely stood up in the party room on only a few occasions, but they were occasions of great importance, and each time he made very clear and succinct points. He was always listened to by his colleagues.

I knew Dick well on a number of levels, both as a fellow MP and as a Liberal Party activist. I had great respect for his contribution to the Liberal Party. Dick's wife is Ruth Beggs. She has always made and continues to make an enormous contribution to the Liberal Party, and I think it is fair to say that the two of them formed a fierce political team. They were able to make great contributions and uphold the position of country Victoria very strongly within the party organisation and also in the parliamentary party. He and Ruth retired to Point Lonsdale and spent a very happy retirement there. He became closely involved with the community, as was his nature.

Dick de Fegely will be sorely missed, not just by me but by all in our party, all in his community and all those he touched across Victoria.

Mr LENDERS (Southern Metropolitan) — On behalf of the Labor Party I support the motion and would like to associate my party with it and with the comments made by the Leader of the Government. Unlike the Leader of the Government, I did not know Mr de Fegely, nor did any of the 16 Labor members here serve with him, so we are in a difficult position to add to the condolence motion. But we certainly offer our condolences to his family, and we associate ourselves with the sentiments expressed by Mr Davis.

Mr BARBER (Northern Metropolitan) — The Greens would like to endorse this motion and send our condolences to the friends and family of Mr de Fegely. He was a humble farmer from the area south of Ararat, which is often seen by many as the beginning of Australia Felix, the beautiful and bountiful plains of western Victoria. Before he even entered Parliament he made the claim:

> I believe that we're tending to become second-class citizens in the country because governments have become city oriented. If you get outside Broadmeadows, Dandenong and Deer Park, the government hardly exists.

We know that is not a true statement, literally; that is a political statement. But it does indicate that he had his finger on the pulse of the way his community felt, and he no doubt served his constituents very well in his 14 years in this place.

Hon. P. R. HALL (Minister for Higher Education and Skills) — I would like to associate The Nationals with this condolence motion for the late Dick de Fegely, who served as a member for Ballarat Province from 1985 to 1999. It was my privilege to have served with Dick for 11 of those years in this Parliament.

If there are two words I would use to describe Dick, they would be loyalty and integrity. Loyalty because he was fiercely loyal to those he represented in his electorate, to the Liberal Party and to the conservative side of politics. He was the Government Whip between 1992 and 1996, and I recall that in tandem with Rob Knowles, who was the leader of government business in those days, the boys from Ballarat governed — almost — the Legislative Council in a very competent and strong manner.

While I do not like to be indulgent — these reflections are from a time when I was younger and perhaps very impressionable — Dick de Fegely came from an era in which on this side of the chamber you had people the likes of Mark Birrell, Rob Knowles, Haddon Storey, Roger Hallam and Bill Baxter, and on the other side of the chamber you had people of the calibre of Evan Walker, David White, Caroline Hogg, Maureen Lyster and the like. They were pretty formidable teams, I am sure, in the history of each side of politics, with people of that calibre. Dick de Fegely served in that era and served well as a shadow minister for a period of time, as Government Whip and ultimately as secretary to the Liberal Party.

I would ascribe the word 'integrity' to Dick because he was a person who, while he had really strong views — I heard him express strong views and mutter utterances about people — whenever it came to speaking publicly about them or expressing a view publicly, he treated people with the utmost respect and integrity. That was something that was certainly impressed upon me. We can learn a lot from people by working with them. Dick de Fegely showed how humility, hard work and, more importantly, loyalty can contribute to one's public life. I think Dick and his family would feel proud of that. To his surviving family we express our sincere condolences. It was certainly a great privilege for me to have known and worked with Dick de Fegely, who was a great man.

Mr P. DAVIS (Eastern Victoria) — Condolence motions are an opportunity for mixed emotions — on the one hand celebrating a contribution to public life in Victoria; on the other hand remembering somebody with whom you may have had a close association and remembering them fondly, as I do Dick. Dick de Fegely, a member of this place for 14 years from 1985, made a contribution not just to the Parliament but more broadly to his community. The centre of Dick's life was his farm — his grazing property, Quamby — and his family, all of whom he took great pride.

His wife, Ruth, came from a background similar to Dick's. Ruth Beggs is from a grazing family, as Dick was, so they shared a strong communal interest in their broad rural district but importantly also a common understanding of issues outside metropolitan Melbourne. They were a great team within the Liberal Party. Dick was a member of Parliament, but he and Ruth were also actively involved and engaged in advocating for and advancing rural interests within the Liberal Party. I would have to say they were in some respects, in an endearing way, a modern power couple. I am sure Dick would be amused to hear that description. Dick was an absolute gentleman, and many could be deceived into perceiving him as extremely laid-back. He was somebody who had very clear views and was prepared to argue them vigorously. He came from a rural tradition, which I empathise with, where contracts are for lawyers but a deal is a handshake and a word — and whatever the word was was honoured.

His great pride was in his grazing property, Quamby. He was a very competent farmer and woolgrower, and he developed his property. He was actively involved in rural affairs through representative politics at a local and state level. He was a director of Woolgrowers Independent Selling Services, which was a very innovative wool marketing company, which demonstrated that Dick was at the leading edge in his wool-growing interests, looking at opportunities to improve the way the industry was served in a commercial sense. Dick was involved not only in the Victorian Farmers Federation but also in a number of other local community rural groups. I do not intend to touch on them because I want to focus on the other element of Dick, which is not often referred to in political circles, and that is his pride in his family.

Quamby was taken over and managed by Dick's son Charlie, who, following the de Fegely tradition, is a leading woolgrower, a man of great capacity who has led innovation in the wool industry. His son Rob is well known in the forestry industry, indeed pre-eminent in the forestry industry, having given advice to state and federal governments and, in a commercial sense, to the forestry industry. Phil is very well known in Melbourne as an auctioneer in the real estate industry — indeed, I had cause to be amused by a presentation he gave at a function just a couple of weeks ago. Dick and Ruth were very proud of the boys, and quite rightly so, and Dick was absolutely proud of Ruth. Ruth De Fegely

was, and is, fierce in her opinions. Some would have said she was the power behind the throne, but they were a great couple and were joined together in their values.

In the Parliament I found another great power couple, who were touched on earlier by Peter Hall. The power couple in the Parliament during the era when Dick was Government Whip was Dick de Fegely and Rob Knowles. Dick was the iron fist in the velvet glove, but the enforcer, when he needed an enforcer, was Robbie. We had no time limits for debate in that era. Dick would gently come over while someone was midstream making a profound contribution, which the ages would testify was a grand contribution to public debate. The member would be speaking at length. Dick, understanding that the government's need was to get the legislation through, would come over and gently have a word in the ear of the member while they were in the middle of making that profound statement that had gone on for far too long. If that was not enough, he would have a quiet word to Rob Knowles. Rob would just come over and stand in front of the member until they sat down. They had a very good relationship. It was a great team. They ensured that the house ran in an orderly and smooth manner.

But Dick not only made a contribution in the Parliament, he was also actively involved in wider party activities. He quietly had a word to ministers about issues, particularly those he was involved in and rural issues in particular, and I worked with him both in the Liberal Party organisation and the parliamentary party on a number of committees and had an intimate understanding of Dick's views. He was incredibly competent, and he engaged with people and drew them out. He had a terrific social manner in the sense of that personal engagement and was able to make people feel immediately comfortable and contribute whatever their opinion was on an issue.

I think that Dick made a significant contribution — a contribution which will not be recognised in the sense of his having held formal office as a minister, but he certainly had a significant influence on ministers and public policy. I want to recognise the contribution that Dick de Fegely made to public life in Victoria and to the Parliament of Victoria and the legacy he has left behind with his wife, Ruth, and Charlie, Rob and Phil de Fegely.

The PRESIDENT — I would like to make some brief comments in respect of this condolence motion as well. Politics is a funny game in the sense that it does not always deliver to people their due reward in terms of their merit. We often have condolence motions in this place, for instance, for members of The Nationals who served as great advocates for their community and were very strong and competent performers in the Parliament but who never became ministers because in their time in Parliament they were not members of the government; they sat on the crossbenches. So too are there Labor Party members who have not had opportunities to be ministers who may well have made very fine ministers of the Crown.

I dare say that Dick de Fegely would have been a minister after the 1992 election had the Liberals and National Party not formed a government as a coalition, because Dick de Fegely was a man who had the values, competence, abilities and skills to be one of our finest ministers. Instead he took up another role within the Parliament and in a very distinguished and effective way made a significant contribution to the Parliament. We sometimes take for granted the role of whips. I suggest that Philip Davis and myself in this house today, and perhaps to some extent Mr Hall and Mr David Davis, certainly Louise Asher, now in another place, and many of the members who came in in 1992 and subsequent elections very much owe the success or at least the progress of their careers to what they learnt from Dick de Fegely.

He was a man who in many ways was more than the policeman or the disciplinarian for the party in terms of votes and so forth. He was a mentor to many people in this place and demonstrated both by word and by deed what is expected of a member of Parliament and how they should go about ensuring that their contribution is worthy of the people they represent, is based on solid values and also upholds the principles upon which they were elected. I know, from conversations we have had in the past, that Philip Davis and I owe a great deal to Dick de Fegely in terms of our early learning of the workings of Parliament, laying the foundations for our activities within this place and the contributions we have made subsequently.

Every party has its heroes, and Dick de Fegely was one of the heroes of the Liberal Party. I do not wish to go back over the biographical material that Mr David Davis, as Leader of the Government, has provided to the house today. Neither do I wish to go over the material that Mr Philip Davis has contributed to the house in what I believe was a speech that encapsulated much of the contribution and the values of this man who gave exemplary service to the Parliament.

Can I say that from my discussions with the staff of the Parliament he was a man who was very highly regarded by all in this place. He was certainly highly regarded by his Liberal and National Party colleagues in the coalition government at the time, but also by members

of the Labor Party, who I think appreciated the fact that he was straightforward and respectful in his relationship with members of the Labor Party in transacting the business of the house. I think he was also very highly regarded by the staff for the way he went about his business, for the contribution he made and for his style in terms of the standards he set as a member of this Parliament.

He can, as Mr Philip Davis has indicated in this debate today, be very proud of his sons. The Liberal Party is very proud of Dick de Fegely and Ruth de Fegely and the contribution they have made. The thoughts of many of us at this time are with Ruth and her boys and their extended families. Dick de Fegely was a person who will be missed but also long remembered for the contribution he made and the way in which he encouraged so many members of the Liberal Party and the community to get involved, to have a voice and to do things to try to make this state a better state.

Motion agreed to in silence, honourable members showing unanimous agreement by standing in their places.

Dame Elisabeth Joy Murdoch, AC, DBE

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

> That this house expresses its sincere sorrow at the death, on 5 December 2012, of Dame Elisabeth Joy Murdoch, AC, DBE, and places on record its acknowledgement of the valuable services rendered by her to the people of Victoria through her sustained involvement in many organisations and community and charitable endeavours.

I think all of us in this chamber knew Dame Elisabeth. She knew people right across this state and this nation. Her reach was extraordinary, her capacity to influence was extraordinary and her capacity to do good was extraordinary. I first met her at a charitable function back in the 1990s. It was very clear to me from that very first meeting what a remarkable individual she was. I think the affection the community has felt for Dame Elisabeth is also remarkable. Her generosity was legendary. Her understanding that a person of her station or position in life was able to devote themselves to charitable and philanthropic works in the way she did was her recognition of an obligation or duty to serve the community in the most generous and honourable way.

Dame Elisabeth Murdoch was born on 8 February 1909. She married Keith Murdoch, who later became Sir Keith Murdoch. She was educated at St Catherine's School in Toorak and Clyde School in Woodend.

In a brief contribution to a condolence motion like this, I could not do justice to the huge list of organisations to which Dame Elisabeth contributed, and I am not going to try. What I will say is that she contributed to two institutions beyond all others. There was her work for the Royal Children's Hospital, and her enormous work on what we now call the old Royal Children's Hospital. I refer to her fundraising and philanthropic work for that hospital back in the 1950s. The hospital opened in 1963.

The length of Dame Elisabeth's service is indicated by the fact that she also played an important role in the new Royal Children's Hospital, which was opened last year. She was associated with the new Royal Children's Hospital through the Murdoch Children's Research Institute. Dame Elisabeth's generosity and the generosity of her family through the Murdoch Children's Research Institute has put enormous strength behind the children's hospital in terms of its research capacity and capability. The hospital has a world-leading position, which demonstrates how Dame Elisabeth and her family have been able to place Victoria's pre-eminent children's institution in a position to contribute to the wellbeing of not only the children of Victoria and Australia but also children across the world.

Dame Elisabeth's great philanthropic efforts were an example to us all in this community. They laid out a course that many could adopt to make a greater contribution to the community. I am honoured to have met her — I talked to her on many occasions — but also, equally, to have learnt from her. There would not be a member of this chamber who did not know Dame Elisabeth Murdoch and understand the importance of her contribution to Victoria. She was a great philanthropist, a great contributor to the future of this state and a great Victorian.

Mr VINEY (Eastern Victoria) — On behalf of the Labor Party I am very pleased and honoured to associate our party with the condolence motion moved by the Leader of the Government. For all of my political career Dame Elisabeth Murdoch has either been a constituent of mine or a very close neighbour, with Cruden Farm being on the boundary of my electorate. I had the pleasure of meeting Dame Elisabeth on a number of occasions, both at functions and at Cruden Farm, which I must say is a remarkable and delightful property; it is surrounded by the urban environment, but it also has a real touch of what country life was once like in that now urban area of Melbourne.

Dame Elisabeth was always a pleasure to meet with. She gave you her attention and made you feel very welcome when you visited her property. As the Leader of the Government has said, her philanthropic activity was extensive and extraordinary. Whether it be in relation to the Royal Society for the Prevention of Cruelty to Animals, the Royal Children's Hospital or the Murdoch Children's Research Institute, her commitment to philanthropy was probably unmatched in this country.

I must also say that whilst she always made clear to me that she was not of the same political persuasion as me, she also made it very clear that she had progressive views. I recall when as Parliamentary Secretary for Health I was opening yet another great Labor project at Frankston Hospital that Dame Elisabeth was there in her capacity as contributor to that particular project. At that time there was a raging debate going on in Victoria about whether or not Victoria should have a safe injecting room for use by drug addicts. Dame Elisabeth made it clear to me that she was not of the same view as the Liberal Party on that matter and was quite disappointed in the Liberal Party's position. Nevertheless, I think she remained a loyal Liberal for all of her life.

I wish to acknowledge in particular today the commitment that Dame Elisabeth had to the local community. She gave great support to the Langwarrin Secondary College, now renamed in her honour the Elisabeth Murdoch Secondary College, but she also contributed to other schools. I know she was a contributor to facilities at Woodleigh School, which my children attended. She was not only a contributor and philanthropist at a national level and in terms of significant institutes and institutions around this country but also to the local community, whether that was the Frankston Hospital or the local secondary colleges. She was very respected in the local community, and her open days at Cruden Farm were very popular. On those open days she would always wander amongst the guests. The last time I saw her there it was with motorised transport support, but she still had that commitment.

I would like to join with the Leader of the Government and all members of this place and offer the Labor Party's condolences to the family of Dame Elisabeth Murdoch — to her children, grandchildren and great-grandchildren. The photograph I saw showed a very large, extended family.

Hon. P. R. HALL (Minister for Higher Education and Skills) — On behalf of The Nationals I would like to associate my colleagues with this condolence motion for the late Dame Elisabeth Murdoch. Much has been said and written about the contribution the late Dame Elisabeth made to the Victorian community, and without exception the tributes have been absolutely glowing. I think what was most impressive about the woman was the breadth of those community interests and the manner in which she pursued them.

In just the last few days I caught part of an interview she did with Andrew Denton on ABC television in which she said, in terms of her philanthropic activity, that giving money was the easy part. The real pleasure was in being involved. I think whatever Dame Elisabeth took on she would have had a hands-on role in and been intimately involved with. That is what made her contribution so impressive. As I said, much has been said about her. I cannot add to that. People who knew Dame Elisabeth and worked with her have been absolutely glowing in their tributes to her. I know all Victorians respect the contribution she has made to life in Victoria. The Nationals add our thoughts and views to those sentiments.

Mr BARBER (Northern Metropolitan) — On behalf of the Greens I would like to support this motion and send our condolences to the extended Murdoch family and to the many thousands of people Dame Elisabeth has touched. As a mere politician I am not as qualified to eulogise such a person as I would be a former fellow politician. While philanthropists can be highly political, it is rare that a politician is seen as having purely philanthropic urges. Since I never met Dame Elisabeth I can only try to understand her by studying the ripples she created.

We in this place all strive to make a contribution. We all admire Dame Elisabeth for hers, but we do not even dream of approaching her achievements. First of all, most of us will not be lucky enough to live to 103 or to be so active when we are, nor will we have the benefits of great wealth and privilege, which she took every opportunity to deploy and multiply quite skilfully. You only have to look at the breadth of issues she reached out to, including the arts, health, education, welfare and the environment, just to name a few, to see that. Beyond her physical existence on this earth she has also given to her many progeny both the opportunity and the example to be great philanthropists themselves, and I have met and worked with a number of them. That is of course a more lasting legacy, which few in this world would ever hope to achieve.

The PRESIDENT — Clearly Dame Elisabeth was a very inspiring Victorian and a person whom I think had the respect of every other Victorian, and that is an unusual thing. If we take one thing forward, it should

be, as Mr Hall mentioned, her plea that people get involved. We do not all have the opportunity to write a cheque for something, but we all have the opportunity to contribute by way of our skills and involvement.

Mr Davis, as Leader of the Government, has moved:

> That this house expresses its sincere sorrow at the death, on 5 December 2012, of Dame Elisabeth Joy Murdoch, AC, DBE, and places on record its acknowledgement of the valuable services rendered by her to the people of Victoria through her sustained involvement in many organisations and community and charitable endeavours.

I ask members to signify their assent to this motion by rising in their places for 1 minute.

Motion agreed to in silence, honourable members showing unanimous agreement by standing in their places.

COUNTY COURT OF VICTORIA

Report 2011–12

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

Laid on table.

SHIRE OF BULOKE

Current and future financial health

For Hon. M. J. GUY (Minister for Planning), Hon. R. A. Dalla-Riva, by leave, presented independent assessment.

Laid on table.

ROAD SAFETY IN VICTORIA

Progress report 2012

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations), by leave, presented report.

Laid on table.

PAPERS

Laid on table by Clerk:

> Alpine Resorts (Management) Act 1997 — Alpine Resorts Strategic Plan 2012 pursuant to Section 33E of the Act.
>
> Freedom of Information Act 1982 — Report of the Minister responsible for the establishment of an anti-corruption commission on the operation of the Act, 2011–12.
>
> Subordinate Legislation Act 1994 — Documents under section 15 in respect of Statutory Rule Nos. 128 and 131.

Mr Lenders — On a point of order and with your indulgence, President, I will refer to the concept of papers being tabled by leave. It is difficult to express this in the house, and I am not trying to be cantankerous, but from the opposition's point of view we have been asked to give leave to table a series of papers regarding the Shire of Buloke, and we know nothing about them. We gave leave as much as anything because we were caught unawares. Can I just use this opportunity to say to the house and the government that it would be courteous to let others know what leave is being sought. We have inadvertently let this go through, and we are not trying to be obstructionist on the last sitting day, but it would be a courtesy if we were informed beforehand that leave will be sought for items rather than it just being asked of the house.

The PRESIDENT — Order! I thank Mr Lenders, and I am sure that will be taken into account. If there are any major issues after Mr Lenders has had a look at those papers, I might allow him to make some comment at the completion of question time, if that is required.

DISTINGUISHED VISITORS

The PRESIDENT — Order! I take this opportunity of acknowledging the Honourable Chris Strong, a former member for Higinbotham Province, who is in the gallery today. I welcome Mr Strong. It is good to see you. Compliments of the season!

MEMBERS STATEMENTS

Cattle: live export

Ms DARVENIZA (Northern Victoria) — I wish to register my deep concern after viewing footage of the treatment of cattle at an Australian abattoir which was aired on the ABC's *7.30 Report* on Tuesday evening. For those who have not seen it, the footage shows the results of the work of an undercover Israeli journalist, Ronen Bar, who worked at the abattoir and who says

that the footage shown depicts the treatment, for the most part, of Australian exported cattle. The footage shows animals being repeatedly stung with electric prods in the eyes, genitals and anus, animals being dragged on the floor with a rope tied to one leg and animals moved for butchering as they were still bleeding to death.

I am sure I am joined by all members in condemning this treatment, but my concern is that despite assurances to the contrary the Exporter Supply Chain Assurance System (ESCAS) for Australian animals exported live simply is not working. I note the view of the federal Department of Agriculture, Fisheries and Forestry in the ABC program that while the department was appalled by what was brought to light initially by Israeli TV, 'This doesn't mean that the system is not working'. Despite the assurances of the federal department to the contrary, the Australian public has every reason to have little confidence in the ESCAS system if it cannot identify very substandard facilities such as this one. I believe the Australian public is fast running out of patience with the live export trade and now suspects that we will never be able to guarantee the welfare of Australian animals once they leave our shores. It is now time — —

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

Banksia Gardens Community Connections: award

Hon. W. A. LOVELL (Minister for Housing) — I would like to congratulate the Banksia Gardens Community Connections project on winning a prestigious national crime and violence prevention award. The project targets issues in the Banksia Gardens area of Broadmeadows and has made a huge difference to the people who live there. Those involved with the project have a lot to be proud of, having been recognised with an Australian Crime and Violence Prevention Award. The results of the project show it to be a worthy winner. It was launched last year in partnership with the Broadmeadows Housing Office and the Banksia Gardens Community Centre, with the aim of tackling a range of issues, including violence, drug trafficking and a lack of tenant participation. In the past 18 months there has been a 51 per cent reduction in crime on the estate and a 27 per cent increase in calls to 000.

This is a wonderful result for the people within the Banksia Gardens community. It also shows what can be achieved when everyone works together. By working with residents, community organisations and all three tiers of government, the community connections project has achieved a significant reduction in crime on the estate. That is a win for all residents, not just for those in public housing.

Western Metropolitan Region: school entrant health questionnaire

Mr EIDEH (Western Metropolitan) — I refer to an item in the *Herald Sun* a few weeks ago and also published in the *Moonee Valley Leader* last month. The item refers to this government, the Baillieu-Ryan regime, killing the visiting nurses program to primary schools that saw every primary student receive a health check when beginning their educational future. I refer to the death knell of a program that even Jeff Kennett would not have objected to but which this government sees only as a waste. I refer to a program affecting children — little children — from the most socioeconomically disadvantaged region in the state: my electorate. I refer to a program that will now force teachers who are not trained nurses, not doctors, not health experts but educators who are already too busy with a vast supply of duties to also monitor and report any health concerns because nurses have been extracted from the equation by this cold government.

I thought I had seen the worst that this government could do with its petty budget cuts in every single area, its volumes of broken promises, but this is by far the worst. This government does not care about little children and whether they have health concerns or psychological problems that could destroy their chances to learn, to grow and to prosper. This government should be more responsible towards our children — our future.

Palestine: United Nations status

Mrs KRONBERG (Eastern Metropolitan) — I rise to castigate the federal government on its decision to abstain from the vote on the Palestinian bid for non-member observer status in the United Nations (UN). This meant Australia was one of 41 nations to abstain in a vote that was passed 138 to 9. Commentators have expressed the view that the vote was predictable, hence the reason for moving it in the first place.

Apparently Israel's main objection to the UN bid was that the Palestinians were using this move to avoid their obligations under the Oslo Accord, especially their commitment to return to peace talks and negotiations. Thinking Australians must now find excruciating the fact that Israel was a strong advocate for Australia when we made our bid for a seat on the security

council. How disgraceful is it that our federal government treats a friend and a supporter in such a way? It is proof positive that the ALP regards the appeasement of voting blocs in suburban Sydney as more important than our relationships with Israel.

Appeasement at any time is appalling and serves to weaken the appeasers. With this abstention our country has started a fundamental weakening of firm support for Israel that goes back for over 60 years. What a pity that the opportunity to push for Palestinian acceptance of Israel's right to exist and the right of the Israeli people to live free of bombardment and within secure borders was lost. It is in the best interests of Australians to consistently uphold the tenets of democracy. We must go out of our way to support nations who do likewise. Where were the state Labor members in supporting the Jewish community here in Victoria? Where was the moral compass of the members of the ALP across this nation?

2012: significant anniversaries

Ms PENNICUIK (Southern Metropolitan) — Luna Park turns 100 today, and I am sure everyone here, as well as millions of others, have fond memories of it — I have always loved the scenic railway. The year 2012 is a year of significant anniversaries in the areas of entertainment, science, politics and human rights across the world.

Fifty years ago, in 1962, we saw the first James Bond movie, and much has been made about that. That year was also the year of the first performances by the Beatles and the Rolling Stones. In 1962 *Silent Spring* by Rachel Carson was published and inspired widespread public concern about pesticides and pollution of the environment, and facilitated the ban of DDT in 1972 in the United States. Also in 1962 the US Supreme Court outlawed race separation on public transport.

Moving closer to home, last Saturday I attended a concert at the Forum in Melbourne to celebrate the release, in 1982, of the single *Solid Rock*. That same year Eddie Mabo and four other Meriam people of the Murray Islands began action in the High Court seeking confirmation of their traditional land rights. In 1992 the High Court upheld that claim and struck out terra nullius. In 2012 the campaign for recognition of Aboriginals and Torres Strait Islander people is gaining momentum, and I hope we will see that achieved before too many anniversaries go by.

Hon. Richard Strachan de Fegely

Mr KOCH (Western Victoria) — I rise to pay tribute to the Honourable Richard Strachan de Fegely, who died at Geelong on 27 November aged 84. Born in Ararat on 15 October 1928, Dick was educated in Ararat and then at Geelong Grammar. He married Ruth Beggs in 1953, and together they managed the family farm 'Quamby' near Ararat and raised their three sons.

Dick was elected to the Legislative Council as a member for the former Ballarat Province in March 1985. He worked hard for the people of Ballarat Province, strongly advocating for rural Victoria, and particularly lobbying for higher education and tourism. Amongst his numerous parliamentary appointments, both in opposition and in the Kennett government, Dick served with distinction as Government Whip from 1992 to 1996. He retired from Parliament in 1999.

Dick was active across his wider community. His interests included the Victorian Farmers Federation, Ararat Rural Fire Brigade, Chalambar Golf Club, Ararat Orchid Society, Australian Superfine Wool Growers Association, the University of Ballarat council and the TAFE board. He was a great contributor to Gum San Chinese Heritage Centre at Ararat, and had a lifetime commitment to the Liberal Party.

Dick and Ruth retired to Point Lonsdale, where they also remained active in the community. Dick just loved people. He had a great humour and was a mentor, guide and genuine long-time friend whose support was greatly appreciated. His guidance was generous and infallible. Dick is survived by his wife, Ruth, their sons — Charlie, Rob and Phil — daughters-in-law and 12 grandchildren. My condolences to all the family.

Fire services: funding

Ms BROAD (Northern Victoria) — The fire started by a lightning strike near Seymour on Saturday night was a timely reminder of the need for all Victorians to have their fire plans in place for the rest of summer. Approximately 1800 hectares were burnt, stock were killed and fences destroyed. Some 155 firefighters attended from around 100 communities to contain the fire over the following days. All those volunteer and career firefighters and all those communities deserve our thanks. What they do not deserve is the $65 million cuts to Victoria's fire services, and Mr Baillieu's broken election promise of $136 million for fire services. Just who do Mr Baillieu and Mr Ryan think they are fooling when they claim that cuts of $65 million will have no effect on front-line services? Not firefighters, that is for sure.

Mildura firefighter Mr Sexton has explained that they are 99 per cent reliant on volunteers, but they do not have uniforms for new recruits. As anyone in touch with community organisations would know, it is not easy to recruit volunteers, and these cuts made by the Baillieu-Ryan government just make it harder. Wodonga firefighter Mr Johnson has explained that the workload at Wodonga keeps increasing, but their funding is going in the other direction, and this must affect them. Instead of arrogantly turning his back on the concerns of communities and hardworking firefighters, Mr Baillieu should show some leadership by admitting he has made a mistake and reversing his funding cuts.

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

Dame Elisabeth Joy Murdoch, AC, DBE

Mrs PEULICH (South Eastern Metropolitan) — I wish to extend the condolences of the people from South Eastern Metropolitan Region on the sad occasion of the passing of an outstanding Victorian, Dame Elisabeth Murdoch. Her residence, Cruden Farm, was the hub of philanthropy in the south-east, and her long and generous life inspired many throughout this state and this nation.

Dame Elisabeth served in many capacities, including on the boards of significant institutions, whilst other institutions carried her name in honouring her life. Dame Elisabeth supported over 100 charities, all carefully chosen and all focused on building, inspiring and leading in her traditional style, which was without airs and graces and with a gentleness and a steely resolve. Dame Elisabeth, may your many causes flourish in your garden of very many good deeds. Of course the condolences are extended to her large family — children, grandchildren and great-grandchildren — and to all those who knew her.

Christmas felicitations

Mrs PEULICH — I also extend the greetings of the season to all those who work in, benefit from and support the Parliament, including the attendants, Hansard, clerks, catering and dining staff, parliamentary services, IT — where would we be without them — the library staff, maintenance and engineers, and of course our protective services officers, including the officer who was injured in the course of his duty serving this Parliament. I wish him a full and speedy recovery. Hopefully everyone will enjoy a good break, and I look forward to seeing everyone in 2013.

Early childhood services: federal funding

Ms MIKAKOS (Northern Metropolitan) — I express my surprise at the Baillieu government's decision at a recent ministerial council meeting of education and early childhood development ministers to vote against a recommendation that would create more child-care places for Victorian families. The federal government sought to establish a national task force to investigate and remove barriers to the opening of new centres. By contrast, South Australian, Northern Territory and Australian Capital Territory governments all supported the recommendation. The latest child-care data update shows an 11.4 per cent increase over the past year in the number of Victorian children now in long day care, which is much higher than the national average of 9.1 per cent. I know that with the New Year being almost upon us many Victorian families will struggle to find child-care places. With more and more families on waiting lists it makes no sense that this government would again shirk its responsibilities to Victorian families. Perhaps that is why the 2012 Victorian families statement has never materialised.

Northern Interfaith Intercultural Network

Ms MIKAKOS — On 4 December I attended the Northern Interfaith Intercultural Network end-of-year function. This network promotes harmony amongst the diverse faith and cultural groups across Melbourne's northern region. Greater interfaith dialogue is vital, and I wish the organisation all the very best in its work.

Women: health services

Ms MIKAKOS — I also express my concern about the Baillieu government's cuts of more than $25 million in financial assistance to community health services across the state. According to the Women's Health in the North annual report for 2011–12, along with other statewide woman's health services, it will be facing the challenge of 10 per cent funding cuts over the next two years. These cuts are disastrous and will have a serious effect on the health of Victorian women. I urge the government to reconsider this appalling decision.

Hon. Richard Strachan de Fegely

Mr RAMSAY (Western Victoria) — I take this opportunity to acknowledge the passing of a friend, mentor and well-respected parliamentarian, Richard de Fegely, known fondly as Dick. Dick was largely responsible for me standing for the western Victoria ticket, as he was responsible for my partner, Sarah Henderson, standing for the federal seat of

Corangamite, and he was a great support to both of us. He stood for Ballarat Province in 1985 and held the seat for 14 years. His was a passionate rural voice in Parliament, and he did it with style over those years. A man from the land, he loved his family, he gained strength from his wife, Ruth, who was his Rock of Gibraltar, and he was proud of his sons, Charles, Rob and Philip.

Dick was a great social communicator who was dedicated to his community and pursued his interest in education with his work at the University of Ballarat. He hated to be branded as a politician but saw himself as a parliamentarian serving all sections of the public. He had roles as Opposition Whip, shadow Minister for Housing and Construction, and Government Whip in the Kennett government. As a rusted-on Kennett supporter and the rural eyes and ears of the Kennett government, after retiring he was still an activist putting pen to paper and giving his views on what he thought was important for the prosperity of rural Victoria.

Dick's funeral was attended by premiers, ex-premiers, ministers and ex-ministers, many former and current parliamentarians, as well as members of communities that had been touched by his work and advocacy. His three sons spoke at the funeral, as did a parliamentary colleague, Rob Knowles. I know Dick would have been proud and well satisfied that his job was done in leaving a legacy in rural advocacy that will continue.

Motorcycle Riders Association: Toyrun

Mr ELSBURY (Western Metropolitan) — I rise today to congratulate the organisers of the Motorcycle Riders Association on its Toyrun which was held last Sunday. Kerry Walton almost single-handedly organises this great event. It was held at Calder Park Raceway, with riders coming from the Mornington Peninsula, Gippsland, Ballarat, Bendigo, Geelong and even as far away as Mildura. It is a great event which brings together people with the common cause of supporting the Salvation Army in collecting toys and other items for families that are doing it tough.

Swimming: pool safety

Mr ELSBURY — I also raise with members and more broadly the community the importance of pool safety as we come into the summer months. I was pleased to be able to join the Minister for Multicultural Affairs and Citizenship, the Honourable Nicholas Kotsiras, at the Maribyrnong swim centre last week to reinforce with ethnic communities the importance of learning to swim and knowing about pool safety. My daughters both go to their swimming lessons, and we have gone through the full gamut of learning resuscitation and first aid when dealing with people who fall into swimming pools.

Australian Red Cross Blood Service: donors

Mr ELSBURY — I also reinforce with everyone the importance of giving blood at this time of the year. Last week I went down to the Werribee donor centre and gave plasma which will be used to save many lives over the next few weeks. I encourage other people to do the same.

Christmas felicitations

Mrs COOTE (Southern Metropolitan) — We have spent an entire year in here talking about and criticising people and each other, and it is timely to reflect on some of the good things that have happened. I put on record my thanks and praise for the extraordinary work done by the members of the Department of Human Services (DHS), especially the front-line staff: the child protection workers; the staff in group homes at Colanda, Sandhurst and Oakleigh; and all foster carers in this state. Foster carers do the most extraordinary work, and I want to put on record that we appreciate the work they do. We know how challenging it can be. I send a thankyou from each and every one of us.

I also thank the advocacy groups — for example, Berry Street — and disability advocacy groups such as Yooralla, Scope, E. W. Tipping Foundation and Karingal, to name a few. I thank all the DHS front-line regional staff who deal with so many challenges during the year, and I thank the Lonsdale Street staff, who work exceedingly hard.

Most of all I recognise parents, carers and especially each individual with a disability. There are some exceptional people in our community who do the most extraordinary things. They are an inspiration to each and every one of us. My very best wishes to them, to this entire chamber and everybody who works in and around this place. I wish all a happy and safe festive season, and I hope everyone enjoys it with the people they love.

Hon. Richard Strachan de Fegely

Mr O'BRIEN (Western Victoria) — I join my colleagues in expressing my condolences to the family of Dick de Fegely. Although I did not know him personally, his farm was legendary in the area, particularly to shearers anxious to obtain the Quamby run and who are grateful for the hospitality that his family continues to mete out to them.

Wind energy: small-scale turbines

Mr O'BRIEN — I express my congratulations to Mr Guy and his family on the arrival of their new baby, and I commend him for his advocacy of behalf of the Ukrainian community.

However, the matter I bring to the attention of the house is the minister's work in relation to renewable wind energy, particularly small-scale turbines. Such turbines are manufactured locally in the Geelong area, and one such turbine is exhibited by Austeng, which has been licensed to produce the turbine known as the Eco Whisper. It is Australian designed and manufactured, and it provides several advantages over the larger wind farm turbines, which we have heard about frequently. This one does not have visual amenity and does not make noise. It resembles, in fact, the Southern Cross turbine, which many people are familiar with, in the sense that it is small scale and able to be used for a house.

Minister Guy, by approval of amendment VC91 on 31 July 2012, has confirmed that these small-scale turbines are not subject to the Victorian planning provision 2-kilometre rule and are therefore able to be encouraged for investment in Victoria. I urge companies to continue that investment and the minister to continue his good work.

Sheila Purcell

Mr O'DONOHUE (Eastern Victoria) — I would like to acknowledge the sad passing of two members of the Liberal Party in my electorate. The first is Sheila Lilian Purcell, who passed away recently. Sheila Purcell was a tireless worker for the Berwick branch of the party. Not surprisingly, like so many other members of the party, she was also heavily involved in the Berwick-Upper Beaconsfield Red Cross and a range of other community activities. My condolences to Tony and the family.

Dame Elisabeth Joy Murdoch, AC, DBE

Mr O'DONOHUE — I would also like to join other members of the house in acknowledging the passing of Dame Elisabeth Murdoch, who I knew as she was a member of the Liberal Party in Eastern Victoria Region. She was a very humble, wonderful woman. As the Premier said, 'She was one of the most loved and most loving Victorians'.

Cycling: government strategy

Mr O'DONOHUE — On a separate matter, I would like to congratulate the government on the release last Sunday of its cycling strategy, Cycling into the Future 2013–23. I would particularly like to thank all those at the Department of Transport, with support from VicRoads and other government agencies, for their dedication and their incredibly hard work to get the job done and to lay out a plan and a vision for cycling in Victoria. I would also like to acknowledge the $18 million funding announcement by the Minister for Planning, Mr Guy, to complete the Darebin Creek Trail — something Labor never did.

CARDINIA PLANNING SCHEME: AMENDMENT

Mr O'BRIEN (Western Victoria) — On behalf of the Minister for Planning, Mr Guy, I move:

> That, pursuant to section 46AH of the Planning and Environment Act 1987, Cardinia planning scheme amendment C165 be ratified.

Cardinia amendment C165 introduces an incorporated document using clause 52.03, 'Specific sites and exclusions', of the planning scheme to allow the land at 22–30 Downey Road, Dewhurst, to be subdivided into two lots of 1.7 hectares and 6.4 hectares. Dewhurst is located outside the urban growth boundary and is identified as a rural locality in the Cardinia planning scheme. The land contains two separate dwellings, one occupied by Mr and Mrs Reading and one occupied by their daughter, who suffers from a medical condition. The second dwelling was purpose built to address her medical condition.

The amendment was exhibited between 19 July and 20 August, and no objecting submissions were received. Cardinia Shire Council requested the amendment and adopted it on 17 September. The amendment requires ratification by Parliament under section 46AG(1) of the Planning and Environment Act 1987, as, according to the Department of Sustainability and Environment's planning provisions for Melbourne's green wedges, it:

> has the effect of altering or removing any controls over the subdivision of any green wedge land to allow the land to be subdivided into more lots or into smaller lots than allowed for in the planning scheme.

The amendment allows for a subdivision outside the urban growth boundary.

I note that the amendment is supported by the opposition. There have been heartfelt speeches by the member for Gembrook, Brad Battin, and the member for Richmond, Richard Wynne, who are both members in the other place. I urge members wishing to explore the background of this important amendment to read

those contributions. They are a demonstration of the cooperative manner in which Parliament and parliamentary representatives can work to achieve an outcome that is beyond politics — and which is very important to this family.

It is an honour for me to move this amendment on behalf of Minister Guy. He is unavailable because of the joyous occasion of the birth of his child, but he did take the time to personally brief me on the background to this amendment. I note that the contributions in the other place acknowledge the work of the minister, his staff and the Department of Planning and Community Development, who, in conjunction with the member for Gembrook and opposition representatives, have combined to achieve this important amendment for the family of a great Australian, Mr Les Reading, and his daughter in their exceptional circumstances. I commend the amendment to the house.

Mr TEE (Eastern Metropolitan) — I am pleased to make a contribution on this issue. I share Mr O'Brien's sentiment in terms of the opposition being wholly supportive of this planning scheme amendment. I think it is worth taking a few minutes, though, to reflect on the broader context of the green wedges and their protection. They are an important part of the psychology of Melburnians, and they are an important asset in terms of the amount of agricultural activity that occurs there.

It is worth remembering that Melbourne was initially settled by Europeans because of its attractive agricultural land. A lot of that is protected by our green wedges, as it ought to be. There are a lot of important environmental benefits and a number of important species that are protected in the green wedges which surround Melbourne. The green wedges are an important part of the Melbourne landscape, they are an important part of our economy from an agricultural point of view and they are important part of our environment in terms of the protection they offer, but they are also an important part of Melbourne's access to open space.

I do not want to spend too much time expressing our concerns about the future of the green wedges. Until now, importantly, they have received bipartisan support, and that is the spirit in which we are approaching this planning scheme amendment. Unfortunately, when you look at what is being proposed for the green wedges in terms of the amount of development and the carving up of the land under the green wedges review that is currently being undertaken, the concern we have is that planning applications like these, which require the formal support of both houses, will be a thing of the past because the amount of development that can occur under the new zones will undermine what the previous government did in making sure that any changes to the green wedges are considered by both houses of Parliament.

Our concern is that the process that has previously been put in place — the process that we are going through today whereby we look at the protection of our green wedges and we only take away from that protection in exceptional circumstances — is effectively being undermined through the zone processes, which, as I said, will see more development and development that is not linked to agriculture, a greater carve-up of our land, restrictions in relation to the size of the hospitality industry and the patron numbers allowable on the green wedges and so on. We are concerned about those changes, and I need to put those concerns on the record.

We are also concerned about the impact the extra development will have in terms of fire risk. As we head into summer we are aware that 100 000 hectares of green wedge land was burnt during the Black Saturday fires, and we are concerned that the zone changes on our green wedges will see more development and development that is not linked to agriculture, and we are concerned that that development will put more people at risk. We are also concerned that this flies in the face of the 2009 Victorian Bushfires Royal Commission recommendations, which indicated that you ought not put people at risk of fires.

By way of background and context, it is important that we put our position on the record in terms of our concerns about the future of the green wedges under this government. We think that the process that the previous government put in place, which is the mechanism that we are now dealing with, is the appropriate way in which you deal with development on the green wedges.

The particular circumstances that Mr O'Brien has identified are unique and exceptional and they demand our attention. This is about a family that is in difficult circumstances, as Mr O'Brien has outlined. The net outcome of this planning scheme change will not see additional development in terms of housing. It will not see a diminution in terms of the environment or of any of the agricultural land, but it does support the particular family members involved, who are no longer able to stay on the land. We believe that this is appropriate because the circumstances are exceptional, because there is no additional development and because there is no change to the character of the area, and we are supportive of this change. We hope that this regime is the one that goes on into the future.

As I said, our concern is that these changes will effectively undermine protections such as those that the previous government put in place to protect the green wedges. We think that is unfortunate for the environment, it is unfortunate for the economic wellbeing of our farmers in those areas and it is unfortunate for the future generations. However, as I said, on this occasion we think this is an example of the process working very well and very effectively.

Mr BARBER (Northern Metropolitan) — The Greens will support this motion. It relates to a particular land title held by a family in a particular situation. I am sure that the family members enjoy and value living in that part of the green wedge, an area I have visited many times, and we wish them well.

Motion agreed to.

MINERAL RESOURCES (SUSTAINABLE DEVELOPMENT) AMENDMENT BILL 2012

Second reading

Debate resumed from 29 November; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Mr LENDERS (Southern Metropolitan) — I rise to speak on this bill, and in doing so say that the Labor Party will not be opposing the bill. Most of the items in the bill have been adequately covered in the discussion by my colleagues in the Legislative Assembly Ms D'Ambrosio, the member for Mill Park, and Mr Wade.

Hon. D. M. Davis interjected.

Mr LENDERS — Yes, Wade Noonan, the member for Williamstown. I have so much respect for him I call him Mr Wade. He is a very impressive man and one of whom Mr Davis's side of politics should be very, very fearful — particularly Mr Davis, as Minister for Health.

However, I will return to the bill, which I will deal with in two parts. As I said, Wade Noonan and Lily D'Ambrosio dealt with the main issues in the debate in the Assembly, and I will confine my remarks to a general comment on the bill and to new sections 110AA to 110AG inserted by clause 7 and the views of the Minerals Council of Australia on that clause. But more significantly I will comment on how the government has treated the industry in the lead-up to this bill. In doing so I will also comment on some of the comments made by my colleague Wade Noonan in the Assembly: where is the government's vision, where is the progression and where is the integrated whole that is coming out of the assorted pieces of resources legislation that are bowled into the Parliament almost on a weekly basis?

I will also comment on how difficult it is to have scrutiny of this legislation, with all due respect to my colleague Mr Hall, who is in the chamber and does a very diligent job — —

Mr Ondarchie interjected.

Mr LENDERS — I say to Mr Ondarchie that I am genuinely praising Mr Hall — other than on the Hall doctrine, which I have issues with — because he treats the Parliament as a Parliament and is more than happy to take questions in the committee stage of bills, unlike his colleague in the Assembly, Michael O'Brien, the Minister for Energy and Resources, who is too fearful to face Lily D'Ambrosio, his shadow, in debate on what has now been, I think, 22 pieces of legislation. Maybe some of those bills have been on gaming, but certainly the minister has taken 22 pieces into the Legislative Assembly and has not had the courage on even one of them to face Lily D'Ambrosio in a debate.

I know Lily D'Ambrosio is a good debater, and I have dealt with her on internal Labor Party issues at times, but surely the minister should face his fears and face her in a debate. The fact that Mr O'Brien has not faced his shadow minister in one committee of the whole in the Legislative Assembly in the 25 months of the Baillieu government says something about the lack of courage of this minister to stand by the decisions he is making. Not only do I suggest that Mr O'Brien find the courage to face Ms D'Ambrosio in debate but I also suggest that he find the courage to face the industry to talk about his legislation. I think facing the industry means that you sit down and discuss your issues; you do not say that consultation has taken place because you have sent the industry a letter.

I had a briefing on this piece of legislation from the minister's office and the Department of Primary Industries. It was a good briefing. They answered and acquitted every single question that I asked as the shadow minister. They were helpful, they were courteous, they organised the meeting and they answered my questions. They convinced me of the merits of this legislation, and my colleagues and I will not oppose it. But as a diligent spokesperson, when you have a departmental briefing you also start talking to industry, and that was when the penny really dropped for me as to the lack of consultation there has been from this government and how the industry feels about the bill.

What I will flag to the minister is that the Minerals Council of Australia has written to every member of Parliament or copied us into a letter it has sent to the Premier outlining its concerns about this legislation.

Mr Barber — Come out of the background, have they?

Mr LENDERS — Mr Barber is no friend of the Minerals Council of Australia and nor is the Labor Party a particular friend of the Minerals Council of Australia, but clearly neither is the coalition. But the Labor Party is not a foe of the minerals council either; it is a strong supporter of job generation in Victoria and sees the mining industry as an opportunity to generate jobs. We think the mining industry should be held to very strict standards on the triple bottom line in its returns to Victoria. The minerals council has written asking us to oppose this legislation, which we will not do. But I think any stakeholder is entitled to a frank discussion with government, and Mr O'Brien has failed to provide that opportunity, because the Minerals Council of Australia has felt compelled to write to every member of Parliament saying it was not consulted. The minerals councils has a range of concerns, and I will quote its letter, which says:

> Issue
>
> The Minerals Council of Australia Victorian division has significant concerns with the Mineral Resources (Sustainable Development) Amendment Bill 2012 currently before the lower house.
>
> Recommendation
>
> That the bill be withdrawn to enable clear demonstration of why the proposed changes are appropriate, an independent assessment of the potential impacts of the proposed changes on future industry activity, and assurances of procedural fairness.

It outlines some substantial concerns in relation to section 110 of the principal act and the amendments to that section in clause 7 of this bill, and I will raise those with the minister in the committee stage of the bill.

However, the first proposition I want to make is that this is another bill from a minister who does not have the courage to face Lily D'Ambrosio in the Assembly. Mr Drum laughs, but Mr O'Brien struts around as if he is the most confident and competent person in the state. He thinks he is the best debater since tertiary politics, and because he worked for former federal Treasurer Peter Costello he thinks he knows more than anybody else. But he does not have the courage to face his shadow minister and be scrutinised clause by clause. He leaves it for Mr Drum's leader to do so.

As I said, Mr Hall attempts to answer questions. If he says he will take them on notice, he does so and he gets back to you. He is an honourable man. But it should not be Mr Hall who faces the questions in this house on a piece of legislation that comes from the Minister for Energy and Resources, who is too cowardly to face his shadow, Lily D'Ambrosio, in debate. As I said earlier, before Mr Drum was in the chamber, Lily D'Ambrosio is a good debater. I have come off the worse in debates with her on some occasions. Mr O'Brien should have had the courage to face her in the Assembly, clause by clause, on this bill — and on the other 21 bills or whatever it is he has taken through the Assembly. But, no, he lobs them in, they go to the guillotine and he leaves it to Mr Hall on every occasion to try to answer the detailed questions on the clauses.

Mr Hall is an honourable man. He tries to answer the questions; if he cannot, he says he will take them on notice, and unlike other ministers, if he takes them on notice, he actually delivers answers. I am praising Mr Hall, which is probably not a good thing for him in a coalition, but I am using it as a contrast to Mr O'Brien, who has not been willing to do it.

Going back now to the concerns of the industry council — —

Mr Ondarchie — Finally.

Mr LENDERS — Mr Ondarchie says, 'Finally'. But we are a legislature that is scrutinising legislation, and the industry says it has not been consulted. This comes from a Premier, a Treasurer and a minister who say Victoria is ready for mining. They criticise the Greens and the Labor Party for making the place unfavourable for mining. They say, 'We need investment in Victoria; we need certainty'. Members have had the discussion about Mr O'Brien's media release headed — let me quote him correctly — 'Labor's fracking hypocrisy'. That was before he did his backflip and went further to the left than the Labor Party did. Mr O'Brien says that he wants mining jobs in Victoria.

The Department of Primary Industries has been gutted. There is no inspectorate service. If you talk to people in any mining company in this state, they say good things about individuals in the Department of Primary Industries, but they also say that there are so few people in the department that they cannot get a response or a quick return. You cannot get an answer to a question and there is no one-stop shop, because the department has lost 200 staff, many of them in the earth resources sector and in the agriculture sector, which members have heard me talk about before in this place.

We have a minister who says that Victoria wants to generate mining jobs and that he does not represent red tape and we have Mr Hall, who has the famous Hall doctrine: it was an election commitment; we will not do a regulatory impact statement (RIS) or a business impact assessment (BIA) on something. Today I will again put to Mr Hall: where is the RIS or BIA on this? Given that the Minerals Council of Australia is asking for this bill to be postponed so that it can have a discussion on it, I suspect Mr Hall's answer will again be, 'Oops, there isn't one'. While not opposing the bill, the point I am making in this debate is that the Minister for Energy and Resources says one thing and does another.

I will conclude my remarks in the second-reading debate and save my further remarks for during consideration of the purposes clause and new section 110. I invite Mr Hall in his summing up to deal with the particular issues that the Minerals Council of Australia has raised. If he can answer what has been raised, I will not pursue them with great vigour in the committee stage. The council says that there is a series of definitions in new section 110 that have no definition and that it has had no comfort from the government on what the definitions are. It refers particularly to the definitions of 'risk', 'public safety', 'the environment', 'land', 'property' and 'infrastructure'.

We have what the shadow minister for energy in the other place, Ms D'Ambrosio, outlined — that is, that Victorian Civil and Administrative Tribunal proceedings can be taken to the equity division of the Supreme Court for injunctions to be granted to get a good public outcome. A good public outcome is a good thing and that is why members of the Labor Party will not oppose this bill. However, the minerals council is saying that when you move from the jurisdiction of VCAT to the equity division of the Supreme Court these things are uncertain.

The industry was not consulted. We say that consultation means dialogue clause by clause, going backwards and forwards and people asking how something is going to work or pointing out that something is not going to work. That is consultation, as opposed to the government saying, 'We're doing a review of all these pieces of legislation over the next four or five years; we've consulted with you'. That is my interpretation, not that of the minerals council, of what dialogue seems to be for this government.

No level of risk is defined in new section 110 and there is no reasonableness test, as the minerals council says. Mr Hall has the same correspondence, because it was sent to the Premier and copied to all members of Parliament, so in the second-reading debate I will not go through all the other issues that the minerals council has raised, other than to say that from its perspective this bill is unclear, that there has not been sufficient consultation, and that there is arguably a significantly greater regulatory burden with no measure having been taken of the impact of it. In concluding and inviting him to comment, I ask Mr Hall: how does this fit in with attracting new jobs to Victoria?

Acting President, I was in your electorate last week, visiting the Stawell gold mine, which is a great mine. Like many people in this house, I have visited the mine and gone down it. It is 1.6 kilometres deep and you have to drive 11 kilometres to the bottom. Fortunately, I did not go down to the bottom. I am not as sturdy as some miners; it is a tad claustrophobic down there for me. You see the magnitude of the mineral resource, the challenges and what losing 360 jobs or the opportunity of 360 jobs coming could do. There is a separate debate about the things being done to try to mitigate the effects of losing those jobs and trying to find jobs in other places. There are lots of opportunities in mineral resources. Given that the government claims to be pro-jobs and pro-mining, the lack of consultation and this crash-through mentality without consultation can only be described as frightening for a company seeking to expand its minerals operations in Victoria.

The Labor Party will not oppose the legislation, but I indicate to the minister that during consideration of the purposes clause and particularly new section 110 I will be seeking answers that were not given to stakeholders in the consultation, which was clearly inadequate.

Mr BARBER (Northern Metropolitan) — The Greens will support this bill. We read with interest the comments of the Minerals Council of Australia and we certainly intend to address those concerns with the minister. It is novel that the Minerals Council of Australia has approached the Greens in this way. We will always, of course, take up the queries raised by any constituent group, both to ascertain the factual basis of what it has claimed and also to measure whether its anticipation of the impact is shared by the government. Mr Lenders made much of the lack of consultation. He is as much aware as I am that it is unusual for the minerals council to want or need to issue a general appeal to every single member of Parliament. I presume that in Mr Lenders's time in government he was used to dealing with the minerals council regularly, but never in the last term of Parliament did the minerals council feel the need to broadcast its concerns so widely. I find that significant, but possibly for a different reason from that which Mr Lenders does.

Mr Lenders's former government of course tweaked the enforcement provisions of the principal act on at least two occasions — and there may have been even more. For one of those occasions there was very wide-ranging public consultation involving those in the sector. On both occasions his government presented a rationale for why it was changing the enforcement provisions of the act and it also expressed its confidence that it was necessary and that its changes would be sufficient for purpose.

Now we have a new government coming in and making some dramatic changes to the act. You would not call these evolutionary changes; they are actually revolutionary. Penalties are being increased dramatically, and the ability for the minister to come in and take over the show is also quite radical. When we debate clause 1 of the bill during the committee stage I am keen to hear from the minister why it is that the government believes this large step is necessary when the previous government took baby steps and argued that they were the only necessary steps. I look forward to the committee stage and to getting into some further debate on that.

Of course we can take a guess about this. We have seen some fairly spectacular environmental risks, public risks and occupational health and safety risks taken in Victoria. On two occasions during my time in Parliament we have seen a whole river fall into a coalmine, and of course we saw the cracking of the Princes Highway, a major piece of infrastructure, which severely disrupted community life in the Latrobe Valley for a number of months. Each time events like these occurred an expert inspector was appointed, and in some cases we were able to read the inspectors' reports, but each time the government thought it had a handle on a problem major impacts kept coming back.

Many mines, especially the large ones in the Latrobe Valley, go through multiple levels of environmental and other approvals. Some people say there is too much green tape in this country. Perhaps they could explain to me how it was that, given the special arrangements that were put in place at the Yallourn mine to move the river, the mine collapsed one night early this year, shutting down a major section of the state's power supply.

This was despite the fact that the special arrangements to move the mine followed a methodology that was highly convenient for the mining operation, were reviewed under the Environment Protection and Biodiversity Conservation Act 1999 and the Planning and Environment Act 1987, went through an environment effects statement (EES) process and a supplementary EES process, won an Engineers Australia award and I believe had its ribbon cut by former Premier John Brumby.

I thought it was environmental protests that were a threat to our electricity supply — at least they are according to the rhetoric of both the Labor and Liberal parties — but it turns out that projects the government approves can be catastrophic failures. I will be interested to find out in detail how this legislation is going to ensure that events like that simply do not happen in the future.

Mr ELSBURY (Western Metropolitan) — I rise to support the Mineral Resources (Sustainable Development) Amendment Bill 2012. The regime by which we manage the earth resources sector in Victoria is of great importance as there are many thousands of regional jobs in mines across the state that are dependent upon this industry, including many jobs in offices in regional centres and executive jobs in buildings in the central business district of Melbourne. Mining, drilling and quarrying the resources of the state contributes $7.3 billion to our gross state product. The value of this sector is undeniable, and the benefits it brings to our state mean that we have the resources we need for production, we have gas to burn in our homes and we have relatively cheap electricity that can be used by industry. This sector also ensures that our homes remain lit and comfortable, and it ensures that we can use the modern conveniences we enjoy today.

This bill does not add to the regulatory burden the industry already works under, but rather it reinforces regulations already in place. Consultation on this bill has been undertaken — although you would not know it from some of the contributions we have heard on the bill. The Victorian division of the Minerals Council of Australia was consulted, as were the Prospectors and Miners Association of Victoria, the Construction Materials Processors Association, the Victorian Limestone Producers Association, Cement Concrete and Aggregates Australia and the Environment Protection Authority.

Mr Lenders — Are you saying the minerals council is lying?

Mr ELSBURY — Just because one group has a hissy fit does not mean we have to throw the whole thing out.

The amendments in this bill will strengthen community confidence that the government can regulate the mining and extractive sector. Confidence will also be

reinforced to ensure that appropriate protections are in place to support growth in the mining sector.

The bill will deliver clearer enforcement powers and increase the penalties for breaches of notices prohibiting activities or failure to take required remedial action. The bill will amend section 110 of the Mineral Resources (Sustainable Development) Act 1990, which will strengthen the enforcement powers of the Minister for Energy and Resources. The changes to the Mineral Resources (Sustainable Development) Act will extend the types of risks that may arise from acts or omissions by mining companies for which a section 110 notice may be issued for risks to public safety, land, infrastructure or property, as well as risks to the environment; allow the minister to apply to the Supreme Court for an injunction compelling an authority-holder to comply with a section 110 notice or restraining an authority-holder from contravening such a notice; and allow a court, in addition to imposing a penalty for non-compliance with a notice, broad discretion to make an order requiring the authority-holder to comply with the notice or any other order it considers appropriate.

Where there is a serious risk to the environment, infrastructure, land, property or public safety, the bill will allow the minister to undertake any remedial action that has not been undertaken by the authority-holder as required by a court order or injunction. It is intended that the state will undertake such remedial action very rarely and only as a last resort after all alternative enforcement measures have been explored and exhausted. The amendments will also increase penalties for non-compliance with a section 110 notice, including the daily default penalty. Penalties will be brought into line with the Environment Protection Act 1970.

Mining in Victoria is regulated by the Department of Primary Industries, with the Mineral Resources (Sustainable Development) Act 1990 providing the department with the authority to undertake its work. DPI is the primary department which provides the minister with advice about circumstances where an authority-holder or licensee, through either act or omission, is breaching the restrictions within the Mineral Resources (Sustainable Development) Act 1990. As the legislation stands, the only recourse government has where a breach occurs is to penalise the entity which is causing the breach or failing to comply with a notice. In contrast, the Environment Protection Act 1970 and the Occupational Health and Safety Act 2004 have means to ensure compliance with notices.

Under the New South Wales Mining Act 1992 inspectors can give directions in the event of non-compliance and, if necessary, the minister can undertake works and seek recovery costs. In South Australia the Mining Act 1971 empowers inspectors to give environmental and compliance directions. Where they are not complied with, the minister may undertake works and recover costs. As we can see, this is not a new way of doing things; it is the way they are being done by other jurisdictions across the country.

This bill moves to strengthen the compliance powers in Victoria under section 110 of the act so that the minister can enforce compliance. Where an authority-holder fails to comply with a notice the amendments in this bill will enable the court to impose penalties, make an order to comply, take remedial action and make other orders it considers appropriate. The minister will be able to apply to the Supreme Court for an injunction against an authority-holder who refuses to, or does not, comply.

As mentioned earlier, remedial action can be undertaken without the active participation of the authority-holder. Instead, the minister can provide an authorised person with the power to enter private or Crown land to undertake remedial action. Except in cases of emergency the minister must not authorise persons to enter land unless: firstly, the minister has given the owner-occupier of the land — and if the land is Crown land, the Crown land minister — reasonable notice; secondly, the land is entered at a reasonable time; and thirdly, that the minister has obtained or taken all reasonable steps to obtain the consent of the occupier of residential premises on the land before entering those premises.

It will be an offence to obstruct the minister or any authorised person without reasonable excuse. A corporation stopping remedial action being undertaken under an order will face a fine of 300 penalty units, and in any other case the fine will be 60 penalty units. The bill also provides that compensation will be payable by the government to the owner or occupier of private land for any loss or damage which has been or will be sustained as a consequence of remedial works, including: deprivation of possession of the whole or any part of the surface of the land; damage to the surface of the land; damage to any improvements on the land; severance of the land from other land of the owner-occupier; loss of amenity, including recreation or conservation values; loss of opportunity to make any planned improvement on the land; and any decrease in market value of the owner or occupier's interest in the land.

An agreement between the aggrieved and the government will be achieved in accordance with part 10 of the Land Acquisition and Compensation Act 1986.

Claims can be made within two years of the remedial work being completed by the authorised person. This action is taken so that those impacted upon by remedial work do not seek compensation from the authority-holder as the authority-holder may dispute their obligation. As a result of these amendments the government will be able to recover reasonable costs of remediation and compensation costs from an authority-holder who has not complied with a court order or injunction.

Failure to comply with a section 110 notice will attract penalties of 2500 penalty units for a corporation, with daily penalties of 300 units, and in any other cases 500 penalty units, with daily penalties of 60 units. To put this into perspective, the current regime of penalties is 1000 units for a corporation and 200 units in other cases, with daily default penalties of 20 and 10 units respectively. A person who contravenes the Environment Protection Act on a pollution abatement notice faces fines of 2400 penalty units and 1200 daily penalty units if they do not comply with the EPA.

Section 110 of the Mineral Resources (Sustainable Development) Act will broaden from being focused on the environment, as it currently stands, and expand to include risks to public safety, infrastructure, land and property. Amendments in this bill clarify that the minister may vary a notice issued under section 110. An authority-holder may apply to the Victorian Civil and Administrative Tribunal for a review of the minister's decision to serve a notice. It is intended that corrections of a minor nature or a technical error cannot be reviewed by VCAT, as this can be used as a method by the authority-holder to try to hold up works that need to be completed. This prevents authority-holders from using this process to delay compliance for a minor variation.

This bill protects property and infrastructure that is vital for the state of Victoria. It requires an authority undertaking mining or quarrying or any other resource-based activity in the state of Victoria to actually take note of what they are doing and what damage they could potentially do to the land around them or the infrastructure that is vital to this state. With that, I commend the bill to the house and look forward to its passage.

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1

Mr LENDERS (Southern Metropolitan) — I invite the minister to make some comments on the consultation and the objects of the bill, and the discussion on either clause 1 or the clauses that modify the operation of section 110 of the principal act would be equally appropriate for that purpose. In relation to the objects of the bill and the discussion, my question to the minister is: in his second-reading contribution Mr Elsbury said that the Mineral Council of Australia's letter was a hissy fit. I am wondering whether the minister agrees with Mr Elsbury's comment that the response to the bill by the Victorian division of the Mineral Council of Australia, its suggested amendments to the bill and its critique of the consultation is a hissy fit.

Hon. P. R. HALL (Minister for Higher Education and Skills) — I assure Mr Lenders that the Minister for Energy and Resources, Mr O'Brien, has a very good working relationship with the Minerals Council of Australia, Victorian division, and regards any contact he has with it very seriously. The minister has responded to those matters in a letter received by the minerals energy council. During the course of this committee stage matters relating to that will be dealt with.

Mr BARBER (Northern Metropolitan) — According to the Department of Primary Industries website, going back to September 2011 there was a review conducted of the Mineral Resources (Sustainable Development) Act 1990 (MRSD act). The questions that were put forward by DPI for review under the heading of 'enforcement' were:

> Do the enforcement tools provided in the MRSD act provide a flexible and efficient means of improving industry compliance and where necessary addressing non-compliance? Is there scope for other mechanisms, such as enforceable undertakings? Should more offences be subject to infringement notices?

Is it fair to say that the bill we are dealing with today is here as a result of the review that was conducted last year?

Hon. P. R. HALL (Minister for Higher Education and Skills) — While I am talking I will get some advice exactly on that. I thought it might be helpful to the committee if in our discussions on clause 1 I respond to a couple of the general issues raised by the opposition and the Greens. By the way, and I will say this formally when moving the third reading of the bill, but I thank them for their indication that support for the passage of

this bill will be forthcoming both from the opposition and the Greens.

During the course of the second-reading debate a number of issues were raised. First of all, the opposition said it would support the bill but queried the nature of it by asking, 'Aren't you supposed to be supporting job growth in Victoria?'. Opposition members were looking to impede or contradict the government's position of supporting jobs growth in the minerals industry. The Greens indicated their support but properly offered the general question, 'But how will it give greater recognition to environmental impacts of resource extraction in Victoria?'. In terms of both positions taken, the government needs to find an appropriate balance between that — that is, an appropriate balance between jobs growth, the use of our resources and the resulting environmental impact.

I also make a general comment about the minerals industry, its peak body in particular and other industry associations associated with mining, including the Prospectors and Miners Association of Victoria. One of the great things we have in Victoria is a responsible attitude, which is demonstrated by the minerals industry in terms of its obligations to meet a whole range of concerns associated with land-holding and environmental impact. I have always found that organisations like the Minerals Council of Australia and the Prospectors and Miners Association of Victoria work well with organisations like the Victorian Farmers Federation, governments and local governments towards finding the right balance between the needs of all parties. This bill seeks to again strike an appropriate balance between creating responsible minerals development activities in Victoria while having regard to issues like the environment, personal safety and the like, as the additions to section 110 indicate.

With respect to that, I will refer to a couple of issues which were raised and which I think are appropriate to deal with during debate on this clause. I refer first of all to the question of whether or not sufficient consultation has been undertaken with the various industry sectors with respect to this bill. Whilst the leader of the minerals energy council suggested there should have been more consultation, I have been advised by the Minister for Energy and Resources, Mr O'Brien, that such consultation took place. He indicated to me that the Victorian division of the Minerals Council of Australia, the Prospectors and Miners Association of Victoria, the Construction Material Processors Association, the Victorian Limestone Producers Association, Cement, Concrete and Aggregates Australia and the Environment Protection Authority were briefed in detail on the proposed amendments during the development of the reforms. Mr O'Brien has also indicated that since the introduction of and during the passage of this bill he has personally met with senior executives in some of Victoria's largest mining companies, and the bill was discussed in a cooperative manner and agreement reached on the development of protocols regarding the administrative implementation of the reforms. He has assured me that that level of consultation has taken place.

Mr Lenders raised a couple of matters, firstly, whether or not there had been a regulatory impact statement (RIS) with respect to this bill. I am advised that the assessment was made that this bill would not lead to an increase in the regulatory burden on the resources industry, and as a result an RIS was deemed not appropriate. This legislation does not require additional reporting by or impose regulatory requirements on industry. It simply gives the minister more powers to address issues which may be breaches of the undertakings required under section 110. As I said, because there is no increase in the regulatory burden, an RIS was not undertaken.

Mr Lenders also raised matters about definitions and quoted the content of a letter from the Minerals Council of Australia, which says there are no definitions here of what constitutes a risk, what constitutes public safety and other matters. I am advised, in response to industry questioning about the meaning of the new terms 'land', 'property' and 'infrastructure' that the Interpretation of Legislation Act 1984 defines 'land' in any Victorian statute to include buildings and other structures permanently affixed to land, land covered with water and any estate, interest, easement, servitude, privilege or right in or over land. The reference to land in the bill should not be limited to adjacent land or land in proximity to a mine, as an act or omission by an authority-holder may lead to risks that occur outside of such land but could still be directly attributed to an act or omission by an authority-holder.

The reference to infrastructure is based upon section 7C(2) of the Mineral Resources (Sustainable Development) Act 1990, which provides that the minister may declare a mine or quarry if the minister is satisfied there are geotechnical or hydrogeological factors within the mine or quarry that pose a significant risk to public safety, the environment or infrastructure. The term 'infrastructure' is not defined in the act and therefore takes on its ordinary meaning. The Oxford dictionary defines infrastructure to mean the basic physical, organisational structures and facilities — for example, buildings, roads and power supplies — needed for the operation of a society or enterprise.

Finally, the term 'property' is not defined in the act and therefore takes on its ordinary meaning. It includes every type of right, interest or thing of value that is legally capable of ownership and encompasses both real property and personal property. I could go on, but I think the general sense is that the word 'property' takes on the general meaning of the word.

They, then, are responses to some issues — about a regulatory impact statement, about definitions and about consultation — that were raised by members during the second-reading debate. Mr Barber asked why the new enforcement powers were necessary. I think that was the general question. I think he also hinted that an example of why we needed to extend the provisions in section 110 would be appropriate. For the record, currently section 110 reads:

> … an act or omission by the holder of an authority is likely to result in a risk to the environment —

and we are replacing 'the environment' with 'public safety, the environment, land, property or infrastructure'. We are extending the range of areas in which the minister can exercise powers under section 110 by the issuing of a notice requiring the authority-holder to take action, stop work or otherwise address an issue that might impact on not only the environment but on those other elements — public safety, land, property or infrastructure.

An example might be Princes Highway around Morwell; there was recently substantial cracking in the road. It was indicated that it may have been attributable to mining activity in the proximity. That posed a significant safety risk, not immediately for the workers or operations of the mine but for motorists using that section of the road. That issue was addressed through cooperative effort. In that sort of example, however, if the owners of the nearby mining operation were not in agreement and were not working cooperatively to address the problem, then as I understand it the new section 110 powers would give the minister the authority to require some sort of action be taken to address the issue. That is an example of how this provision might help in areas other than the environment, such as with public safety type issues.

Deputy President, I have attempted to respond to a number of the issues that were raised during the course of the second-reading debate. I am certainly happy to address other issues if members wish to raise further matters.

Mr BARBER (Northern Metropolitan) — Regarding the issue of consultation, my question was whether the bill that has been brought forward here is a result of the output of the consultation that was carried out in September 2011.

Hon. P. R. HALL (Minister for Higher Education and Skills) — I am advised that the answer to that is no.

Mr BARBER (Northern Metropolitan) — That is interesting because in that consultation process one of the questions that was put forward was the issue of enforcement. The minister says that the Princes Highway incident might have brought into doubt the power of the minister to issue a section 110 notice because it refers to the environment — not to public safety, worker safety or infrastructure. I tend to think the environment is a fairly all-encompassing thing; pretty much everything is 'environment', but perhaps there is a fear that without being more specific the minister's powers would fall short. Has there been an example where a court has expressed doubt about the minister's power to issue a section 110 notice? Has such a notice been challenged or does the department believe that there may be a future risk of that sort to its powers of enforcement?

Hon. P. R. HALL (Minister for Higher Education and Skills) — 'Future risk' was one phrase that was mentioned to me. My interpretation of this is that it puts beyond doubt that matters, which some may think are not related to the environment but are related to public safety risk issues, can be covered by provisions under this particular section. Yes, the environment is all-encompassing but that may possibly be challenged, so this makes the range of matters which can be covered under section 110 far clearer.

Mr BARBER (Northern Metropolitan) — How many section 110 notices have been issued this year, and how many have been issued over recent years?

Hon. P. R. HALL (Minister for Higher Education and Skills) — The preliminary advice I have received is that there have been around 50 section 110 notices issued, but the exact number is something I would prefer to take on notice and get back to the member on.

Mr BARBER (Northern Metropolitan) — That is very handy. I presume the minister is suggesting that it is somewhere around 50 this year?

Hon. P. R. HALL (Minister for Higher Education and Skills) — Yes.

Mr BARBER (Northern Metropolitan) — That is useful to know. Mr Hall also said that a regulatory impact statement was unnecessary because he did not think it would lead to a large additional burden. Can I take it then that it is the government's view that

extending this definition to include all the other things is not going to lead to a dramatic increase in the number of notices being issued — the 50 notices he just mentioned — over this year?

Hon. P. R. HALL (Minister for Higher Education and Skills) — Regarding the regulatory impact statement, guarantees in relation to public safety, environmental impacts, and land and property-related issues are already required as part of the permit conditions to enable those mining activities to take place. Therefore, there is no extension of the regulatory burden on those seeking the authority to undertake mineral resource activity. It simply gives the minister those greater powers to look at issues associated with matters other than the environment. I am not sure if an estimate has been made of whether it would lead to a greater number of enforcement notices under this particular provision. It may not, because it does not increase the requirements on licence-holders, but it does give the minister powers to act on a greater range of matters.

Mr BARBER (Northern Metropolitan) — I would have thought that the order to cease work itself would have been one of the larger parts of the regulatory burden, given that once a mining operation has stopped it is actually losing large amounts of money. In those recent catastrophic incidents that I referred to we know that mining was occurring right up to the minute when somebody first became aware of anything happening, and it was not long after they became aware that the final collapse actually happened. Given that there are many references throughout the bill and its later clauses to inspectors, how many people within the Department of Primary Industries are currently designated as inspectors and how many of them are doing the role of inspector?

Hon. P. R. HALL (Minister for Higher Education and Skills) — I can give Mr Barber two choices. The exact information will be sought if the committee is extended beyond question time, which is due in about 7 or 8 minutes, or I can give him an answer when we come back. Otherwise I can take Mr Barber's question on notice and provide him with an answer formally.

Mr LENDERS (Southern Metropolitan) — I would like to take up the minister's response to the question about consultation. The Minerals Council of Australia has written to the Premier with a series of questions and copied every MP. The minister helpfully outlined a number of definitions which he could confirm or for which a common usage applies. Without asking the minister to identify them now, there was also a request in the letter for a definition of 'avoid', 'minimise', 'remove', 'reasonable time' et cetera. I seek a statement from the minister as to whether the Minister for Energy and Resources has replied in detail to the letter from the minerals council.

Hon. P. R. HALL (Minister for Higher Education and Skills) — I thank Mr Lenders for his question. The minister has replied in detail to the minerals council, and I think the reply goes generally to the issues that have been raised. If Mr Barber is asking me for a definition of a couple of the terms that were in the letter, I do not think the definitions were raised to the extent that I quoted before, nor were the other terms. The letter I have that is dated 9 November and was sent to the Premier is just over a page in length. I am not sure whether some of the more detailed commentary was contained in that letter, because the response to the Minerals Council of Australia — a copy of which I also have — does not go to all those issues but covers the general matters raised in the council's letter of a little over one page. I am happy to read the content of that letter onto the record or to provide a copy to the member if he so wishes.

Mr LENDERS (Southern Metropolitan) — I am making a request to the minister. I am not expecting him to answer here — he has reasonably sought to answer on a number of those definitions — but I ask him to request of the Minister for Energy and Resources that those four requests for definitions from the minerals council be addressed.

On the issue of consultation, it is worth noting that the minerals council is not the sort of body that lightly sends letters to 128 members of Parliament. It is fine for Mr Elsbury and the minister to assert that there has been consultation with the minerals council, but a lot of it goes to the definition of what consultation is. As I said in my earlier remarks, someone saying that something is happening or 'We are putting a bill through' et cetera is not consultation. Without holding the minister at the table, who is representing in this place the Minister for Energy and Resources, to the detail, I make the point that the government might be of the view that, because it said it has consulted, it has consulted. Then you get bodies like the minerals council coming back with a very strong view saying, 'You have missed this, this and this'. I urge the minister to have another look at what consultation means before so boldly asserting it.

Following through on Mr Barber's comment about the regulatory impact statement, I am finding this to be an interesting debate, particularly Mr Barber's vigour in taking up some of the procedural issues raised by the minerals council. As I interjected earlier, I think aliens

have taken over his body, but they are very valid process points. That is the point I make and Mr Barber makes. Mr Barber's point about a minister simply asserting that a regulatory impact statement is not required because the burden is removed is absolutely valid. There is an economic impact on a company when it is ordered to cease operating, as is the case under the orders provided for in this bill, where a minister can go to the Supreme Court and have it tell a company to cease operating for a period of time.

I am not arguing that the minister should not have power to tell a mining company to cease operating if it is contaminating the environment or threatening the wellbeing of workers. I am not suggesting that, but I am saying that it goes to the point that I think this is — I will stand corrected — the 22nd bill I have addressed in this house where there has not been a business impact statement or an RIS from this government. Ministers can simply assert that there is no business impact when, as Mr Barber says, being ordered to cease work for days on end is by any definition a business impact. I would urge the minister to drift from the Hall doctrine — it is not in the government's election commitment — that in this case it means that no RIS is required. It is simply an assertion from the Minister for Energy and Resources, who will not face scrutiny clause by clause on any piece of legislation he has introduced to the 57th Victorian Parliament. What we are seeing here once again is a minister asserting there is no business impact when I would assume there is.

That concludes my questions on the objects clause and after question time I will have a limited number of questions on clause 7 of the bill, which inserts new sections 110AA to 110AG.

Hon. P. R. HALL (Minister for Higher Education and Skills) — While we have an opportunity, I will just make sure that I have this information correct. I will seek to obtain some information for Mr Barber about the number of notices that have been issued under section 110 and how many inspectors are employed by the department to undertake that work.

Mr Lenders asked whether further comment could be provided on the definitions, some of which I read, and I will request that that information be provided to him in writing. If there is some further detail about consultation dates and forms, I would be happy to provide him with those as well. I think Mr Lenders was also asking whether further information could be provided on why no RIS was required in this instance. I will undertake to obtain that information.

Mr BARBER (Northern Metropolitan) — There is one more piece of information I request. The number of fines issued for failure to comply with a section 110 notice would also be useful.

Business interrupted pursuant to standing orders.

QUESTIONS WITHOUT NOTICE

Employment: government performance

Hon. M. P. PAKULA (Western Metropolitan) — My question is to the Minister for Employment and Industrial Relations. On the last sitting day of 2011 the minister was asked a question about job losses, and his answer was, in part:

> But if you are talking about jobs and employment, since the Victorian coalition came to office 9400 new jobs have been generated in Victoria. We are actually ahead.

In looking at the most recent jobs data, is the minister prepared to restate that claim that we are actually ahead on the last sitting day of 2012?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank the member for his question. Of course we recognise that Victoria's unemployment rate is currently at 5.5 per cent seasonally adjusted. There were 2 878 900 Victorians employed as of November 2012. This compares with a figure of 2 845 200 in December 2010 — an increase of 33 700 jobs since the Victorian coalition government came to office.

Supplementary question

Hon. M. P. PAKULA (Western Metropolitan) — I thank the minister for his answer. With the confidence with which it was given, I can only assume that he continues to believe that we are actually ahead. I would like the minister to take note of the fact that the most recent jobs data suggests that 13 700 jobs were lost in November, 10 600 of them full time; unemployment is up; the participation rate is down; the rate of underemployment is up; and over the last six months Victoria has lost more jobs than any other state or territory in the country. If this is the minister's idea of Victoria being ahead, could he tell us what being behind would look like?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank the member for his question. We have consistently said that there are enormous challenges facing the industries here in Victoria, but we have also identified some of those challenges, be they the carbon tax or Labor's failed

industrial relations laws. I can say there has been an increase in employment in this state since we have come to office. I can also say that employment in the particular industries that those opposite had forgotten about, like manufacturing — the most significant full-time employer in this state — has increased since we have been in power.

Honourable members interjecting.

Hon. R. A. DALLA-RIVA — You hear them harp across the chamber about the figures. The realities are that the most recent Australian Bureau of Statistics labour force data indicates an increase in jobs across Victoria against the rest of Australia.

Skin cancer: prevention

Mrs COOTE (Southern Metropolitan) — My question is for the Minister for Health, Mr Davis. Can the minister inform the house of recent Victorian announcements and initiatives to reduce the prevalence of skin cancer?

Hon. D. M. DAVIS (Minister for Health) — I thank Mrs Coote for her question and indicate that today the government launched 'Skin cancer prevention framework 2013–17'. This is a very important document that will lay out a framework for reducing the incidence of skin cancer into the future. I am sure it is a document that will receive wide support across the community and no doubt across the chamber as well.

All of us understand the importance of skin cancer prevention, and we know that the figures for melanoma are very high in Victoria and very high in Australia and that much more can be done to reduce the incidence of melanoma. It is a fact that in 2010 there were more than 40 000 new cases of skin cancer, of which 2256 were melanomas. During 2010, 297 of those people died of melanoma. The government's response to the issues around skin cancer — the still very high prevalence — is to work with the academic community and the broader Victorian community to develop a comprehensive framework that will seek to reduce the incidence of skin cancer in our community, and particularly the incidence of melanomas.

I want to place on record my thanks to all those who submitted to this process. More than 200 individuals provided formal submissions, including many eminent academics and researchers, but also clinicians from the Peter MacCallum Cancer Centre and other important institutions in this state.

A key aspect is that from 31 December 2014 the government has said it will bring legislation to this Parliament to ban sunbeds and to ban solariums. That will be a significant advantage for the community. It will reduce their impact on skin, particularly the skin of young people. The fact is that solariums have a significant and direct impact on the causes of melanoma in those aged under 35 in particular.

The framework of course is much more than that. It seeks to work with other parts of government around the country — other states and the commonwealth — to set up a national framework for the achievement of these objectives and to work with councils, schools and workplaces to put in place arrangements to reduce the incidence of skin cancer, and melanoma in particular.

As I say, I want to thank my department for the work it has done and the section of the department that has carried the load on this work. I thank Professor Grant McArthur and his team for the input that they have provided. Peter Mac has been magnificent throughout this process. I also thank Todd Harper at Cancer Council Victoria and a number of individuals who have put significant effort into this document through formal submissions.

I believe this is a constructive and comprehensive way to move forward. I can indicate to the chamber that I will put on the Australian Health Ministers Advisory Council agenda for the next meeting discussion of these matters to deal with the issues of importation and manufacture of sunbeds nationally and to seek as much national consistency as we can through this process. This is an area of great promise, because it is prevention, it cuts costs and it cuts the terrible misery and the impact on families of skin cancer.

Public sector: job losses

Mr LENDERS (Southern Metropolitan) — My question is to the Assistant Treasurer in his capacity as the minister representing the Minister for Finance. Will the minister rule out any additional public sector job losses being announced in tomorrow's midyear budget update?

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I thank Mr Lenders for his question. Mr Lenders invites me to speculate on what is going to be in the midyear budget update. I say to Mr Lenders that that midyear budget update will be released tomorrow, as has been indicated, and he will be able to see what is in it then.

Supplementary question

Mr LENDERS (Southern Metropolitan) — My supplementary question to the minister then is: can the

minister at least assure the house that he will achieve his target for public sector job losses in the Department of Treasury and Finance and the Department of Business and Innovation, where he has ministerial responsibilities, without resorting to compulsory redundancies? It is related to the original question and the answer.

The PRESIDENT — Order! I will allow the minister to respond.

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I thank Mr Lenders for his supplementary question. What I will say to Mr Lenders is that this government will deliver a budget which is responsible, unlike the one we inherited from the previous government. When we came to office — —

Honourable members interjecting.

Hon. G. K. RICH-PHILLIPS — Mr Lenders refers to doubling debt. It was in fact Mr Lenders in his last budget who forecast an increase in debt of more than 80 per cent. The last budget update of Mr Lenders in December 2010 forecast an increase in debt of more than 80 per cent. This government inherited a budget position which was unsustainable; this government is getting the budget back into a position that is sustainable for future years.

Royal Children's Hospital: kindergarten program

Ms CROZIER (Southern Metropolitan) — My question is to the Minister for Children and Early Childhood Development, Ms Lovell, and I ask: can the minister advise the house how the Baillieu government is ensuring that children in the Royal Children's Hospital can stay connected with an early childhood education program.

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — I thank the member for her question and her ongoing interest in the early childhood education of Victorian children. Last week I was delighted to join the Premier, the chair of the Royal Children's Hospital, Rob Knowles, the Royal Children's Hospital CEO, Christine Kilpatrick, and also the executive director of the Royal Children's Hospital Education Institute, Glenda Strong, in announcing that the government will fund a kindergarten program within the Royal Children's Hospital. This is an important addition to the Royal Children's Hospital prep to year 12 education program. The program ensures that while children are in hospital they do not miss out on an early education learning opportunity. The average stay for preschoolers in the Royal Children's Hospital is 9 days. However, last year almost 100 children spent more than 20 days in hospital. As I have said, running an early childhood program within the hospital will ensure that those preschoolers do not miss out on that vital early childhood education opportunity.

As we know, early childhood programs can be run with flexible arrangements, so that some of the programs within the Royal Children's Hospital will be run in activity rooms, but others for some of the sicker children can be run at their bedside. The program will be flexible in its delivery, and the educators at the Royal Children's Hospital will stay in close contact with the children's early childhood services so they can ensure that the program suits the needs of the child.

We know that 95 per cent of children's brain development happens in the first five years of life. This program is vitally important to keep those children who are in hospital in contact with their learning opportunities, and it will be a great addition to the hospital. We have provided funding for 23 kindergarten places within the hospital, which is approximately $90 000 to the hospital each year. That funding will be ongoing and will continue to be reviewed according to the hospital's needs and the demand.

It was wonderful to see the enthusiastic teachers within the education unit at the Royal Children's Hospital. They were fantastic with the children who were in the hospital when we visited last week.

It is also fantastic to see the state government supporting the Royal Children's Hospital. While the federal government is cutting $107 million from Victoria's hospitals, the state government is supporting Victoria's hospitals. The result of the federal government's cuts to health will mean that the Royal Children's Hospital has its budget reduced by $3.5 million. That is a disgraceful act by the federal government to cut vital health funding to Victoria's most vulnerable children.

Victorian Registration and Qualifications Authority: fees

Mr LENDERS (Southern Metropolitan) — My question is to the Minister for Higher Education and Skills, Mr Hall. Under the minister's full cost recovery model, the Victorian Registration and Qualifications Authority's application and assessment registration fees for the vocational education and training sector are slated to rise from around $2040 to more than $15 000 over the next four years. Can the minister advise the

house whether he will allow those fees to rise in that way?

Hon. P. R. HALL (Minister for Higher Education and Skills) — In reply to Mr Lenders's question, the Victorian Registration and Qualifications Authority has fees for a whole range of different functions that it undertakes. Yes, under the previous government there was a move towards regulatory authorities like VRQA fully recovering costs of their functions. I simply say to Mr Lenders that you cannot just say that the fees are going to increase from a certain amount when VRQA applies fees for a whole range of functions that it exercises as a regulatory body.

Hon. M. P. Pakula — They are all going up.

Hon. P. R. HALL — Mr Pakula, I am not sure whether that is the case or not. Some specific figures were put to me. I do not know to what particular function those fees are being applied.

Supplementary question

Mr LENDERS (Southern Metropolitan) — The Moe Life Skills Community Centre, which is in the minister's electorate, is registered with VRQA to provide employment skills courses for people with disabilities, accredited further education courses and working place opportunities. It will face a fee increase from $2000 to $15 000. Is that correct?

Hon. P. R. HALL (Minister for Higher Education and Skills) — I do not have that information with me. I do not know whether it is absolutely correct or not. That is something I will take on notice, and I will get back to Mr Lenders.

Darebin Creek Trail: link

Mr ONDARCHIE (Northern Metropolitan) — My question today is for my good friend and colleague in Northern Metropolitan Region, more importantly the father of new baby, Alex, the Honourable Matthew Guy, Minister for Planning. I ask the minister if he can inform the house what action the Baillieu government has taken to facilitate better planning for cyclists across metropolitan Melbourne.

Hon. M. J. GUY (Minister for Planning) — I thank my good friend and colleague in Northern Metropolitan Region, Craig Ondarchie, a man who has taken the time to walk an interesting piece of missing bicycle infrastructure — that is, the missing link in the Darebin Creek Trail. He has walked that track and seen the missing link. He knows, as bicycle groups know, that there is a great big hole in bicycle infrastructure in the north-eastern suburbs connecting to the eastern suburbs. I am proud to inform this chamber that the Baillieu government intends to fill that gap.

Through transport and planning, my work and that of Mr O'Donohue and Mr Ondarchie, and a range of others such as the Banyule City Council, particularly its former mayor and councillor, Tom Melican, we have arrived at a situation where the Department of Planning and Community Development will commit $18 million for the immediate construction of the missing link in the Darebin Creek bicycle trail.

This is in stark contrast to the previous government, which talked for 11 years about filling this link. It made commitments in 1999 but did nothing for 11 years. During the time of transport ministers Mr Batchelor, Ms Kosky and Mr Pakula, and all the planning ministers — Mr Hulls, Mr Thwaites, Ms Delahunty and even Mr Madden — all the ministers who were part of the previous government, not a cent was found for the Darebin Creek Trail.

This is not a budget bid or an announcement for the next three years. The planning department has the money now, it is allocated to the project now and construction will commence straightaway. This project is good to go, and it is proof positive that, together with the Jim Stynes Bridge, $16.5 million has been provided by the planning department for bicycle infrastructure. That is $34.5 million in two projects from the planning department for cycling infrastructure in this city over the next few years. That represents the greatest level of investment by any government in two cycling infrastructure projects in this city. It is the greatest level of infrastructure investment in two projects by any government in this city, so let us put that into perspective.

Ms Broad — It is so good. We know you are so nice.

Hon. M. J. GUY — We can tell that Candy worked for former Premier, Joan Kirner. Members of the Labor left faction were spiteful in the Kirner period, and they are spiteful now about two magnificent projects that the Baillieu government has initiated.

The Jim Stynes Bridge is the missing link connecting the CBD to Docklands, and the Darebin Creek Trail is the missing link connecting the eastern suburbs to the northern suburbs. These works are being done by the Baillieu government to ensure that good transport and good planning are integrated for the future of this city. Some governments talk about infrastructure. Some governments deliver strategy after planning. They have

ads in helicopters and ads on trains. Hollywood Bracks and all the others looked the part, but they did not deliver. It has taken the Baillieu government to deliver two projects worth nearly $40 million. This is the best piece of infrastructure for bicycle riders in Melbourne's history, and the Baillieu government is proud to deliver it as of today.

Minister for Health: register of interests

Hon. M. P. PAKULA (Western Metropolitan) — Allow me to add my congratulations to the highly excitable Minister for Planning on the birth of Alex and wonder aloud whether he was named after the most famous of Ukrainian Australians, Alex Jesaulenko.

My question is to the Minister for Health. I refer the minister to his declaration under the Members of Parliament (Register of Interests) Act 1978 and ask whether he has received any benefits that he intends to declare from the companies Stryker, AstraZeneca, Roche, GlaxoSmithKline or Pfizer?

Hon. D. M. DAVIS (Minister for Health) — As far as I understand, no.

The PRESIDENT — Order! Mr Pakula on a supplementary question.

Hon. M. P. Pakula — No, we have got what we need.

Adult, Community and Further Education Board: grants

Mr ELSBURY (Western Metropolitan) — My question is to the Minister for Higher Education and Skills, the Honourable Peter Hall. Can the minister advise the house of any recent announcements which will benefit adult and community learning in Victoria?

Hon. P. R. HALL (Minister for Higher Education and Skills) — I thank Mr Elsbury for his question and for his interest in adult learning. Adult learning is an area of our education system that I take every opportunity to promote. I think it is a much-underrated component of our education system, and I think there is a responsibility for us all to support and promote adult learning throughout our communities. I am very pleased to work with the Adult, Community and Further Education Board in the work that it does in providing assistance to many of our 310 Learn Local organisations scattered throughout Victoria. Members would know that the Capacity and Innovation Fund grants that the ACFE board provides periodically go a long way toward assisting Learn Local providers to provide the important services that they do to their local communities.

On Friday last week I had the pleasure of going to Coonara Community House in Upper Ferntree Gully to announce the outcome of the most recent round of the Capacity and Innovation Fund grants from the ACFE board, a sum of grants totalling $2.65 million. They have been awarded to 50 successful organisations that submitted applications to the fund. One of the two grants I was able to present on Friday was for Coonara Community House for a series of pop-up learning kiosks and information centres throughout the city of Knox and the surrounding eastern suburbs. Pop-up shopping has become a bit of a trend of late and, typical of the innovation that is demonstrated by our Learn Local organisations, it is adopting that concept to promote learning opportunities for adults.

Rowville Neighbourhood Learning Centre, in conjunction with a number of other organisations, was awarded almost $70 000 to help women from culturally and linguistically diverse backgrounds to access education. Again, this is the sort of project that Learn Local organisations excel at. The adult and community education sector now provides something like 16 per cent of accredited training for people with disadvantage or disability, and it does a fantastic job.

I know Mr Elsbury has been a keen supporter of adult education, because he has been out there with me. We have shared the stage to make some grant presentations to adult education providers in his electorate. Flicking through the list I can see there are five or six organisations in Mr Elsbury's area that might benefit from those grants this time around. We will endeavour to get those to him so that he can congratulate the organisations in his electorate when those amounts are made publicly available. I encourage members to visit their Learn Local organisations, learn about what they are doing in their electorates and help to promote the very good work that they do.

Minister for Health: conduct

Hon. M. P. PAKULA (Western Metropolitan) — My question is to the Minister for Health, who is also the Minister for Ageing and Leader of the Government. I refer the minister to the additional resources that all ministers receive by virtue of their position as ministers, including but not limited to the ministerial office staff, driver and allowance. I refer also to clauses 2.8 and 2.9 of the ministerial code of conduct relating to the appropriate use of those resources, and I ask: can the minister assure the house that he has at all times utilised

those resources in line with the terms of the code of conduct?

Hon. D. M. DAVIS (Minister for Health) — I always endeavour to comply with the code and to use those resources in the appropriate way.

Supplementary question

Hon. M. P. PAKULA (Western Metropolitan) — I note the careful use of the words 'endeavour to'. I am not asking whether the minister has endeavoured to use them appropriately, I am asking whether he has utilised those resources in line with the code of conduct.

Hon. D. M. DAVIS (Minister for Health) — I endeavour to do so and would always endeavour to do so.

Hospitals: federal funding

Mr O'BRIEN (Western Victoria) — My question is to the Minister for Health, and I ask: can the minister update the house on the impact of the commonwealth government cuts to Victorian hospitals following the visit to Victoria of the federal Minister for Health yesterday?

Hon. D. M. DAVIS (Minister for Health) — I thank the member for his question and note his strong support for hospitals and health services in his region. Many in this chamber were hopeful that the visit of the federal Minister for Health to Victoria yesterday would have seen her present a cheque to health services or bring $107 million in her pocket in the form of a cheque for Victorian health services to assist in filling the void for this financial year. Unfortunately, I can inform the house that hopes were dashed.

The federal minister visited Barwon Health, and there was no offer of the replacement funds that will be needed given the cuts in the commonwealth funding into the pool — $4.9 million will be the reduction at Barwon Health. I know that the board and staff at Barwon Health are concerned and the community is concerned about the impact of these commonwealth cuts on health care. I think many people had hoped when the federal minister went to Barwon Health yesterday she would actually have a solution in hand. The state government remains prepared to work with the commonwealth to find a solution.

I can indicate also that the commonwealth minister met with board chairs, who requested a meeting with the minister to make sure that she understood very directly the impact of the cuts on health services in Victoria. To explain to the house again, the cut from November to December is a significant one of $15.3 million. It will impact on a wide range of services. The hope was the Victorian health service board chairs that met with the federal health minister at the office of the Royal Australasian College of Surgeons would be able to thrash out some way forward. Unfortunately it is clear that the federal health minister does not understand the impact. She is uncaring and appears not to understand the full significance of the commonwealth funding reductions on hospitals like Barwon, the Royal Melbourne Hospital and the Royal Children's Hospital, which will face a significant reduction in funding because the commonwealth has reduced its health payments to Victoria.

It is clear that the cuts will impact very severely on hospitals such as Latrobe Regional Hospital, which will see more than $2 million cut because the commonwealth has taken money from the pool, cut money from November to December and will do so all through the year. However, the sharp impact on health services of a cut part way through the financial year will magnify the size of the impact.

The federal minister had all sorts of half-baked solutions, but what she did not have was the additional money that she and the commonwealth government are taking from Victorian hospitals — the $107 million this year and the $475 million in the years that follow. The cuts are severe and will significantly impact on the outcome for Victorian patients. Victorian patients will be the losers. I am saddened to inform the house today that the commonwealth minister flew into Victoria yesterday, met with a number of people and then left, and unfortunately she has not found the $107 million from the commonwealth budget that has been cut as a result of its dodgy statistical mechanism.

PERSONAL EXPLANATION

Mrs Coote

Mrs COOTE (Southern Metropolitan) — I desire to make a personal explanation. Yesterday in the debate in this house on the motion against the member for Caulfield in the Assembly, I mistakenly suggested that Paul Howes, national secretary of the Australian Workers Union, was a supporter of the boycott, divestment and sanctions boycott against Israel. This statement was incorrect. I wish to acknowledge that Paul Howes is a key opponent of any boycott of Israeli business and is a vocal supporter of Israel.

MINERAL RESOURCES (SUSTAINABLE DEVELOPMENT) AMENDMENT BILL 2012

Committee

Resumed discussion of clause 1.

Mr LENDERS (Southern Metropolitan) — If I could propose a course of action, I potentially have some questions about clause 7 in relation to the new sections to be inserted in section 110 of the principal act, but they depend on whether the minister's answers on the earlier matter satisfy the questions. It is government business and I am not moving a motion, but I suggest to the minister that if we postpone the committee stage until later in the day we can probably deal with it expeditiously — in a couple of minutes. If we do not postpone it, we will be asking questions that may have been answered had we waited.

Hon. P. R. HALL (Minister for Higher Education and Skills) — I am certainly happy to facilitate that. As long as we are organised to go on to the next piece of government business, I have no problems with that at all.

Progress reported.

COMMISSION FOR CHILDREN AND YOUNG PEOPLE BILL 2012

Second reading

Debate resumed from 29 November; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Ms MIKAKOS (Northern Metropolitan) — I rise today to speak in the debate on the Commission for Children and Young People Bill 2012. At the outset I say that the Labor opposition supports the creation of an independent Commission for Children and Young People, which is what this bill intends to do, just as it supported the establishment of the current Office of the Child Safety Commissioner back in 2005. We support any measures that aim to strengthen and provide support to our vulnerable children. However, we do have some concerns about the bill, and I foreshadow that I will be moving some amendments, which I am happy to have circulated if they are available now. I point out, though, that I made a point of advising both the government and the Greens party of these amendments earlier. I will speak to the amendments later in my contribution.

Opposition amendments circulated by Ms MIKAKOS (Northern Metropolitan) pursuant to standing orders.

Ms MIKAKOS — In her second-reading speech, the minister spoke at some length about transparency in the child protection system and ensuring that the system is subject to review and scrutiny. The Labor opposition will be watching very carefully to ensure that this actually occurs. The extent of resources given to the commission will largely determine what role it can play as well as the preparedness of this government and future governments to implement changes it recommends to them.

I make a point of saying that we are disappointed with the budget allocation for the commission set out in the state budget this year, which I have been advised is approximately $4.4 million in 2012–13. I point out that the equivalent bodies in other comparable jurisdictions, which vary state by state, receive much larger budgets. For example, the Queensland commission is funded to the level of approximately $42.9 million and the New South Wales commission to $9.2 million. There is a stark contrast between the level of funding for the new body in Victoria compared with those jurisdictions. The funding set aside for the Victorian commission is certainly nothing like the budgets for the Queensland and New South Wales bodies. In the committee stage I will also be seeking some advice from the minister to confirm exactly what the budget for the commission will be.

In its budget submission the Victorian Council of Social Service said at page 24 that whilst it supports the establishment of the children and young people's commission it has some concerns about the level of funding. In an erratum to page 24 of its budget submission VCOSS said:

> … we are concerned that this funding does not reflect the significant increase in the functions of the commission, particularly the capacity to undertake individual and systemic inquiries and monitor whole-of-government performance. Funding needs to be increased in this budget.

This goes to the heart of one of the other concerns I have about the bill, and I will be speaking about this in more detail later in my contribution. Because the commission will have the ability to conduct own-motion inquiries, we are concerned about the fact that the bill stipulates that those inquiries will be subject to its resources. We are concerned that through the inclusion of that particular language in the bill those own-motion inquiries could be nobbled by starving the commission of resources. One of the amendments I will be moving and speaking on in more detail later relates to fixing this so there is no specific reference in the bill to the commission having to consider its resources in determining whether to conduct an own-motion inquiry.

Turning now to the broader issue of funding, we are concerned that the commission may not have adequate resources to undertake its work as well as to take on own-motion inquiries. As I said, if the commission's budget is compared with those in Queensland and New South Wales, it is clear the Victorian allocation — this is as I understand it, and hopefully it will be confirmed by the minister later — falls well short of the budgets in the other jurisdictions.

The background to the bill is that the government commissioned an inquiry into Victoria's child protection system, and the resulting work of the Honourable Philip Cummins together with Emeritus Professor Dorothy Scott and Mr Bill Scales was the report tabled in the Parliament entitled *Protecting Victoria's Vulnerable Children Inquiry*. It is a wide-ranging report, which I have spoken about on a number of occasions. It covers a whole range of government departments and agencies and makes a very wide-ranging set of recommendations on taking a whole-of-government approach to protecting our vulnerable children.

I have been critical of the government's failure to implement some of those recommendations, particularly as they relate to our early childhood education system — for example, recommendation 7, which talks about investment and appropriate infrastructure for universal early childhood services. I note that the Baillieu government failed to take heed of this recommendation when in this year's state budget it allocated zero dollars for kindergarten capital infrastructure.

There are other recommendations in the report that need to be acted upon. A number of important recommendations in the Cummins report have not been implemented. I do not propose to go through all of them in depth today, but as time goes on I will be taking an ongoing interest in this report to see whether the recommendations are picked up. I know that this bill relates to some specific recommendations, and obviously I will focus on those today, but the recommendations in the report are important, and I think that the government is cherry picking and addressing only those it wants to and leaving a whole lot of them without any action.

Coming to the bill, it establishes a Commission for Children and Young People. There will be a principal commissioner, and the bill provides for additional commissioners to be appointed. The second-reading speech indicates that the government intends that the first additional commissioner will be a dedicated commissioner for Aboriginal children and young people, but that position has not been specifically provided for in the bill. I will be moving a set of amendments to ensure that it is provided for, and I will speak further about that in my contribution to the debate.

The commission is designed to protect vulnerable children and young people. A vulnerable child or young person is defined in the bill under clause 5 as a child protection client, a youth justice client, a person attending a youth justice unit, a child who is receiving services from a community service, a child whose carer receives services from a community service, a child who has died from abuse or neglect, or a person under the age of 21 who is leaving or has left the custody or guardianship of the secretary of the department to live independently.

The commission will replace the existing Office of the Child Safety Commissioner. I take this opportunity to commend the inaugural and current child safety commissioner, Mr Bernie Geary, and his staff for the very important work that they do. Mr Geary has had that role since the Office of the Child Safety Commissioner was established in 2005, during which time I believe he has earnt the respect of people on all sides of politics and also in the broader community. Mr Geary has dedicated his whole life to supporting vulnerable children and young people and their families. The fact that he continues to attract the respect and support of the sector, despite being in a difficult and sometimes critical role, speaks volumes about his personal credibility. I guess there is an expectation that the government will formalise his appointment to the new commission once the bill has been passed by Parliament. I understand and expect that he will be appointed the inaugural commissioner for children and young people, and I wish him well in that new role.

The new commission's functions will be broader than those of the Office of the Child Safety Commissioner in that they include giving advice to not only the minister but also the government departments of health and human services and, most importantly, directly to the Parliament through an annual report. It will be able to provide impartial, independent advice to the government on policies and practices relating to the safety and wellbeing of vulnerable children and young people, and it will be able to carry out the functions relating to working with children under part 3 of the bill and also functions relating to out-of-home care under part 4.

Part 3 of the bill provides the commission with the functions of reviewing and reporting on the administration of the Working with Children Act 2005.

It may work with the Secretary of the Department of Justice to educate and inform the community about that act. Part 4 provides the commission with the functions of promoting the provision of out-of-home care services that encourage the active participation of those children in making decisions that affect them, advising the minister and the secretary on the performance of out-of-home care services and, at the request of the minister, investigating and reporting on out-of-home care services.

Currently the child safety commissioner has a responsibility to conduct inquiries into the services provided to all child protection clients who die while still clients or who were formerly child protection clients up to 12 months prior to their death. The new commission will have a broader role — that is, to review all child deaths where a child dies due to abuse or neglect, irrespective of whether the child was known to the child protection system.

A key change to the current functions is the new commission's ability to conduct its own-motion inquiries, which I have already mentioned. This is a good thing which I believe highlights the independence of the new body. However, the issue of resourcing the body will be quite critical to its ability to undertake those inquiries. The Office of the Child Safety Commissioner has been limited to inquiries directed to it by the minister. The minister may only recommend that there be an inquiry, and the new commission may refuse to conduct such an inquiry. If it does so, it must also provide a statement of its reasons for doing so. The minister will still be notified of any self-initiated inquiry of the commission before it commences. These new self-initiating powers will allow the commission to conduct inquiries into the provision of services provided by and funded by the government, such as health services, human services and schools, and also government-funded community services organisations.

The minister's second-reading speech states that a commission's own-motion inquiry could be an individual inquiry or a systemic inquiry where the commission identifies persistent or recurring issues. The commission will also be able to access a broader range of information, documents and records. Unlike the Office of the Child Safety Commissioner, the new body will be able to request information from outside the Department of Human Services — for example, from other government departments, schools and community service organisations. Following each inquiry the commission must give its report to the minister and the secretary of the department. Before doing so it must give persons or service organisations criticised in a report the opportunity to respond to adverse comments.

Only those inquiries which relate to government services rather than individual vulnerable children or child deaths, which were not commenced on recommendation by the minister and which do not identify individuals subject to child services — for example, family members, carers and so on — may be tabled in Parliament and published online.

I note that recommendation 89 of the Cummins report suggests that all reports be made to the minister and the Parliament when it says:

> The commission should have responsibility for overseeing and reporting to ministers and Parliament on all laws, policies, programs and services that affect the wellbeing of vulnerable children and young people.

That recommendation has not been taken up to its full extent.

At this point I come to the first lot of amendments I propose to move. They relate to own-motion inquiries. Currently the bill limits the ability of the new commission to conduct own-motion inquiries to circumstances where the inquiry can be conducted 'within the resources of the commission'. I draw the attention of members specifically to clause 39(1), and I will read it out just to make it clear:

> The Commission may conduct an inquiry in relation to the provision of services if the Commission —
>
> (a) identifies a persistent or recurring systemic issue in the provision of those services; and
>
> (b) considers that a review of those services will assist in the improvement of the provision of those services; and
>
> (c) considers that the inquiry can be conducted within the resources of the Commission.

The amendment that I will move will delete paragraph (c) entirely, and therefore it will retain the discretion of the commission to conduct own-motion inquiries but delete references to resources being a deciding factor, given that the government's control of resources could hold the commission hostage. There is no similar restriction in other legislation in our state that stipulates that an inquiry can only be conducted 'within the resources of the commission'.

In many other acts there is a positive duty to conduct such an inquiry — for example, section 33(1) of the Child Wellbeing and Safety Act 2005 states:

> The Child Safety Commissioner must conduct an inquiry and prepare a report in relation to a child who has died and who

> was a child protection client at the time of his or her death or within 12 months before his or her death.

Section 33A(2) of the act states:

> The Child Safety Commissioner must conduct an inquiry and prepare a report in relation to a child protection client that is the subject of a recommendation under subsection (1).

Section 141(1) of the Equal Opportunity Act 2010, which relates to inquiries by the tribunal, states:

> If a matter has been referred to the Tribunal under section 139(2)(c), the Tribunal must conduct an inquiry into the matter and, if satisfied that a person has contravened this Act …

It goes on to provide further detail.

Section 11(2) of schedule 4 of the Liquor Control Reform Act 1998 states:

> …the Tribunal must conduct an inquiry in respect of an application to which this section applies under sections 90 to 93.

Section 41(1) of the Essential Services Commission Act 2001 states:

> The Commission must conduct an inquiry into any matter which the Minister by written notice refers to the Commission under this Part.

Section 2.6.32 of the Education and Training Reform Act 2006 states:

> If the Institute is informed that a registered teacher has been convicted or found guilty of an indictable offence other than a sexual offence, the Institute must conduct an inquiry under this Part into the registered teacher's fitness to teach.

Section 191B of the Transport (Compliance and Miscellaneous) Act 1983 states:

> (1) On being given written notice by the Minister, the Commission must conduct an inquiry into —
>
> (a) the structure, conduct, performance and regulation of the commercial passenger vehicle industry —

and so on and so forth.

Section 27(1) of the Energy Safe Victoria Act 2005 states:

> Energy Safe Victoria must conduct an inquiry into any matter which the Minister by written notice refers to it under this Part.

The examples I have given show that there is a positive duty to conduct inquiries in a whole range of other legislation in Victoria. I would have thought that a body which the government has claimed will be a new independent body, which will be able to provide advice to not only the government but also to the Parliament, should be able to conduct these inquiries, or be obligated to conduct these inquiries where there is sufficient cause, but not have it stipulated within the legislation that it can only consider conducting such an own-motion inquiry if it believes it has adequate resources. This is a quite significant limitation on the commission's ability to conduct own-motion inquiries, and that is why I think that paragraph should be removed from clause 39.

I hope the government will take this issue very seriously and agree to support this amendment today. I will be asking this question during the committee stage, but I understand there is no comparable provision in any other Victorian act that puts such a limitation on a body by curtailing its ability to conduct an own-motion inquiry. I am quite puzzled as to why the government would do this in relation to own-motion inquiries.

The other set of amendments I am proposing to move relate to a very notable omission in the legislation in that there is no provision that establishes an Aboriginal children's commissioner. As I said earlier, the opposition supports having an independent children's commissioner, but we believe that a dedicated Aboriginal children's commissioner should be appointed at the same time. In the report entitled *Protecting Victoria's Vulnerable Children Inquiry* Justice Cummins's recommendation 35 was that:

> … an Aboriginal children's commissioner or deputy commissioner should be created to monitor, measure and report publicly on progress against objectives for vulnerable Aboriginal children and young people across all areas of government activity …

Justice Cummins was quite specific about this. He required reporting by the commission against a 10-year plan for Aboriginal communities by a dedicated Aboriginal commissioner, but there is no requirement in this bill for that to occur, nor is there an indication as to when it will occur.

I note that the CEO of the Victorian Aboriginal Child Care Agency, Muriel Bamblett, who was a member of the inquiry reference group, said in relation to Justice Cummins:

> The proof of these recommendations will be how and when they are implemented …

In her second-reading speech, the Minister for Community Services said the government intends to create a commissioner for Aboriginal children or young people. This bill should establish a dedicated children's commissioner; the position should not be established at the whim of the government when it decides it has the

will or the budget to do so. If the commissioner is appointed in the near future, and I hope that they will be, there may well be a vacancy. The filling of that position will be at the whim of a future government or a future minister. It is important that there is certainty around this issue — that is, that we formally recognise and establish this position in the legislation.

I note that the Youth Affairs Council of Victoria has also expressed some concern about this issue, and I believe there has been very little consultation with the Aboriginal community about it.

Sitting suspended 1.00 p.m. until 1.32 p.m.

Ms MIKAKOS — Before the break I was speaking about the absence of a stipulated provision in the bill to establish a dedicated Aboriginal children's commissioner. I note that clause 12 of the bill allows for the Governor in Council to appoint additional commissioners, and in relation to this the government is effectively saying, 'Trust us; we will appoint a commissioner for Aboriginal children and young people sometime in the future'. We on this side of the house believe that that commissioner position is something that should be specifically legislated for. That is why in the committee stage I will be moving an amendment to the bill that would provide for the establishment of a dedicated Aboriginal commissioner for children and young people.

As I said earlier, the current minister may well be intending to appoint someone to that position in the near future. I look forward to hearing, from the contributions in the committee stage of other government members, particularly the minister, what the government's intentions are. However, even if the government does intend to fill this position in the near future, the position will fall vacant at some point. It is important that there is certainty in the legislation to ensure that there will always be such a person undertaking that important role within the commission. I urge government members to take note of Justice Cummins's specific recommendation in this regard and to support the amendment I will be moving in relation to this issue.

Very briefly in relation to other provisions in the bill, the confidentiality provisions for the commission are the same as for the child safety commissioner, although the knowledge gained through the commission will be significantly broader, given its ability to access a broader range of information. There is also a new provision to make notification of corruption to the Independent Broad-based Anti-corruption Commission mandatory unless the corruption relates to IBAC personnel, and there are parts of the bill that relate to annual reporting. The Office of the Child Safety Commissioner was required to table an annual report within 21 days; the new requirement will be for the report to be tabled 14 days after its receipt.

I mentioned earlier in my contribution my disappointment that there are a range of Cummins's recommendations that have not been enacted in the bill. I note, for example, that Justice Cummins recommended that specific powers of the Ombudsman under section 20 of the Children, Youth and Families Act 2005 be transferred to the commission. Whilst the commission has gained the power to conduct own-motion inquiries, it has not gained the coercive powers of the Ombudsman. Justice Cummins also recommended that the role of the Victorian Children's Council be strengthened and clarified by allowing it to provide advice to the commission if requested by the commission to do so. Again, there is nothing in the bill that I can see that fulfils recommendation 84. And finally, Justice Cummins also recommended that government performance be accountable under the vulnerable children and families strategy. I note in particular recommendation 89, which says:

> The commission would hold agencies to account for meeting their responsibilities as articulated in the vulnerable children and families strategy and related policy documents.

However, the legislation as it currently stands makes no reference to this strategy or the way in which agencies will be held to account.

I conclude by saying that whilst Labor opposition members support an independent children's commissioner we think there are some significant deficiencies in the bill. In particular, I will be urging government members to lend their support to the formal establishment in the legislation of a dedicated Aboriginal children's commissioner and also to allowing the commission to have truly independent own-motion inquiries without any legislative limitation relating to resources. We think that whatever we can do to enhance the protection of our children is important work, and with those words I conclude my contribution.

Mrs COOTE (Southern Metropolitan) — It gives me an enormous amount of pleasure to speak today on the debate on the Commission for Children and Young People Bill 2012. This legislation fulfils an election promise made by the coalition; it is another one we are able to put a tick against. It is a really important addition, a really important step forward.

I am absolutely and utterly overwhelmed by the breathtaking hypocrisy of the opposition's comments

on this bill. I am absolutely staggered to hear Ms Mikakos talking about significant deficiencies in this bill. I remind members of the ALP that when they were in government they absolutely refused to create an independent commission, despite extensive lobbying to do so. Here they are in the debate on this bill being totally hypocritical and holier than thou, pretending that they have these great, you-beaut ideas. It is important to understand that they refused — absolutely refused — to establish an independent commission themselves.

We have gone even further than our election promise; we have put in more money and given the independent commissioner more power, and that is going to be better for families all round. For the member to suggest that this bill has significant deficiencies is absolutely and utterly hypocritical.

Ms Mikakos's comments about the budget in particular are quite extraordinary. We have spent two years cleaning up an astonishing mess left by the ALP, at every level, in every portfolio and in every way.

Mr Leane interjected.

Mrs COOTE — Mr Leane is over there interjecting, and I take up his interjection because, let me tell you, Acting President, it is absolutely extraordinary. I remind Mr Leane about myki and the desalination plant — the list goes on and on. He is on very thin ice when he says things like that.

Yet again we are being financially responsible in this area. It is important that families are aware of what is promised and what is sustainable. They too are looking for better financial discipline in every direction, and this is certainly a case in point. We will be putting more money into this, and it will be more than adequate to do what needs to be done. The funds will be there, and we will abide by the principle of economic rigour. That is a hallmark of the coalition government, and here is another example of exactly how we intend to do that.

Ms Mikakos's coming in here and saying, 'We should be doing this. We should be having more of that and more of this and more of everything else' just goes to show how Labor is not used to accountability. It is very good at the rhetoric and talking, but the reality is that we have put our money — even more than we promised — where we intend it to be. We have honoured our election promise, and we have done more. As I said, it is better for Victorian families. We have put in over $1 million more than Labor allocated in its 2010–11 budget. As I said, our hallmark is sustainable government, and that is exactly and precisely what we intend to provide. We have provided a substantial amount of money for the new commission, and that is what we are going to be doing.

I would also like to talk about a number of other things. Ms Mikakos also spoke about the issue of a commissioner for Aboriginal children and young people, and I know that that is in her amendments. It is quite interesting for her to come up with this, considering what Labor did in the lower house. It is quite interesting to see Ms Mikakos being so passionate about this. However, I reassure Ms Mikakos that this weekend in the newspaper there will be advertisements calling for a commissioner for Aboriginal children and young people. I am sure Ms Mikakos will be particularly interested to know about that. We are recruiting people for this position as we speak, and the advertisements will be there in the papers this weekend, so I suggest she tells everyone she knows who have intimated an interest in this.

I will go back again to what this bill is, just to put it into the framework of what this debate today is about. The objective of the bill is to achieve the government's election commitment to establish a commission which will strengthen, oversee and enhance the transparency of the child protection system. This bill will ensure that the independence of the commission is consistent with other states and territories. As we know, rather than simply amending the Child Wellbeing and Safety Act 2005 the bill will establish a Commission for Children and Young People. The commission consists of one commissioner, but additional commissioners may be appointed by the Governor in Council.

The bill provides for the commission to report directly to the Parliament and also to the Minister for Community Services. It strengthens the protection of vulnerable children by authorising the commission to investigate and make recommendations in relation to child protection clients and vulnerable Victorian children, either on the commission's own initiative or on the recommendation of the minister. These changes will put the commission at arm's length from the Department of Human Services, the department responsible for the daily operation of the child protection and youth justice systems. The proposed five-year period of tenure for commissioners will provide a level of autonomy that promotes independent monitoring of that system — something the Labor Party refused to do. We said we were going to do this, and that is what we have done. It is a very proud moment for us to be here with this bill today.

I would like to examine in greater detail the issue of the commissioner for Aboriginal children and young people. It is very clearly stated in the second-reading

speech, and Ms Mikakos was remiss not to have alluded to this, that:

> The new commission will also have the capacity to have additional commissioners if a particular focus is warranted.
>
> The government intends the first additional commissioner to be a commissioner for Aboriginal children and young people.
>
> Victoria will be the first state or territory to have a commissioner dedicated to Aboriginal children and young people, recognising their particular vulnerabilities and significant overrepresentation in the child protection system.
>
> This commissioner will oversee the five-year plan for Aboriginal children in out-of-home care and other policies and practices that affect Aboriginal children.

Ms Mikakos spoke about the Cummins report, and I say again what an excellent report that was. The reaction of the Minister for Community Services, Ms Wooldridge, to that was immediate, and she put money into implementing the report's recommendations. As I have said on many occasions, most of the Cummins material has been dealt with. This bill is another example of the implementation of a recommendation of the Cummins report, as indeed was the inquiry into child sexual abuse, which is well on the way. I remind Ms Mikakos that the Cummins inquiry specifically recommended the creation of a commissioner for Aboriginal children and young people but did not recommend that this should be legislated for. Ms Mikakos perhaps forgot that in her haste to write her amendments.

The position of the first commissioner for Aboriginal children and young people is intended to bring an increased focus on improving outcomes for vulnerable Aboriginal children in Victoria across all service systems. He or she will have independent oversight of policies, practices and the provision of services relating to the safety or wellbeing of vulnerable Aboriginal children and young persons and will promote their interests across the state.

Last week in Mildura I had the honour of being a co-chair of the Indigenous Family Violence Partnership Forum — it meets twice a year — and this issue came up. Those on the forum are very pleased to know that the coalition government is abiding by its election promise and that there will in fact be a commissioner for Aboriginal children and young people. They found Minister Wooldridge very praiseworthy, and they too will be looking for the recruitment advertisements coming out on the weekend. I know they will be recommending some very good people to become the ambassadors.

The other issue Ms Mikakos brought up was the budget. This was an absolute fudging of a whole range of figures. I understand how hard it is in opposition when I look at those things. Looking at what some of the other investigative authorities, official bodies and statutory officers had by way of funding in 2011–12 it puts this into perspective. Ms Mikakos mentioned the figure of $4.5 million, which I think is very close, but let me put on the record what the other organisations' figures are. In 2011–12 the Victorian Ombudsman received $9 744 736; the disability services commissioner had a budget of $2 099 646; the Office of the Victorian Privacy Commissioner had a budget of $2 272 668; the Office of the Health Services Commissioner, $2 506 707; and the Victorian Law Reform Commission, $2 748 692. As I said before, we have put in $1 million above what the Labor Party's equivalent budget was. We have put in more money than we said we would in our election promises, and because of financial — —

Honourable members interjecting.

Mrs COOTE — We will be doing an extremely good job in terms of rigour. The commission will have enough money to do the work it needs to do.

Ms Mikakos also spoke about the commissioner not having coercive powers. Neither the Cummins report nor the Victorian Law Reform Commission recommended that the commission should have coercive powers. The commission will have the ability to initiate investigations and conduct inquiries, but these are intended to promote continuous improvement and innovation in policies and practices relating to child protection and the safety and wellbeing of vulnerable children and young people. Coercive powers are not necessary to achieve this.

Where powers to compel seem to be required, the commission will need to refer inquiries to other investigative bodies such as the Ombudsman or the Independent Broad-based Anti-corruption Commission.

The bill does not require, in terms of the conduct of the commission's typical inquiries, that the commission be given access to information, documents and records. It does require that the commission must be given access to information, documents and records that are held by relevant departments, registered community services, health and human services and schools in relation to persons and services subject to an inquiry.

Another area Ms Mikakos spoke about in her contribution that I would like to refer to is the transfer of Ombudsman Victoria powers. Section 20 of the

Children, Youth and Families Act 2005 enables the Ombudsman to inquire into administrative actions taken by a registered community service. The Cummins inquiry recommended that these powers be transferred to the new commission. The government did not consider this necessary, as section 37 of the bill empowers the commission to conduct individual inquiries concerning vulnerable children or young persons and provides powers and functions similar to those of Ombudsman Victoria under section 20. The main difference is that Ombudsman Victoria may utilise coercive powers when conducting an investigation. I hope that goes some way towards clarifying Ms Mikakos's concerns.

The other concern she had was the overlap with other bodies. The commission is required to liaise and share relevant information with other investigative authorities, official bodies or statutory offices to avoid duplication and to facilitate coordination and the expedition of inquiries. The commission will not have powers to compel witnesses, and should its inquiries require such powers the commission may refer the matter to the Ombudsman for consideration.

I am now constrained by time. I am certain that a number of issues will be brought up during the committee stage. I my praise for the minister in bringing this bill into the Parliament and providing the opportunity for the coalition to debate a bill of such significance and for us to know that independence will be protected, that vulnerable children in this state will have greater protection, that families will have greater protection, that there will be financial rigour and understanding and that money is being put where it is needed.

This is a very important piece of work. It goes along with the coalition government's approach of responsible care for vulnerable families within our community, and it is a very important piece of legislation. I commend the bill to the house.

Mr ELASMAR (Northern Metropolitan) — I rise to speak on the debate on the Commission for Children and Young People Bill 2012. One of my colleagues has already indicated to the house that we support the bill but favour amendments, and I will get back to that later on. I would like to place on record the magnificent job done by the present child safety commissioner, Mr Bernie Geary. It is to be hoped that the operation of this new body, the Commission for Children and Young People, will lead to significant changes aimed at reducing the instances of abuse committed against the most vulnerable and defenceless people in our community — children.

It is critically important that the new commissioner be independent and have sufficient powers to stem the tide of incidents of abuse. The commissioner will report to the minister and, as with the Victorian Ombudsman, any person named in a report will have the right to see extracts pertaining only to themselves and will be given a right of reply. Natural justice is a good thing and should be accommodated wherever possible.

Although the bill relates to vulnerable children known to the Department of Human Services, it totally ignores the Aboriginal community. Earlier we heard Mrs Coote respond on an amendment circulated by my colleague, Ms Mikakos, that would provide for the appointment of an Aboriginal children's commissioner. I understand from Mrs Coote that that position is already going to be advertised in the newspapers, which was not the case in terms of previous consideration of this bill. That is why the Labor Party has circulated that amendment. I think what Mrs Coote meant in her response was that she supported our amendment — but in a different way.

Let us get back to the bill. The sad reality is that these types of abuses are on the increase. The new body can request information from outside the Department of Human Services — from other government departments, schools, community services and central registers. It can now request information from educational providers, in addition to health and welfare professionals. As with the current child safety commissioner, the new commission will maintain responsibility for conducting inquiries into the services provided to all child protection clients who have died whilst they were still clients or were clients up to 12 months prior to their death. The Commission for Children and Young People will be able to access a much wider range of information, documents and records. However, it will not have the coercive powers of the Ombudsman.

Finally, there are many omissions in this bill that relate to excluded Aboriginal children who are an integral part of our community. Another matter of concern is that legislation states the commission can only conduct inquiries within its own resources. This may have the effect of hamstringing the commissioner, which would defeat the whole purpose of the legislation. My colleague has referred to our proposed amendments. I hope government members will support those amendments.

Mr EIDEH (Western Metropolitan) — I will make a brief contribution to the debate on the Commission for Children and Young People Bill 2012. As the government has already been made aware, the opposition fully supports an independent commissioner

for all children and young persons and any measure to improve the lives of vulnerable children in this state. I stress the words 'for all children and young persons'. The Labor Party in fact led the push for the establishment of the current child safety commissioner in 2005. Mr Bernie Geary and his staff have been brilliant examples of what Labor is about in government — creating not only the right laws but also placing the right people in the right places.

The bill before us seeks to enact recommendations contained in the report by Justice Cummins, although the recommendation for a separate commissioner specifically for Aboriginal children and youth is not reflected in the legislation. It is a grave error on the part of the Baillieu government. The government claims it will retain the discretion to appoint further commissioners, but that is simply inadequate; it is not good enough. However, it is good to learn that the position is going to be advertised soon, and I hope that will go ahead.

Following on from former Prime Minister Kevin Rudd's apology to Australia's Indigenous peoples, which was moved despite strong opposition from the federal Leader of the Opposition, Tony Abbott, I am stunned that the Victorian government has not thought it worth including the specific appointment of a separate commissioner for Aboriginal children and young people as part of this bill. Clearly the government has not fully read nor completely understood what Justice Cummins put forward in his report. It is also critical that the independence of the commissioner be proven in open and unabridged reports to the Parliament as a whole and not via a minister who could well filter what the rest of us see and hear, as is the practice with this government.

As members of Parliament, our first duty must always be to protect the most vulnerable members of our community, and to me that means children and the aged — the very groups singled out by this government in its negative budget for ongoing slashing of funding, and the very groups where it is most needed. The state budget is already miserable and petty by Australian standards, and the Baillieu administration should hide in shame for such a lack of foresight. I would not be surprised if more money was spent on upgrades to ministers' offices than is allocated to the commission to perform its duties. That is why I very much support the new commission being given the power to begin its own inquiries, unfettered by the need to seek anyone else's approval. That is precisely the power that such an independent body must have if it is to be impartial and effective. I say to the public servant or ministerial adviser who suggested it: well done.

I am also pleased that the commissioner will have broader powers to seek relevant evidence and to pursue inquiries with health and educational providers. They are usually the first people outside of family to become aware of a serious issue that demands investigation. But on that point, I also remind any such practitioner or expert about the mandatory reporting standards and warn them against keeping anything secret that might hinder an investigation or that might lead to further harm. I also remind them that not one single member of this house will tolerate anyone harming or allowing harm to befall a child.

In returning to Justice Cummins's solid report, I note he recommends that the specific powers of the Ombudsman established under section 20 of the Children, Youth and Families Act 2005 be transferred to the commission. Why the government has refused this logical recommendation defies imagination. There are many recommendations relating to the seeking of certain information, the collection of information on those leaving care and post-care services, and annual reporting which, again, this government has chosen to ignore. There are several more recommendations, but they have all been ignored by the Baillieu-Ryan administration. I hope this bill results in a great step forward in child protection, but if its lack of teeth and the paucity of funds reduces its ability to protect children, the entire state of Victoria will point the finger at the other side of the house.

Ms HARTLAND (Western Metropolitan) — The Greens will be supporting this bill. It is a logical bill, and it allows the update of the current position of the child safety commissioner. I have seen the work of Bernie Geary over a number of years, and it is impressive. If we look on the website at the kinds of investigations and the kinds of policy work that the current commission is doing, we can only be pleased that the commission is there because it is very important work. The issue of self-referencing is important because we want the child commissioner to be independent of government and have the ability to make those self-referrals.

The issue that I am concerned about, which Ms Mikakos raised, is the limitations of resources. I understand there is never a limitless bucket of money in government, but if we are talking about the safety of children and the considerable cost of an investigation, what is more important? Is it the safety of the child or is it the money? Of course we are not just talking about an individual child; we are talking about the safety of children in general. The Greens will be supporting the amendments to be put forward by Ms Mikakos, especially in relation to the need for

an Indigenous commissioner. I understand there is an intention to employ a commissioner, and I think that is excellent — —

Mrs Coote — They will advertise it this weekend.

Ms HARTLAND — That is what I understood, Mrs Coote. It is really good that the advertising process has already started. I want to see this position covered by legislation because what will happen when that person retires, if there is a change of minister or a change of government and the position is not required under legislation? This amendment should be supported by all sides of the house. Obviously it is the intent of the government to have an Indigenous commissioner and the amendment will just make sure that there will always be one. The Greens will also support the amendment regarding self-referencing and making sure that it is not limited by the resources available.

I would like to make a few more points. The Minister for Community Services campaigned very hard during the term of the previous government and during the election period around the issue of children's protection, welfare and safety, and that was necessary because it is an incredibly important issue. I think we now have to carry that campaign forward, be practical and have a good child safety commission process that has the resources and the budget it needs and also the legislative powers to make sure we always have an Indigenous commissioner so we know that all children will be kept safe.

Motion agreed to.

Read second time.

Committed.

Committee

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — I seek the leave of the committee for Mrs Coote to join me at the table.

Leave granted.

Clause 1

Ms MIKAKOS (Northern Metropolitan) — Mrs Coote in her contribution was critical of me referring to a figure that in fact she had given me earlier in the day outlining the commission's budget. I will not table the piece of paper, but I ask the minister what the budget for 2012–13 will be for this new commission?

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — Prior to the election of the coalition government the funding for the Office of the Child Safety Commissioner in 2010–11 — under the former government — was $3 338 460. The government made a pre-election commitment of an additional $1.7 million over four years. The funding was provided and we have since committed an additional $400 000 in 2012–13, $800 000 for 2013–14 and $900 00 for 2014–15. The 2012–13 budget will be $4 437 652 and the 2016–17 budget will be $5 063 583. Since 2010 the government has provided a 34 per cent increase in funding to prepare and support the Office of the Child Safety Commissioner for transition to the new structure. This budget is around double that of the disability services commissioner, the privacy commissioner, the health services commissioner and the Victorian Law Reform Commission.

Ms MIKAKOS (Northern Metropolitan) — I thank the minister. Just to clarify, the total budget for 2012–13 is $4.4 million. Is that correct?

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — It is $4 437 652 to be exact.

Ms MIKAKOS (Northern Metropolitan) — Funnily enough, that is the same number I have on my piece of paper, so I thank Mrs Coote.

I point out to the minister that there are other jurisdictions — and of course every jurisdiction is different — that have comparable commissions. In particular New South Wales has a system where the commission reports both to a parliamentary joint committee and to the minister, as does Queensland. Their budgets, I understand, are considerably more. Referring to the figures I mentioned earlier in my contribution, as I understand it, for 2011–12 the Queensland figure was $42.9 million and for New South Wales it was $9.2 million. That is considerably more than the Victorian government is going to provide to the commission. Given that the populations are fairly equivalent, and I imagine the work would be fairly similar, can the minister give some explanation as to the discrepancy between the other comparable jurisdictions and Victoria?

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — Yes, I can give the member an explanation. The member would also note, if she compared the Victorian budget to that of the Australian Capital Territory, the Northern Territory, Western Australia, South Australia and Tasmania, that our budget is significantly more than it is in those states.

It is not possible to have a true comparison across jurisdictions because of the varying functions of each commissioner or guardian across Australia. For instance, not only do the two particular jurisdictions that Ms Mikakos has pointed out have the functions of a child safety commissioner, in New South Wales it also has the Children's Guardian and in Queensland it has responsibility for the working-with-children checks, and this includes the employment of 241 full-time equivalent staff to manage that portion of their portfolio. It is about the fact that different states have different functions within each of them, and they are budgeted accordingly.

Ms MIKAKOS (Northern Metropolitan) — I point out that the Australian Capital Territory, the Northern Territory, South Australia and Tasmania all report only to the minister, so I would not regard those bodies as being comparable to what we are establishing here. New South Wales and Queensland appear to be the closest in terms of bodies that report both to a parliamentary joint committee and to the minister — but I move on. Unless the minister wants to add anything further, I make the point that if you are trying to compare like to like, apples with apples, for Victoria the most comparable jurisdictions are New South Wales and Queensland, and the budgets are very different in scale in those jurisdictions to that of Victoria.

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — I think I have answered that in my substantive answer. These are not comparable across jurisdictions because of the different functions that exist within each of the jurisdictions.

Clause agreed to; clause 2 agreed to.

Clause 3

The ACTING PRESIDENT (**Mr Elasmar**) — Order! I call Ms Mikakos to move her amendment 1, which is a test of her amendments 2 to 5.

Ms MIKAKOS (Northern Metropolitan) — I move:

1. Clause 3, line 20, omit "an additional Commissioner" and insert "the Commissioner for Aboriginal children and young people, or an additional Commissioner,".

I also point out that I will speak to that amendment as well as amendments 2, 3, 4 and 5, because the other ones are related. All the first five amendments relate to the formal establishment of the position of an additional commissioner, a commissioner for Aboriginal children and young people. That person is to be appointed by the Governor in Council on the recommendation of the minister. As I said in my earlier contribution, members of the opposition think it is very important that we have a dedicated Aboriginal children's commissioner provided for in the bill itself. I welcome the advice that Mrs Coote gave earlier that the government is taking steps to appoint an Aboriginal commissioner, but I would have thought that is all the more reason for the government to support this amendment. I cannot see why the government would have a problem with it.

The Cummins report itself made a recommendation; recommendation 35 is that there be an Aboriginal children's commissioner created to monitor, measure and publicly report on progress against objectives for vulnerable Aboriginal children and young people across all areas of government activity, and that there be reporting to the commission against a 10-year plan for Aboriginal communities by this dedicated Aboriginal commissioner.

Opposition members are concerned there is no specific reference to this position in the bill. If someone is to be appointed — and I would like the minister to confirm that — there is going to be a vacancy at some point in the future, so what opposition members want to ensure is that there can be some certainty and that there will be a dedicated Aboriginal commissioner both now and into the future, irrespective of who the minister is and irrespective of which government is in office. We all know we have very disappointing and very tragic levels of overrepresentation of Aboriginal children in our child protection system and our youth justice system. These issues need to be tackled. I know that other stakeholders working in the sector have also expressed support for this position to be enshrined in legislation.

I refer to an article published online by Paula Grogan on VCOSS Voice on 15 November 2012, where VCOSS (Victorian Council of Social Service) has expressed its support for having this position enshrined in the legislation. I will quote very briefly from this VCOSS blog site. Paul Grogan says:

> VCOSS is disappointed at the lack of a legislative framework for the role of Aboriginal commissioner. The legislation provides for additional commissioners, and the Minister for Community Services, Mary Wooldridge, indicated in Parliament that the government intends that the first additional commissioner will be a commissioner for Aboriginal children and young people. This recognises the significant overrepresentation of Aboriginal children and young people in the child protection and youth justice systems. However, VCOSS believes that the significance and sustainability of this role would be strengthened if it was in legislation.

There is very strong support for the amendment from VCOSS, and I know that other stakeholders working in

the sector also indicated support for the shadow minister, Ms Green, the member for Yan Yean, when she moved similar amendments in the Assembly. Very positive feedback was received from a number of organisations, including MacKillop Family Services and Berry Street, and I believe other stakeholders are supportive of this measure as well.

I again urge the government to consider this amendment. Opposition members think it will enhance the legislation and will give a great deal of comfort to those people working with Aboriginal children and the sector more broadly that this is going to be a priority issue for the government.

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — I say to the member that this is a priority for the Victorian government. We have made the intent to appoint a commissioner for Aboriginal children and young people very clear in the second-reading speech, and I would have thought with the member's background in law she would understand that second-reading speeches are read in conjunction with legislation to show the intent of the legislation.

While the Cummins inquiry did recommend the creation of a commissioner for Aboriginal children and young people, it did not actually recommend that that should be legislated for. The way this bill has been constructed is to allow the appointment of multiple commissioners, providing all future governments with the flexibility to manage the focus of specific commissioners based on community need at any given time.

As I said, we have said in our second-reading speech very clearly that our intent is to appoint an Aboriginal children's commissioner, and this will be the first additional commissioner appointed under this act. We are recruiting for that position as we speak. I will wait for the member to stop speaking to the attendant so she can listen to my answer.

Ms Mikakos — I am listening.

Hon. W. A. LOVELL — As I was saying, we are recruiting for that position as we speak. This commissioner will provide an independent oversight of policies, practices and the provision of services relating to the safety and wellbeing of vulnerable Aboriginal children and young people and promote their interests across the state.

Ms HARTLAND (Western Metropolitan) — I support Ms Mikakos's amendment, even though I absolutely accept that the government is making really good attempts to employ someone. As I said before, it needs to be in the legislation because the minister will change, the government will change, the person will resign and there will not be a legislative requirement to do that. It is important that we specify in legislation that it occurs.

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — I will take that as a statement from the Greens, but the government will not be supporting the amendment.

Committee divided on amendment:

Ayes, 18

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

Noes, 20

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

Pairs

Jennings, Mr	Guy, Mr

Amendment negatived.

Clause agreed to; clauses 4 to 6 agreed to.

Clause 7

Ms MIKAKOS (Northern Metropolitan) — Clause 7 relates to the objectives of the commission. It talks about the objective of the commission to promote continuous improvement and innovation in policies and practices and in the provision of out-of-home care services for children. The shadow minister for child safety, Ms Green, the member for Yan Yean in the other place, has received an email from Jennifer Duncan, the CEO of Post Placement Support Service. It relates to the adequacy of current data on vulnerable children and young people who have been placed with an alternative family through permanent care or adoption. I will just read some parts of that email to assist with my query. Essentially the question relates to data collection, or the absence of data collection. If the commission is going to be looking at improving

policies and practices, having the right data will obviously be a key component of that. In her email Ms Duncan said:

> To the best of our knowledge, there is no data for Victoria formally collected through the Department of Human Services or any other government agency that examines the health, social and economic outcomes for children raised in permanent care and adoption. Whilst there are some 'proxy data' sets that operate in relation to placement breakdown for children in permanent care, this is the extent of data collected in this area.
>
> Anecdotally, placement breakdown for children in permanent care is estimated as sitting anywhere up to 20 per cent; such statistics, even if correct, only provide a hint to other outcomes for children and families in home-based care and adoption where the child does not return to the care of the state. However, there are a limited number of small studies that show significant social, economic and emotional costs of unsuccessful or troubled placements of children through permanent care and adoption.
>
> Children who have been placed into the system and made their way into families through permanent care and adoption do not lose their vulnerability at placement. We know from the permanent care and adoptive parents that we work with that these families in many ways inherit the vulnerabilities of the children whom they embrace, through the ongoing effects of the children's pre-placement trauma, abuse and neglect.
>
> If the commission is to fulfil its objective as contained within the bill (clause 7) in relation to improving policy and practice regarding wellbeing and outcomes for vulnerable children, it must be noted that this cannot be fully achieved within the existing data collected. There remains a need for data that accurately measures outcomes for children in permanent care and adoption. This data must be comprehensive, and beyond what is currently collected, to provide us with a true picture of outcomes for children in permanent care and adoption.
>
> As the state government rolls out the proposed vulnerable children's framework and the five-year out-of-home care plan, it will be vital to ensure that the data collected regarding outcomes for children is comprehensive and properly empowers the commission to fully enact its role in relation to monitoring, reporting and making recommendations for policy and practice that genuinely secure the wellbeing of children.

I apologise for reading such a long email, but this stakeholder has raised an important issue. I ask the minister: does the department currently collect this data and, if it does not, is it intended that the commission will collect this data once it is established?

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — I am told that the department does not currently collect that data, but this is an independent commission, and I am sure that if the commissioner feels that he requires additional data, he will make a recommendation.

Ms MIKAKOS (Northern Metropolitan) — Is it possible, then, for this stakeholder to write to the new commissioner to suggest that this data be collected, and would that be entirely at the discretion of the commissioner? Would there currently be the data sets needed to start to collate this type of data?

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — This is an independent commissioner. Anyone can raise a concern with the commissioner, so anyone is welcome to write to the commissioner. If the commissioner wants to take that further, it is up to the commissioner to make a recommendation.

Clause agreed to; clauses 8 to 36 agreed to.

Clause 37

Ms MIKAKOS (Northern Metropolitan) — Clause 37 relates to the commission conducting inquiries concerning children or young people. I think the assurance I wanted is clear from the clause, but an issue has been raised by a stakeholder so I just want to provide some certainty for them that this clause would enable an inquiry to be conducted when a group of children or a child misses out on a service that might be captured by the legislation. Can the minister just confirm that, in the case where a service is not provided, such an inquiry could be conducted under the provisions of this section?

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — Yes, I can confirm that.

Clause agreed to; clause 38 agreed to.

Clause 39

The DEPUTY PRESIDENT — Order! I invite Ms Mikakos to move her amendment 6, which is a test for her amendment 7.

Ms MIKAKOS (Northern Metropolitan) — I move:

> 6. Clause 39, line 23, omit "services; and" and insert "services.".

I will speak to both amendments 6 and 7, as they both relate to the same issue, and amendment 6 is consequential to amendment 7.

This relates to the commission's ability to conduct own-motion inquiries. As I explained earlier, the bill currently limits the ability of the new Commission for Children and Young People to conduct own-motion inquiries in circumstances where the inquiry can be conducted 'within the resources of the commission'. These amendments propose to in effect delete

paragraph (c) in clause 39(1), so that the sentence 'considers that the inquiry can be conducted within the resources of the commission' is deleted. That will mean the commission retains its discretion as to whether to conduct own-motion inquiries but the reference to resources being a deciding factor will be deleted.

The government says this is an independent commission. If the government is true to its word, it is important that resources not be the determining factor as to whether the commission can conduct own-motion inquiries. I went through an exhaustive list earlier of other Victorian acts which impose a positive duty to conduct an inquiry, and I do not propose to do so again. That included the current child safety commissioner in relation to various matters. I find it surprising that there is no other body, as far as I am aware, that has a similar limitation where an inquiry must be conducted within the resources of the commission. I will be asking the minister, in addressing the government's response to this amendment, to advise if there is such a body, because it is critical that the government explain why this limitation has been put into this clause — what the rationale is — when Justice Cummins made it very clear in his recommendation for an independent commission that it should be an independent commission. If the commission is to be nobbled by being starved of funds, its independence will be undermined.

The government should think seriously about this. The inclusion of paragraph (c) has also attracted attention from stakeholders. Marilyn Webster, director of research and social policy at the Centre for Excellence in Child and Family Welfare, has communicated with the shadow minister for child safety, the member for Yan Yean in the other place, Ms Green, and has indicated her concerns about paragraph (c) being included in this bill. She specifically referred in her email to the fact that she had looked at the Essential Services Commission, the Victorian Competition and Efficiency Commission and the Victorian Multicultural Commission and could not see that they were constrained in the same way.

If the government is serious about this body being independent, not only does it need to adequately resource it but it also should not have provisions like this in the bill. I urge the government to support this amendment.

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — I reiterate to the member that the budget for the 2012–13 year will be $4 437 652, which is a 34 per cent increase in the former government's 2010 budget for the Office of the Child Safety Commissioner. We think this a fair and adequate budget. This amendment would enable the commission to conduct inquiries without any due consideration of its budget. This is typical of Labor's disregard for any financial discipline and of it allowing taxpayers dollars to be spent no matter what the actual budget is. We think financial discipline is entirely appropriate, and we will not agree to this amendment.

Ms HARTLAND (Western Metropolitan) — The Greens will be supporting this amendment because we think the safety of children is much more important than money.

Committee divided on amendment:

Ayes, 18

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

Noes, 20

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

Pairs

Eideh, Mr	Guy, Mr

Amendment negatived.

Clause agreed to; clauses 40 to 47 agreed to.

The DEPUTY PRESIDENT — Order! Before I call clause 48, I will reiterate the process of calling for a division. The Chair calls the vote on the voices and then determines in his or her view which has the greatest number of people agreeing or not agreeing to the proposition. It is the prerogative of any member to call for a division if they disagree with the Chair's call. It is not the normal process for a member to call for a division when they are in agreement with the Chair's call. I have made this point many times now; I am trying to help members to understand it.

Ms Mikakos — I called for a division because I did not agree with the earlier call.

The DEPUTY PRESIDENT — Order! That is correct.

Ms Mikakos — Thank you, Chair.

Clause 48

Ms MIKAKOS (Northern Metropolitan) — Clause 48 relates to the commission first giving a person or an agency the opportunity to respond to adverse material. This is something very new to agencies that receive government funding but have not been subject to these types of provisions before, and I have received a query from a stakeholder about the operation of this clause. That is why I am raising it again. I want to give certainty to stakeholders about how this clause will operate.

I note that the commission will be providing adverse material that it proposes to include in a report to the relevant health service, human service or school, but I ask the minister to advise how that process will work. Will the relevant agency or individual be informed whether the report will be tabled in Parliament or when the report will be provided to the minister? Can the minister give some explanation of how the process will work?

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — This is a standard process in that the Auditor-General and the Ombudsman now follow. If they are making a report and there is commentary in it about an individual or an organisation, the individual or agency is given the chance to defend themselves and to comment on that commentary prior to publication of the report.

Ms MIKAKOS (Northern Metropolitan) — I thank the minister. I am aware that that is the process that works with the Ombudsman and the Auditor-General, but there are a number of welfare agencies that would not ordinarily have been subject to this kind of report in the past. I am not saying that in a critical way; I am just pointing out that this is a brave new world for that sector and there may well be some anxiety about how this is going to work. I am giving the minister an opportunity to provide them with some advice about the process that will be involved in providing these adverse reports. For example, I specifically asked the minister if the affected person or agency will be advised if the adverse report is to be tabled in Parliament.

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — I do not think this is quite a brave new world, because it is quite possible that those agencies could find themselves to be participants in an Ombudsman's or Auditor-General's report now. But, yes, they will be advised if it is to be tabled in Parliament. This is about giving them the first opportunity to see what has been written about them so that they have a chance to raise it with the commissioner if they disagree with it before the report becomes public and they have to defend themselves in the media. This is about a fair process and about giving them the opportunity to respond first. They will be advised at that point if it is to be tabled in Parliament.

Ms MIKAKOS (Northern Metropolitan) — Thank you, Minister. I understand the purpose of the clause. Will they similarly be advised of the timing of tabling in the Parliament or when the minister will be provided with that adverse report? The reason that they want to know this is because they would then have to respond to media inquiries et cetera. Will they be informed about the timing of these issues?

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — I would think that if you were a subject of one of these reports, you would be preparing yourself for the media commentary anyway. Only systemic inquiry reports can be tabled in the Parliament but, yes, they will be aware of when a report is being tabled.

Ms MIKAKOS (Northern Metropolitan) — I guess that comes to the related issue — that is, why does the bill not require all these reports to come to the Parliament, given that that was my understanding of recommendation 89 of the Cummins report, which refers to the reports being tabled in the Parliament? Why has it been decided that only particular reports will come to the Parliament?

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — Individual reports will not be tabled in the Parliament to protect the privacy of the individual. That is why only the reports of systemic inquiries will be tabled in Parliament.

Clause agreed to; clauses 49 to 84 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Motion agreed to.

Read third time.

MINERAL RESOURCES (SUSTAINABLE DEVELOPMENT) AMENDMENT BILL 2012

Committee

Resumed from earlier this day; further discussion of clause 1.

Hon. P. R. HALL (Minister for Higher Education and Skills) — Progress was reported and I think I have some further progress for the committee. The break has given us a chance to collect some of the information that members participating in the committee were seeking. In particular, Mr Barber and Mr Lenders raised questions regarding the number of notices that have been issued under section 110 of the principal act and the number of inspectors and a couple of other questions.

I can confirm to the committee that in the order of 50 notices were issued in the past year and that no fines have been issued in the past year. It has not been necessary to issue fines to ensure compliance. The minister does not expect to be issuing more notices as a result of these amendments.

There was a question from Mr Barber about the number of inspectors employed by the Department of Primary Industries for carrying out the purpose of new section 110. I can advise that there are 16 inspectors employed for that particular purpose.

Mr Lenders also asked for any further details about consultation and about some of the definitions of some of the terms in the Minerals Council of Australia's letter. I can confirm that meetings and briefings and telephone conversations took place between the department and the minister's office and the Minerals Council of Australia and other interested bodies, both before the bill was introduced in the house and during the seven weeks the bill sat between the houses.

There were a number of issues about definitions, and I think I commented on four of those definitions. The two definitions I did not comment on were those of 'risk' and 'public safety'. On 'risk', again it is the standard or ordinary dictionary definition of risk, being: an assessment of the level of risk is undertaken through assessing the likelihood of an event happening and the consequences of that occurring. The level of risk could be low to catastrophic — for example, the consequences of a slope failure, as in the collapse of a freeway or whatever, would be high and if the likelihood was similarly high the risk would be high.

It is the same with 'public safety'. Public safety relates to the health and safety of the public, as distinct from occupational health and safety, which relates to the workforce. Public safety in this case could relate, for example, to communities living near a mine or users of a public road adjacent to a mine.

I think that encompasses the issues that were raised by both Mr Lenders and Mr Barber during the previous sitting of the committee.

Mr BARBER (Northern Metropolitan) — Thank you, Minister.

Mr LENDERS (Southern Metropolitan) — I will be not quite but almost as succinct as Mr Barber. First I would like to thank the minister. I also make the observation that something we will not resolve in this chamber is the question of whether the Minerals Council of Australia and the Minister for Energy and Resources, Minister O'Brien, had a genuine consultation.

I thank the minister for seeking to get an answer. I would also like to put on the record the courtesy the minister has shown in seeking to get answers to questions. Quite often in this place we are just told, 'It's government policy', or, 'We think it's a good idea'. There is just a mantra or repeat of, 'We think it's a good idea', 'We thought it was a good idea' or 'We think it was a good idea' as an answer to questions on policy. The minister has sought to answer them, and I particularly thank him for the courtesy of moving that the committee report progress so that he could come back with answers to a series of questions. On the basis of the minister's answers, I will not pursue the questions I flagged on new section 110, and that concludes my comments on this bill.

Clause agreed to; clauses 2 to 9 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

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

That the bill be read a third time.

I wish to express my sincere thanks to the opposition, particularly Mr Lenders, and to the Greens, particularly Mr Barber, for the cooperative way in which all aspects of this bill have been dealt with this morning and this afternoon.

Motion agreed to.

Read third time.

TOBACCO AMENDMENT (SHOPPER LOYALTY SCHEMES) BILL 2012

Second reading

Debate resumed from 11 December; motion of Hon. D. M. DAVIS (Minister for Health).

Ms HARTLAND (Western Metropolitan) — The Greens will be supporting this bill. It is perfectly sensible and logical that people buying tobacco should not be able to get what I suppose you would call frequent flyer points. We should do everything we can to discourage people from buying any tobacco products, and smoking is a habit we need to break in our community, especially among young people.

Ms CROZIER (Southern Metropolitan) — I rise to speak on the debate on the Tobacco Amendment (Shopper Loyalty Schemes) Bill 2012. I thank Ms Hartland for her support of the bill. I note that in the other place the opposition did not oppose the bill. As Ms Hartland just highlighted, this bill is about loyalty programs and the effects of smoking. As she said, whatever we can do in this area should be done. The Baillieu government is fully committed to ongoing health reform in this state, and it will continue to roll out preventive programs in a number of areas that will better inform Victorians of healthy initiatives and lifestyle choices. I note that the Victorian Health Priorities Framework 2012–22 clearly outlines those priorities and is focused on a preventive strategy across government and across sectors.

In the last sitting week we had another bill that related to tobacco. We debated and passed the Tobacco Amendment (Smoking at Patrolled Beaches) Bill 2012. Today the Premier and the Minister for Health announced a ban on solariums. That is not related to tobacco, obviously, but it is another strong message to Victorians that where it can do anything to assist with initiatives to prevent cancer, this government is clearly committed to doing so. I congratulate the minister on launching the skin cancer prevention framework, which is the first framework of its kind in Victoria. It will go a long way toward further preventing the ongoing tragic effects of cancer.

This bill is fairly straightforward and simple. It is another measure with which the government is demonstrating its commitment to further reduce the incidence of smoking, and it sends a message to younger Victorians, which is very important.

The purpose of the bill is to amend the Tobacco Act 1987 to further limit the operation of shopper loyalty schemes in relation to the sale of tobacco products. As was highlighted by Ms Hartland, there are various loyalty schemes or frequent flyer reward points that people get when they purchase goods. A lot of retail is geared towards marketing campaigns, and clearly loyalty programs are used by many retailers. The bill will take away the inducement of rewards to coerce or entice shoppers into buying tobacco-related products.

The amendment to section 7 of the Tobacco Act will bring Victoria into line with other states that have already gone down this path, including New South Wales, Queensland, South Australia and the Australian Capital Territory. For major retailers that operate nationally, it will provide a more consistent basis in relation to any reward loyalty schemes that might be in place for the consumer.

As we have said, there is bipartisan support for whatever we can do to reduce the incidence of smoking, and we are especially interested in targeting younger people or the more vulnerable in lower socioeconomic brackets. Clearly some reward programs are targeted at those two specific groups. This amendment will go a long way towards protecting those people in relation to those programs. The state has come a long way in introducing many initiatives around smoking. As we know, something in the vicinity of 4000 deaths a year are attributed to smoking. The health effects cost billions of dollars per year — up to $5 billion or thereabouts. Smoking has an enormous economic cost, let alone the health cost and the costs to individuals that are affected and their families.

It seems incredible that not so long ago we would have considered smoking in the workplace acceptable. I remember that smoking was once allowed in hospitals and wards; it seems incredible that that was not so long ago. I am very pleased that all sides of the house are supporting this initiative. It is a very good initiative that will further protect Victorians against the harmful effects of smoking. Currently there is also a defence provision for some benefits that are applied by the larger chains in relation to credit card transactions, and some institutions have not been able to easily identify those benefits. This bill will review that defence, which is particularly relevant to reward schemes that are attributed to credit card transactions.

In closing, I do not need to say too much more about this bill. As I said, the minister should be commended for bringing it forward. It sends a strong message to Victorians that we are further increasing our preventive health programs, and I note that there has been consultation with and support from retail chains. We

thank those retail chains as well as those opposite for supporting the bill.

Mr JENNINGS (South Eastern Metropolitan) — I am happy to support the Victorian Minister for Health in relation to the Tobacco Amendment (Shopper Loyalty Schemes) Bill 2012. For the benefit of the *Hansard* record, I note that the minister just gave a brief cheer in response to my having expressed my support for him on this initiative, which is interesting, given the dynamic between us at this point in time, which is not always as amicable, fruitful or productive as it has been in relation to this issue.

The minister should be congratulated for any action he takes in relation to any form of legislative, regulatory or programmatic effort that reduces the incidence of tobacco smoking in the Victorian community. He will continue to be congratulated on such efforts, however modest they may be. In fact the second-reading speech recognises that this is a very modest proposal, but one that continues the trend of legislative and regulatory imposition on the sale and distribution of tobacco products in Victoria.

The bill closes what might have been a loophole in existing legislative provisions involving a retailer distributing gifts as a reward for the purchase of tobacco products and as an inducement to the purchase of those products. That ban has been in place for some time. This particular provision guarantees that a retailer will not get around that loophole and be able to include tobacco products in a shopping basket of goods for which a retailer can reward a customer for purchasing.

That is the intention of this legislation. It contains a simple, modest proposal. It builds on a raft of legislative reforms that Victoria has made over a number of decades, most significantly kick-started by the introduction in 1987 of the Victorian Health Promotion Foundation, colloquially known as VicHealth, which gathered state-based taxes on tobacco products and redistributed the takings from those taxes into health promotion activities, cancer treatment, tobacco mitigation and community health campaigns more broadly. It has been a very successful model in Victoria since 1987, notwithstanding the fact that in 1997 the High Court of Australia indicated that it was beyond the scope of state jurisdictional responsibility to gather state-based taxes in relation to tobacco retail. Notwithstanding that, the allocation of equivalent resources to support VicHealth has continued pretty much continually since that time. In fact within the last fortnight I had the good fortune to be in the company of the minister and VicHealth staff as VicHealth celebrated 25 years — —

Hon. D. M. Davis — And 400 others.

Mr JENNINGS — The minister is very keen for me to put on the public record that it was not a private celebration between him and me; we were in the company of about 400 Victorian citizens who were very pleased to support the great achievements of VicHealth.

We want to continue attempts to reduce tobacco use in public spaces within Victoria. The minister has made indications in the last month or two that it is his intention to introduce those reforms, and we look forward to his consultation with various stakeholders and consideration of how they might be practically implemented and to reviewing those matters when they come before the Victorian community and the Parliament in the future. In the spirit of providing support to the government in this endeavour, let us be wholehearted and clear in that support and wish this piece of legislation all the utility that can be extracted from it.

Motion agreed to.

Read second time.

Third reading

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

That the bill be now read a third time.

In doing so I thank honourable members for their contributions and particularly the non-government parties for their support of the bill. As has been said, it is a modest bill but it closes a loophole, and as Mr Jennings and others have outlined, it is one in a series of steps in tobacco control, which has a long history and further to go.

Motion agreed to.

Read third time.

CLIMATE CHANGE AND ENVIRONMENT PROTECTION AMENDMENT BILL 2012

Second reading

Debate resumed from 11 December; motion of Hon. D. M. DAVIS (Minister for Health).

Mr JENNINGS (South Eastern Metropolitan) — It is with a sense of absolute sadness if not bitterness that I rise to make a contribution to this piece of legislation, the Climate Change and Environment Protection

Amendment Bill 2012. By my reading of what this piece of legislation is actually designed to achieve, its title is a misnomer. If anybody wants to understand the effect of the bill, I draw their attention to its purposes clause.

The purposes clause indicates what the bill is designed to do, which is to wind back significant state-based reforms contained in the Climate Change Act 2010. That legislation established an openness of the state of Victoria to recognising the dimensions of climate change, the potential impacts of climate change and potential opportunities in terms of the adjustment to our economy that may have been available to the state, providing a framework in which support would be available from government in partnership with business and communities to address the adaptation challenges we may confront in the decades to come as a result of climate change and to mitigate the adverse outcomes of that climate change.

That was the reason the then Victorian government introduced the bill for that act. As the minister who was responsible, along with the Premier at that time, John Brumby, for the development, delivery and implementation of that legislation in the state of Victoria, I can say we had no illusions about how challenging the international environment was in relation to achieving climate change action. We embarked proactively on a program to place Victoria at the leading edge of jurisdictions in terms of targets for greenhouse gas abatement, adjustment policies, industry transition and adaptation plans.

The clause of this bill that amends the purposes of the principal act outlines what it does. Clause 4(3) states:

> In the Heading to part 2 of the Principal Act omit "EMISSIONS TARGET, POLICY OBJECTIVES AND".

In other words, the legislation before the Parliament today removes the whole framework of Victorian statutes which support the Victorian community and the Victorian economy in dealing with greenhouse gas abatement and which enable programs that were designed to achieve that objective and assist our community in relation to the adjustments that not only deal with the challenges but also create positive opportunities for investment and growth in the Victorian economy in the context of driving a climate change agenda. Beyond that, the range of objectives that fell from that commitment and from that framework is being removed in one line in clause 4(4), which reads:

> Divisions 1 and 2 of Part 2 of the Principal Act are repealed.

When this tawdry, parochial, provincial, defensive piece of legislation is passed, the principal act — that open, optimistic, engaging and responsible piece of legislation to meet the climate change challenge for and on behalf of the Victorian community, the nation and our international obligations — will be removed.

This is a legislative disgrace. I believe Victoria has lost a great opportunity for its economy and for the Victorian people to have a leadership role. As parochial and provincial as we may be in the state of Victoria we still have the opportunity to play our role as international citizens in this regard. If you err, you should err on the side of leadership. If you are in this space to make a difference — and that is what governments and parliaments are supposed to be about — you should be proactively engaging in the challenges that confront our citizens, trying to set the legislative environment, trying to set programs and trying to provide opportunities to proactively address those challenges. This tawdry piece of legislation is a desertion of all those principles and that opportunity, and it will be a very sorry day for the Parliament and the people of Victoria if and when this legislation passes.

Apparently within the few brief minutes that were available in the Legislative Assembly for debate on this bill a number of government members were confused about what the position of the opposition is, which is to oppose this legislation. That is what we are doing and will do. When the vote on the third reading occurs we will oppose this bill. As occurred in the Legislative Assembly, I formally move a reasoned amendment to put an additional requirement on the government prior to that vote being taken and prior to the second reading being voted on within this chamber. I formally move:

> That all the words after 'That' be omitted with the view of inserting in their place 'this house refuses to read this bill a second time until the minister has tabled a climate change adaptation plan in accordance with section 16 of the existing Climate Change Act 2010'.

The purpose of the amendment is to put some acid on the government in relation to delivering what it is obliged to do, which is to provide to the Parliament and to the people of Victoria an adaptation plan for the state before we vote on this bill. That is our intention. The government may say, 'Trust us; we will do what we are obliged to do. Have no fear that that we will not deliver an adaptation plan in accordance with our obligation, and there is no need for this reasoned amendment to prevent the second reading being voted on'. I assert very strongly that you cannot take this government on its word in relation to anything to do with environmental policy and sustainability. In fact the only

thing you can rely on is that until proven otherwise this is a government which in the environmental field will make a commitment and then subsequently break it.

Mrs Petrovich — That's harsh!

Mr JENNINGS — It is the truth. If Al Gore lived in this jurisdiction, it would be a very inconvenient truth which he would be alerting this government and the people of Victoria to. When this bill was debated in the Legislative Assembly my colleague the member for Bellarine in the other place drew to the attention of the chamber that when the Climate Change Bill 2010 was debated in the Parliament in 2010 — an election year — the then spokesperson for the Liberal Party, the member for Doncaster in the Assembly, now the Minister for Mental Health, indicated that it was the intention of the Liberal Party to accept and comply with the greenhouse gas abatement targets of 20 per cent for Victoria by 2020 if it were to come into government. That was the clear expectation that excessively naive people in the Victorian community — and many of them work in the newsprint industry — took on face value, and they gave the Liberal Party the benefit of the doubt. Unfortunately many people in the environment movement took it on face value as well and gave the incoming Liberal Party the benefit of the doubt that it would in fact hold on to its commitments in relation to greenhouse gas abatement targets and its commitments to deal with the climate change challenge.

If those people have had any doubts over the last two years, then if and when this legislation is passed, how could they have any doubts in the future? They might be extremely slow learners — I have been accused of being a slow learner once or twice in my life — but any slow learners who have a look at the environmental track record of the Baillieu government will see a litany of broken promises which indicate why the Victorian community can have a very clear view that this is a government that is quite happy to trash not only the environment but also our environmental credentials in legislation, regulations and program support for environmental protection into the future. This is a government which quite extraordinarily chose to keep one promise, and that promise was to allow cattle grazing back into national parks.

Mr Lenders interjected.

Mr JENNINGS — The Leader of the Opposition is encouraging me to be derisive by referring to what the government itself calls 'mobile fuel reduction units', which is a complete misnomer for — —

Honourable members interjecting.

Mr JENNINGS — That is the first and last interjection I will respond to, because it encourages people. Government members seem to be confused about the nature of environmental protection and the commitment of their government to environmental protection. They argue the toss — erroneously — that cattle grazing in the high country is assisting the quality of environmental protection there. They say they want the science to prove that, but no science will ever prove that. If it is science they want, the science they will get will indicate that the reintroduction of cattle to the high country has a negative effect. However, in the name of disclosure, that is the one commitment the incoming Liberal-Nationals coalition gave on environmental policy that it actually fulfilled.

The coalition did not maintain a number of its other policies. It did not maintain its policy to support renewable energy, particularly in the wind sector. One of the objectives of the Climate Change Act 2010, which is being removed by the bill before the Parliament today is trying to get the right energy mix for Victoria in renewable energy in the years to come. The government is formally removing that today, but it has already effectively removed the potential for wind industry growth in Victoria through its actions over the last two years. In fact if it had not been for wind energy developments that had been approved and had already gone into development under the Labor administration prior to 2010, no wind development would have occurred in Victoria in the last two years — and there will not be any on the basis of the new policy prescriptions being introduced by this Victorian government.

The Victorian government elected in November 2010 has the good fortune of governing at a time when something far closer to average rainfall has returned to Victoria. Government members have lapped up the luxury of rain falling during their two years of tenure, after drought circumstances had prevailed in Victoria for over a decade of Labor administration — for the full life of the Bracks and Brumby era. A chronic shortage of rainfall and water supply in the state of Victoria led to a number of measures, which included a target for water savings, Target 155, which was a policy of achieving 155 litres of water use per person per household across Victoria in an effort to address water shortages. That target and commitment has gone. In fact at the moment the government has the good fortune of being able to rely on heavy rainfall amidst its ongoing assault on the decisions made by the previous government in relation to the desalination plant — attacks on the fact that we will always have a surplus supply of water.

It is tragic for me to say that my argument will only ever be proven over time in adverse circumstances, with distress in the Victorian community. If those drought conditions return and prevail, at one level I will be extremely sorry to point to that fact rather than deriving any joy from doing so. I confidently believe that, given climate change scenarios, the bad days will return, and that it is only a matter of time. Nevertheless there is an attitude that you do not have to be mindful of demand management in resource allocation, whether with respect to water or any other consumer goods, the use of agriculture or the use of natural resources. The messages to the contrary are lost on this government.

This government gave undertakings in relation to maintaining access to firewood across the park system, particularly in forested areas across Victoria, and soon after coming to government opened access to firewood in an open-slather manner, and from that moment until now that has been and will continue to be a major threat to native vegetation across the landscape. We have seen a reduction in the number of officers available in the Department of Sustainability and Environment and the Department of Primary Industries to support local communities to deal with stresses within our environment. We have seen a disproportionate number of savage cuts in the state public sector, particularly across regional Victoria, where many DSE and DPI officers have lost their jobs, with a subsequent reduction in protection of biodiversity and fisheries and a reduction in provision of support to communities in dealing with adaptation issues now and into the future.

This has been pretty much the story of what the Baillieu government has already delivered within two years. Clearly this laissez-faire attitude to environmental management and these reductions of resources available across the public sector and available to our community to deal with those matters are pretty consistent with what will be a very sorry pattern of the deterioration of our environment and of human activity adding to the stresses and strains our environment has already been subjected to since the colonisation of the land that became this state. Indeed people well versed in not only climate change but topics such as biodiversity will say that Victoria is an acutely deteriorating part of the national environment — that is, that within the Victorian landscape we have seen a greater deterioration of environmental values, whether it is of native vegetation or of flora and fauna species across the landscape, as a result of the acuity of the urban developments and land practices of the past.

It seems to me quite extraordinary that there seems to have been a conscious decision made within the government and the Victorian community to be blind to environmental risk factors in terms of not only the environmental values themselves but also what dangers those risk factors may pose to human activity, particularly in relation to our fire effort. As somebody who experienced the great devastation visited upon our landscape and our communities during 2009 and who had to deal with the consequences in terms of our bushfire recovery and our community grieving in relation to the loss of life and opportunity that resulted from those tragic bushfires, I will never forget — until the day I lose my faculties — what profound risk and vulnerability confronted the Victorian community.

In terms of any collective memory of those experiences, the pattern throughout the first decade of this millennium was horrendous, and I am certain that anybody who sits in the luxury of assuming that those days may not come again will have a very rude awakening. I hope it does not come at their cost, and I hope the community does not bear the collective cost of that negligence and abrogation of responsibility and opportunity.

When talking about climate change under normal circumstances I have always attempted to acknowledge the challenges and stay up-beat about the opportunities afforded to us to engage and encourage communities and businesses to proactively embrace these challenges, to be creative, determined and innovative for the enrichment of communities and industry and to drive opportunities. That is the mood I would desperately like to maintain on behalf of the Victorian community, and that is what I would like to do today in acknowledging the profound backward step taken by the Victorian government.

It is hard for people to stay focused on these issues. As part of fulfilling its international obligations the federal government has been confronted by the challenge of trying to find a level of agreement in its approach to climate change policy and the introduction of what ended up being a carbon tax. In public policy terms it is a tragedy that in the name of shifting from an emissions trading scheme — which, in my view, had great potential for a relatively smooth adjustment in meeting an abatement target and received a high degree of public support — we have moved now to a model that has fewer demonstrable targets being met onshore and is less popular. Talk about a conundrum! Talk about a missed opportunity! It becomes very difficult for the Australian community to see this approach in a positive and engaging way. It is seen as a burden on the economy, on our households and on our lifestyle rather than being seen as a positive part of adaptation and particularly of adjustment.

It is a lost opportunity for this nation, and it is being compounded by this disgraceful piece of legislation. I am bitterly disappointed on behalf of the people in our community who are mindful of the scientific challenge confronting the global community and who want to do what they can to mitigate that risk and assist others to support change and to be positive contributors to the debate in Victoria. To the people who want to maintain their enthusiasm and optimism in light of overwhelming resistance, including in this case legislative resistance, I wish them well in their endeavours.

I would like to conclude my contribution with an encouraging voice rather than a voice of despair and loss, but if this piece of legislation passes today, it will be a great loss of opportunity for the people of Victoria. It will lessen our contribution as global citizens to doing something about the very important and significant public policy issue and economic opportunity that is not seen by this government, because this government's vision is of its feet.

Mr BARBER (Northern Metropolitan) — Human-induced climate change is the greatest challenge we humans have ever faced, yet from the two old parties in this country, the Liberal Party and the Labor Party, you cannot get a straight story, you cannot get a direction and you cannot get a vision. You cannot get any articulation of a solution, and this bill and the act that it amends are a very good example of that.

Here in the state of Victoria we have a Liberal Party and its leaders who are completely incapable of articulating anything meaningful on the subject of climate change. You have got everything from those who understand and accept the science through to those who deny it is even happening — and that is just here in this chamber. We have got the likes of Mr Finn and Mr Elsbury, who say that it is all a big furphy and it used to be warmer in the time of the dinosaurs. Well, they ought to know; they are a couple of dinosaurs themselves. But in between those two bookends we have got a slew of backbenchers who really cannot articulate any position on this matter at all. They are too cowed by the outspoken denialists and the lack of a direction set by their leaders.

I had hoped to hear from Mr Ondarchie today, because I am yet to hear from him on the subject of climate change. In fact just a moment ago I used the *Hansard* search function to find Mr Ondarchie's record on the words 'climate change' and what I got back was, 'There is no *Hansard* text which matches your query'.

Then over on the Labor side we have simply got a party that tries to simultaneously walk on both sides of the street. I do not know which approach is worse. This was well articulated by a colleague of mine, Peter Christoff, writing in the *Age* earlier this week. He said:

> There are two Labor governments in power in Canberra, and neither is headed by Julia Gillard or Kevin Rudd. One is led by Greg Combet, the other by Martin Ferguson. They represent the two faces of Labor. One of them peers nervously at the future while the other looks longingly to the past.
>
> Climate Minister Combet — —

Mr Ondarchie interjected.

Mr BARBER — Mr Ondarchie is caught out now. He is going to have to get up and tell us what he thinks about human-induced climate change.

The article continues:

> Climate Minister Combet has established a carbon price as a very cautious first step towards national emissions trading, set up a fund for renewable technologies, and an independent authority to set future emissions targets. Without the provocation and support of the Greens, this would not have happened.

Without the provocation and support of the Greens nothing is going to happen on climate change, regardless of whether Labor or Liberal is in power at any level.

Mr Christoff went on to note the energy white paper put out by Mr Ferguson — let us call it in shorthand, 'Creating a Pilbara of the South to massively exploit the fossil fuel resources of Victoria'. While Mr Jennings used an enormous number of words to deride this government's approach in its two years in office, he really did not have his own alternative, because energy and climate policy in the state of Victoria is being run by the dynamic duo of Martin Ferguson, the federal Minister for Resources and Energy, and Michael O'Brien, the Victorian Minister for Energy and Resources, and Mr Jennings's party and Mr Jennings's leader are having zero impact on that.

How did we get to this bill today? The bill itself arises out of a trigger Labor built into its legislation when it passed the Climate Change Act in 2010. The government is simply following the requirements of Labor's act that should a national carbon price be implemented, a review of the Victorian Climate Change Act would become automatic. I have to ask the Labor Party: what was the purpose of that trigger in the first place? What outcome did it expect from the review it built into the legislation other than to weaken the mechanisms that are in the principal act and to lower or

alter — most likely lower — the so-called 20 per cent reduction goal?

Some other matters are being brought to bear in the bill. There is the ability for the minister to create guidelines for himself as to how to write an adaptation plan, and with that adaptation plan due in December this year it should already have been well under way. It should already have been framed, considered and put out for public consultation, as it has in Tasmania, where of course the climate change minister is a Green — Cassy O'Connor. She has already released a climate change adaptation paper for the state of Tasmania. It covers issues such as human settlement and infrastructure, natural systems, water management, industry sectors, natural disasters, human health and vulnerable communities, with appendices related to the predicted impacts of climate change on Tasmania and noting the actions already taken, completed or under way.

This government is a dismal failure for not having produced such a document for the state of Victoria. Instead it brings in here a bill that teeters around the edges of the job it is supposed to have done. In a little while I will come back to why a plan for adaptation is also a plan for mitigation of greenhouse gases and to the point that one inextricably follows from the other. These two alternatives, Labor and Liberal, have neither. If they had, they would have articulated them already.

Why is it that people as urbane and educated as Mr Ondarchie have to keep quiet on climate change? It is a function of the recent politics of the Liberal Party. Back in 2008 climate change was on the front page of every major Australian newspaper almost every day of the week, if members care to remember. There was a global conference due in Copenhagen and there was a discussion between the then Prime Minister, Mr Rudd, Mr Turnbull and their seconds about a carbon price being imposed.

Mr Ondarchie interjected.

Mr BARBER — It is going to take more than that, Mr Ondarchie, to knock me off my path — you may have noticed. You are the one fumbling around in the dark for a position when asked about these things. Before this is over you will understand my position very clearly.

Their seconds, Senators Wong and Macfarlane, were thrashing out a deal. It was a deal that would have locked in failure for a very long time, and we were lucky that we avoided it the way we did. When the Lib-Labs could not get together on this lame plan for locking in failure and massively compensating polluters to keep doing what they were doing, the Labor Party sort of threw the bill across the table to the Greens and said, 'There you go. Vote for it or else!'.

Since then though, quite a bit has changed in the Australian political scene. At the urging of Alan Jones, Tony Abbott ran a culture war inside the Liberal Party to convert it into a climate change denialist organisation, and that changed attitudes in Australian society. Support for urgent action on climate change is now less than it was in most polls in those days, but interestingly the change has not been consistent across all Australians. Back then, as I said, there was strong support among Liberal voters for such action, and even among Liberal MPs and most of their leadership group, but things have changed as a result of all that furious action by Tony Abbott and all the wackos he unleashed, who now feel that they are off the chain and able to say almost anything they want about climate change and the science of it. In fact by 2009 a Roy Morgan poll showed that 50 per cent of Liberal voters said that when it comes to global warming concerns are exaggerated, but 34 per cent said that if we do not act now it will be too late and another 12 per cent said that it was already too late.

The outcome of the Tony Abbott project is that he split his own voting base and his MPs straight down the middle on the question of climate change. As you would know, Acting President, if you walk down the middle of a road, you get squashed, and that is what is about to happen to the Liberal Party. In the meantime the Labor Party is to be found on both sides of that highway, and we saw that here today.

Clause 8 of the bill does some minor tinkering with the provisions in relation to the storage of carbon and the property rights created under Victorian law, although it is a pity there is no action to give people a chance to store carbon in the landscape and be paid for it. Through the Clean Energy Future package, the Greens have delivered hundreds of millions of dollars for carbon farming, and that money has already started to flow.

Just last week I was out in your electorate of Western Victoria Region, Acting President, where I met a farmer who is already working his way through the steps required to register his new biodiverse plantings for regular payments under the carbon farming initiative. He estimates that with the storage of carbon he is achieving out there he may be earning $100 a tonne per hectare on country that was pretty marginal and in fact needed to be treed, because at the bottom of the hill excess run-off is bringing on salinity in what were the prime paddocks.

At the Victorian level we are facing a situation where farmers who move from active farming, such as cropping or grazing, and cease those activities, as my friend has done, could be found no longer to be engaged in farming activities for rating purposes and could lose their differential farm rate.

In a letter from the Treasurer to one of his own MPs the Treasurer has confirmed the definition under the Valuation of Land Act. While someone may receive some small and regular payment for being a carbon farmer, the risk is always there that they will lose their farm rating valuation and get hit with higher rates in any municipality where there is a differential rate between farming and other activities. That is something I would like to see the Treasurer attend to, and this bill would have been the right place to do it.

I turn to clause 19 of the bill, which deletes section 13(1)(ga)(i) of the Environment Protection Act 1970. The former Labor government's act gave the EPA (Environment Protection Authority) two powerful tools. One is the ability to regulate emissions of carbon dioxide towards the achievement of the 20 per cent target — and I will detail what that 20 per cent target really meant in a bit — and the second, in section 13(1)(ga)(ii), was to regulate greenhouse gas emissions to reduce harm to the environment. They were the two powers given by the principal act, the Climate Change Act 2010. In this legislation the government is clawing back only one of those powers — the one that relates directly to the target, because the government is getting rid of the target.

Both of those tools are incredibly powerful. While the government, with this bill, is running away from its responsibilities in climate change, it is not yet giving up this quite powerful tool. It is interesting that Mr Jennings, on behalf of the Labor Party, was quite coy about the use of these powers when I quizzed him on the bill when he first introduced it as the Minister for Environment and Climate Change in 2010, because a wide-ranging, open-ended power to regulate greenhouse gas emissions to reduce harm to the environment is almost unlimited. If it chose to, the EPA could use that on almost any facility or any type of activity that emits greenhouse gases. Despite that, the government has not seen fit to hand that back just yet, but there has not been any kind of plan or any kind of direction on how a government might use it.

Mr Jennings's 20 per cent target that is being abolished by this bill meant quite little when it came down to it, because the only time a minister had to consider that 20 per cent target was in a few limited instances, such as when making certain plans under the Flora and Fauna Guarantee Act, when looking at sustainable water strategies under the Water Act, when ticking off on a catchment and land protection plan or a coastal management plan, or when ticking off on a council's public health and wellbeing plan. These are all matters in the realm of adaptation, but they are hardly the types of tools you would be bringing to bear if you wanted to make deep cuts to Victoria's emissions.

For all Mr Jennings's flailing around about the Labor government's environmental record, he still has not got a plan. His leader, Mr Andrews, has told us that he will produce a plan for the renewable energy industry after he is elected. He says that an Andrews government will write a plan to encourage a renewable energy industry. I do not know who they think will be taken in by that. Why is it so hard for Mr Andrews and Mr Jennings to say that they will reverse the provisions of planning amendment VC82, which has made it so hard to apply for and build a new wind farm in Victoria? After all, the Labor Party voted on a disallowance of VC82, but when members of the former government are asked about it, as Mr Andrews was at the Rural Press Club, they back off from saying they would disallow it. They cannot commit themselves to removing a provision that says that one individual can block not just the construction of a wind farm but even someone making an application. That is a provision that applies to absolutely no other type of development in the state of Victoria, let alone those large and polluting developments, ranging from transport infrastructure to new coalmines to new energy-generating facilities, that truly do have large impacts on people's amenity, not to mention on the global environment.

If they wanted to, the Labor and Liberal parties could use existing tools to develop a plan to make deep cuts to Victoria's emissions, but the climate change principal act or any of the provisions in this bill before us today run a mile from that. That would require the Minister for Planning to consider the plan when building a new suburb in the outer realms of Melbourne that does not yet have a working train station.

The bill does not require the Minister for Energy and Resources under the Electricity Industry Act 2000 to consider the need to reduce emissions when issuing new licences. It does not require the Minister for Public Transport to turn his mind to it — just these puny little decisions listed in the schedule to the Climate Change and Environment Protection Act 1970.

Mr Jennings's Labor government did not even have a plan to achieve its 20 per cent target. In fact its first move was to fund and issue an Environment Protection Authority works approval for the HRL clean coal —

so-called — plant while promising to shut down 25 per cent of Hazelwood power station. Twenty-five per cent, which is barely used under the current settings, represents a small amount of power across various coal-fired power stations in our grid, and it has already been mothballed as a result of the clean energy future package. There is no plan from the Liberal and Labor parties on stationary energy. The Liberal government withdrew the gross feed-in tariff, but it did that using a provision in Labor's bill that sets a 100 megawatt cap on that original feed-in tariff.

There is no transport plan from this government — nor was there from the previous government — that would have led to a major expansion of V/ Line, even to keep up with the level of patronage growth or, for that matter, to advance those heavy rail lines needed across Melbourne running north–south and east–west.

On native vegetation clearing — a small but significant part of our greenhouse gas emissions that are meant to be a net gain but are currently a net source of emissions — Labor and Liberal have done nothing but make it worse when they have been in charge. On the logging of the Central Highlands forests — the mountain forests, some of the most carbon-dense ecosystems on earth — that has continued, and always would have continued under a Labor or Liberal government post the 2010 election.

On housing, there have been some weak promises, barely implemented and not attacking the main body of the problem — that most of our housing, particularly our rental housing, is enormously inefficient in the way that it forces its occupants to use energy.

On energy efficiency programs — the biggest free kick we will ever get in attacking climate change — there have been some baby steps. The Labor Party introduced the Victorian energy efficiency target scheme. The Liberal minister who had an expansion of that target in his in-tray when he arrived has ticked that off and expanded it to 5 million tonnes a year, which is a significant volume. I do not know how you would equate that to megawatts, but it would be the equivalent of reducing the need for a couple of hundred megawatts of generation, I would have thought, at the least. Notably, that is exactly what happened. We have seen a flattening of energy demand, and we even saw a decline last year here in Victoria with the impact of solar photovoltaic installations, highly effective wind farms, the energy efficiency program and citizens basically just getting mad as hell and being unwilling to take it anymore, making them more efficient around their homes in the absence of any particular program.

It is interesting to go through that list. Those are all the areas where we should be taking action to reduce emissions, and they are also the areas where we desperately need an adaptation plan, which we are not seeing from this government. If it is working on that, it is doing so in secret. It is not bringing the people of Victoria into its confidence, and on the issue of climate change, confidence is what the ordinary citizen desperately needs. The citizens do not know what this problem necessarily means for them, and that is why when the Liberal Party abandoned effective action on climate change it took its voters with it — or at least half its voters. The other half are the kind of people who ignore the how-to-vote card and preference Greens anyway if they live in the inner city, over the top of Ted Baillieu's orders. But the other half — —

Mr Ramsay interjected.

Mr BARBER — We will hear from Mr Ramsay on this in a moment. As I was saying, mitigation and adaptation are two sides of the same coin. If we were to reduce our use of coal-fired power here in Victoria, we would save water, which we desperately need in those rivers in central Gippsland, to meet the effects of climate-induced drought and to ensure that our agricultural production in that area remains strong.

If we were to build a better and more up-to-date transport system, not only would we rapidly reduce our emissions from transport, one of our fastest growing areas, but we would harden that system against the impacts of climate change, because it seems that every time we have a downpour of rain or conversely a heatwave the transport system stops working.

On land clearing, if we took our net loss of native vegetation and turned it into a net gain, not only would that be a significant slice of emissions avoided but we would be improving the resilience of some of those threatened ecosystems against the droughts, fires, pests and so forth that they will be facing as the world continues to warm. If we stopped logging in the Central Highlands, which we could do rapidly, not only would we be protecting and enhancing those massive carbon banks but we would be ensuring or at least assisting with the survival of the Leadbeater's possum — our state faunal emblem up there — which is threatened by the combined effects of logging and fires brought on by climate change. On housing stock and energy efficiency, we could beat our bills and cut our carbon emissions at the same time.

But, as I said, we have a Liberal Party that does not even know what it thinks on the subject, and we have a Labor Party that believes it can continue to walk on

both sides of the street indefinitely. Neither party has a hope of sustaining the positions they are in — —

Mr Lenders — And the next speaker is in Parliament because of your preferences.

Mr BARBER — And the best that Mr Lenders can offer up is that the Greens should have preferenced the Country Alliance candidate for Northern Victoria Region, a rabid climate-change denialist — Steve Fielding with a shotgun! — whom Mr Lenders would have preferred to see sitting in the chamber and making a contribution on this bill. Labor would have been kowtowing to that gentleman in a way that is even more embarrassing than the way we saw Mr Lenders sucking up to the fossil fuel industry earlier this morning in his contribution on the Mineral Resources (Sustainable Development) Amendment Bill 2012. Mr Jennings tried to paint a picture to show that things would have been so much better if we had not been taken in by that Mr Baillieu, whereas I am pointing to a scenario where things could have been a lot worse with a Labor-Country Alliance alliance — the climate change denialists and those with a vision to make the Latrobe Valley the Pilbara of the south. These, Mr Lenders is telling me, are my alternatives.

Mr Lenders interjected.

The ACTING PRESIDENT (**Mr Ondarchie**) — Order! Through the Chair!

Mr BARBER — No wonder I am so desperate to get some action on this. I am with the citizenry on that, while the Labor and Liberal parties try to goad each other into sticking exactly where they are — smack in the middle of the road, with an impending disaster ahead. We are not heading for an environmental crisis, we are in an environmental crisis, and the bill in front of us does absolutely nothing to get us out of it.

Mrs PETROVICH (Northern Victoria) — I am very pleased to address the Climate Change and Environment Protection Amendment Bill 2012 today. I am going to try to be as succinct as I can, while highlighting the importance of this bill, which amends the Climate Change Act 2010 and the Environment Protection Act 1970 to give effect to the changes arising from a review of the Climate Change Act. That review was triggered under section 19 of the act by the introduction into federal Parliament of the commonwealth government's Clean Energy Future package, which provided a national carbon price and a greenhouse gas emissions trading scheme. I am going to go through this quite clinically, because I think there have been a few furphies put around the chamber today about positions. I would just like to clarify where we are actually at with the bill, because I think this is something the community has a right to see for its merits.

Shortly after that review of the Climate Change Act was conducted the report was tabled in the Victorian Parliament on 27 March. The review examined the impact of the national carbon price and the emissions trading scheme on the Victorian government's climate change policy objectives, as set up under the Climate Change Act, as well as the appropriate mechanisms for achieving those objectives. The review made a series of recommendations for legislative changes to remove redundancies in light of the national emissions reduction scheme and to improve the overall functionality of the legislation.

I will just add a couple of quick quotes here which might put other speakers' contributions in historical context and highlight that the Victorian coalition government has been very clear and very practical and has taken its approach to climate adaptation very seriously. It has not deviated, and it is working to a consistent plan. In contrast, we see this comment from Mr Barber in the *Australian* on 27 March 2012. The article reads:

> State Greens MP Greg Barber said repealing the target would have minimal impact.
>
> 'It didn't actually do anything. It was a PR stunt', he said.

I will now talk about comments from members of the Labor government. This is a quote from the Victorian Climate Change Green Paper 2009. I think Mr Jennings was the environment minister at that stage. It says:

> … the introduction of the CPRS means that a binding emissions reduction target set by the Victorian government would distort the operation of the scheme by mandating that a set level of reductions should take place within the state, regardless of the efficient allocation of national emission reductions that should be achieved through the CPRS market. Accordingly, the government does not see any benefit in legislating for a state-based emissions reduction target that is inconsistent with a national target.

The Victorian government's response to the review, which was also tabled in the Victorian Parliament on 27 March 2012, endorsed the majority of the recommendations, which are given effect in the bill. The bill makes a small number of amendments to the Environment Protection Act that are unrelated to the review.

I think the key to all of this is that, with a clear new direction, the Victorian government has a well-defined policy role going forward that focuses on managing and

adapting to climate risks to better protect Victoria's assets and to make communities more resilient to future extreme weather events. This does not involve any black balloons or any harebrained schemes, but it will certainly help communities when we have extreme events like those we have seen in recent times. We are supporting adjustment to the carbon price by helping Victorians understand how they can adopt cost-effective and energy-efficient practices at home and less resource-intensive manufacturing processes in the workplace. It is about understanding what we have to do to adapt to a changing climate.

The bill also makes minor changes to the Environment Protection Act 1970 to double fines for some littering offences, which will act as a deterrent to litterers and help keep our streets, parks and waterways clean. Residential noise abatement directions, which are given by the council or by police, will now remain in place for up to 72 hours rather than 12 hours. The bill removes the $500 service fee which has been payable to the Environment Protection Authority when businesses or individuals were given a pollution abatement or clean-up notice. It realigns and adjusts the Victorian government's climate change role and responsibilities, provides more effective responses to our state within the national policy settings, focuses on supporting Victoria's economy under a national carbon price and protects our competitive advantage while continuing to improve productivity and business opportunities. I did not hear that mentioned today on one occasion by either the Labor opposition or the Greens.

We are working in a difficult economic climate. We will look at how we can effectively manage our economy and how we can ensure — —

Mr Barber — Your answer is to do nothing.

Mrs PETROVICH — I will tell Mr Barber in detail, if he likes, what we have done in addressing some of the issues he could only dream of. In relation to climate change, the bill repeals a provision with respect to the state-based emissions reduction target which duplicates commonwealth government measures, and that is really important. One of the things that this government went to the election on was a reduction of red tape and improved cost efficiencies. Professor Garnaut sees no need for a separate trade emissions target if there are appropriate national targets and policies in place to make sure we meet that national target. The *Victorian Climate Change Green Paper* 2009 says:

> The CPRS should be the main instrument for reducing emissions in Australia.
>
> …
>
> The introduction of the CPRS means that there is no longer any value in state and territory governments setting their own binding targets for reducing statewide emissions.

The bill repeals revision with respect to the state-based emission reduction targets that duplicate commonwealth government measures and are now redundant with the introduction of the national carbon pricing mechanism. It improves the overall functionality of provisions relating to planning for and adapting to climate change impacts and risks, and it addresses technical impediments to Victoria's participation in the commonwealth government's carbon farming initiatives. The bill also makes a small number of amendments to the Environment Protection Act 1970 to improve community amenity and reduce business costs. It increases the penalties for common littering infringements, extends the periods for residential noise abatement and repeals the service fee required to be paid by businesses when they are issued with an abatement notice.

We could talk about the key areas of the bill for a long time, but it is important to address some of the points that were made earlier. The key to this bill is that we do not need to duplicate; we have a federal system, which will be implemented. We are keen to ensure that Victoria is placed in a position of competitive advantage. We are developing programs for the provision of those services, and some of the programs that we have already initiated are making their mark.

I am sorry that Mr Jennings is sad about this bill today. I look at his motion, and I know he was a minister in the previous government. I think he has a real passion for the environment. During his speech I thought he was almost in furious agreement with our position in this bill. It is a positive piece of legislation which is responsive to climate adaptation and which shifts responsibilities to the carbon pollution reduction scheme.

Mr Jennings's motion will delay and in fact work against what has been done nationally. All states are participating in the Council of Australian Governments (COAG) agreement. We are receiving very mixed messages today and have received them consistently from the opposition and the Greens. 'Hurry up. Stop' is the sort of language that is used all the time. We want to pass this legislation today, move forward, get on with the good programs that are out there and send a positive message about the environment. Many people are tired of the carping, and the carbon tax has concerned communities in a way that is not positive. People know it is going to cost them a lot of money.

We need to understand that the continual negative banter takes away from the true work that needs to be done, which is creating sustainable solutions for Victoria to ensure that we are providing the responses that are needed for issues of climate adaptation. In my region I have seen many disasters. Look at our response to fuel reduction and the figures around what is emitted during a hot burning bushfire. The work that is being done in these areas produces much less carbon. There are many other programs that we will talk about in detail at another time; if I had more time today, I could speak more extensively. The impact of this motion places Victorians at a disadvantage from a community perspective but also in terms of the COAG agreement. It also sends a bad message about what we think of the environment and how we need to move on to protect our communities from climate change.

House divided on amendment:

Ayes, 18

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

Noes, 20

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

Pairs

Viney, Mr	Guy, Mr

Amendment negatived.

Motion agreed to.

Read second time.

Third reading

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

That the bill be now read a third time.

In doing so, I thank honourable members for their contributions. However, I particularly want to make a statement after having a discussion with Mr Barber. He raised questions about the climate change adaptation plan and when that would be tabled in Parliament. I inform him that under the Climate Change Act 2010 the first climate change adaptation plan must be prepared by 31 December 2012 and tabled in Parliament within 10 sitting days. The preparation of the climate change adaptation plan is on track for completion by the end of this year. Accordingly, it will be tabled in Parliament in early 2013. Under the current parliamentary calendar the latest date for tabling it in Parliament will be 19 March 2013. I know the relevant minister, the Minister for Environment and Climate Change, Mr Smith, is working assiduously on this. He has done a great deal of work and is keen to table the document.

The PRESIDENT — Order! The question is:

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

House divided on question:

Ayes, 19

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

Noes, 17

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

Pairs

Guy, Mr	Viney, Mr
O'Brien, Mr	Pakula, Mr

Question agreed to.

Read third time.

LIQUOR CONTROL REFORM AMENDMENT BILL 2012

Introduction and first reading

Received from Assembly.

Read first time for Hon. M. J. GUY (Minister for Planning) on motion of Hon. G. K. Rich-Phillips; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Hon. M. J. GUY (Minister for Planning), Hon. G. K. Rich-Phillips tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (charter act), I make this statement of compatibility with respect to the Liquor Control Reform Amendment Bill 2012.

In my opinion, the Liquor Control Reform Amendment Bill 2012 (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 bill will amend the Liquor Control Reform Act 1998 (the act) to introduce a power that authorises Victoria Police members, protective services officers (PSOs) on duty at a designated place and gambling and liquor inspectors to tip out alcohol, whether in an opened or unopened container, that has been seized from a person under the age of 18.

The bill will also make minor amendments to maintain the operation of part 8B of the act which provides for the closure and evacuation of licensed premises for fire and emergency purposes, and enable the Victorian Commission for Gambling and Liquor Regulation (VCGLR) to delegate powers under part 8B to a single commissioner.

Human rights issues

Clause 3(2) of the bill introduces a power that authorises Victoria Police members, PSOs, and gambling and liquor inspectors to tip out alcohol that has been seized from a person they reasonably believe is under the age of 18. This provision engages section 20 of the charter act that provides that a person must not be deprived of his or her property other than in accordance with the law.

The bill sets out that if a police member, PSO or a gambling and liquor inspector reasonably believes that a person under the age of 18 is in possession of liquor in contravention of the act, the relevant officer must tip out the liquor as soon as practicable, which operationally will be at the point of seizure. Therefore, the power is confined, structured and lawful rather than arbitrary or unclear. As such, it is not a limitation on the rights protected under the charter act.

Further, Victoria Police and the VCGLR will develop and put in place additional operational instructions and training for the three groups of officers about how and when to exercise the tip-out power. The operational instructions will complement existing instructions about seizing property and dealing with minors. For example, in instances where police members encounter a person that claims to be 19 years of age and the person does not have identification to produce, the police member may elect to take away the liquor, instead of tipping it out, and offer the person the opportunity to attend the relevant police station the next day with identification to prove they are not a minor and police can return the seized alcohol to them.

Conclusion

Accordingly, I consider that the bill is compatible with the Charter of Human Rights and Responsibilities and does not limit any rights.

Matthew Guy, MP
Minister for Planning

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

The government has introduced major reforms to liquor laws to deliver a system of responsible liquor licensing that contributes to a vibrant and safe Victoria and demonstrates the government's commitment to minimising alcohol-related harm.

These reforms include the commencement of the demerit points and 5-star rating systems, new streamlined arrangements for small beer and wine producers, recognition of the important role of the live music industry in the objects of the Liquor Control Reform Act 1998 and addressing the inequality in the way packaged liquor outlets are regulated by ensuring that licensees that exclusively sell packaged liquor have a packaged liquor licence.

The government has also introduced a power that provides police members, licensees, permittees and responsible persons to issue barring orders to bar individuals from entering or remaining on licensed premises for a specified period where the person is drunk, violent or quarrelsome, or presents a safety risk to themselves or others. The government also doubled the penalties for drunk and disorderly behaviour, failure to obey a direction to leave licensed premises and introduced new offences for patrons who remain in the immediate vicinity of licensed premises to which they have been refused entry.

This bill further builds on the government's work to date by amending the Liquor Control Reform Act 1998 to fulfil the government's commitment to strengthen the power of police to deal with minors in possession of liquor.

This bill introduces a new power that authorises Victoria Police members, protective services officers on duty at a

designated place, and gambling and liquor inspectors to tip out alcohol, whether in an opened or unopened container, that has been seized from a person they reasonably believe is under the age of 18 and is in possession of liquor in contravention of the Liquor Control Reform Act 1998.

This amendment will lessen current operational concerns related to the seizure of liquor and will assist in reducing alcohol-related harm and risky drinking behaviour by under-age young people.

Currently, police members, protective services officers and gambling and liquor inspectors have the power to seize liquor if they reasonably believe that a person is under the age of 18 and is in possession of liquor in contravention of the Liquor Control Reform Act 1998, but do not have the power to tip it out.

The seized alcohol must be retained and stored until a court determines that an individual's possession was in fact in contravention of the Liquor Control Reform Act 1998. At this point, the court may order the liquor to be forfeited to the Crown or be destroyed or otherwise disposed of.

Retaining alcohol containers or samples of alcohol is not always practical from an operational perspective. For example, there have been times where police members have been required to store opened alcohol containers in their vehicles, or hold on to it while conducting foot patrols where they can only return it to the station upon conclusion of their shift. It requires dedicated storage facilities, and is administratively cumbersome as the liquor cannot be disposed of until the court proceedings have been finalised. This may take several months. The bill will improve operational procedures by enabling seized alcohol to be tipped out in certain limited circumstances.

The tip-out power will be discretionary, allowing an operational decision to be made to tip out the liquor at the point of seizure or take it away.

The tip-out power may be used in circumstances where police members, protective services officers and gambling and liquor inspectors encounter minors in possession of alcohol in public places such as a recreational park, a train station, in licensed premises or in the vicinity of licensed premises. While police members will be able to exercise the power at any time, protective services officers and gambling and liquor inspectors would only do so when on duty. This is also consistent with the powers these three groups of officers already have.

Victoria Police and the Victorian Commission for Gambling and Liquor Regulation will amend their operational instructions to provide guidance to police members, protective services officers and gambling and liquor inspectors about exercising the tip-out power. These instructions will guide the three groups of officers in exercising this new power in a manner that is lawful, ethical and professional.

Importantly, the tip-out power is consistent with the harm minimisation principles of the Liquor Control Reform Act 1998. It will provide police members, protective services officers and gambling and liquor inspectors with an additional means of reducing risky drinking behaviour by under-age young people.

The bill also makes minor amendments to maintain the operation of part 8B of the Liquor Control Reform Act 1998, which provides for the closure and evacuation of licensed premises for fire and emergency purposes, and enables the Victorian Commission for Gambling and Liquor Regulation to delegate powers under part 8B to a single commissioner.

In 2010, important amendments were introduced to the Liquor Control Reform Act 1998 providing for powers for the closure and evacuation of licensed premises for fire and emergency purposes. At the time these amendments were being developed it was thought that this regime might ultimately be incorporated into different legislation addressing fire safety in public buildings more broadly. For this reason, these provisions were to be repealed on 22 March 2013. However, the government has now determined that it is more appropriate for these provisions to remain in the Liquor Control Reform Act 1998. The bill therefore removes the sunsetting provision for these powers and provides for their continuation.

The bill also makes an amendment to part 8B to extend the power of the Victorian Commission for Gambling and Liquor Regulation to delegate its powers in relation to this matter to a commissioner. This will make the power of delegation consistent with that provided for in the Victorian Commission for Gambling and Liquor Regulation Act 2011.

I commend the bill to the house.

Debate adjourned for Ms PULFORD (Western Victoria) on motion of Hon. M. P. Pakula.

Debate adjourned until Thursday, 20 December.

RETIREMENT VILLAGES AMENDMENT (INFORMATION DISCLOSURE) BILL 2012

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 Retirement Villages Amendment (Information Disclosure) Bill 2012.

In my opinion, the Retirement Villages Amendment (Information Disclosure) Bill 2012, 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

In its 2010 plan for consumer affairs, one of the government's retirement village commitments is to promote a better understanding of retirement village residents' rights and obligations both prior to entry to a village and also while a resident.

The amendments in the bill to the Retirement Villages Act 1986 will enable the government to make regulations implementing that part of the commitment pertaining to the provision of a fact sheet of village information to prospective retirement village residents and inspection of relevant documents held by the village operator, at the stage where prospective residents are investigating and comparing villages, and before they sign a contract to enter a village.

Human rights issues

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

Presumption of innocence (section 25(1))

Clause 4 of the bill, which inserts new sections 18A and 18B into the Retirement Villages Act 1986, and clause 5, which amends section 19, are relevant to the presumption of innocence under section 25(1) of the charter act. The new provisions require the owner or manager of a retirement village to provide a fact sheet to a prospective resident or make available for inspection other documents when requested to do so by the prospective resident. The provisions create offences or, in the case of new section 19(2)(ca), widen an existing offence if the owner or manager fails to comply with the requirement.

New sections 18A(6), 18B(4) and 19(3) provide that the owner or manager of a retirement village is not required to provide a fact sheet or make a document available for inspection to a prospective resident if the fact sheet or document has previously been provided to, or inspected by, the prospective resident and the information has not materially changed in the meantime.

These provisions create an exception to the offence provisions and, as such, place an evidential burden on an accused person who wishes to rely on them (see section 72 of the Criminal Procedure Act 2009). Accordingly, they engage the presumption of innocence under section 25(1) of the charter.

However, this is unlikely to amount to a limitation on the presumption of innocence because:

- it would be anticipated that a request for a fact sheet or to inspect documents would only be refused if the owner or manager has clear records indicating that the fact sheet has already been provided to, or the documents already inspected by, the prospective resident;
- in the case of the fact sheet, discharging the burden of proof will be straightforward for the owner or manager, as the fact sheet will incorporate a provision for the owner or manager to record when and to whom it was provided;
- the burden relates to facts which are readily provable by an owner or manager as the relevant matters are within their own knowledge or to which they have ready access; and
- the offence arises in a regulatory context, where retirement village owners and managers are subject to a range of record-keeping requirements under the Retirement Villages Act 1986 and regulations thereunder.

Conclusion

I consider that the bill is compatible with the charter act because it does not limit any human right protected by 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 bill will amend the Retirement Villages Act 1986 to require retirement village operators to provide a prescribed fact sheet and inspection of prescribed documents held by them to retirees inquiring about their village and to prospective residents about to sign a contract to enter their retirement village.

The bill further delivers on the government's retirement village commitments, set out in its 2010 plan for consumer affairs, which are aimed at assisting senior Victorians and their families to better understand what is involved in retirement village living, to better compare retirement villages before choosing one and to better understand their rights and obligations; and at reducing disputes in retirement villages.

The first of those commitments, of which the bill is a component, is to actively promote better understanding of retirement village residents' rights and obligations both prior to entry and also while a resident.

The other components of the first commitment will be implemented through new regulations made under existing powers in the act. First will be the enhancement of the current disclosure statement required to be provided to prospective residents to include critical information about the entry costs, ongoing costs and departure costs that the prospective resident will incur.

Second will be the standardisation of the structure of retirement village contracts, which will better enable prospective residents to compare contracts and actual residents to locate their rights and responsibilities.

Third will be the prescription of a basic set of mandatory rights and responsibilities of residents and of owners and managers.

The second of the government's commitments is to improve the effectiveness of the retirement village internal dispute resolution guidelines published by Consumer Affairs

Victoria. This commitment has been implemented through the revision, improvement and republication by Consumer Affairs Victoria of the guidelines earlier this year.

The third commitment is to work with peak bodies representing retirement village owners and residents to develop protocols to encourage a more consistent approach to dealing with contentious issues across Victoria's retirement villages, including marketing procedures on the vacation of a resident from a retirement village and the charging of fees following vacation.

This commitment has also been implemented. In 2011, Consumer Affairs Victoria conducted a number of round tables with the Retirement Village Association, Stockland, Aged and Community Care Victoria, Residents of Retirement Villages Victoria, Council on the Ageing and Housing for the Aged Action Group to discuss protocols for owners and managers to assist them to better deal with a range of contentious issues that can arise in retirement villages.

In addition to the two issues identified in the government's commitment, the round tables identified and developed protocols on changes to services provided to residents, increases in service charges, the maintenance process, what is covered by the service and capital charges, presentation of the annual financial statement, and refurbishment of units.

These protocols were collected in a publication produced by Consumer Affairs Victoria earlier this year entitled *Retirement Villages — Good Practice to Address Key Issues*. In May this year, I launched that publication, along with the new dispute resolution guidelines, at the Renaissance Living retirement village in Surrey Hills. Consumer Affairs Victoria followed with a statewide education campaign for village owners, managers and residents to embed the guidelines and protocols.

The government's commitments underline its recognition both of the importance of the retirement village sector of the Victorian housing industry and the importance of the decision of a retiree to enter a retirement village.

About 30 000 Victorians live in some 400 retirement villages across the state. The number of retirees living in retirement villages will increase significantly with the ageing of the population. About half of Victorian retirement villages are owned by commercial operators and the other half by not-for-profit entities but, due to the typically larger size of commercial villages, about 70 per cent of Victorian retirement village units are in commercial villages.

For individual retirees, the decision to sell their house and enter a retirement village is one of the major decisions in their lives and one that is, financially, very difficult to undo, particularly in a commercial village. To ensure that they make the right decision, retirees need assistance, first, in understanding what is generally involved in retirement village living; second, in understanding and comparing the offers and contracts of the retirement villages they inspect; and, third, in understanding the financial commitment involved in a decision to sign a contract to enter a retirement village.

Once in a retirement village, owners, managers and residents need assistance in dealing with the disputes and issues that sometimes arise in order to reduce the tensions, conflicts and misunderstandings that can have severe effects on the day-to-day life of residents. This is where the new dispute resolution guidelines and the protocols fit in.

For assistance at the first stage of the process of entering a retirement village, Consumer Affairs Victoria publishes information and conducts seminars on what is involved in retirement village living generally and is in the process of updating its main publication, 'Guide to choosing and living in a retirement village'.

However, for the other stages, the information disclosure that the act currently requires village owners or managers to make to prospective residents is minimal and is only required to be made at the last stage, when a retiree is about to sign a contract to enter a retirement village. At that stage, prospective residents may be too financially or emotionally committed to the village they have chosen to be able to make effective comparisons.

Resident and consumer groups have long complained of the inadequacy of the existing disclosure requirements under the act; and have insisted on the need, firstly, to ensure that any enhanced disclosure regime does not result in retirees and prospective residents being overwhelmed with information and, secondly, to separate any enhanced disclosure regime between the information that is relevant at the stage when retirees are investigating and comparing villages, and that which is relevant at the stage when prospective residents are considering signing a contract.

At the earlier stage, retirees need accessible and comprehensible information to enable them to choose a retirement village that suits their needs and lifestyle. After they have selected their preferred village and are considering signing a contract, they need accessible and comprehensible information to enable them to understand the nature and extent of the actual financial commitment they are about to undertake.

The bill addresses these concerns and provides for the implementation of an important component of the government's commitment in relation to the second stage of the process of choosing a retirement village. This component is the provision, through the proposed fact sheet and document inspection, of targeted information to retirees who are investigating and comparing villages, before they are considering signing a contract to enter a village.

Further, the bill will ensure that if the fact sheet and document inspection are not provided at that earlier stage, they are provided with the other documents and information required to be provided to prospective residents who are considering signing a contract to enter a retirement village.

The information proposed for the fact sheet includes such matters as the number and size of units in the retirement village, any proposals for further development of the village, the services and facilities available to residents, the range of entry, ongoing and departure costs, and the financial status of the village.

The documents proposed to be made available for inspection include the village site plan, construction plans, planning permissions, financial statements and blank forms of the contracts that will need to be signed.

The fact sheet and document inspection must be provided when a retiree requests it and, whether requested or not, before a prospective resident signs a contract to enter a village, unless the fact sheet or document inspection has previously been provided and the information has not materially changed.

The fact sheet must also be included in any village marketing material given to a retiree unless the fact sheet has previously been provided and the information has not materially changed.

In separating information disclosure into two stages and in ensuring that the fact sheet and the enhanced precontract disclosure statement contain only critical information, the government is responding to the concerns expressed by resident and consumer groups, and also minimising the cost to village operators.

In providing for the obligation to provide a fact sheet at the stage when retirees are investigating and comparing retirement villages to be activated, in the first instance, by a request from a retiree, the bill makes it clear when the obligation is triggered and ensures that information is provided to those who genuinely want it.

The supplementary requirements for a fact sheet to be included in any village marketing material given to a retiree and for the fact sheet and document inspection to be provided before a prospective resident signs a contract to enter a retirement village ensure that all those who need the information get it before they enter their village.

The bill provides for the information contained in the fact sheet and disclosure statement to be prescribed but for the forms of the documents to be as approved by the director of Consumer Affairs Victoria. This will better ensure that the documents will achieve their aims and that necessary changes can be made expeditiously.

Finally, the bill clarifies section 26(2)(b)(i) of the act, which provides that if a residence contract contains a condition that must be fulfilled before a non-owner resident's departure entitlement is refunded, it is deemed to be void, subject to certain exceptions. One of the exceptions is if the condition only entitles the resident to recover the amount if payment is made by another person that is the equivalent of the amount owed to the resident. However, that requirement is too restrictive and the bill amends section 26(2)(b)(i) to provide that the payment be at least the equivalent of the amount owed to the resident.

I commend the bill to the house.

Debate adjourned for Ms MIKAKOS (Northern Metropolitan) on motion of Hon. M. P. Pakula.

Debate adjourned until Thursday, 20 December.

TRADITIONAL OWNER SETTLEMENT AMENDMENT BILL 2012

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

For Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations), Hon. G. K. Rich-Phillips tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (charter act), I make this statement of compatibility with respect to the Traditional Owner Settlement Amendment Bill 2012.

In my opinion, the Traditional Owner Settlement Amendment Bill 2012, as introduced to the Legislative Council, is compatible with the human rights set out in the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill seeks to amend the Traditional Owner Settlement Act 2010 (the act) to:

provide a statutory basis for standard conditions in a land use activity agreement in order to manage future state liabilities, prevent duplication of cultural heritage processes, and streamline processes for access to earth resources;

facilitate economic development and reduce red tape by enabling carbon sequestration projects on Aboriginal title land and allowing commercial uses of flora and forest produce to be authorised through a settlement;

increase the ability to reach settlements by broadening the eligibility of members of a traditional owner group to exercise their rights under an agreed natural resource authorisation order;

correct inconsistencies and ambiguities in the provision of the Traditional Owner Settlement Act 2010.

Human rights issues

1. Charter act rights that are relevant to the bill

(a) Section 19(2) — Distinct cultural rights of Aboriginal people

The bill will enhance the cultural rights of Aboriginal people under section 19(2).

It does this by broadening the eligibility of members of traditional owner groups who enter into a settlement package under the act to access natural resources according to an authorisation order. Currently, the act provides that a traditional owner must be a member of their group's corporate entity in order to exercise their rights under an authorisation order or exemption. This bill will amend the relevant provisions such that a traditional owner need only be a member of the group.

Similarly, the bill enables traditional owners who enter into a settlement package to develop commercial opportunities from the use of natural resources, including traditional activities that have a commercial element, for example, traditional crafts and art. Currently, the act restricts the ability of a settlement package to provide for the authorisation of commercial uses of certain natural resources. This bill will lift

that restriction, supporting traditional owners to maintain their economic relationship with the resources of the land.

Also, the addition of new land use activities provides a further protection of the right of traditional owners with a settlement package to maintain their distinctive spiritual, material and economic relationship with their land and waters and other resources, by enabling a minimum notification and consultation process, or a negotiation requirement, where a land use activity is proposed that would impact on their traditional owner rights. This ensures that traditional owners are able to have their interests represented and respected.

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

Second reading

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I advise the Council that the bill was amended in the Legislative Assembly to modify the definition of 'traditional owner group' to refer to a group who may authorise the making of an Indigenous land use agreement rather than to a group who may enter into an Indigenous land use agreement, in order to avoid any suggestion that the group consists only of those persons who sign the agreement on behalf of a traditional owner group. 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:

This government is committed to the fair and timely settlement of native title claims, through negotiated outcomes.

It is not in the interests of Victoria for the government, traditional owners and third parties to spend years, sometimes decades, in Federal Court native title determination processes if this can be avoided. Preferably, a negotiated settlement can enable the redirection of resources towards social, economic and cultural benefits for traditional owners while at the same time providing certainty for users of Crown land.

In 2010 there were 14 claims before the Federal Court. Since the passage of the Traditional Owner Settlement Act 2010 (the act), no new claims have been lodged and 6 of the 14 have been resolved or discontinued. The government is negotiating for the withdrawal of 4 of the 8 remaining claims, brought by the Dja Dja Wurrung people in central Victoria, and has agreed to negotiate using the act to settle the Wamba Wamba, Barapa Barapa and Wadi Wadi people's claim in north-central Victoria. Where the circumstances warrant it, the government will use the act to finally resolve native title claims and avoid their future lodgement.

However, the act has a number of flaws and deficiencies which this bill seeks to remedy.

The bill will amend the definition of a traditional owner group in section 3 of the act, specifically subsection (a). This amendment will make it clear that a traditional owner group, for the purposes of this act is one that has, or is able to have, a native title settlement — that is, a group that can authorise the making of a registered and legally binding Indigenous land use agreement to withdraw native title and compensation claims and to not lodge any in the future. This definition ensures that the government has settled with the 'right people for the right country' and that the settlement can provide legal finality and ongoing certainty.

The bill further clarifies the purposes for which the government can make a native title settlement and the relationship between the agreements that comprise a settlement package. The bill makes clear that a settlement can include an Indigenous land use agreement, which is the means by which a group 'contracts' out of the Native Title Act 1993 (cth). The Indigenous land use agreement assists the state to achieve finality by preventing the making of future native title claims.

The amendments under division 2 relate to land agreements. They deal with unintended situations where the grant of land to a traditional owner group entity could be taken to extinguish native title, and where the grant of land in Aboriginal title limits the ability of the government to enter into agreements to have Crown land used for carbon sequestration. There are likely to be future economic opportunities in regional Victoria arising from carbon sequestration, as carbon credits are available from the commonwealth for trade.

The bill will strengthen the framework for land use activity agreements, which are the means by which traditional owner procedural rights over certain future land use activities are given effect. There are not yet any land use activity agreements in the state and a number of amendments are required to ensure that:

- there is sufficient certainty for the investment in, and development of, Crown land;
- there is a limit to the future liabilities accrued by the state for its significant land use activities on Crown land;
- there is no duplication of processes across different acts; and
- the system is broadly comparable with the procedural rights available under the Native Title Act, which is necessary for reaching agreement with the traditional owners.

Specifically, the bill will deal with some of the gaps between the Native Title Act and the act, by enabling procedural rights over some land use activities that were not defined in the Traditional Owner Settlement Act in 2010, and by making a minor amendment to the Planning and Environment Act 1987 to clarify notification rights for traditional owner group entities in relation to planning scheme amendments.

This bill will also amend part 4 of the Traditional Owner Settlement Act to provide greater certainty for investment and development in our state's alpine resorts. These resorts were established specifically for this purpose and the government

seeks to ensure that new developments can proceed with certainty. The amendments provide for certain land use activities in alpine resorts to give rise to advisory procedural rights — providing traditional owners with notification of those activities. These amendments bring the Traditional Owner Settlement Act procedural rights into line with the level of Native Title Act 1993 (cth) procedural rights available in alpine resorts.

Other key amendments to part 4 of the act will:

> streamline the processes for negotiations and for certain low-impact earth resource approvals; and
>
> ensure that there is no duplication with the Aboriginal Heritage Act 2006.

The act currently provides for the activities that can be included in a land use activity agreement. However, the act does not provide for an up-front agreement with traditional owners about the community benefits that should apply to certain activities or about the relationship between a land use activity agreement and the Aboriginal Heritage Act 2006. Addressing these matters as standard conditions in an agreement will streamline these processes and make them more certain for everyone involved.

The other group of amendments to part 4 of the act will clarify the provision relating to the ministerial directions that are to detail the process for advisory activities, and the information requirements of a decision-maker in relation to negotiation and agreement activities.

The amendment to part 5 of the act, which provides for a funding agreement and the establishment of a trust to hold and invest settlement funds, will clarify the purpose of the trust that has already been established. This trust, which has had moneys paid into it as part of the Gunai Kurnai settlement, is a charitable trust. The definition of 'charitable' in terms of tax rulings is informed by common law and statute. Making this amendment will increase the likelihood that the trust is ruled to be charitable into the future. This has important implications for the effectiveness of the trust as an investment vehicle for managing traditional owner finances. This amendment will not prevent trust money being used for economic development, but it does assure that profits will be applied for community purposes and community wealth generation.

Part 6 of the act provides for traditional owners to be authorised to access natural resources for traditional and non-commercial use. However, as it stands, this part:

> does not allow for commercial agreements to be made, limiting the ability of traditional owners to pursue their economic development objectives and achieve independence and sustainability; and
>
> an authorisation can only apply to traditional owners who are also members of their corporation (traditional owner group entity).

This bill will amend part 6 of the act to enable commercial matters to be included in a natural resource agreement and to enable authorisation orders for flora and forest produce to include commercial uses — for example, bush crafts. This reduces red tape and makes it easier for traditional owners to pursue economic development opportunities.

The bill will also enable authorisation orders to apply to all members of a recognised traditional owner group. Currently, if a person chooses not to be a member of their group's corporation, for whatever reason, they are not able to exercise natural resource rights as a member of the group. Similarly, children are effectively excluded from exercising such rights because a person under the age of 16 cannot be a member of a registered body corporate under the commonwealth Corporations (Aboriginal and Torres Strait Islander) Act 2006.

I commend the bill to the house.

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

Debate adjourned until Thursday, 20 December.

BUSINESS OF THE HOUSE

Adjournment

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

> That the Council, at its rising, adjourn until Tuesday, 5 February 2013.

Motion agreed to.

CRIMINAL ORGANISATIONS CONTROL BILL 2012

Second reading

Debate resumed from 29 November; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Hon. M. P. PAKULA (Western Metropolitan) — It gives me pleasure to speak on a bill for the final time in 2012. I indicate that the opposition will not oppose the bill, as the opposition in the Assembly did not.

This bill has had a reasonably long gestation, not simply here at the state level where it was first expected to be introduced last year but right around Australia, because attempts to legislate in this area have been somewhat problematic. In the time Labor was in government we saw one attempt to legislate in South Australia fall foul of the High Court of Australia. In the early months of the current government we saw an attempt to legislate this kind of bill fall foul of the High Court as a result of New South Wales legislation. I suspect quite strongly that that is why this bill is being dealt with now rather than having been dealt with in 2011.

It is appropriate and prudent that governments, whether they be Labor or Liberal, take careful heed of potential matters of constitutional validity and that they take their

time to get these bills right. We are hopeful that given the lessons that have been learnt in both South Australia and New South Wales and subsequently in other states, including Queensland and Western Australia, this bill has been drafted in such a way that it will defy attempts to overturn it in the High Court on constitutional grounds. I would not say that we have been given assurances by the Department of Justice, but certainly it has given us strong indications that the bill will withstand constitutional challenge. We are hopeful that those indications will be proven to be correct.

I say again for the record that it would be a shame if the government's refusal to take similar precautions in regard to the Independent Broad-based Anti-corruption Commission were to cause that act as it stands to fall foul of constitutional challenge in the High Court, particularly considering the warnings that have been issued by the Ombudsman this week about the commission's potential unconstitutionality. It may well be that history shows us that it is better to take a more conservative approach to constitutional matters.

This bill establishes a two-step process for criminal organisations and individuals to be subject to control orders. As a kind of shorthand, the bill has been described as the 'bikie bill' by many sections of the media and in public discourse more generally. It is far better to describe it as a criminal organisations control bill. It is far fairer to the motorcycling community to describe it that way, because in the minds of some members of the community all motorcycle riders are associated with criminal bikie gangs, and that is entirely unfair — —

Mr P. Davis — Who has a motorcycle licence?

Hon. M. P. PAKULA — The chair of the Public Accounts and Estimates Committee has just brought to my attention the fact that he has a motorcycle licence. By doing so, he has made my point, because despite the fact that Mr Philip Davis can sometimes be a rather menacing figure, he can bellow and roar in a way that would make children break down and cry, no reasonable person would suggest that he should necessarily be subject to the types of control orders contemplated by this bill merely for the reason that he has a motorcycle licence. I must say that when I first saw him use the dump button during the budget estimates hearings this year I would have liked to have been able to apply a control order to him, but I do not think that is what is being contemplated by this bill.

Mr P. Davis interjected.

Hon. M. P. PAKULA — Mr Davis has said that he would have liked to have applied a control order to me.

To return to a serious point, there are recreational motorcycle riders, there are members of the Ulysses Club and there are even blokes with long beards and tattoos who ride motorbikes, including Harley Davidsons and the like, who have never engaged in any kind of criminal activity throughout their whole lives. It is the only unfortunate by-product of this debate that occasionally it could be understood by the general community that bills such as this are designed to control motorcycle riders in the general sense rather than criminal organisations in the specific sense, which is what this bill and bills of this nature are designed to do.

The fact is that unlike original iterations of this legislation in other jurisdictions this bill creates a two-step process, and it allows the Supreme Court to function as the Supreme Court. It does not ask judges to be designated persons, and it does not ask judges to act other than as judges or other than in their judicial capacity. It is those elements that the government contends are likely to ensure that this bill is able to withstand constitutional challenge, and as I have indicated, we certainly hope that is correct.

What is contemplated is the Chief Commissioner of Police applying to the courts for an organisation or individual to become declared under the terms of this bill, and once that declaration is made, an application for a control order can be made. If that control order is granted, it can include conditions like a prohibition on the organisation's continued operation, a prohibition on members associating with one another or a prohibition on insignias or patches being worn.

It is worth going into the bill in some detail, because this element of the chief commissioner applying to the court for an organisation to be named a declared organisation or for an individual to become a declared individual is something that sets this bill apart from those original iterations — that is, the bills that were struck down in the High Court. Importantly, for an organisation to be declared the court has to be satisfied beyond reasonable doubt that the organisation has engaged in, organised or otherwise facilitated serious criminal activity or that two or more people in the organisation have used the organisation or their relationship with the organisation for serious criminal activity. Importantly, in either case the court must be satisfied that the activities of the organisation pose a serious threat to public safety and order. All those elements taken together are very important, because any of the elements considered on their own could lead

some to imagine that these provisions could lead to perverse outcomes.

I would say this: if you only looked at the provision concerning two or more people using the organisation or their relationship with the organisation for serious criminal activity, it would not be difficult to imagine that you could have two individuals in an otherwise lawful organisation using the cover of that organisation to operate in a criminal way. If that provision were there on its own, one could imagine some fairly unusual outcomes, such as organisations being declared simply because two badly motivated people had used the organisation to conduct criminal activities. I will provide an example. You could have two postal workers who use their employment with Australia Post to deliver narcotics. If that provision were there on its own, you could imagine that an application could then be made against Australia Post.

As the government explained in its briefing, the next provision indicates that the court must be satisfied that the activities of the organisation pose a serious threat to public safety and order, and that would protect an organisation in the circumstances I have just described. So it is not enough, as we understand it, for two individuals to use an organisation in an improper way; the organisation itself must be a serious threat to public safety and order before the Supreme Court can declare it. That is the first point.

It is also important to note that there must be an ongoing threat to public safety and order from the perspective that this is not simply about past activity. As it has been put to the opposition, an organisation cannot be declared simply because once upon a time it was involved in criminal activity, because by definition, if an organisation was engaged in criminal activity at one time and is no longer, then there is no current threat to public safety and order. In those circumstances, again, the opposition is satisfied that the bill builds in sufficient safeguards against organisations being declared simply for things that have happened in the past.

In terms of control orders, the court, having had an application made to it by the Chief Commissioner of Police, must be satisfied that the order is likely to contribute to the prevention or destruction of serious criminal activity. The court can only reach this conclusion when presented with acceptable, cogent evidence that is of sufficient weight. On this side of the house we place a great deal of emphasis on the notion that the independence of courts must be maintained and that judges should be entitled to act as judges. Again, we are pleased that the bill leaves it solely to a judge of the Supreme Court to determine whether cogent evidence of sufficient weight has been presented to the court to allow a control order to be made.

I have been through some of the conditions that can be imposed under a control order. They last for three years but can be withdrawn earlier. The chief commissioner can apply for the renewal of a control order, but importantly, as the government briefing described it to us, for another control order to be made, another declaration has to be made, so the process needs to be completed again.

There are some matters that I think warrant some discussion. There is the question of criminal intelligence. The bill provides a mechanism for police evidence gathered as part of an intelligence operation to be presented to the court but protected from public disclosure. The chief commissioner can apply for that intelligence material to be protected so that it is not revealed in open court or to the defendant. The opposition would say that it is always preferable that any person who may be the subject of an adverse finding — to use a broad term — by a court is able to appear in court, hear all the evidence and defend themselves. But we recognise there are circumstances such as what you might describe, if you were going to be colloquial about it, as a Donnie Brasco situation, where individuals have been engaged in covert activity to gather criminal intelligence and having those revelations made in open court might put their lives or security at risk. There may well be circumstances where these things need to be heard in closed court.

It is appropriate that the bill provides for a special counsel to be appointed to represent a defendant's interests. That at least goes some way towards ensuring that there is a proper process. The special counsel can test the evidence that is before the court. The opposition would say that matters which are heard in such a way ought be kept to the absolute minimum. It ought not be the rule; it ought be the absolute exception that matters are heard in such a way that the potential subject of a declaration or a control order is not able to defend themselves with their own counsel. However, we accept that there are circumstances already where that can occur, under other pieces of legislation, and that there could be genuine circumstances in relation to this bill where it is absolutely necessary. But we would say again that it ought to be confined to those circumstances where it is absolutely necessary.

We would just make the point again that this is an area of the law where constitutional validity has been tested in the past and will no doubt be tested again in one form or another. I suspect that someone speaking on behalf

of the government will at some stage during this debate make the point that in 11 long years the former Labor government did not introduce this legislation. Let me say this about that — —

Mr O'Donohue — You're pre-empting me.

Hon. M. P. PAKULA — Mr O'Donohue can call me a psychic or a soothsayer, but I have heard it often enough. Let me say in general that the absurdity of the charge is that it seems that the current government believes it should have come to office with everything done and nothing left to do because everything that could have been done should have been done in the previous 11 years. It believes there ought to be no more legislation, no more projects — no more anything. The current government believes it should have been able to come in here and put its feet up for four years, which incredibly is what many of its ministers are doing. But the fact is that when the Cain government took office after the Bolte-Hamer-Thompson years, there were things that had to be done, despite 27 consecutive years of conservative government. When the Kennett government came to office in 1992 there were things that still needed to be done, despite 10 years of Cain-Kirner governments. When we came to office in 1999 incredibly there were still things that we needed to do, despite 7 years of Liberal-Nationals government.

Having said that, it is also worth repeating that while we were in government legislation of this nature was thrown out in the High Court after the South Australian government had a go at it. When those opposite first came to government, legislation of this nature was thrown out after the New South Wales government had a go at it. As I indicated at the outset, it was just as prudent for the former government to wait to see the lay of the land in regard to the constitutional validity of these criminal organisation bills as it has been prudent for this government to wait two years to see the lay of the land after the exclusion of the New South Wales legislation during its early months in office. Having said that, I do not expect Mr O'Donohue to be deterred; I am sure he will endeavour to make these points nevertheless.

This legislation will pass this house. I have no doubt that there will be a rather lengthy process before that happens. I should indicate that I am aware that Ms Pennicuik intends to seek to have consideration of this bill deferred for some period of time. I indicated during the last sitting week, when Ms Pennicuik sought to delay consideration of this bill until the first sitting week of next year, that the Labor Party saw no impediment to the bill being debated and concluded this sitting week. Our position has not changed; we are happy to continue sitting through what remains of today in order to see this bill passed.

Let me say again that it is, we think, encouraging that this bill provides in the most genuine sense for the absolute institutional integrity of the Supreme Court to be maintained. We think that is something that sets it apart from attempts to introduce legislation of its kind in other states. Whether or not that will be sufficient to allow the bill to survive a High Court challenge is something that we will not know until, I suspect, a challenge of that nature is made. But we at least believe that the fact the institutional integrity of the court is being maintained by the legislation will ensure that it has a better chance of surviving a challenge in the High Court than it would have if that institutional integrity were not protected.

With those words, I indicate that the opposition will not oppose the bill, and I commend it to the house.

Ms PENNICUIK (Southern Metropolitan) — I start my contribution by thanking the library for its excellent research brief on the Criminal Organisations Control Bill 2012, which was put out last month and is the 10th research brief the library has put out this year. It gives some background on what are called 'outlaw motorcycle clubs', on crime and on Victoria Police's Taskforce Echo. It goes through the bill in detail, and it also goes through what has happened in other jurisdictions, including in the United Kingdom, with regard to similar laws that have gone through the parliaments of those places.

Page 6 of the library brief is interesting. I have always wondered what the origin of the term 'outlaw motorcycle club' was, because it seems to me that the word 'outlaw' means 'against the law'. However, according to the library brief, these motorcycle clubs originated in the US, and if they were not members of the American Motorcyclist Association, they were regarded as outlaw motorcycle gangs. Even though this bill is called the Criminal Organisations Control Bill, it has been promoted by the government as being aimed at outlaw motorcycle clubs or bikie gangs. However, the bill will apply to any organisation and not just to motorcycle clubs.

I also have an issue with the title of the bill because the bill is not just aimed at organisations but also at individuals. While the bill will allow the Supreme Court, on application from the Chief Commissioner of Police, to declare an organisation a 'declared organisation', it will also allow the Supreme Court to declare individuals 'declared individuals' and to apply control orders not only to organisations but also to

individuals. That has not been widely promulgated by the government in its cheering on of this bill in the community, but it is something the community needs to be aware of.

I refer to two substantial parts of the bill: one, the declaration of organisations and control orders applied to organisations and/or individual members of organisations; and two, declarations of individuals and control orders applied to those individuals. They do not actually have to be related, so this bill goes further than what the government is making out in its press releases and statements.

The Attorney-General in his second-reading speech stated that criminal organisations:

> … often regard themselves as beyond the reach of the law, and commonly use violence and intimidation to achieve their criminal aims.

I do not think many people would disagree with that, but criminal organisations include a range of organisations. I would agree that many of them are underground and shadowy. The Attorney-General said:

> This makes such groups harder to detect and prosecute …

And:

> … traditional criminal laws are limited in their effectiveness to respond to these organisations …

I would agree with that to a certain extent, but I do not think the phrase 'harder to detect' would apply to motorcycle clubs. It is not difficult to detect a motorcycle club; most of them have registered premises, and they usually have club colours which members all tend to wear publicly to identify themselves as members of whatever motorcycle club they happen to be part of.

The research brief also discusses outlaw motorcycle clubs (OMCs) and crime. It says:

> There is evidence that OMCs use violence to protect their memberships as well as to 'patch over' (or take over) other clubs.

It goes on to say:

> The nature of the relationship between OMCs and organised crime is contested. OMCs themselves assert that they are clubs primarily for people who enjoy riding motorcycles. Whilst they acknowledge that some members of their clubs may engage in criminal activities, they deny that OMCs as a whole are organised crime units. They believe they are unfairly targeted by the media and the police.
>
> In contrast, reports of OMCs in the media are typically associated with a range of criminal activities such as: illegal drug manufacturing and distribution; violent attacks; weapons offences; murders; intimidation; extortion; and money laundering.

That may be so, and I do not dispute it; however, there are an awful lot of other people who are not in outlaw motorcycle clubs or any other organisations but are engaged in these activities. We have on the statute book — under the Crimes Act 1958, the Summary Offences Act 1966 and a range of other acts — laws to deal with these issues. Victoria Police has set up particular squads to deal with organised crime. For example, we also have the chief examiner to deal with that. We already have the infrastructure to deal with people who are involved in those types of criminal activities.

The Australian Crime Commission states that Australian-based motorcycle clubs are involved in a range of organised criminal activities, including the production, distribution and importation of methamphetamine and precursor chemicals; trafficking in methylenedioxymethamphetamine; importing counterfeit goods; and the commercial cultivation of cannabis. Again, that may be so, but these activities are all undertaken by people, and those people can be arrested by the police and charged and convicted of those offences already under the laws we have on the statute book.

The commonwealth Parliamentary Joint Committee on the Australian Crime Commission conducted an inquiry into the legislative arrangements to outlaw serious and organised crime groups. The inquiry found that the level of outlaw motorcycle club involvement in serious and organised crime is difficult to clearly establish and varies across the states. However, the Australian Crime Commission found that the clubs are a visible and therefore prominent target in both the political and public arenas and that serious and organised crime often involves a level of sophistication or capacity above that of many organised motorcycle clubs.

While we do not support people being involved in serious criminal activity, what I am trying to establish here — and I think it has been established in the literature discussed in the library brief — is that while individuals in organisations, including motorcycle clubs, are involved in serious criminal activity, Victoria already has laws under the Crimes Act 1958, the Summary Offences Act 1966 and a wide range of other acts that enable the police to pursue and charge those offenders and to have them convicted in the courts.

The bill before us is the fifth bill of its type to be introduced into a state parliament. Similar bills have been introduced in New South Wales, Queensland, Western Australia and South Australia. I did some

research on the application and existence of control orders under those statutes. My research informs me that at present there is not one control order in place under the legislation that has been passed in any of those jurisdictions.

I will refer to the legislation in New South Wales and South Australia as it was originally introduced. New South Wales introduced the Crimes (Criminal Organisations Control) Act 2009 No. 6. That was the first of those particular bills, but it was thrown out by the High Court after it was challenged by the president of the Hells Angels. The High Court held that provisions not requiring Supreme Court judges to give reasons for a declaration under part 2 of that act were repugnant to and incompatible with the integrity of the Supreme Court and constitutionally invalid. Because part 2 was invalid and other parts relied on part 2, the court declared the whole act invalid. In South Australia the equivalent legislation was definitely marketed as an anti-bikie law, and the High Court also declared that invalid, saying section 14(1) authorised the executive to use the Magistrates Court or the judiciary to implement executive decisions, which was incompatible with the Magistrates Court's institutional integrity.

The Western Australian legislation was only promulgated last month; no orders have been made under it, so it has not come up for challenge yet. In Queensland the first application under that state's legislation, which was passed in 2009, was made by the police commissioner in June. It was made to have the Gold Coast Finks declared a criminal organisation following a shooting on the Gold Coast, and the Finks have challenged the constitutionality of the relevant laws, mainly with respect to the criminal intelligence provisions. The High Court heard that challenge just last week, on 4 and 5 December. That decision as to the constitutionality of the Queensland act is pending.

As a consequence, I am moving a reasoned amendment to this bill. I move:

> That all words after 'That' be omitted with the view of inserting in their place 'this house refuses to read this bill a second time until the outcome of the High Court of Australia challenge to Queensland's Criminal Organisation Act 2009 is known'.

The government suggests the bill we have before us is drafted to avoid the problems the High Court identified in the New South Wales and South Australian legislation that it threw out. Those jurisdictions have amended their legislation, trying to fix up the problems identified by the High Court; however, it remains to be seen whether those acts will be still open to challenge if another application is made under them. My reading of those acts is that they still have aspects which would leave them open to challenge.

The government maintains it has addressed such issues — for example, the issue under the South Australian law where the South Australian government's attempt to direct the judiciary to make certain declarations was found to be invalid. The Victorian government in this bill has maintained the discretion of the Supreme Court. Interestingly, the point was made very clear to me — and I can see it myself in the bill — that this bill is very different in that under it the Supreme Court has discretion. The point is that the Supreme Court already has discretion, and the fact that this bill does not try to take it away as others have done is no great achievement. The bill also gets around the challenge to the New South Wales act by requiring the court to give reasons for making a declaration or an order.

The issue that we do not know much about is the protection of criminal intelligence, which is the issue the High Court is considering at the moment. I cannot make a judgement as to whether the provisions in the bill with regard to the protection of criminal intelligence, which make up the whole of part 4 of this bill, are valid or not valid, because we have not heard what the High Court has to say about the Queensland legislation. Of course the High Court may have things to say about other parts of that legislation apart from the protection of criminal intelligence.

Under clause 14 of the bill the Supreme Court, on the application of the Chief Commissioner of Police, can declare an organisation or individual to be a declared organisation or declared individual. There only need to be two or more members of an organisation who are involved in criminal activity for the whole organisation to be declared a criminal organisation, and I do not entirely understand what the purpose of that is. If the chief commissioner knows two or more people are involved in criminal activity, I do not know why the chief commissioner does not just pursue those people under the existing legislation, rather than going to the Supreme Court, trying to have a declaration made about the organisation and then trying to have control orders put on particular members of that organisation.

In terms of the types of things that can be included in control orders, control orders can prevent people from going certain places or from speaking to or meeting with certain people. These provisions therefore engage the Charter of Human Rights and Responsibilities Act 2006, in particular section 12, 'Freedom of movement', and section 16, 'Peaceful assembly and freedom of association'. I am not convinced of the purpose of that.

It is worth bearing in mind that Victoria is the only state that has a charter of human rights, which was brought in by the Attorney-General in the previous government.

When these laws were first enacted in South Australia four years ago our Chief Commissioner of Police at the time, Christine Nixon, said:

> An adoption of similar reform in Victoria may possibly be inconsistent with Victoria's Charter of Human Rights and Responsibilities.

I believe it is in breach of the two sections of the charter. I am not convinced that those breaches are ameliorated by being the only way that the purpose of the act that we are looking at here, which is to prevent criminal activity, can be achieved. In April 2009 the former Attorney-General, Rob Hulls, issued a media release which said what I have been saying — that is, that 'Victoria has the most comprehensive suite of laws and arrangements to tackle organised crime in the country.' Mr Hulls said:

> Focusing on membership of bikie gangs, rather than the criminal behaviour of their members, is not sufficient to address serious and organised crime in the complex and changing environment which Australia faces …
>
> Victoria's tough laws attack all forms of organised crime, whether perpetrated by bikie gangs, underworld groups, triads or any other form of organised criminal association.

The basis of my concerns about this bill is that we already have those laws on the statute book. In terms of what control orders can include — for example, that people are not meant to meet with other members — I draw the house's attention to the fact that 'members' does not just include current members; it can include former members, prospective members and even associates. It is quite a wide net that is being cast here.

The control orders can include restrictions such as not being able to meet with other people or not being able to undertake the activities of the club. If it is a motorcycle club, you could be prevented from riding motorcycles with other members of the club or you could be prevented from wearing the club insignia. I am not really sure what is going to be achieved by that or even if that is not open to challenge as well. I cannot think of another place where that sort of law comes in, except perhaps in this house, Acting President, where we are not allowed to wear slogans or insignias or badges. I am unable to wear my Greens triangle badge on my lapel in this place, but I am not prevented from wearing it in the street if I wish to, nor are other members of the public. I am not quite sure what that is meant to achieve.

I was talking about other laws that we have on the statute book. One of the key aspects of the control orders that can be placed on individuals is that they cannot meet or undertake activities with other members if they are under a control order. But I would draw the attention of the house to section 49F of the Summary Offences Act 1966 headed 'Consorting', which states:

> (1) A person must not, without reasonable excuse, habitually consort with a person who has been found guilty of, or who is reasonably suspected of having committed, an organised crime offence.

We already have this under the Summary Offences Act. It further states:

> (2) The accused bears the burden of proving reasonable excuse for habitual consorting to which a charge of an offence against subsection (1) relates.

Subsection (3) goes on to state:

> … organised crime offence means an indictable offence against the law of Victoria, irrespective of when the offence was or is suspected to have been committed, that is punishable by level 5 imprisonment (10 years maximum) or more and that —
>
> (a) involves 2 or more offenders; and
>
> (b) involves substantial planning and organisation; and
>
> (c) forms part of systemic and continuing criminal activity; and
>
> (d) has a purpose of obtaining profit, gain, power or influence.

That bears quite a bit of resemblance to what is actually in the bill before us. Section 321 of the Crimes Act 1958 makes it an offence to conspire to commit an offence. If the purpose of the bill is to prevent people from conspiring to commit offences, we already have that as an offence under the Crimes Act.

One of the other parts of the bill which allows for control orders to be placed on an organisation will include provisions that the organisation stop its activities and it cannot use its assets et cetera. If the police and the courts are convinced that the assets owned by the organisation or by members of the organisation are the proceeds of crime, they can be confiscated under the Confiscation Act 1997. That is picking out just some of what I believe is already on the statute books to deal with people who are involved in the types of criminal offences that this bill aims to capture.

I refer to clause 43. The government has gone to a lot of trouble to say there are a lot of safeguards. When I say 'the government' I mean the minister's office and the

department, because they are the people I have talked to about this bill. They are the ones who were kind enough to give me their time, and they are sitting over there in the advisers box, going through the questions we had about the bill.

I will concede that there are more safeguards in this bill than there have been in the acts that have been thrown out by the High Court; but I still think there are issues. One of them is about clause 43. The government says that the Supreme Court needs to be convinced beyond reasonable doubt that the organisation poses a serious threat to public safety before it declares that particular organisation. However, in terms of the control orders, under clause 43 the Supreme Court can issue control orders, even though it need not determine which specific offences the control orders would be preventing or disrupting. I find that to be quite a contradiction.

If the chief commissioner is to make a watertight case as to why an organisation needs to be declared and control orders need to be put upon that organisation and a court needs to be satisfied that that is proved beyond reasonable doubt, I do not think the chief commissioner would be able to do that by walking in and saying, 'I'm not quite sure what offences they might be going to commit; I'm not really sure which specific offences we want to prevent or disrupt from happening'. There is also the added provision in the bill about the court being persuaded by substantial evidence; I think 'substantial' is the word. I cannot see how a court could be convinced that offences are going to be committed and public safety is going to be at risk if it does not know what those offences are. Clause 43 is very confusing and contradictory to other aspects of the bill that the government says are safeguards against the misuse of the legislation.

Control orders on an organisation can include, as I mentioned before, things such as prohibiting the organisation from operating or carrying on a business or taking new members; prohibiting current, former or prospective members from participating in the activities; requiring the organisation to exclude certain members; prohibiting certain members from wearing the patches or insignia; and prohibiting the organisation from carrying out activities, using property et cetera.

If that were all to come into play, what would prevent most of the members of the organisation from resigning from that organisation and immediately forming another one which was not a declared organisation and did not have control orders applied to it? That would mean that the whole exercise of declaring the organisation would have been fruitless or would need to be repeated with the new organisation. It would be possible just to use the laws we already have on the statute book in relation to the offences the government has outlined it is trying to prevent.

I want to talk a little about the criminal intelligence protection orders in part 4 of the bill. The Chief Commissioner of Police can apply to the Supreme Court for a criminal intelligence protection order. Those applications will be heard in a closed court, and that is about protecting the intelligence the chief commissioner is relying upon to make the application for the declaration against the organisation, the individual or the individuals. As I said, the application will be heard in a closed court.

The court may appoint a special counsel to represent the interests of the respondent, which is the organisation or the individual that the chief commissioner is making the application against. However, under the Queensland act — the one that is being challenged — the same situation can apply. The police commissioner can apply to declare evidence criminal intelligence. In both cases this is to protect covert operatives from exposure, so there is some understanding of that need, but that protection also needs to be balanced against the rights of the respondents and the public interest. In Queensland the safeguards are that the court has complete discretion. It decides how much weight to put on the criminal intelligence, and the Criminal Organisation Public Interest Monitor is present at all hearings, has access to the information and represents the public's interests. That person is a judicial appointment. The officer monitors applications for criminal organisation orders and tests suspicions about the appropriateness and validity of the applications.

There is no such protection in the Victorian bill. We are setting up a body, the Public Interest Monitor, that is charged with representing the public interest when the Independent Broad-based Anti-corruption Commission or the Ombudsman apply for the use of surveillance or telephone intercepts. That person could fulfil that role under this legislation as well. I suggest that the government have a look at doing that, because there is a gap in this legislation.

The bill has also received some criticism from the Law Institute of Victoria. The law institute has cast doubt on the Victorian legislation, saying that it is not convinced that it will be legally enforceable. I have tried to outline the fact that I tend to agree. The law institute said:

> The new laws will not stamp out illegal activities and will make lawful activities, such as meeting, a criminal offence.

The institute also questioned whether the proposals that allow interstate orders to be registered and enforced in Victoria would be upheld in the courts. I have not gone into that in detail, but the bill does have a provision where similar interstate orders could be enforced in Victoria. It remains to be seen if that is possible. The law institute opposes:

> … laws that make criminals out of a whole class of people. The focus should be on what illegal acts individuals or a group of individuals are undertaking, not what shirt or jacket you wear …
>
> …
>
> Not all members of motorcycle clubs are criminals. Turning otherwise law-abiding citizens into criminals simply because they associate with a group is wrong and an anathema to the rule of law and freedom of association …

Liberty Victoria has also raised some issues with the bill, including clause 3, which sets out the definition of a 'member' — and I will ask about this in committee. It said:

> Inclusion of a definition of a member; someone whose conduct would reasonably lead another person to believe they are a member … This is far too wide a net to cast in relation to the meaning of member. Investigating officials would most likely draw upon tenuous links between individuals where in fact an innocent family member, for example, could be deemed a member. This definition should be amended to exclude this —

very —

> likely scenario.

I added 'very' because it is very likely.

The law institute makes a good point in terms of enforceability. Perhaps the government speaker could outline how control orders on organisations and individuals are going to be enforced.

The bill also allows for the use of criminal history to be included in the application for declarations of individuals or organisations. One wonders why that is the case. People may have a criminal history — they may have a serious criminal history — but I would have thought that what we believe in Australia is that if you have committed an offence, you have served your sentence and you are not involved in other criminal activity, then that criminal history should not come into play. Otherwise people could never redeem or rehabilitate themselves and go on to live a different life from the one they may have led.

Liberty Victoria also raises concerns about the inclusion of pending cases under the definition of 'criminal history':

> … pending cases or those under investigation are just that. They are not indications of any criminal conduct unless or until pleas are entered on the record. Including pending cases is completely inconsistent with the singularly most important cornerstone of our criminal justice system: that is the right to be presumed innocent until proven guilty. Charges are only authorised by senior investigating officials once there is sufficient evidence to warrant the charge. It is often telling why matters have not been proceeded with on charge or indictment and for those obvious reasons (lack of evidence) Liberty Victoria strongly opposes the way the current definition stands.

The inclusion of a ban on association with an associate of another declared organisation as posed by this clause is seen as an unreasonable restriction.

I have tried to lay out the reasons the Greens are unable to support this legislation. The Greens have not supported similar legislation in any state where it has been introduced. Here we are sitting on a Thursday. We have had a situation where the Independent Broad-based Anti-corruption Commission bills were rushed through. They should have gone to an upper house committee for further consideration and inquiry, given the plethora of people who have criticised the legislation and pointed out its fundamental flaws. But, no, the government insisted on pushing it through. There will be more amendments to that legislation. Mr O'Bryan, who has been appointed as the Independent Broad-based Anti-corruption Commission Commissioner, will have his work cut out for him; he will need an army of lawyers to advise him on every step he takes.

We have had a rush of bills this week. Only lead speakers have spoken on these bills that are of important public interest. This bill is one such example. Despite its importance, this debate is being curtailed to just lead speakers. There is no need for us to be debating this bill now, and it needs more consideration. I alert the house to the fact that, if passed, the bill will not come into operation until 1 November 2013, so I do not know why we are rushing it through without more consideration. In particular it is unwise of the government to promulgate this legislation while a High Court challenge to very similar legislation in the state of Queensland is afoot. If government members were wise, they would wait until the outcome of that High Court challenge is known. It may be that the High Court challenge will not be upheld, but if it is, this legislation will be affected.

As I have said, there are already laws on the statute book to deal with these issues. This bill does engage the Charter of Human Rights and Responsibilities. I think the bill is incompatible with the charter in terms of freedom of movement and freedom of association, and it is not as if there is no other way to deal with these

matters. The Scrutiny of Acts and Regulations Committee raised concerns in particular about permitting a declaration to be made about an entire organisation on the basis of the activities of a small number of members or former members of that organisation. An organisation could comprise 100 people, only 2 of whom may be involved in criminal activity but the chief commissioner could apply to have the whole organisation deemed to be a declared organisation. SARC also pointed out that other jurisdictions require significant numbers of people to be involved in criminal activities for a declaration to be made about an organisation. That at least would be an improvement; to have such a small number is very problematic.

The legislation before us is still open to challenge. The government has tried to deal with the issues the High Court raised with previous legislation where challenges were upheld. I presume that if the chief commissioner tries to bring an application using this legislation, the legislation will be challenged, notwithstanding the outcome of the Queensland challenge in the High Court. Surely the government, and we as a Parliament, should be awaiting the outcome of that challenge.

I will be moving that the legislation be referred to the Legal and Social Issues Legislation Committee for inquiry, consideration and report by 16 April 2013. People might say that is a long way off, but the bill is not due to come into operation until November, so there is plenty of time.

I want to conclude with a quote from a paper written by Nicola McGarrity for a constitutional law conference this year. The paper is entitled *Much Ado About Nothing? The Future of 'Bikies' Control Orders in Australia*. The paper is very interesting. It talks about constitutional challenges in the High Court, although not the Queensland challenge because the paper was published before that. The paper states:

> We already have a plethora of laws on the statute books across Australia dealing with organised criminal activity. Laws prohibiting the substantive acts (e.g. drug trafficking and money laundering). And laws prohibiting consorting. These laws are far more targeted to the criminal activity than are the —

so-called —

> 'bikies' control orders.

Ms McGarrity's paper also quotes Phillip Boulton, SC, who said in March 2009:

> I'm not sure that this particular measure is going to have any real effectiveness. If these people who are shooting and killing each other can't obey the laws that say you can't shoot or kill each other, I don't think they're going to obey a law that says you can't have a beer with each other or can't go on a motorcycle ride with each other.

My final comment is that we have had gangland killings to do with drug trafficking et cetera over many years, and as far as I know those people were not members of organisations. They were certainly not members of the bikie gangs that are being targeted by this legislation, so none of that activity would have been prevented by this legislation. This legislation is unnecessary, and the Greens will not be supporting it.

Mr O'DONOHUE (Eastern Victoria) — I am pleased to speak on behalf of the government in relation to this bill, and may I say at the outset the government welcomes the 'not opposed' position taken by the opposition. I will disappoint Mr Pakula and will not mention the previous 11 years, but in its place I will say that I believe Mr Pakula gave a considered analysis of the bill. His highlighting of the importance of retaining the institutional integrity of the Supreme Court is in agreement with the government and is in agreement with the way this bill has been drafted.

It is what sets it apart from the constitutional challenges that have taken place in other jurisdictions, and it sets it apart from the constitutional challenge that is on foot before the High Court at the moment. Of course the High Court will make its own decision about that, but the point being made is that we reject the amendment moved by the Greens seeking that this bill be delayed until after the judgement of the High Court. We believe the matters being appealed to the High Court are different from those contained in this bill, so the situations are not analogous. Therefore we will be opposing the amendment to be moved by Ms Pennicuik.

The government will also be opposing the referral to the parliamentary committee suggested by Ms Pennicuik. In so doing I note the comments from Mr Pakula that this bill has had a long gestation and that the long gestation has allowed the government to learn from the High Court decisions in relation to similar bills in other jurisdictions. I use the words of Mr Pakula to rebut Ms Pennicuik's wish to refer this to a parliamentary committee for further examination. It is the view of the government that this bill has gone through a rigorous process. The decisions of the High Court have been considered in the drafting of the bill. The institutional integrity of the Supreme Court, to again use Mr Pakula's words, is paramount in the decision-making process, and we believe the bill has been well considered — and it has had a long gestation. Therefore we believe it is appropriate that the bill be put to the test before the house today, and the government hopes it will pass. I thank Mr Pakula for

his considered contribution in relation to this bill. He articulated the two-step process that is at the heart of the bill.

Before I move on I want to respond to some of the points made by Ms Pennicuik. Ms Pennicuik referred to the charter of human rights, which was cited in correspondence from the Scrutiny of Acts and Regulations Committee (SARC). I would also like to cite the response received from the Attorney-General. It is so refreshing. As a person who has been a member of the Scrutiny of Acts and Regulations Committee in the last Parliament and this Parliament, I can say that the great difference between the last Parliament and this Parliament is that ministers respond while bills are live in the upper house. Under the previous government invariably this house did not have the benefit of the response from the minister to queries raised by committee.

I congratulate the Attorney-General. He has given a most detailed response to the issues raised by SARC in its previous *Alert Digest*. That was tabled on Tuesday in the normal way, and it forms part of the consideration. Without going through the human rights issues that were identified by SARC, I think it is fair to say that the Attorney-General has provided a very fulsome response, which I think discharges many of the concerns Ms Pennicuik has raised about human rights issues. The charter itself, under section 7(2), provides for the detailed analysis of different rights. The Attorney-General's statement of compatibility did that in a detailed way and, as I say, he has provided a fulsome response to the issues SARC raised. That is unlike the responses received in the last Parliament when the Legislative Council invariably did not have the benefit of the minister's response to issues raised by SARC.

Ms Pennicuik also raised the issue of how enforcement will occur. Enforcement is a matter for Victoria Police; it is not a matter that we need to prosecute and analyse today. If this legislation passes, Victoria Police will have the tools to apply to the Supreme Court and it will be up to the Supreme Court as to whether it uses the powers Parliament is conferring on it today — but it is a matter for the police.

Ms Pennicuik also made reference to the Public Interest Monitor and its role in Queensland with regard to criminal intelligence information. This bill provides that a counsel can be appointed to act in the interests of a respondent. The interests of the respondent and the public interest may not be the same, but the respondent's interests are protected through the process. The Public Interest Monitor Ms Pennicuik is advocating would be wearing two hats, and we do not think that is appropriate.

The other point I make in a general sense to rebut many of the propositions put forward by Ms Pennicuik is that the threshold to be reached for a declaration is beyond reasonable doubt. That is a very high threshold; it is not on the balance of probabilities, it is beyond reasonable doubt. When Ms Pennicuik cites academic articles and makes other observations, the point that must be remembered is that it is a very high threshold that has to be reached and then, if that threshold is reached, it is at the discretion of the court. It is not the executive making the decision, it is not a judge sitting as a person, it is the court and the discretion rests with the court once that threshold is reached. The integrity of the court is retained, and it is a very high bar to be reached as the initial proposition.

Ms Pennicuik spent much of her contribution talking about the current legislative instruments available to fight crime, and here we have to agree to disagree with the Greens. The broader community agrees to disagree because, as I understand it, Victoria has been working collaboratively with other jurisdictions in regard to the development of this legislation — I use that in a general sense. It is seen as a common issue across jurisdictions, and to cite the second-reading speech the minister says:

> Criminal organisations pose a serious and ongoing threat to public safety and order in Victoria. They are involved in serious criminal activities including drug offences, violence and intimidation.
>
> More needs to be done to tackle the criminal activities of these organisations than simply waiting until crimes are committed and then seeking to prosecute and punish those involved after the event.

Later the minister says in his speech:

> This bill recognises that traditional criminal laws are limited in their effectiveness to respond to these organisations, as such laws can only be used to prosecute illegal activity on a case-by-case basis, after the event.

That is the position of the government. We believe this bill is required because the current suite of legislative arrangements is not sufficient to appropriately deal with criminal activity in these organisations. That can only happen after the very high bar is cleared, and all decisions are ultimately at the court's discretion.

I will briefly summarise the bill. The Chief Commissioner of Police will be able to apply to make declarations against organisations and individuals involved in serious criminal activities. Where a declaration is made the chief commissioner will be able to apply for a control order against a declared organisation and its members or a declared individual.

Police will be able to use criminal intelligence to support an application. The court will be able to make orders to protect the confidentiality of criminal intelligence; I alluded to and discussed this previously. The Supreme Court will have the discretion as to whether it makes a declaration or control order and what conditions it imposes as part of a control order. It will be an offence for an organisation or individual to breach a control order. The bill will provide for the mutual recognition and enforcement of declarations and orders made under corresponding legislation in other statutes and states.

That is a summary of the bill. The bill is quite lengthy; it has 148 clauses. As I said in the introduction to my contribution — and I echo the comments of Mr Pakula — this bill has had a long gestation. It has been carefully drafted to take into consideration the decisions of the High Court. Judicial independence and the integrity of the Supreme Court are paramount in relation to this bill. There are very high tests to pass before police can take any action. We believe those safeguarding tests mean that this bill is reasonable and proportionate in its response to issues involving criminal organisations.

We do not believe the current legislative arrangements are sufficient, which is what Ms Pennicuik asserts. For that reason the government wishes the bill a speedy passage. We oppose the reasoned amendment moved by Ms Pennicuik. The government is opposed to the proposition that the bill should be referred to a parliamentary committee.

House divided on amendment:

Ayes, 3

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

Noes, 35

Atkinson, Mr
Broad, Ms
Coote, Mrs
Crozier, Ms
Dalla-Riva, Mr
Darveniza, Ms
Davis, Mr D.
Davis, Mr P.
Drum, Mr
Eideh, Mr
Elasmar, Mr
Elsbury, Mr
Finn, Mr
Hall, Mr
Jennings, Mr
Koch, Mr
Kronberg, Mrs
Leane, Mr (*Teller*)
Lenders, Mr
Lovell, Ms
Mikakos, Ms
O'Brien, Mr (*Teller*)
O'Donohue, Mr
Ondarchie, Mr
Pakula, Mr
Petrovich, Mrs
Peulich, Mrs
Pulford, Ms
Ramsay, Mr
Rich-Phillips, Mr
Scheffer, Mr
Somyurek, Mr
Tarlamis, Mr
Tee, Mr
Tierney, Ms

Amendment negatived.

House divided on motion:

Ayes, 35

Atkinson, Mr
Broad, Ms
Coote, Mrs
Crozier, Ms
Dalla-Riva, Mr
Darveniza, Ms
Davis, Mr D.
Davis, Mr P.
Drum, Mr
Eideh, Mr
Elasmar, Mr
Elsbury, Mr
Finn, Mr (*Teller*)
Hall, Mr
Jennings, Mr
Koch, Mr
Kronberg, Mrs
Leane, Mr
Lenders, Mr
Lovell, Ms
Mikakos, Ms
O'Brien, Mr
O'Donohue, Mr
Ondarchie, Mr
Pakula, Mr
Petrovich, Mrs
Peulich, Mrs
Pulford, Ms
Ramsay, Mr
Rich-Phillips, Mr
Scheffer, Mr
Somyurek, Mr
Tarlamis, Mr
Tee, Mr
Tierney, Ms (*Teller*)

Noes, 3

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

Motion agreed to.

Read second time.

Referral to committee

Ms PENNICUIK (Southern Metropolitan) — I move:

> That the Criminal Organisations Control Bill 2012 be referred to the Legal and Social Issues Legislation Committee for inquiry, consideration and report by 16 April 2013.

I will not reprosecute my contribution to the second-reading debate, but it is good that all members are in the chamber. Mr O'Donohue said this bill had a long gestation. It may have had a long gestation in the Attorney-General's office, but it has not been in the public domain for more than a month, and it is being rushed through this Parliament unnecessarily. As I said, the bill does not come into force until November next year, so referring it to the Legal and Social Issues Legislation Committee for consideration and inquiry up until April is a good idea. Without pre-empting the outcome of the High Court's consideration or when it may choose to make its decision, there is a possibility it may have made its decision by April, so the committee could also consider in its deliberations how that decision applies to the bill before us now.

Mr O'DONOHUE (Eastern Victoria) — As foreshadowed in the second-reading debate, the government will oppose Ms Pennicuik's motion.

House divided on motion:

Ayes, 3

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

Noes, 35

Atkinson, Mr	Lenders, Mr
Broad, Ms	Lovell, Ms
Coote, Mrs	Mikakos, Ms
Crozier, Ms	O'Brien, Mr
Dalla-Riva, Mr	O'Donohue, Mr (*Teller*)
Darveniza, Ms	Ondarchie, Mr
Davis, Mr D.	Pakula, Mr
Davis, Mr P.	Petrovich, Mrs
Drum, Mr	Peulich, Mrs
Eideh, Mr (*Teller*)	Pulford, Ms
Elasmar, Mr	Ramsay, Mr
Elsbury, Mr	Rich-Phillips, Mr
Finn, Mr	Scheffer, Mr
Hall, Mr	Somyurek, Mr
Jennings, Mr	Tarlamis, Mr
Koch, Mr	Tee, Mr
Kronberg, Mrs	Tierney, Ms
Leane, Mr	

Motion negatived.

Sitting suspended 6.19 p.m. until 6.52 p.m.

Committed.

Committee

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I seek leave of the house for Mr O'Donohue to join me at the table.

Leave granted.

Clause 1

Ms PENNICUIK (Southern Metropolitan) — Clause 1 is the purposes clause obviously, and clause 1(a) states that a main purpose of the bill is 'to provide for the making of declarations and control orders'. My question is twofold. Firstly, I just want it clarified that the making of a declaration in and of itself does not have any practical effect.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Yes, I am advised that that is correct.

Ms PENNICUIK (Southern Metropolitan) — Just for clarification, therefore, my question is: there has been confusion about the fact that unless a declaration is made a control order cannot be made; is that correct?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Yes, that is correct also.

Ms PENNICUIK (Southern Metropolitan) — Is it possible that an organisation could be declared but no control order put in place either on the organisation or on members of the organisation?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I will just check that again.

The correct response for *Hansard* is that the making of a declaration does not necessitate the making of control orders.

Ms PENNICUIK (Southern Metropolitan) — So a court could declare an organisation a declared organisation but then not go on to issue control orders for the organisation or for individual members of the organisation; is that a possibility?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — My advice is: yes.

Ms PENNICUIK (Southern Metropolitan) — I thank the minister. That is enlightening and something I was not quite sure about. My question would then be: if a declaration has no practical effect, what would be the purpose of making a declaration without control orders?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I advise Ms Pennicuik that the declaration process establishes the involvement of an organisation or an individual in serious criminal activity and threat to community safety and order. Control orders seek to respond to that risk.

Ms PENNICUIK (Southern Metropolitan) — The minister did answer my question in that it is a possibility that an organisation can be declared a declared organisation — which has no practical effect — and then not be followed up by a control order. What would be the purpose of that, bearing in mind of course that in order for an organisation to be a declared organisation, the court needs to know that one of the criteria for the Chief Commissioner of Police is that two or more members of that organisation are involved in or are planning to be involved in criminal activity? If that is a possibility, what would be the point of it?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I advise Ms Pennicuik that a declaration is a condition precedent

for a control order. Whether or not a control order is made is entirely at the discretion of the court.

Ms PENNICUIK (Southern Metropolitan) — I will put it a different way. Does the government envisage it would be the case that the chief commissioner would not apply for a declaration unless he or she was going to then apply for control orders as well?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — It would be expected that there would be an application for both.

Ms PENNICUIK (Southern Metropolitan) — So in effect it is a possibility but it would not be the intention of the chief commissioner. Will it be the case that the court may well decide to declare an organisation or an individual, but then not agree to control orders?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — As I indicated earlier, whether a control order is made is entirely at the discretion of the court.

Ms PENNICUIK (Southern Metropolitan) — Clause 1(b) states:

> … to provide for the recognition and application of declarations and control orders made under corresponding laws …

I presume that corresponding laws are laws in other jurisdictions. Has the government obtained legal advice on the enforceability of corresponding laws?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The making of regulations proscribing laws in other jurisdictions is a standard process that is undertaken regularly. To be proscribed, the laws must achieve the same purposes and be consistent.

Ms PENNICUIK (Southern Metropolitan) — Given that Victoria is the only state with a charter of human rights and responsibilities and other states do not have to comply with such a charter, has the government obtained any legal advice about similar laws in place in other jurisdictions and their applicability to complying with the Victorian Charter of Human Rights and Responsibilities?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I am advised that a human rights certificate must be produced as part of the procedure to proscribe laws.

Ms PENNICUIK (Southern Metropolitan) — Does that mean that the corresponding jurisdiction would have to produce a human rights certificate or that Victoria would have to produce a human rights certificate?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I am advised that Victoria would produce the human rights certificate and the regulations can be disallowed by Parliament.

Clause agreed to; clause 2 agreed to.

Clause 3

Ms PENNICUIK (Southern Metropolitan) — My question on clause 3 concerns the definition of a member of an organisation, which is on page 6 of the bill. The definition talks about a current member, paid membership fees, an honorary member, a person who identifies as a member or an office-holder and at paragraph (d):

> an individual whose conduct in relation to the organisation would reasonably lead another person to consider the individual to be a member of the organisation.

Can the minister explain for the committee what that means and how that will be ascertained?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — In response to Ms Pennicuik's question I am advised that this is an objective test that the court must be satisfied of before making an order.

Ms PENNICUIK (Southern Metropolitan) — Given this is the government's legislation, it must have foreseen a reason to put this particular clause in the bill, so it must be able to provide me with an example of how it would work.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I am advised the application of the test is entirely the court's decision.

Ms PENNICUIK (Southern Metropolitan) — I am not very happy with that. Let us not talk about a motorcycle gang; let us talk about something like a darts club, which could be an incorporated association under clause 7 of the bill or an association that has registered members. There may be a darts club, two or more members of which are involved in criminal activity, so they would be caught up by this legislation, and there may be a person who plays darts with those people at the hotel every Tuesday night. You could say that their conduct could reasonably lead another person to consider them to be a member of that darts club, even though they are not a member of it. How would

the court determine whether they were or were not a member, and if they were incorrectly determined to be a member, what redress would they have?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I am advised that as the darts club would be most unlikely to pose a risk to community safety or order, no declaration could be made in the circumstances Ms Pennicuik describes.

Ms PENNICUIK (Southern Metropolitan) — I do not accept that. The bill allows a declaration to be made or applied for by the Chief Commissioner of Police if two or more members of an organisation are involved in criminal activity and the court decides the organisation is a risk to public safety, and this clause allows a person who may or may not be a member to be deemed a member by their conduct. I want to know: if they are wrongly classed as a member, what redress do they have?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — As I indicated before to Ms Pennicuik, this is an objective test which the court must be satisfied of before making an order. In the circumstances Ms Pennicuik described, no declaration could be made.

Ms PENNICUIK (Southern Metropolitan) — I have one further question on this particular paragraph. Given there are four other paragraphs describing what a member is that are reasonable — I do not have a problem with the other definitions of what a member might be — what is the purpose of adding this one, which is so open to mistake?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — As I indicated before in relation to your question, it is an objective test. The court must be satisfied before making an order, and that is the situation here.

Ms PENNICUIK (Southern Metropolitan) — I will apply my rule of asking the same question only twice. The next definition I want to talk about is that of 'serious criminal activity'. The bill defines it as:

> … conduct that would, if the facts were found proved beyond reasonable doubt at a trial, constitute any one or more applicable offences and includes any such conduct that occurs before the commencement of Part 2 …

My question relates to the part about facts being proved beyond reasonable doubt at a trial. This is not a trial. It is an application by the chief commissioner to the Supreme Court, not a criminal proceeding. How is the Supreme Court to know what the outcome of a trial would be when it is ascertaining whether it is serious criminal activity; or is this just meant to cover general indictable offences?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The advice I have is that beyond reasonable doubt is the burden of proof, and the reference to the trial is the application of the rules of evidence applicable to these matters.

Ms PENNICUIK (Southern Metropolitan) — I think one of the fundamental problems is that we are looking at a civil procedure in the Supreme Court applying the evidentiary requirement of beyond reasonable doubt if the facts were known as proved in a trial, but it is not a trial. I am just concerned about how the court can come to a view about what the outcome would be if the facts were known at a trial, because that is not what the court is doing.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The Supreme Court is well able to apply a range of tests.

Clause agreed to.

Clause 4

Hon. M. P. PAKULA (Western Metropolitan) — Clause 4 defines 'applicable offence'. The meaning of subclauses (1) and (2)(a) are clear enough, and the meaning of subclause (2)(c) is relatively clear as well. However, subclause (2)(b) refers to the schedule to the bill, which outlines a long list of specified offences, many of which on their face do not appear to be what would generally be considered by most members of the community to be serious criminal offences. For example, item 1.4 in the schedule refers to 'making an objectionable film'. There is a forgery provision, and there are a number which are more easily explicable in relation to dangerous goods and controlled substances.

There are also a range of firearms provisions, some of which relate to the possession of various types of handgun and other types of weapon, but there are also offences in relation to the disposition of certain firearms by licensed firearm dealers, which, again, would not on their face appear to be what would normally be considered serious criminal activity. At the very end of the schedule there are a number of offences in relation to the Sex Work Act 1994, including the carrying on of business as a sex work service provider in association with an unlicensed person and having an interest in more than one brothel licence or permit. Could the minister provide an explanation as to how the offences contained in the schedule were chosen, particularly in light of the fact that some of them, as I have indicated,

do not on their face appear to constitute what most people would consider to be serious criminal activity?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank Mr Pakula for his important question. I can advise Mr Pakula and the chamber that the offences contained in the schedule to the bill, such as the offences outlined by Mr Pakula, relate to the kinds of profit-motivated crimes that are typical of organised crime gangs. These offences relate to regulated activities and trade in regulated commodities where if one is prepared to break the law, a strong profit motive exists — hence the reason for the offences that are outlined.

Hon. M. P. PAKULA (Western Metropolitan) — Just for the sake of clarity and to have this on the record, I imagine there would be people and organisations who do not fit any of the criteria within the bill — for example, being an organisation or an ongoing threat to the public, having two or more people involved et cetera — which would make someone or an organisation liable to be declared as declared individuals or declared organisations. Is it the case that even if someone is engaged in some of the activities outlined in the schedule, they are not at risk of becoming declared organisations or declared individuals unless those other criteria that have already been referred to are also present?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank Mr Pakula for the question. For clarity, yes, these offences will only be applicable offences where they involve two or more offenders; involve substantial planning and organisation; form part of systemic criminal activity; and have the purpose of obtaining profit, gain, power or influence, or the purpose of sexual gratification where the victim is a child. These criteria will ensure that the new powers in the bill are appropriately directed towards criminal activity of an organised and ongoing nature. If offences do not meet the other criteria, a declaration cannot be made. As I said, these criteria include significant planning, multiple offenders and a risk to public safety and order.

Clause agreed to.

Clause 5

Ms PENNICUIK (Southern Metropolitan) — The question I have about clause 5 regards the court considering criminal history in deciding an application for a declaration or control order. Clause 5(2) says criminal history includes a conviction that becomes spent under the law of another jurisdiction. Clause 5(1)(c) says it includes any pending criminal charge for an offence under a law of Victoria, the commonwealth or another state or territory.

Concerns have been raised by Liberty Victoria, for example, about the inclusion of pending charges. In the case of a pending charge, a person might ultimately be acquitted of that charge and thus not have any criminal record whatsoever. I also raise my concern about the inclusion of spent convictions, because the idea of a spent conviction is that it is removed from a criminal record and does not come back to haunt someone.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — In terms of the pending charges, they may be relevant to fill in the full picture for the court, and it would be a matter for the court to decide what weight is given to them. In terms of spent conviction schemes, there are only spent convictions for specific valid purposes, and those purposes do not include an application under this scheme.

Ms PENNICUIK (Southern Metropolitan) — Actually, clause 5(2) says:

> … criminal history includes a conviction that becomes spent under a law of another jurisdiction.

So spent convictions are included.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I am advised that there is a bit of contradiction in what Ms Pennicuik is saying, because spent convictions are included.

Ms PENNICUIK (Southern Metropolitan) — I am saying they are included specifically by subclause (2), and I am asking why they are.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I am advised that spent convictions are only spent for specific valid purposes, but those purposes do not include an application under the scheme, so they are still live for the purposes of the applications under this scheme.

Ms PENNICUIK (Southern Metropolitan) — I think we are in furious agreement with each other. My question was just: why? However, I have asked it twice, and my rule is not to ask a question more than twice.

Clause agreed to; clause 6 agreed to.

Clause 7

Ms PENNICUIK (Southern Metropolitan) — Clause 7 is the part of the bill that defines an

organisation as an incorporated or unincorporated body or association, however structured, that may be based in Victoria or elsewhere, that may be part of a larger organisation or affiliated with another organisation and that may consist of persons who reside or do not reside in Victoria. It would appear to me that there are many criminal organisations in the state of Victoria and around the world that would not fit this definition — that is, they would be neither an incorporated association nor an unincorporated association, and they would be neither part of a larger organisation nor affiliated with another organisation. By that I mean they might constitute a collection of individuals doing or planning to do some criminal activity — and they may be involved in organised crime — but they might not be an organisation under the meaning of this clause. The example I am thinking of is the groups involved in the gangland killings of the last decade or so. My question is: are those types of groups covered by this clause?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The advice I have is that 'an unincorporated association' is a very broad definition, and it will be for the courts to make that determination.

Ms PENNICUIK (Southern Metropolitan) — I am just trying to tease this out. Is it possible that some of the groups of individuals that are involved in organised crime would not be captured by this clause? That is my question.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Again for Ms Pennicuik, for clarity, in clause 7, 'Meaning of organisation', subclause (1) says 'unincorporated body or association (however structured)'. Whilst this will be a matter for the court, it is hard to envisage an organisation that would not be captured by this definition.

Ms PENNICUIK (Southern Metropolitan) — Later in the bill it talks about the form of the application for a declaration. If I can, I will prosecute that issue under this clause because it specifically goes to this clause without having to go to those other clauses. The bill says the chief commissioner needs to name the organisation, or words to that effect, so the organisation has an existence, if you know what I mean. The organisation has a name that it goes by, and in most cases it has a registered address et cetera. That is what is later in the bill in terms of the form of the application. I am concerned that unstructured, unnamed organisations are not captured in this bill. I use the example of the gangland killings — those groups did not seem to be structured organisations, with names et cetera, that were identifiable, except perhaps some of them were identifiable by family groupings. I am trying to clarify whether that is sufficient for the application of the act.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank Ms Pennicuik. Again, as I outlined earlier, it will be an unincorporated body or association, however structured. Clause 15(2)(d) states that an organisation can be identified by formal or informal means and:

> if the organisation is an unincorporated body or association —
>
> (i) the name by which is commonly known; or
>
> (ii) any other particulars that are sufficient to identify it.

Again, this will be a matter for the court, but it is hard to envisage an organisation that will not be captured by this definition.

Ms PENNICUIK (Southern Metropolitan) — Does that mean that it is up to the court to decide whether a group of individuals is in fact an organisation?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — At the risk of repeating myself — which I will — an organisation is defined under clause 7 as an 'unincorporated body or association (however structured)' and the court in its determination would consider clause 15(2):

> (d) if the organisation is an unincorporated body or association —
>
> (i) the name by which it is commonly known; or
>
> (ii) any other particulars that are sufficient to identify it.

As I said, this will be a matter for the court but it would be hard to envisage an organisation that would not be captured by this definition.

Ms PENNICUIK (Southern Metropolitan) — Indeed, part of the concern with the bill is that it would be hard to envisage an organisation that would not be captured by this definition in the bill.

The other issue is that 'however structured' can mean 'however loosely structured'. An organisation could be just a group of individuals and not, for example, a highly visible, highly structured, highly known, highly recognisable group such as a motorcycle club. It could be a loosely structured group of individuals operating in the underworld who do not have a name or any identifying features that can be picked up by this

definition. Is it correct to say that it is up to the court to decide that?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — It is at the discretion of the court.

Ms PENNICUIK (Southern Metropolitan) — So in some cases the court would not only have to decide whether it is going to grant an application or a declaration but it would also have to decide whether or not the organisation is in fact an organisation. That is all I have to ask about clause 7.

Clause agreed to; clause 8 agreed to.

Clause 9

Ms PENNICUIK (Southern Metropolitan) — Clause 9 is the clause that describes the meaning of 'respondent', and the respondent under this definition is 'the organisation or individual identified in the application' or 'the declared organisation to which or declared individual to whom the declaration applies'. I just want to clarify this. In discussion of the purposes clause we established that a control order cannot be put on an organisation or individual unless a declaration has been made. Under the bill, though, can a declaration be made against an individual in the absence of a declaration on the organisation to which an individual belongs or does not belong?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank Ms Pennicuik for her detailed question, and the answer is yes.

Ms PENNICUIK (Southern Metropolitan) — I thank the minister for his succinct answer. In fact just for clarification and for the benefit of the committee, does this bill allow for the chief commissioner to apply for the declaration of an organisation or an individual, whether or not that individual is a member of any organisation?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I am advised the answer is no.

Ms PENNICUIK (Southern Metropolitan) — For my benefit and the committee's beneft, could the minister outline the process by which an individual, as opposed to an organisation, becomes a declared individual?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The matters that Ms Pennicuik has outlined are detailed in clause 19(3) on page 20 of the bill.

Clause agreed to; clause 10 agreed to.

Clause 11

Ms PENNICUIK (Southern Metropolitan) — Clause 11 states:

> It is the intention of the Parliament that powers under this Act, so far as is possible consistently with the purposes of this Act, be exercised in a way that does not diminish the freedom of persons in Victoria to participate in lawful protest, advocacy, dissent or industrial action.

It is possible that people could get caught up, given the low threshold of two members only, in applications for declarations under this bill. I want to know what the practical effect of the phrase 'so far as is possible consistently with the purposes of this act' means in terms of the protection of citizens to participate in protests, advocacy, dissent — dissent in particular, which could involve breaking the law — or industrial action and not be caught up in this process.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I advise Ms Pennicuik that these are normal English words that carry their normal meaning.

Clause agreed to; clauses 12 to 18 agreed to.

Clause 19

Ms PENNICUIK (Southern Metropolitan) — The part of clause 19 I am particularly interested in is subclause (2)(a)(ii), which provides that the court must be satisfied, amongst other things, that:

> any 2 or more members, former members or prospective members of the organisation have used —

et cetera. The threshold is two or more members. The Scrutiny of Acts and Regulations Committee (SARC) commented that this clause:

> … may permit a declaration to be made about an entire organisation on the basis of activities by a small number of members or former members of the organisation. The committee notes that most similar Australian statutes bar a declaration about an organisation being made on the basis of activities of only some of the organisation's members unless 'those members constitute a significant group within the organisation' in terms of numbers or influence. None permit a declaration solely on the basis of the activities of former members.

The committee wrote to the Attorney-General about that clause. It also sought further information as to:

> whether or not declarations may be made under clause 19 about groups of people who associate together due to personal or communal attributes that are protected by the charter; and
>
> whether or not requiring a court to make findings about the activities of a significant group within an organisation (in terms of numbers or influence) before it makes a declaration about the whole organisation is a less restrictive means reasonably available to achieve the purpose of preventing and disrupting the activities of organisations involved in serious criminal activity.

I remind members that Mr O'Donohue mentioned the response of the Attorney-General in the *Alert Digest*, which I read. It is as follows:

> There is no need for a super-added requirement that a 'significant group' within the organisation is engaged in serious criminal activity. If a court considers that the serious criminal activity is isolated to a few members, with the result that the organisation does not pose a serious threat to public safety and order, the court will not make the declaration against the organisation.

That is among other things. People can read the SARC report and the minister's response themselves.

The committee was correct in pointing out that in other jurisdictions there is no such low threshold, and the understanding is that there must be a significant number of members involved. It must also be a substantial purpose of the organisation that they are involved in criminal activity before an application can be made, but the threshold is much lower in Victoria. As I said, the bill says there must be 2 or more members, but it could be 3 members out of 50, which no-one would consider a significant number. Why has the government chosen this very low threshold?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I note, as Ms Pennicuik rightly pointed out, the Scrutiny of Acts and Regulations Committee report that was raised by my colleague Mr O'Donohue. I also note that the Attorney-General had appropriate time, as was outlined. Mr O'Donohue provided an expansive response to the issues Ms Pennicuik raised. Such a declaration could only be made if the court was satisfied that the organisation posed a risk to community safety and order.

Ms PENNICUIK (Southern Metropolitan) — In my example of a group where 3 persons out of 50 have been identified by the chief commissioner as being involved in criminal activity, it is very difficult to see how that would mean the full organisation of 50 persons posed a significant risk. That is what the Scrutiny of Acts and Regulations Committee was getting at, and that is why the threshold is not as low in other jurisdictions.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The Attorney-General has given a fulsome response, and as I indicated earlier, my statement stands.

Ms PENNICUIK (Southern Metropolitan) — Notwithstanding the fulsome response of the Attorney-General, I am not entirely satisfied, especially where he said there was no need for a super-added requirement, which is actually the requirement in every other jurisdiction; it is Victoria that is the odd one out, not the others. I acknowledge that the Attorney-General did respond, and that was often not the case in previous times. I just want to know the answer to the question: why is it a low threshold? Why not say 'a significant number' or 'a substantial number'? Considering Mr O'Donohue informed the house that the government had consulted closely with other jurisdictions, why has it chosen to go in a different direction on this?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Victoria has a higher threshold of beyond reasonable doubt.

Clause 19 agreed to; clauses 20 to 37 agreed to.

Clause 38

Ms PENNICUIK (Southern Metropolitan) — Clause 38 refers to applications by the chief commissioner for control orders. I just have a simple question: in his application for a control order is the chief commissioner able to suggest, recommend or ask for particular controls on an individual or organisation?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — In response to Ms Pennicuik's question, the answer is yes, and it is outlined under clause 39(1)(d).

Ms PENNICUIK (Southern Metropolitan) — Without going through the clause, that could be any of the contents that are listed in clauses 45 or 47?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — This is an inclusive list, and the final form of the control order is at the discretion of the court.

Clause agreed to; clauses 39 to 42 agreed to.

Clause 43

Ms PENNICUIK (Southern Metropolitan) — My question is about clause 43(3) on page 34, which I

referred to during the second-reading debate. Under this section the court:

> … may be satisfied that the making of a control order is likely to contribute to the purpose of preventing or disrupting serious criminal activity without having to determine which particular applicable offence or offences would be prevented or disrupted.

Given that the test is beyond reasonable doubt, it seems to be at odds with that if the chief commissioner is making an application saying, 'These individuals are involved in this particular criminal activity', such as firearms trafficking, yet the court does not have to determine which particular offence they are making the control order for.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — This is a forecast of likely risk, which the court will decide on the balance of probabilities.

Clause agreed to; clause 44 agreed to.

Clause 45

Ms PENNICUIK (Southern Metropolitan) — I have a general question on clause 45, which concerns the content of control orders regarding declared organisations, such as prohibiting them to operate, to participate in activities and to wear their colours, and to have new members et cetera. I will not go into it all. If one of the control orders is that members cannot participate in the activities and the organisation has to come to a halt, what is to stop members from resigning from the organisation and forming a different organisation?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — After a declaration has been made in respect of an organisation, the court may make control orders against both the organisation itself and individual members of the organisation. It is these control orders made against individual members that are able to prevent a gang disbanding and reforming under another name.

Ms PENNICUIK (Southern Metropolitan) — Just for clarification, a court could do that. If a court did not prohibit them from resigning and reforming, then there is a declaration on basically a non-functioning organisation. Would that not be the case?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — It can apply to both — the organisation itself and the individual members of the organisation — and it is these control orders made against individual members that are able to prevent a gang disbanding and reforming under another name.

Ms PENNICUIK (Southern Metropolitan) — Yes, but only if those particular control orders are part of the content of the control order at the discretion of the court. If the court does not make that particular order, then it is not an applicable order, and it is not something, if you have got court discretion, that you can envisage the court will or will not do. It might not do that.

For my next question I will stick with my example of an organisation with 50 members, 3 of whom have been identified by the commissioner as being involved in criminal activity. Will the control orders on the organisation apply to every member of the organisation or just the members who are identified as involved in criminal activity, or will there possibly be different orders on different members?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — If a court makes control orders relating to an organisation, it may also make controls that cover specific members or, indeed, all members.

Ms PENNICUIK (Southern Metropolitan) — Can they be different from each other, as in specific members who are involved and identified as being involved in criminal activity? Will they have, for example, stronger control orders on them than members who have no criminal record and have not been identified as being involved in any criminal activity or a conspiracy to commit criminal activity?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The court can make orders as it sees fit.

Clause agreed to.

Clause 46

Ms PENNICUIK (Southern Metropolitan) — Clause 46 is about the winding up of associations that are prohibited from operating under a control order. Under this clause it seems as if the court could order a declared organisation to be wound up. Would that mean it would no longer be possible for control orders to be applied to former members of that group?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank Ms Pennicuik for her question. As I indicated, if a court makes control orders relating to an organisation, it may also make control orders to cover specific or all

members of the organisation. I indicated that before. These controls persist beyond the winding up of the organisation and last for three years.

Ms PENNICUIK (Southern Metropolitan) — Does this apply even in the case where the organisation no longer exists and therefore the organisation is not a declared organisation and the former members do not belong to a declared organisation? Under the provisions the minister spoke about, former members cannot have a control order made against them if they are not a member of a declared organisation.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — If an organisation exists at the time of an application, that is all that matters. A court can then make control orders lasting for three years.

Ms PENNICUIK (Southern Metropolitan) — That is a concern, because an organisation could become a declared organisation and then be wound up six months later, or even sooner, and the control orders on its members would exist without the declaration of the organisation to which they belong. I think that is a concern.

Clause agreed to.

Clause 47

Ms PENNICUIK (Southern Metropolitan) — I would like to draw the committee's attention to clause 47, which deals with the content of control orders on individuals. The clause runs to some 20 prohibitions that could be included. The Scrutiny of Acts and Regulations Committee drew our attention to the fact that there is no requirement in either clause 43(2), which we have passed, or clause 47(1) to require that a control order's purpose or content relate to the member's association with the declared organisation. Even though the person may have contact with other members, they may have nothing to do with the purpose of the organisation.

The committee also observes that while similar Australian statutes in other jurisdictions operate in this way for current members of a declared organisation, some bar the imposition of control orders on former members unless they have an ongoing involvement with the organisation — that is, if they are former members but they have not been a member for five years, the control orders do not apply to them. But that is not the case under this bill, as I understand it. Can that be clarified?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — In the circumstances Ms Pennicuik has outlined, control orders would only apply to past members if the court specifically orders it.

Ms PENNICUIK (Southern Metropolitan) — Indeed. But, as I said, in other jurisdictions there is a bar on the application of control orders to former members, unless they have a continuing association with the organisation. I suppose the civil liberties or the public interest concern is that someone may have been a member of an organisation some time ago and have no association — and certainly no criminal association — with the organisation now, but they could be caught up in this.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — A lot of detail relating to the question Ms Pennicuik has asked was provided by the Attorney-General in a letter of 10 December to the Scrutiny of Acts and Regulations Committee. I will read the specific issue there:

> The bill is aimed at preventing and disrupting the serious criminal activities of individuals linked to organisations, not just the serious criminal activities of the organisation. Current and former members of organisations may be jointly engaged in serious criminal activity and it would create a significant gap in the scheme of the legislation to exclude former members.

As I outlined earlier, in the circumstances described by Ms Pennicuik the orders would only apply to past members if the court specifically ordered it.

Ms PENNICUIK (Southern Metropolitan) — I thank the minister for his answer; however, just because the Attorney-General wrote about it in his response does not mean that I have to be satisfied with the response, particularly if the response is just a reiteration of government policy and does not go to the issue raised by SARC, which is that in other jurisdictions former members are barred from being included unless they have an ongoing association. That is not the case here and it is a concern for people in the community.

Clause agreed to; clauses 48 to 67 agreed to.

Clause 68

Ms PENNICUIK (Southern Metropolitan) — Clause 68 refers to offences for individuals to whom or organisations to which a consent control order applies — it is about the offence of not complying with a control order. Subclause (3) reads:

> For the purposes of —

this —

> … service of a copy of a control order that applies to the individual or organisation is proof, in the absence of evidence to the contrary, that the individual … knows that a control order … applies …

I ask the question: is there any defence for a person, for them to not know? If they have not seen the copy, is there any other defence for them not knowing the control order was in place?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — This clause provides an evidentiary presumption. If they did not know about the order, the subject would simply tell the court this and the court would decide the matter on the evidence before it.

Ms PENNICUIK (Southern Metropolitan) — My next question relates to subclause (5), which I consider one of the most concerning clauses in the bill. It reads:

> In proceedings for an offence against subsection (1) for a contravention … of a condition of a control order … it is not necessary for the prosecution to prove that the accused associated with another person for any particular purpose or that the association would have led to the commission of any offence.

SARC draws attention to this. It notes that this clause:

> … provides that a person can be convicted for associating with others in breach of a control order without any proof that the association was for a criminal or other unreasonable purpose. The committee observes that most similar Australian statutes expressly exempt certain reasonable personal associations from restriction by control orders.

I presume this means that persons who have not been involved in any criminal activity or conspiracy to perform a criminal activity can still be convicted under this clause.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — This was responded to by the Attorney-General in a letter to SARC on 10 December 2012. The letter reads:

> In contrast, the bill confers on the court a flexible discretion whether to impose a control order, and if so, the terms of the conditions that apply. This will allow the court to take into account personal associations, such as family relationships, when framing appropriate conditions for a control order.

Ms PENNICUIK (Southern Metropolitan) — So the court will take that into account and can then not convict on the basis of that?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The Attorney-General said:

> Where interstate schemes provide for mandatory controls on association, the exemptions in those schemes are necessary to ameliorate or avoid unintended effects of those mandatory controls. In contrast, the bill confers on the court a flexible discretion whether to impose a control order, and if so, the terms of the conditions that apply.

Ms PENNICUIK (Southern Metropolitan) — This is not about the imposition of a control order. It is about the offence of not complying with a control order, so I do not agree that the Attorney-General is addressing the right issue. That is an aspect of the bill that will concern most members of the public, that any association, even a personal one, can be caught up in this clause. That is one of the main concerns that ordinary people have with the bill. That is all I have to say on that.

Clause agreed to; clauses 69 to 70 agreed to.

Clause 71

Ms PENNICUIK (Southern Metropolitan) — Clause 71 relates to the appointment and role of the special counsel who is appointed to represent the respondent. There are certain conditions on what the special counsel can and cannot convey to the respondent with regard to protection of criminal intelligence, if the Chief Commissioner of Police has applied that certain intelligence be kept protected. Accepting all that, it says here that 'the court may appoint a special counsel', so it would not be in every case that the court will appoint a special counsel. I know the minister is going to say this is at the discretion of the court, but what would be an example of the court not appointing a special counsel such that the respondent is not represented at this application? That would mean the respondent would not be represented at the application, because the respondent would not be allowed to be present in the closed court.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The advice I have is that it will be at the discretion of the court as to the appointment of the special counsel.

Ms PENNICUIK (Southern Metropolitan) — So there could be a situation where the respondent is not represented under this clause? I did mention in my speech that another jurisdiction, Queensland — even though the Queensland act is being challenged in the High Court — appoints a Public Interest Monitor (PIM) to represent the public interest in an application for protection of criminal intelligence, and I suggested a similar thing.

In the second-reading speech Mr O'Donohue responded to that point, incorrectly or inaccurately believing that I was saying we should have just the Public Interest Monitor and not the special counsel

when I was actually suggesting both. In particular, in the case where there is no special counsel representing the respondent, there is no-one representing the public interest either, and the Queensland legislation has seen fit to include that. I am therefore wondering whether the government has given any consideration to who or what, beside the court, is representing the public interest.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The PIM represents the public interest. This may not be consistent with the respondent's interest, and that is why the bill contains a role for a special counsel rather than the PIM — it is fundamentally fairer for the respondent.

Ms PENNICUIK (Southern Metropolitan) — In the case where there is a special counsel that is so, but there can be a case where there is no special counsel because it only says 'the court may'. It does not say 'the court must'. So there can be cases where there is no special counsel. I am not suggesting that there not be special counsel; I am suggesting that there be both — representing the public interest and the respondent.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The suggestion made by Ms Pennicuik that the court must take certain actions is precisely the issue that has caused similar schemes to fail. The Supreme Court, in the interests of justice, will appoint special counsel where it deems appropriate.

Ms PENNICUIK (Southern Metropolitan) — I am not suggesting that it should say 'must'; I am saying it says 'may', which means some respondents will be unrepresented and the public interest will definitely be unrepresented. I am suggesting that it would be good to have that representation. I urge the government to consider that when it has to amend the bill, which no doubt it will.

I have no further questions on the bill. I would like to thank the ministerial and departmental advisers for their advice and patience.

Clause agreed to; clauses 72 to 141 agreed to; schedule agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Motion agreed to.

Read third time.

ADJOURNMENT

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

That the house do now adjourn.

Higher education: TAFE funding

Mr LENDERS (Southern Metropolitan) — The matter I raise tonight is for the attention of the Minister for Higher Education and Skills, Mr Hall. The government states that the changed TAFE funding arrangements will provide better targeted course subsidies to ensure that training is directed to areas of greatest public benefit and industry need. Despite the almost $300 million budget cuts and the opinions of TAFEs, students and ex-teachers, the government still claims it is improving vocational education in this state. The minister has said in this house that the Baillieu government is assisting young people in particular in gaining qualifications in a trade such as carpentry, plumbing and electrical.

I draw the minister's attention to a letter to the editor that appeared in the *Age* yesterday. The letter starts with a quote:

> Dear Ben, due to the significant financial cuts made in the recent state budget … I regret to advise that we will not have the same number of positions available for 2013.

The 'Ben' in question is Ben Merton, the author of the letter to the editor, who was until recently a teacher at GippsTAFE. Mr Merton was sacked. There are thousands of quality TAFE teachers being sacked across the state at the moment, but that is not why I raise this matter. The most important aspect of this letter is that Mr Merton was a trades teacher; he taught plumbing. The letter goes on to say:

> Next year we have the same number of apprentice plumbers, and a desperate need to reach out to more ex-students and upskill them to certificate IV level. We now have the means to do most of that online — to make it more available to regional kids — but we have 2.5 teachers left to do it. Impossible.

Of course the things in which I think the minister will be most interested are that it is online and it is regional, which are issues that are near and dear to his heart.

Mr Merton went on to express his disappointment at the cuts at GippsTAFE and 'the nausea, hopelessness and feelings of inadequacy that accompany the Christmas termination letters'.

The action I seek from the minister is that he visit Ben Merton, who lives in Toongabbie, to find out why there

is such a gross discrepancy between what the minister and government are telling Parliament they think is happening and the actual life experience of Ben and others on the ground in the minister's own electorate. Therefore the action I seek is that the minister meet with Ben to try to reconcile that discrepancy.

Wind farms: Macarthur

Mr RAMSAY (Western Victoria) — My adjournment matter tonight is for the Minister for Planning, the Honourable Matthew Guy, and the action I seek is for him to help facilitate a meeting between Department of Planning and Community Development staff and residents affected by the operation of a wind farm at Macarthur, the biggest wind farm industrial park in Victoria.

I have brought to this house on many occasions concerns that constituents have raised with me on the impact that wind turbines are having on their livability and health, and I have even shared my own personal experiences of the behaviour of wind generators and their desperation to meet conditions of their permits.

Anne Gardner of Macarthur is a real-life example, suffering a living hell as a result of the callous, insensitive and ad hoc plethora of wind farm planning permits handed out like confetti by the planning minister of the previous Labor government, Justin Madden, who, living in Carlton, had no idea what damage he was inflicting on a community that was not properly consulted.

Yes, I am supportive of wind farms, despite the fact they were demonstrated to deliver only 8 per cent of capacity in an emergency situation last week. Yes, sections of the community are benefiting from the investment, and as my parliamentary colleague David O'Brien stated in the house today, an investment by a Geelong company is looking at reducing the noise impact of turbines. However, Ann Gardner described the Christmas gift from the previous Labor government's planning decision as follows:

> Last night was my fourth night of severely disturbed sleep in the last five — I had to go away one night and for two days to try and recoup my physical condition before shearing, which is a huge physical job for my husband and me.
>
> Since coming back to the farm on Monday evening I've had three more bad nights — 3 or 4 hours sleep is not sufficient for anyone …
>
> Last night the turbines were roaring with a wind from the south. Couldn't even get to sleep till about 2.30 a.m., and just lay in bed as if I was in a pressure chamber with my head aching badly and my heart thudding — in a bed that felt as if it had an electric charge through it.

This is not an isolated plea, but as more wind farm projects come on line I feel we have a duty of care to offer protection to the Ann Gardners of our rural communities, and that is the reason why in South Australia the Supreme Court ruled that turbines are to be turned off at night. I ask the Minister for Planning, through his department, to discuss with me and the residents who are impacted what options are available to reduce the impost of these turbines on their livability.

Building Practitioners Board: performance

Mr BARBER (Northern Metropolitan) — My adjournment matter tonight is for the Minister for Planning, Mr Guy. Now that he has had the chance to read the Ombudsman's report on the Building Practitioners Board and come to understand that the organisation has failed completely in the delivery of its important regulatory processes, my request from Mr Guy is to provide some assistance, some redress, some compensation and maybe even some closure for all of the many victims not just of dodgy builders and building practitioners but of the complete failure of the board itself to provide a well-regulated industry.

Take for example the situation of Dr Sharon Harrison, who asked me to make representations to the minister after she made a complaint under section 178 of the Building Act 1993, which provides for the Building Practitioners Board to conduct an inquiry into the conduct or ability to practise of a registered building practitioner. Having done that, she stated:

> Even though my husband and I submitted our complaint to the BPB directly under section 178 of the Building Act 1993 and should be treated as a party to the proceedings, attempts to obtain the transcript, even with the intervention of the Ombudsman, have been ignored.
>
> Initial enquiries with the Building Appeals Board registrar have been rebuffed, with the acting registrar refusing to provide any information regarding when the appeal was submitted and on what grounds. They also refused to provide advice regarding whether we may lodge a counterclaim and how this might be handled in view of the fact the practitioner has already lodged an appeal. The entire process has been completely non-transparent and the manner in which the matter is being treated is akin to a top secret ASIO case.

She went on to say:

> We find ourselves fighting a system that is not accountable to us in any way, even though it is supposed to be in place to protect us. Ted Baillieu previously intervened in the case around a year ago when I was a constituent in his Hawthorn electorate but will not have anything to do with it now, referring me to Matthew Guy, who ignores every phone call and letter.

My request of the minister is that he does intervene in this and other similar cases where people have already

suffered as a result of the huge disruption that comes from a dispute over a poorly constructed house. In Ms Harrison's case, her house has had to be almost completely rebuilt as a result of the works being utterly substandard. She is now seeking to appeal against some of the practitioners involved for their suspension or deregistration. If she were to achieve that, she may have some chance of a further appeal to obtain the necessary redress.

I therefore ask the minister to get cracking and provide some redress to those citizens who have been affected by the failures of the Building Practitioners Board.

Ambulance Victoria: Sunshine station

Hon. M. P. PAKULA (Western Metropolitan) — The adjournment matter I have tonight is for the Minister for Health. It concerns the state of the Sunshine ambulance station. The minister would be aware that this matter was raised by the member for Williamstown in the other place on 9 October and that the minister replied by letter dated 14 November. I note that the minister's response on 14 November contained his customary hyper-political commentary and invective. I can assure him that it won him no friends amongst the staff at the Ambulance Victoria Sunshine branch, and it would be best if he did not do that again.

His response was also incorrect in that it asserted that seven of the eight improvement notices issued by WorkSafe had been resolved. In fact only six have been resolved, with the two outstanding being the two most important — namely, security and the lack of sleeping facilities for ambulance officers. In other words, Ambulance Victoria has resolved the essentially low-cost and cosmetic matters but not the matters that relate to staff safety and fatigue. I can inform the minister that this matter has now become so serious that staff at the Sunshine ambulance station are contemplating a site shutdown if those serious issues are not resolved, with all the consequences that might entail for the residents of the area.

The action I seek is that the minister get down from his hyper-political high horse, resist the temptation to yet again respond with hyperbole and invective and actually ensure that Ambulance Victoria resolves the issues at Sunshine ambulance station either by rectifying the safety and fatigue issues as identified in the WorkSafe improvement notices or, better yet, by rebuilding the station.

Manufacturing: Laverton North

Mr ELSBURY (Western Metropolitan) — The matter I raise this evening is for the attention of the Minister for Manufacturing, Exports and Trade, the Honourable Richard Dalla-Riva. It is in relation to the Laverton North industrial zone. The minister has been in Laverton North on a number of occasions. Recently I was with him on a bus trip that was organised by the Wyndham Industrial and Liaison Development Committee. We went around looking at the great potential of the area, the massive amount of industry that is being supported there and some of the issues that the area is having to deal with.

On the bus trip we had representatives from Nufarm Australia, Oxford Cold Storage, OneSteel Recycling, Alex Fraser Group, Pacific Terminals and Schütz Australia. We also met with representatives of Krueger Transport Equipment, Vistaprint Australia and Probiotec on various visits to see the magnificent work that is being accomplished by those companies in the Laverton area. I have met with a number of other companies in the area, including Haines Hunter, Murray Goulburn Co-operative, Visy Recyclers Glass Division, Extrusions Australia, Edgemill Group and Ocean Oils, all of whom told me about various issues impacting upon their business.

During the visits I was told about the proposed development under the previous government of a spur line for a train to go into the area. Unfortunately that project can no longer go ahead because the area was allowed to be built over. What I ask the minister to do — —

Mr Barber — I bet none of them mentioned the carbon tax, did they?

Mr ELSBURY — I say to Mr Barber that the carbon tax did come up in those discussions, but I will not go into that. I do not want Mr Barber to picket their premises.

I ask the minister to work with his ministerial colleagues to ensure that the full manufacturing potential of the Laverton North industrial precinct is realised and to take heed of the issues that were raised with us, including the carbon tax, which is having a massive impact upon some of the more energy-reliant companies in the area.

Mr Barber interjected.

Mr ELSBURY — Even when they undertake energy efficiencies, Mr Barber, they are still being slugged, they are still unable to expand their business

and they are having to give major consideration to their staffing levels.

Health: western suburbs

Mr FINN (Western Metropolitan) — I wish to raise a matter for the attention of the Minister for Health. The minister would be aware that in the six years I have been in this place I have on a number of occasions raised the issue of the neglect of health services in the western suburbs by Labor governments. I have spoken about the dental service based in Footscray that has suffered under Labor's neglect for many years. I have visited the Western Hospital in Footscray, and I have reported to the house just how badly that hospital needs a refit to say the very least. I have spoken about the need for paediatric services in an area that has a huge number of families, which obviously include children, and so the need there for paediatric services is very strong.

I have also spoken about the carbon tax that will hit hospitals throughout the western suburbs. Indeed, it is hitting hospitals throughout Australia.

Mrs Peulich — It's a Christmas gift from the Greens!

Mr FINN — It is a Christmas gift from the Greens; that is exactly right. The Grinch over there is smiling as he takes money out of the pockets of sick people throughout the western suburbs.

We have seen growth in the west over the last five or six years, and the services provided have really been struggling to keep up with the demands of a booming population. I have been staggered and absolutely amazed to see the federal Labor government slashing health funding for services that are already struggling, scrimping, saving and pulling every which way just to keep going. This is hurting many newly arrived migrants and many asylum seekers who find themselves in the western suburbs; it is hurting the unemployed; it is hurting the battlers of the western suburbs; and of course it is hurting Labor's much-beloved working families, although we do not hear Labor talking about them much anymore.

I ask the minister to assure the people of the west that he will stand up for their needs, both in and against Canberra, and that he will defend and extend the health services we need in Melbourne's west. I ask the minister to give that assurance in the knowledge that the people of the west are deeply concerned at this time about what will happen to the health services they so desperately need.

An honourable member interjected.

Mr FINN — I do not think Bill Shorten, the member for the federal seat of Maribyrnong and Minister for Employment and Workplace Relations, gets out there much, so he probably would not know.

I also take this opportunity to wish the President, members, and staff of this Parliament and their families all the very best for a happy and safe Christmas, so they can come back to see us all in 2013 for another exciting and fun-packed year.

Manufacturing: jobs

Mr SOMYUREK (South Eastern Metropolitan) — I raise a matter for the attention of the Minister for Manufacturing, Exports and Trade, Mr Dalla-Riva, in terms of the employment figures released today by the Australian Bureau of Statistics (ABS). Being the last sitting day before Christmas I was hoping my adjournment matter would be as uplifting as Mr Finn's, but I am afraid I have some very bad news in terms of employment figures. The ABS released its quarterly employment figures based on industry today and the news is bad for the Victorian manufacturing sector. This is in complete contrast to the situation nationally and in New South Wales.

According to the ABS data, total manufacturing employment in original terms for the November quarter was 972 200 positions nationally, which compares to 962 900 for the August quarter. That was an increase of 9300 positions in manufacturing nationally. In the November quarter of 2012 there was a rise of 2.2 per cent in total manufacturing employment from the previous corresponding quarter in 2011. Again, I speak of national figures. So there was an increase of 2.2 per cent, or 9300 jobs, federally.

Moving on to the state level, in New South Wales total manufacturing employment in the November quarter of 2012 was 317 400 positions, up from 299 400. This is an increase of 18 000 manufacturing positions in New South Wales. In the November quarter total manufacturing employment increased by 11.2 per cent in New South Wales from the previous corresponding quarter in 2011.

Mr Ondarchie interjected.

Mr SOMYUREK — I am making a point, Mr Ondarchie. I am getting to it.

These figures show an increase in manufacturing employment nationally and in New South Wales, but the picture is not as rosy in Victoria. In Victoria total

manufacturing employment for the November quarter was 283 800 positions, decreased from 308 100 for the August quarter — a fall in total manufacturing employment of 24 300 positions. New South Wales now has more people employed in the manufacturing sector than does Victoria.

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

Energy: smart switch installation

Mr ELASMAR (Northern Metropolitan) — My adjournment matter is for the Minister for Energy and Resources, the Honourable Michael O'Brien. As part of the Victorian government's energy saver incentive scheme, energy-saving power boards, or smart switches, are made available to consumers free of charge. They are useful and save energy but must be installed properly. A smart switch is designed to save power when an appliance such as a television, DVD player or computer is in stand-by mode. There have already been several reports from constituents of improper installations causing damage to devices such as computers and cable TV boxes that should not have been connected to such a device. The action I seek from the minister is that he introduce measures to ensure that companies funded through the Victorian government's energy saver incentive scheme maintain professional standards during installation, make consumers aware of the correct operation of the device and are held accountable for their work.

Para–Rattray roads, Montmorency: safety

Mrs KRONBERG (Eastern Metropolitan) — The matter I wish to raise tonight is for the Minister for Roads, the Honourable Terry Mulder. The matter concerns the intersection of Rattray Road, the Banyule council collector road, and Para Road, which is a VicRoads road in Montmorency in the state seat of Eltham. On Monday this week I spent a period of time at this intersection with Banyule councillor Steven Briffa, who for some time now has been concerned about the dangerous traffic conditions at this intersection and the acute need for this T-junction to be controlled by traffic lights.

After what I saw on that day I am convinced this intersection warrants traffic lights to manage this increasingly dangerous traffic problem. The specifics of the problematic intersection are that it is situated on a slight bend in Para Road with a moderate downgrade to the south. The approach to the intersection on Rattray Road is downhill and on a slight bend. These bends and grades impact sight lines for pedestrians, cyclists and motorists.

Rattray Road currently terminates at a T-junction with Para Road and is stop-sign controlled. A right-turning lane is provided on Para Road with a left slip lane from Para Road into Rattray Road. In 2009 this intersection was a black spot with four casualty crashes recorded over a five-year period, and no significant works have been undertaken since. Recently a young girl was hit as she attempted to cross Para Road to reach a SmartBus stop down from the intersection. She was hit by a car speeding up in the execution of its right-hand turn into Para Road from Rattray Road, a common practice when entering this busy road.

Pedestrian crossing of Para Road is not encouraged at the intersection, given the complexity of vehicle movements and vehicle storage areas at the intersection. To discourage pedestrians crossing here, pedestrian fencing is provided on the north-east corner of the intersection. Pedestrian crossing of Para Road has to occur north of Rattray Road in the vicinity of the Lower Plenty oval and the SmartBus stop where sight lines are better. The existing intersection is very wide, requiring pedestrians to navigate large expanses of road pavement to cross Rattray Road.

Importantly, too, the Montmorency and Lower Plenty sports ovals, the nearby Montmorency Secondary College, SmartBus stops and access to the Plenty River shared trail generate increasing pedestrian and cyclist activity. A large proportion of the community of Montmorency has to cross this road system to access these facilities. The action I seek from the minister is that this dangerous intersection be reconsidered and given priority for signalisation and that state government funding for the signalisation cover the likely shortfall in what the Banyule City Council can provide for these works.

Finally, I would like to wish everybody here tonight a wonderful Christmas and those of faith a happy and holy Christmas and a wonderful new year. Thank you very much for the year.

School Focused Youth Service: future

Mr LEANE (Eastern Metropolitan) — My adjournment matter is for Martin Dixon, the Minister for Education, and it is to do with an initiative from the Department of Education and Early Childhood Development, which works collaboratively with a number of good non-government organisations and also with Catholic Education Melbourne and a number of independent schools on the School Focused Youth

Service. This service is designed to reduce the risk of suicide through prevention and early intervention programs, especially in a secondary school environment. Unfortunately the program is set to be axed by the Minister for Education's government in June of next year. Local teachers and youth workers are very worried about this move, which I became aware of when speaking to some of them in the outer east. Australian of the Year Professor Patrick McGorry said that the move to shut down this service reveals that the government is 'clearly walking away from young people'. He believes this is a very ill-advised cut to such an important service.

The action I am seeking from the minister is for him to not cut the funding to this service and to keep the funding in place at least until something else might replace the service. People who work in this sector experience a bit of frustration because they get responses from the Baillieu government that indicate there is going to be this overarching plan that will look after all these things. They do not want to be without a service like this while this overarching plan is being developed for years to come. The action I seek is clear, and I hope the minister can give a positive response to the communities that have a concern in this area.

Victorian Multicultural Commission: community grants program

Ms MIKAKOS (Northern Metropolitan) — My matter this evening is for the Minister for Multicultural Affairs and Citizenship. As members are well aware, Victoria is a very multicultural state. We are fortunate to live in a state that has migrants and refugees who have made and continue to make a significant contribution to our state. I take this opportunity to wish everybody who will be celebrating either of two very important religious celebrations in coming weeks both a merry Christmas and happy Hanukkah. I wish all the best to members and particularly the Parliament's staff for all their support throughout the year; it is very much appreciated.

I have recently had drawn to my attention that the latest round of the Victorian Multicultural Commission (VMC) community grants program has excluded applications for 'infrastructure projects that are for the enhancement of a place of worship'. This is on page 4 of the grant guidelines and application form. As the minister would be aware, places of worship are very important components in the cultural beliefs and practices of many ethnic community members. I believe places of worship should be supported through the VMC community grants program, as has occurred in the past. The previous government allowed places of worship to be funded through the VMC program.

I also went back and checked the last two years of the community grants program's applications and criteria. I was pleased to see that, at least in the last two years, places of worship had not been excluded from receiving these grants. I am therefore puzzled as to why in the 2013–14 grants round all of a sudden infrastructure projects that would enhance places of worship are now specifically excluded. I call on the Baillieu government to reconsider this discriminatory exclusion, as there appears to be no policy rationale for this decision. I hope the process will revert back to allowing places of worship for various faith communities to be eligible to be the subject of applications for funding.

Responses

Hon. P. R. HALL (Minister for Higher Education and Skills) — I must say that I am impressed by the enthusiasm shown by members on this last day of sitting. At this hour on Thursday evening we have had 11 members raise matters on the adjournment.

First of all, Mr Lenders raised an issue for me regarding a letter that was printed in yesterday's *Age* newspaper from Ben Merton of Toongabbie. I read that letter with some interest. Let me say at the start that occasionally I contact at random people who write to the newspapers, and prior to Mr Lenders raising this matter tonight I had made a decision that out of my own interest I would seek to meet, or at least offer to meet, Mr Merton to discuss the issue Mr Lenders raised. However, when Mr Lenders raised it — it is quite interesting — I wondered whether Mr Merton had contacted Mr Lenders to seek his assistance in facilitating a meeting or whether, like me, Mr Lenders chose the letter randomly from a newspaper to raise the matter. Anyway, as I said, I had already made a decision to make contact with Mr Merton and offer for him to meet with me.

Mr Ramsay raised a matter for the Minister for Planning requesting that a meeting be arranged between officials of the Department of Planning and Community Development and residents of Macarthur to discuss some of their concerns with wind farm operations in that area.

Mr Barber also raised a matter for the Minister for Planning following the tabling in the Parliament this week of the Ombudsman's report on the Building Practitioners Board. Mr Barber urged the minister to find some redress for people who may have been

affected by the failures of the Building Practitioners Board. I will pass on that request.

Mr Pakula raised a matter for the Minister for Health regarding the Sunshine ambulance station and concerns that officers have with the state of that station. I will pass that request on to the Minister for Health.

Mr Elsbury raised a matter for the Minister for Manufacturing, Exports and Trade, Mr Dalla-Riva, urging him to work with his parliamentary ministerial colleagues to fully realise the potential of manufacturing in Laverton North. I know Mr Dalla-Riva would be more than happy to do that. I will pass on that request.

Mr Finn urged the Minister for Health to act in the best interests of those in the western suburbs to ensure that they receive their funding entitlement from the federal government in respect of health issues, and I will pass on that request.

Mr Somyurek raised a matter for Mr Dalla-Riva, again in his capacity as Minister for Manufacturing, Exports and Trade. He gave us quite an account of the most recent employment figures in the manufacturing sector. At the end of it I was not quite sure of the action sought, but what I will do for Mr Somyurek is make sure that his full speech is passed on to the minister to see if he can distil a request out of it.

Mr Elasmar raised a matter for Mr O'Brien in his capacity as Minister for Energy and Resources. The matter concerns the energy saver incentive scheme and the need for overarching control or regulation of the installation of smart switches in homes. I will convey that request to Mr O'Brien.

Mrs Kronberg raised a matter for Mr Mulder, the Minister for Roads. It concerns the state of a road intersection in the seat of Eltham. I will pass that request on to the Minister for Roads.

Mr Leane raised a matter for Mr Dixon, the Minister for Education, regarding the future of the School Focused Youth Service or a service that addresses the same needs. I will pass that request on to the minister so that he can have a look at that.

Ms Mikakos raised a matter for the Minister for Multicultural Affairs and Citizenship regarding the criteria for the most recent rounds of grants offered by the Victorian Multicultural Commission and suggested that infrastructure enhancement for places of worship should be included. I will pass that matter on to the Minister for Multicultural Affairs and Citizenship for his consideration.

I have written responses to five adjournment matters raised by Mr Pakula on 10 October, Ms Tierney on 23 October, Mr Lenders on 13 November, Mrs Petrovich on 14 November and Mr Somyurek on 28 November.

While I am on my feet, I take this opportunity to wish all a safe, happy and restful Christmas break.

Ms PULFORD (Western Victoria) — I hate to spoil the party, as I know everyone wants to go home — in addition to everybody else's Christmas greetings, I would like to pass on my good wishes to everybody while I am on my feet — but I have written to Santa and there was just one thing I was hoping for for Christmas: an answer to the adjournment matter I raised for the attention of Terry Mulder, the Minister for Public Transport, on 22 August. It related to the rail line between Ararat and Maryborough. I am not sure that Minister Mulder would have been able to find Christmas wrapping paper back in August. As a courtesy, I indicated to Mr Guy and indeed to the Government Whip that I would be raising this issue. It would be great to get an answer to this question, maybe in time for Christmas.

Hon. P. R. HALL (Minister for Higher Education and Skills) — That is a fair request, so I will add that to my list of matters which I will convey to my various ministerial colleagues and see if we can get an answer for Ms Pulford.

The PRESIDENT — Order! It is appropriate at this stage that on behalf of members I extend my thanks and best wishes to various people who are associated with the Parliament and support us in our work. I take this opportunity tonight to extend to them the appreciation of all members and our best wishes for the Christmas and Hanukkah celebrations as well as for the new year, a time when people get together and enjoy each other's company and friendship and participate in many events, irrespective of their faiths.

The people I would particularly like to acknowledge tonight are the staff who serve us in this chamber, particularly the redcoats, who do a fine job in supporting members in the day-to-day activities of the Parliament in particular but whose work extends beyond the chamber. I extend thanks to the clerks and the staff of the two respective house departments — the Legislative Council and the Legislative Assembly — for all the work they do throughout the year, certainly for me and, I believe, the party leaders in particular. They are very courteous and knowledgeable when it comes to the preparation of material, motions and so forth that need to be brought before this place. I think

all members certainly appreciate their advice and knowledge, and we thank them for it.

I also wish to acknowledge the Department of Parliamentary Services, including the Hansard staff, for their sterling work in both the chamber and the committee system. I of course extend our gratitude to the people in the committee secretariat who support the committees as well. I acknowledge also the people in the library, catering, IT and maintenance and grounds. They all work in circumstances that at different times are challenging. The nature of this place is that it is not a 9 to 5 operation and not always easy. Circumstances often arise — particularly because this building is owned by the people of Victoria and is one we like to encourage the people of Victoria to visit, which is a very important objective — that bring challenges for our staff. We thank them for the way they have facilitated both the enjoyment of this place by so many members of the public and so many functions throughout the year. We also thank them for their work directly for and on behalf of members of Parliament.

At this time we are obviously very mindful of the work of the protective services officers (PSOs) and other protective services staff — the contract security staff. Our thoughts are particularly with the fallen PSO. My understanding is that he continues to make good progress, and we are encouraged by that. As I said the other day, our thoughts and prayers are very much with his family at this time of the year. We acknowledge the risks the PSOs and other people working in security have to encounter in their work at this Parliament. It is appreciated, and it is understood.

I extend my appreciation particularly — and I guess members on the floor of the house would also join me in this — to the leaders and the whips for the work they have done throughout the year. I think this place has worked particularly well this year, and the success of the chamber as one that has progressed a lot of legislation and addressed many issues over the course of this year owes a lot to the leadership shown by John Lenders, David Davis, Peter Hall and Greg Barber. I thank them for their work and particularly their cooperation with me on the occasions that has been important in terms of progressing the work of the house. I am not sure what we would do without the whips. I appreciate their assistance in terms of ensuring that the house runs smoothly, and I am sure members appreciate that as well.

I take the opportunity to extend appreciation to each member's electorate officers and the ministerial advisers. Particularly in terms of all members' electorate officers, they support our work and are quite often unsung heroes in terms of the work we do while we are in here and indeed on many occasions when we are out in our electorates. They are almost de facto members in many ways. They engage with the community in a way that goes to providing a professional service that stands us in good stead as members of Parliament. They perhaps often work feeling a little isolated from the organisation overall, but their work is very important.

I extend my appreciation personally as well, and I know many members have had dealings with them both, particularly to Chiara Edwards — because of the lolly jar! — and to Jessica Lalor for their support of me throughout the year and for the liaison work they have done with staff and members of Parliament.

It has been a privilege to serve with all of you this year and to work on so many things throughout the year that have made for a very significant year in the course of the Parliament. I am pleased to extend wishes for a very safe and happy Christmas, Hanukkah and New Year period to all members and their families and friends, as well as to Victorians generally. This is a time of the year when, irrespective of our faiths and irrespective of all of the things that we work on during our lives, we are reminded that we have to make an important investment. That investment is the time that we give to those that we love, those that are important to us. We are supported in many cases by partners, families and friends in the work that we do. I know many of us would not get very far if we did not have the sort of support that we have at home and in our close relationships. This is the time when we all need to put back and invest in those relationships. We live each day as it comes, never knowing what might be around the corner, and this is a very important period to make sure that we give time to those we love.

With those greetings to everybody and an expression of gratitude for the work that has been done throughout this year, I very sincerely wish each of you a wonderful holiday period. Please all come back next year safe, happy and intact, without, as I often say to schoolchildren, any plaster of Paris around your arms, legs or such like. I look forward to seeing you all next year as we continue the journey.

The house now stands adjourned.

House adjourned 9.32 p.m. until Tuesday, 5 February 2013.