PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SEVENTH PARLIAMENT

FIRST SESSION

Thursday, 17 October 2013

(Extract from book 13)

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By authority of the Victorian Government Printer

The Governor

The Honourable ALEX CHERNOV, AC, QC

The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

The ministry

(from 22 April 2013)

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Minister for Liquor and Gaming Regulation, Minister for Corrections and Minister for Crime Prevention	The Hon. E. J. O'Donohue, MLC
Minister for Local Government and Minister for Aboriginal Affairs	The Hon. E. J. Powell, MP
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Minister for the Arts, Minister for Women's Affairs and Minister for Consumer Affairs	The Hon. H. Victoria, MP
Minister for Agriculture and Food Security, and Minister for Water	The Hon. P. L. Walsh, MP
Minister for Police and Emergency Services, and Minister for Bushfire Response	The Hon. K. A. Wells, MP
Minister for Mental Health, Minister for Community Services, and Minister for Disability Services and Reform	The Hon. M. L. N. Wooldridge, MP
Cabinet Secretary	Mr N. Wakeling, MP

Legislative Council committees

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

Legislative Council standing committees

Economy and Infrastructure Legislation Committee — Mr Barber, Mrs Coote, #Ms Crozier, Mr Drum, Mr Finn, #Ms Hartland, #Mr Leane, Mr Lenders, Mr Melhem, #Mr Ondarchie, Ms Pulford and Mr Ramsay.

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

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

Environment and Planning References Committee — Mr Dalla-Riva, Mr Elsbury, #Mr Finn, #Ms Hartland, Mrs Kronberg, #Mr Leane, Mr Ondarchie, Ms Pennicuik, #Mrs Peulich, Mr Scheffer, #Mr Tarlamis, Mr Tee and Ms Tierney.

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

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

 # Participating member

Joint committees

Accountability and Oversight Committee — (*Council*): Mr P. Davis, Mr O'Brien. (*Assembly*): Ms Kanis, Mr McIntosh and Ms Neville.

Dispute Resolution Committee — (*Council*): Mr D. Davis, Mr Hall, Mr Lenders, Ms Lovell and Ms Pennicuik. (*Assembly*): Ms Allan, Ms Asher, Mr Clark, Ms Hennessy, Mr Merlino, Mr O'Brien and Mr Walsh.

Economic Development, Infrastructure and Outer Suburban/Interface Services Committee — (*Council*): Mr Eideh and Mrs Peulich. (*Assembly*): Mr Burgess, Mrs Fyffe, Mr McGuire and Mr Shaw.

Education and Training Committee — (*Council*): Mr Elasmar, Mrs Kronberg and Mrs Millar. (*Assembly*): Mr Brooks and Mr Crisp.

Electoral Matters Committee — (*Council*): Mr Finn, Mrs Peulich, Mr Somyurek and Mr Tarlamis. (*Assembly*): Mr Northe.

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

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

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

Independent Broad-based Anti-corruption Commission Committee — (*Council*): Mr Viney. (*Assembly*): Ms Hennessy, Mr McIntosh, Mr Newton-Brown and Mr Weller.

Law Reform, Drugs and Crime Prevention Committee — (*Council*): Mr Ramsay and Mr Scheffer. (*Assembly*): Mr Carroll, Mr McCurdy and Mr Southwick.

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

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

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

Scrutiny of Acts and Regulations Committee — (*Council*): Mr Dalla-Riva. (*Assembly*): Ms Barker, Ms Campbell, Mr Gidley, Mr Nardella, Dr Sykes and Mr Watt.

Heads of parliamentary departments

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

Council — Clerk of the Legislative Council: Mr W. R. Tunnecliffe

Parliamentary Services — Secretary: Mr P. Lochert

MEMBERS OF THE LEGISLATIVE COUNCIL

FIFTY-SEVENTH PARLIAMENT — FIRST SESSION

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Deputy President: Mr M. VINEY

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

Leader of the Opposition:
Mr J. LENDERS

Deputy Leader of the Opposition:
Mr G. JENNINGS

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

Deputy Leader of The Nationals:
Mr D. DRUM

Member	Region	Party	Member	Region	Party
Atkinson, Hon. Bruce Norman	Eastern Metropolitan	LP	Lenders, Mr John	Southern Metropolitan	ALP
Barber, Mr Gregory John	Northern Metropolitan	Greens	Lovell, Hon. Wendy Ann	Northern Victoria	LP
Broad, Ms Candy Celeste	Northern Victoria	ALP	Melhem, Mr Cesar [2]	Western Metropolitan	LP
Coote, Mrs Andrea	Southern Metropolitan	LP	Mikakos, Ms Jenny	Northern Metropolitan	ALP
Crozier, Ms Georgina Mary	Southern Metropolitan	LP	Millar, Mrs Amanda Louise [4]	Northern Victoria	LP
Dalla-Riva, Hon. Richard Alex Gordon	Eastern Metropolitan	LP	O'Brien, Mr David Roland Joseph	Western Victoria	Nats
Darveniza, Ms Kaye Mary	Northern Victoria	ALP	O'Donohue, Mr Edward John	Eastern Victoria	LP
Davis, Hon. David McLean	Southern Metropolitan	LP	Ondarchie, Mr Craig Philip	Northern Metropolitan	LP
Davis, Mr Philip Rivers	Eastern Victoria	LP	Pakula, Hon. Martin Philip [1]	Western Metropolitan	ALP
Drum, Mr Damian Kevin	Northern Victoria	Nats	Pennicuik, Ms Susan Margaret	Southern Metropolitan	Greens
Eideh, Mr Khalil M.	Western Metropolitan	ALP	Petrovich, Mrs Donna-Lee [3]	Northern Victoria	LP
Elasmar, Mr Nazih	Northern Metropolitan	ALP	Peulich, Mrs Inga	South Eastern Metropolitan	LP
Elsbury, Mr Andrew Warren	Western Metropolitan	LP	Pulford, Ms Jaala Lee	Western Victoria	ALP
Finn, Mr Bernard Thomas C.	Western Metropolitan	LP	Ramsay, Mr Simon	Western Victoria	LP
Guy, Hon. Matthew Jason	Northern Metropolitan	LP	Rich-Phillips, Hon. Gordon Kenneth	South Eastern Metropolitan	LP
Hall, Hon. Peter Ronald	Eastern Victoria	Nats	Scheffer, Mr Johan Emiel	Eastern Victoria	ALP
Hartland, Ms Colleen Mildred	Western Metropolitan	Greens	Somyurek, Mr Adem	South Eastern Metropolitan	ALP
Jennings, Mr Gavin Wayne	South Eastern Metropolitan	ALP	Tarlamis, Mr Lee Reginald	South Eastern Metropolitan	ALP
Koch, Mr David Frank	Western Victoria	LP	Tee, Mr Brian Lennox	Eastern Metropolitan	ALP
Kronberg, Mrs Janice Susan	Eastern Metropolitan	LP	Tierney, Ms Gayle Anne	Western Victoria	ALP
Leane, Mr Shaun Leo	Eastern Metropolitan	ALP	Viney, Mr Matthew Shaw	Eastern Victoria	ALP

[1] Resigned 26 March 2013
[2] Appointed 8 May 2013
[3] Resigned 1 July 2013
[4] Appointed 21 August 2013

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THURSDAY, 17 OCTOBER 2013

Thursday, 17 October 2013

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

PAPERS

Laid on table by Clerk:

Architects Registration Board of Victoria — Minister's report of receipt of 2012–13 report.

Building Commission — Report, 2012–13.

Confiscation Act 1997 — Asset Confiscation Operations, Report to the Attorney-General, 2012–13.

Consumer Affairs Victoria — Report, 2012–13.

Crown Land (Reserves) Act 1978 — Minister's Order of 19 August 2013 giving approval to the granting of a lease at Victoria Park Reserve.

Electoral Boundaries Commission — Report on the 2012–13 Redivision of Electoral Boundaries.

Freedom of Information Commissioner — Report, 2012–13.

Justice Department — Report, 2012–13.

Mallee Track Health and Community Service — Report, 2012–13.

Parliamentary Committees Act 2003 — Government Response to the Environment and Natural Resources Committee's Report on Flood Mitigation Infrastructure in Victoria.

Places Victoria — Report, 2012–13.

Plumbing Industry Commission — Report, 2012–13.

Residential Tenancies Bond Authority — Report, 2012–13.

Subordinate Legislation Act 1994 — Legislative Instruments and related documents under section 16B in respect of —

Specification of relevant court pursuant to section 126 of the Family Violence Protection Act 2008 for the making of counselling orders in relation to the Frankston venue of the Magistrates' Court of Victoria.

Specification of relevant court pursuant to section 126 of the Family Violence Protection Act 2008 for the making of counselling orders in relation to the Moorabbin venue of the Magistrates' Court of Victoria.

Specification of postcode area of residence of respondents pursuant to section 128(B) of the Family Violence Protection Act 2008 for the making of counselling orders in relation to the Frankston Venue of the Magistrates' Court of Victoria.

Specification of postcode area of residence of respondents pursuant to section 128(B) of the Family Violence Protection Act 2008 for the making of counselling orders in relation to the Moorabbin Venue of the Magistrates' Court of Victoria.

Terang and Mortlake Health Service — Report, 2012–13.

The Greater Metropolitan Cemeteries Trust — Report, 2012–13.

The Royal Victorian Eye and Ear Hospital — Report, 2012–13.

Victorian Institute of Forensic Medicine — Report, 2012–13.

BUSINESS OF THE HOUSE

Adjournment

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

That the Council, at its rising, adjourn until Tuesday, 29 October.

Motion agreed to.

MEMBERS STATEMENTS

Victoria Police bands

Mr EIDEH (Western Metropolitan) — I was appalled to learn of the massive $100 million budget cuts to Victoria Police by the Napthine government. What saddened me even more was knowing that the budget cuts have impacted the lives of 400 staff who lost their jobs, as well as the popular police band and the rock band, Code One, which have now been forced to disband.

These savage cuts are a real blow to many community and festival programs in my electorate, such as the St Albans lunar festival, which immediately comes to mind, as they rely on the fantastic entertainment provided by the police bands to help raise funds and draw large crowds to their event every year. More importantly, the Victoria Police bands help promote the message of safety and good citizenship and break down barriers with young people and migrant communities, making them an extremely valuable element in my electorate of Western Metropolitan Region, which is one of the most culturally diverse regions in Victoria.

It is a tragedy that these historic and talented groups have been forced to disband after 122 years of work in the community. The loss of the police bands will likely have a negative impact on the ability of the groups that the bands support to fundraise and run successful programs, and will in turn damage Victoria Police's public image. It is unfortunate that the harsh effects of the Napthine government's budget cuts are becoming more apparent, and as a result we are losing more and more valuable services where we need them most in our community.

Victorian Healthcare Association

Hon. D. M. DAVIS (Minister for Health) — I rise to draw the attention of the house to the 75 years of the Victorian Healthcare Association (VHA). Seventy-five years is a remarkable achievement for a body reflecting and representing our public hospitals and health services across Victoria. Established in May 1918, it has represented country hospitals in particular but has grown to represent city-based hospitals as well. This association is I think pretty much unique now around Australia, and Victoria's devolved governance system has become the model for the new way forward in terms of health care nationally. It was founded on the fact that we have separate institutions — large hospitals, small hospitals, health services — across the state, and they are overwhelmingly members of the Victorian Healthcare Association. That body is in partnership with the government to further the aims of better health care, particularly public health care, in this state. That partnership is a very important one, and one the government greatly values. But it is also a health-care association that is prepared to make its points clearly to government.

I welcome the ongoing input of members of the VHA executive. The current chair, Tony Graham, and particularly Trevor Carr, the chief executive of the VHA, have established it as a body of great significance in Victoria, and the 75th anniversary is an opportunity to mark that. I look forward to joining the VHA in marking it and furthering the interests of our public hospitals statewide into the future.

Public Transport Victoria performance

Mr BARBER (Northern Metropolitan) — I am going to sit down and make a list of all the public transport promises that have ever been made in all of the various transport and land use plans of the last 20 years, because I think there have probably been more broken promises on public transport than those that have actually been delivered. Famous examples include of course Doncaster rail — promised by a whole succession of governments and now, according to this one, some time away, decades from now — and my favourite, the Labor promise for an inner city SmartBus on Hoddle Street and along Brunswick Road, which it un-promised in the following version of the plan.

The Greens promoted Public Transport Victoria as a strong and accountable public transport authority, and that is one promise at least that the government when it copied our initiative went ahead and delivered. The only problem is it is neither strong nor accountable. It is not strong, because it cannot get on and plan with the certainty of the funding available, in sharp contrast to VicRoads, and it is not accountable, because the basis on which its transport decisions are being made is not public. We desperately need clear information so the public can judge the promises made by politicians on different public transport projects and have a view as to what the correct priorities are.

Parliament House incident

Ms DARVENIZA (Northern Victoria) — President, I would like to congratulate you on your swift response to the incident involving the member for Frankston in the Assembly and a crowd of demonstrators on the steps of Parliament House on Tuesday. I am not an expert on the analysis of video footage, but I have seen some of the footage of the incident online and it seems clear to me, as an ordinary observer, that the member for Frankston was significantly physically intimidated and manhandled by a group of angry men before responding physically himself. To me it seems that his response, although ill-advised, was completely understandable in the circumstances.

It is vitally important that citizens have the right to demonstrate on the steps of Parliament and elsewhere, but those demonstrations must never involve physical confrontation. I was the subject of intimidation, jostling and verbal abuse outside my electoral office several years ago, when I was surrounded and trapped by an angry mob protesting about the former Labor government's determination to guarantee water security for Victoria, including through the north–south pipeline.

Citizens can disagree and demonstrate, but that must never include physical intimidation of MPs. When a member of Parliament is intimidated in this way, it is important that we show, dare I say it, our solidarity and that we do not try to use such episodes for party political advantage. I wish to record my concern at the intimidation experienced by the member of Frankston literally on our doorstep, and I congratulate you, President, and the Speaker in the Legislative Assembly on your determination to review the incident to ensure that it is not repeated.

Walsh Street shootings anniversary

Hon. W. A. LOVELL (Minister for Housing) — Last Saturday marked the 25th anniversary of the day Victoria lost two of its finest young police officers. Aged just 20 and 22 at the time, constables Damian Eyre and Steven Tynan were murdered during an ambush in Walsh Street, South Yarra. For those of us

old enough to remember that day, 12 October 1988, it comes to mind whenever we pass or hear mention of Walsh Street. Despite the passage of time, this anniversary is a difficult one for family and friends of both young men. They were going about their job protecting the community and investigating the discovery of a stolen car when their lives were stolen from them. I know the Eyre family well and had spoken with Damian only a few days before his death. I remember him as a young man who was excited and proud to be following in the footsteps of his father, Frank, and brother, Daryl. Becoming a police officer was a lifelong ambition and a dream come true.

The Eyre family has done Damian proud by raising awareness of Victoria's fallen police officers. We remember the lives lost in the line of duty each year through Blue Ribbon Day and National Police Remembrance Day.

Damian and Steven's lives are acknowledged at the emergency departments of the Shepparton and Bendigo hospitals, which have been named in their honour. On this 25th anniversary Damian and Steven would have been 45 and 47 years old. Instead they are among the 157 Victoria Police officers who have been killed in the line of duty in the past 160 years.

Automotive industry future

Mr SOMYUREK (South Eastern Metropolitan) — The recent announcement by Toyota of 100 redundancies demonstrates yet another instance of the Napthine government being asleep at the wheel when it comes to the automobile industry. The Victorian Labor opposition recognises the strategic importance of the auto industry. That is why we put out a policy last year which mandates that sections of the government, from state government and its agencies through to local government, purchase locally produced motor vehicles. However, the government has failed to implement this initiative.

Another initiative was that we would advocate through the Council of Australian Governments process for other states to increase the number of Australian-made motor vehicles used by government fleets. The Napthine government has totally disregarded this too. Yesterday in the adjournment debate I talked about London taxicabs produced in China being trialled in Western Australia. I am concerned that that might be implemented in other states as well.

The PRESIDENT — Time!

City of Greater Dandenong Relay for Life

Mr TARLAMIS (South Eastern Metropolitan) — Over the weekend Ross Reserve hosted the City of Greater Dandenong Relay for Life, where dedicated teams kept their batons moving around the athletics track for 18 hours in order to fight back against cancer. The first lap was dedicated to cancer survivors and carers, and the ribbon was cut by local identity Chris Leyshan, who is celebrating five years since receiving her treatment. At the beginning of the relay the fundraising tally already stood at $20 000, with more fundraising still to come over the weekend. Congratulations to the 200 participants who took part in this wonderful community event and all those who were involved in making it possible.

Noble Park community art show

Mr TARLAMIS — The eighth annual Noble Park community art show was held over the weekend and was opened by the City of Greater Dandenong mayor, Cr Angela Long. Celebrating community art, this show offers an opportunity for emerging and established artists and local schools to showcase their artwork. The art show provides an opportunity to increase social inclusion in the wider community by incorporating works from newly arrived migrants, refugees and people with a disability. This year aged-care facilities were also invited to enter work in the art exhibition. Over 200 private entries were exhibited, plus work from students from 10 local schools, work from five local aged-care facilities and work from Urimbirra Support Options Victoria, Wallara Australia and Yooralla Day Care Services Noble Park.

This year's art show was extremely successful, with hundreds of residents attending over the weekend, clearly highlighting that this event has a strong future. This year's judge and prominent local artist, Sue Jarvis, was impressed with the quality of work. Thanks to the Noble Park volunteer committee arts group, Noble Park Community Centre and all the sponsors for making this event such a success.

Food and fibre producers

Mrs COOTE (Southern Metropolitan) — Yesterday at 7.30 a.m. the Premier, together with Peter Walsh, the Minister for Agriculture and Food Security, and my colleague Georgie Crozier from Southern Metropolitan Region, visited the South Melbourne Market. We met with Ralph's Meat Company and a number of stallholders there to celebrate Victoria's role in providing agricultural products to the world and to Asia in particular.

I put on the record my praise for former Premier Ted Baillieu, the member for Hawthorn in the Assembly, who initiated a whole range of trade delegations to China and to Asia. He did a great job, and we are now starting to see some of the fruits — pardon the pun — of those meetings. In fact it was particularly interesting hear the minister say our exports in food and fibre had increased by $9.4 billion in 2012–13. It is no wonder that Victoria is able to show an increase in its budget surplus and can continue to maintain its AAA rating under Treasurer Michael O'Brien, which is a great result for Victoria in light of the situation in other states.

However, it is important to understand that it is our clean, green growing of grain and production of meat that is so valuable to those markets. For example, in China there has been a huge surge in demand for grain and meat, and indeed we have also increased our shipment of grain to Indonesia and the United Arab Emirates. I congratulate all our primary producers. They have done a phenomenal job to help us earn this reputation.

Sunshine Hospital children's multidisciplinary assessment

Ms MIKAKOS (Northern Metropolitan) — Members will recall that on a number of occasions I have raised the issue of multidisciplinary assessments at Sunshine Hospital no longer being available to preschool children from the start of March this year. I have raised this issue with the Minister for Children and Early Childhood Development, Ms Lovell, a number of times, and she has given assurances that her department has been having discussions with the hospital. Unfortunately those discussions have not produced any positive results to date, and the community, parents in particular, and the kindergartens in the western suburbs are still awaiting the resolution of this issue.

Imagine my amazement when I lodged a freedom of information request with the minister's office seeking copies of all correspondence, including emails, between the office of the minister and Western Health regarding this issue, and the response I received was that there are in fact no documents in existence. There is no correspondence. The minister has not even bothered to send one letter directly to Western Health seeking to have the multidisciplinary assessments at the Children's Allied Health Service at Western Health reinstated.

Hellenic Women's Cultural Association photographic exhibition

Ms MIKAKOS — I am extremely disappointed that Mr Ondarchie, in his members statement yesterday, sought to claim that no Labor member attended — —

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

Odyssey House Victoria

Mr DRUM (Northern Victoria) — I recently travelled along with the member for Benalla in the Assembly, Dr Bill Sykes to Molyullah on the outskirts of Benalla to visit Odyssey House to see the drug and alcohol intervention program that it has been running for some years. I previously visited Odyssey House to inspect this program a number of years ago when it was running short on funds, and I am pleased to announce that it now has the finances to enable it to run six to eight-week programs for 11 months of the year. It looks after about 15 residents at any one time, and the residents come and go on a rolling basis. The 15 residents are made up of a combination of male and female participants who have volunteered to undertake the program. They live a healthy lifestyle at Odyssey House and openly embrace the program, which provides them with quality counsellors. As explained by the participants, the counsellors help them to freely open up and expose their problems fully so that they can gradually be put back together again. They call it a miracle-working place and kept pointing to the meeting room where the miracles take place.

The overarching evidence is that alcohol is still the biggest problem in alcohol and drug rehabilitation centres. However, the emergence of crystal amphetamine, or ice, is certainly becoming a scourge within our state and across this country.

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

Young People Transitioning From Care program

Hon. P. R. HALL (Minister for Higher Education and Skills) — One of the many fine initiatives that came out of refocusing the vocational education and training policy announced in May 2012 was a program called Young People Transitioning From Care. At any one time in Victoria there are over 5000 young people living in out-of-home care, and the fact is that statistics show that when they transition from school to the workforce we find that the number of people involved

in training is less than what we would hope for. The Young People Transitioning From Care program has a zero-fees policy position, which enables young people who are taking that transitional step to be involved in training and the state picks up the full cost, including the fees, that others would normally pay. This is a small program but one which I think is providing opportunities for those who are in a significant needs category.

Last week I had the pleasure of visiting Wodonga. I chose Wodonga because already, of the 70 young people who have gone through this program, 20 of them have undertaken the training through the Wodonga Institute of TAFE. I visited some of them who were, mixed with others, undertaking a warehousing and forklift-driving course. Such was their enthusiasm that the young kids who were to take part in the demonstration of their skills driving forklifts, which was planned to take place after the speeches, evidently could not wait. They hopped on those forklifts in demonstration as soon as I arrived. It is a great program and one which we hope will help many young people to transition from out-of-home care into the workforce.

COURTS LEGISLATION AMENDMENT (JUDICIAL OFFICERS) BILL 2013

Statement of compatibility

Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation) 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 Courts Legislation Amendment (Judicial Officers) Bill 2013.

In my opinion, the Courts Legislation Amendment (Judicial Officers) Bill 2013, as introduced to the Legislative Council, is compatible with the human rights as set out in the charter act. I base my opinion on the reasons outlined in this statement.

Section 8(3) — right to equal and effective protection against discrimination
Section 18(2)(b) — right to have access to public office without discrimination

Section 8(3) of the charter act provides that every person has the right to equal and effective protection against discrimination.

Section 18(2)(b) of the charter act provides that every eligible person has the right, and is to have the opportunity, without discrimination, to have access, on general terms of equality, to public office.

This bill makes further enhancements to the reserve judicial officer scheme established by the Courts Legislation Amendment (Reserve Judicial Officers) Act 2013. The bill extends the compulsory retirement age for reserve judicial officers from 75 years to 78 years. This may limit the right to equal and effective protection against discrimination by restricting access to one class of public office for persons over the age of 78 who would otherwise be eligible for appointment as reserve judicial officers.

These limitations are reasonable and justified by the inherent requirements of the office. Judicial office is a demanding responsibility, requiring a high level of intellectual capacity and industry. Tenured Victorian judicial officers are currently subject to mandatory retirement at the age of 70. Issues of incapacity due to ageing are less likely to arise if officers are subject to an age limit. An age limit helps to maintain a vigorous and dynamic judiciary, which is able to fulfil the demands of the office. An age limit for judicial officers also enhances the independence of the courts, as it reduces the need for close monitoring of the mental and physical capacity of judicial officers. Although reserve judicial officers will be appointed for five-year terms, they are subject to the same removal processes as other judicial officers. Thus removing a reserve judicial officer from office on the grounds of incapacity may be a complex and potentially lengthy process.

Section 24 — right to a fair hearing by a competent, independent and impartial court or tribunal

The bill promotes the right set out in section 24 of the charter act, namely that a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

The bill provides that reserve judicial officers are to be engaged for active service by the relevant head of jurisdiction, rather than the Attorney-General. This enhances judicial independence by removing the executive government's control over the use of reserve judicial officers and minimising the risk of improper interference with the judicial system.

The bill enhances the independence of the Victorian Civil and Administrative Tribunal (VCAT) by providing that the remuneration of non-judicial members of VCAT is to be paid by special appropriation from the Consolidated Fund, consistent with the payment of judicial officers in all Victorian courts.

Edward O'Donohue, MLC
Minister for Liquor and Gaming Regulation
Minister for Crime Prevention
Minister for Corrections

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation).

Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

This bill implements three initiatives to improve the independence and flexibility of Victorian courts and tribunals.

The first initiative builds on the introduction of the reserve judicial officer scheme by the Courts Legislation Amendment (Reserve Judicial Officers) Act 2013.

That act replaced the offices of acting judge and acting magistrate created by the Courts Legislation (Judicial Appointments and Other Amendments) Act 2005 with the new offices of reserve judge and reserve magistrate.

As I said in my speech to the house on the Courts Legislation Amendment (Reserve Judicial Officers) Act 2013, the offices of acting judge and acting magistrate were intended to provide greater flexibility to deal with periods of higher demand in the court system. However, the fact that people who had never been judicial officers were eligible for appointment meant that the 2005 act had the potential to corrode the independence and impartiality of the judiciary. It was widely criticised on that basis.

The Courts Legislation Amendment (Reserve Judicial Officers) Act 2013 addressed the shortcomings of the 2005 act by ensuring that, in future, only persons who have already held a judicial commission can be appointed to a temporary judicial office in this state.

The bill marks the second stage in the government's reserve judicial officer reforms. It confers the functions of engaging reserve judicial officers to perform judicial duties, and approving other paid work or the holding of other paid offices during the term of an engagement, on the relevant head of jurisdiction, rather than the Attorney-General. This will further strengthen the independence of the courts. It will also ensure that the reserve judicial officer scheme can better and more flexibly respond to the operational needs of the court.

The bill also increases the maximum age of service as a reserve judicial officer from 75 years to 78 years. This will give the courts greater opportunity to benefit from the expertise of a larger pool of former judges, associate judges and magistrates, especially where they have specialist knowledge and experience. At the same time, the bill provides that each engagement period will not exceed six months. This helps ensure that reserve judicial officers are primarily engaged on an as needed basis, and having regard to their availability and suitability, to address suitable short-term demands, absences and other needs in the court system.

In addition, the bill provides that a judicial officer or reserve judicial officer is authorised to complete a matter that was part heard, but not finally disposed of, when the officer retired or resigned from judicial office, or when his or her engagement or appointment as a reserve judicial officer expired. The power to complete part-heard matters is only intended to allow judicial officers to finish minor unfinished aspects of a case. Work done under this power will not attract remuneration. If more substantial matters remain uncompleted, it is expected that the judicial officer would, if eligible, be reappointed or re-engaged on a remunerated basis. However, this change will enable judicial officers to be more effectively engaged towards the end of a period of service, and avoid the need for the court to be reconstituted before matters can be completed.

The bill also provides for the new offices of reserve associate judge and reserve coroner. Like reserve judges and magistrates, reserve associate judges and reserve coroners will be appointed by the Governor in Council for five-year terms, or until they reach retirement age. They can only be removed from office by Parliament, in the same way and on the same grounds as tenured judges and magistrates.

The bill's second initiative creates a uniform scheme for part-time judicial service in all Victorian courts. This reform is designed to facilitate the appointment and retention of judicial officers who have personal or family commitments, or might otherwise contemplate earlier retirement or resignation due to a lack of 'work/life balance'.

All judges, associate judges and magistrates, except those in leadership positions, will be able to enter into an arrangement with the relevant head of jurisdiction to serve on a part-time basis for a specified period or on an ongoing basis.

When considering whether to permit an officer to serve part-time, the head of jurisdiction will have regard to the operational needs of the court, questions of parity, and other relevant matters. A part-time service arrangement must specify the proportion of full-time duties to be performed, which must be at least two-fifths of a full-time workload. However, the arrangement does not need to specify precise days or a pattern of work. This will enable flexibility so that precise working arrangements can be adapted to facilitate the smooth running of trials and other court processes.

The bill provides that a judicial officer's salary and any pension entitlement are adjusted to appropriately address part-time service performed by the officer.

In addition to the existing statutory and common-law restrictions on external offices and activities that apply to all judicial officers, the bill provides that a judicial officer who has entered into a part-time service arrangement may not, without the approval of the head of jurisdiction, undertake employment, conduct a business or profession or hold a paid directorship or similar office. Further, a judicial officer who has entered into a part-time service arrangement may not engage in legal practice. As with reserve judicial officers, this provision is intended to make clear that part-time judicial officers, like all judicial officers, will need to refrain from external offices and activities inconsistent with their judicial office, while providing scope for the head of jurisdiction to authorise an external office or activity if satisfied it is lawful and consistent with the judicial office held.

The third initiative in the bill is to provide for the salaries of non-judicial members of VCAT to be funded directly from the Consolidated Fund. This will reinforce the independence of VCAT by placing the funding arrangements for the salaries of all members of VCAT on the same footing as those for judicial salaries.

Current administrative arrangements under which statutory trusts are drawn on to meet expenses involved in funding certain VCAT lists will remain unchanged.

The courts and VCAT will be required to manage their use of reserve judicial officers and sessional members, respectively, within their available budgets, in the same manner as other expenditure.

This bill is a further major step in the government's reforms to strengthen the independence of Victoria's judiciary and the

capacity of Victoria's courts to meet the needs of the Victorian community.

I commend the bill to the house.

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

Debate adjourned until Thursday, 24 October.

OPEN COURTS BILL 2013

Second reading

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

Ms MIKAKOS (Northern Metropolitan) — I rise to make a contribution to the debate on the Open Courts Bill 2013 and also to indicate that the opposition will not be opposing the bill. I thank Mr Elasmar, our lead speaker, who on Tuesday set out in detail the provisions of the bill. From the outset I indicate that we on the Labor side have a firmly entrenched view that supports open and transparent justice that provides freedom to the media to report on court proceedings. We believe in the principle that justice should be seen to be done and therefore proceedings, including the contents of court files, ought to be open and accessible to the public unless there are exceptional circumstances. This principle underpins the very integrity, accountability and performance of our court system.

The background to the bill is that in recent times concern has been raised that there has been a growing trend in the number of suppression orders issued by Victorian courts. I understand that last year in Victoria there were about 300 orders restricting the coverage of legal proceedings and that that figure is up from 200 in 2005. It is hardly surprising, then, that many in the media and other interest groups have dubbed Victoria the suppression capital of Australia and have been calling for reform in this area.

I note that this bill is modelled largely on the Court Suppression and Non-publication Orders Bill 2010 endorsed by the Standing Committee of Attorneys-General and announced by the then Labor federal Attorney-General, Robert McClelland, in November 2011. At the time, Mr McClelland said that that bill was designed to:

> … assist courts to appropriately craft suppression orders, so that they are only made when they are clearly justified, and in as narrow terms as necessary to achieve their purpose, recognising the important role that open justice plays in upholding the rule of law.

In an article published on the Melbourne Press Club website on 12 January 2012, Minter Ellison lawyers Sandip Mukerjea and Mark Silberer are quoted as saying:

> A similar legislative initiative would be most welcome in Victoria. A new Victorian act in similar terms to the federal bill would consolidate the multitude of suppression order powers that currently exists in Victoria, thus establishing a modicum of simplicity. It would also displace the curious statutory power vested in Victorian courts to suppress information not derived from the proceedings before them. Currently, the Magistrates, County and Supreme courts of Victoria have a statutory power to suppress any 'specified information' for a specified period of time. This is often used by the courts to issue far-reaching suppression orders which suppress information of all kinds, including information that was not before the court or which was obtained from an independent source.

They article goes on to say:

> The repeal of this wide-ranging Victorian power in favour of the more limited federal formulation would … provide a significant boost to open justice in Victoria …

The case is made there that there should be reform in this area.

The bill before us proposes to consolidate provisions relating to suppression orders and closed court orders in the Supreme, County, Magistrates and Coroners courts and the Victorian Civil and Administrative Tribunal into one piece of legislation. More specifically it proposes grounds on which a suppression order may be made and states that the court must be satisfied that the order is necessary to prevent prejudice to the proper administration of justice, to prevent prejudice to national or international security, to protect the safety of any person, to avoid undue distress or embarrassment to a party to or witness in criminal proceedings involving a sexual offence or family violence and to avoid causing undue distress or embarrassment to a child who is a witness in any criminal proceeding. These grounds consolidate the existing grounds, except for the addition of avoiding undue distress or embarrassment to a party or witness in a family violence criminal proceeding or a child witness to a criminal proceeding. Essentially the bill consolidates existing law but adds these two grounds which I strongly support.

I note in this respect that Ellen Whinnett wrote a very interesting opinion piece in yesterday's *Herald Sun* headed 'Law is protecting the wrong people', in which she essentially calls for the laws that relate to suppression orders in regard to intervention orders to be examined. She makes the argument that the law is protecting people who have breached intervention orders and that the privacy of these people is being

protected even though they are perpetrators of offences. The article says:

> Victims are further disempowered by the law forbidding the media reporting that their partners have breached intervention order against them, even when that is what the victim wants.

I note that in the article the author talks about case studies of two high-profile individuals. She writes:

> … there's a man in Melbourne, considered a bit of a celebrity, who has a dirty little secret.
>
> When his marriage broke down, he was violent to his wife.
>
> We would like to tell you who he is. We'd have liked the school group he performed for to know that he's an angry man who so terrified his wife that an intervention order was issued against him by the courts.
>
> We'd like to be sure that the new girlfriend he took up with after his marriage ended knows about his history. And what does the government, which gives money to the organisation he's heavily involved in, think of his behaviour?
>
> We'd like to name him, when we tell you that he was charged three times with breaching a family violence intervention order. One charge was withdrawn. He pleaded guilty to the other two. No convictions were recorded because he agreed to be of good behaviour for a year. And he's twice been ordered to pay $750 to a women's support group.
>
> But we can't. The law won't let us.

She talks about another case study as well. I wonder who this individual is. I am sure we all wondered who it is after reading this opinion piece. It is concerning that the law is protecting the identity of these individuals. I hope the government looks at this issue, because it is important that suppression orders are not being put in place unnecessarily where there is a very strong public interest in favour of disclosure.

On this side of the house we favour judicial discretion. In fact for all the government's talk about mandatory sentencing, it has not made changes to the law that would erode judicial discretion. It is important to allow judicial discretion to continue. The bill puts in place a new presumption in favour of disclosure unless there are the kinds of circumstances I referred to earlier that would justify a suppression order being made. Clause 4 of the bill sets out this new presumption in favour of disclosure of information and provides that the court must have regard to this presumption. The bill also enshrines the media's right to appear and be heard when it wants to fight a suppression order.

I note that Ms Pennicuik in her contribution indicated to the house that she was going to move some amendments to extend the provisions of this bill beyond criminal proceedings to include civil proceedings. Our inclination on the Labor side is to support these amendments unless the government is able to demonstrate that there would be some serious consequences if these amendments were to be passed today. Our inclination is to ensure that we prevent distress or embarrassment to a complainant or a witness, irrespective of whether the matter is a criminal matter or a civil proceeding. It is possible for a victim of a sexual offence or other similar offences, including family violence, to take legal action through a civil process, so it is important that we have a presumption of disclosure in those types of proceedings as well. With those words, I conclude my contribution.

Mrs MILLAR (Northern Victoria) — I rise today to make a contribution to the debate on the Open Courts Bill 2013, which constitutes the coalition's commitment to clear, transparent and open justice in the courts and tribunals of Victoria. The bill consolidates the general statutory powers of the courts and the Victorian Civil and Administrative Tribunal to make suppression orders and closed court orders but with some slight modifications. The bill in no way adversely affects any person's right to a fair trial.

As all members of this house are no doubt aware, Melbourne has become known as the suppression order capital of the nation. In the period from 2006 to 2008 alone 600 suppression orders were enacted in Victorian courts and tribunals. When this is compared with the 54 suppression orders that were made in New South Wales courts and tribunals during the same period, it is fair to say that the enactment of suppression orders has become the status quo in dealing with sensitive cases in the Victorian justice system. In fact the excessive enactment of suppression orders in this state has been detrimental to the core principles of justice, those of clarity, openness and transparency.

The bill is designed to bring Victoria into the 21st century in relation to suppression orders. In particular this will be achieved through removing the antiquated 99-year option of a suppression order and ensuring that all suppression orders will be for a fixed, definable period which must have an expiration period of no longer than five years.

The bill will apply to both civil and criminal proceedings. However, it is important to note that it will not apply to the Children's Court, which has its own suppression framework tailored to children and young offenders. Under this bill the possible circumstances in which a suppression order may be enacted will be restricted to only those in which there is a compelling and valid reason to do so, the exact natures of which are defined at length in the bill.

These circumstances for the Supreme, County and Magistrates courts and the Victorian Civil and Administrative Tribunal (VCAT) include to prevent prejudice to the proper administration of justice, to prevent prejudice to national or international security, to protect the safety of any person, to avoid undue distress or embarrassment to a party or witness in criminal proceedings involving a sexual offence or family violence, or to avoid undue distress or embarrassment to a child witness in criminal proceedings. The Coroners Court and VCAT can also make a proceeding suppression order on additional grounds reflecting their existing powers as follows: VCAT can do so for any other reason in the interests of justice, and the Coroners Court can do so if publication would be contrary to the public interest. Courts and tribunals will have a general statutory power to make closed court orders on the same grounds on which they can make proceeding suppression orders.

The proposed changes under this legislation importantly recognise the evolving role of the media in our society and allow for media organisations to appear and be heard by a court or tribunal on an application for an order. Media organisations, together with other parties, will be given express statutory rights to seek a review of orders made. The freedom of the press is a significant principle and one which generally enjoys widespread support from the public. I quote Thomas Jefferson, 'The only security of all is in a free press'. Jefferson went on to note the agitation caused by the press being something which 'must be submitted to', and that agitation is something we all recognise but at the same time are willing to bear as the price for this openness.

The bill acknowledges the presumption of the principle of openness in a balanced way which allows for the judiciary to make fair judgement on a case-by-case basis within the proposed presumption of openness framework. Balanced against this, in the event that it is necessary for a court or tribunal to make an order, it will be an offence for either persons or organisations, including media organisations, to engage in conduct that violates that order, whether that person or organisation knows or is reckless as to the existence of the order. The maximum penalty for this offence is five years jail or 600 penalty units, currently $86 616, for an individual or 3000 penalty units, currently $433 080, for a body corporate.

In place of the blanket and overused orders that have previously existed, the new guidelines for making suppression orders under this bill detail that a court or tribunal must specify the information covered by the order and the length of time for which the order remains in effect. In asserting that all courts and tribunals in Victoria must hold a presumption in favour of disclosure and public hearings, this bill will improve the clarity, transparency and openness of the workings of the justice system in Victoria. These principles are in keeping with the present-day mindset and expectations of the Victorian public, and it is for these reasons that I commend the bill to the house.

Mr SCHEFFER (Eastern Victoria) — The opposition naturally supports the position set out in the second-reading speech that the presumption is that the community is entitled to know what takes place in Victorian courts and how individuals or organisations that are accused of breaking the law are treated and dealt with. Members of the opposition and indeed all members of this Parliament support the freedom of the media to report, for the public benefit, the proceedings of our courts and accept that this freedom should be exercised within a framework that ensures fairness and protects the rights of the vulnerable. The opposition supports the presumption that under certain limited circumstances courts will be closed and suppression orders granted in order to prevent prejudice to national or international security, prevent prejudicing the fairness of subsequent trails, prevent embarrassment to a party involved in an offence which involves sexual or family violence, prevent causing undue distress to a child or, in certain circumstances, protect a person's safety.

The Open Court Bill 2013 proposes to reform and consolidate the management of suppression orders in the Supreme Court, the County Court, the Magistrates Court, the Coroners Court and the Victorian Civil and Administrative Tribunal, and the opposition will not be opposing the legislation. The background against which this legislation is introduced is the belief that Victorian courts have been granting too many suppression orders, with around 627 being granted between 2006 and 2008 and a further 644 being granted in 2011 alone. Victorian courts have also been criticised for making orders that are too broad in scope and often without justifiable time limits. Amongst the other state jurisdictions there are wide variations in the number of suppression orders that the courts grant and the duration of those orders, and in order to explain this it has been suggested that variable record keeping and inconsistent databases may be at fault.

The purpose of the bill, which is not stated in the second-reading speech, is to change the behaviour of the courts so that they grant fewer suppression orders and that those orders have certain time limits, and the opposition supports this general policy direction. However, in doing so the opposition puts the case that

the bill ultimately does very little to change the practices of the courts. We have said that the bill creates a presumption against granting a suppression order and also sets out the basis or the grounds for making a suppression order. Clause 18 outlines the grounds for granting a suppression order. As I indicated at the outset, these are to prevent the risk of prejudice in subsequent trials, to prevent prejudice to national or international security, to protect the safety of any person, to prevent embarrassment or distress in cases of family violence or sexual abuse and to avoid distress or embarrassment to a child who is a witness to any criminal proceeding. These grounds are little more than a consolidation and codification of existing practices, which is not an unreasonable exercise, and the opposition supports this element of the legislation.

Clause 10 sets out how a court or tribunal should make a suppression order and obliges an applicant for an order to give three days notice where the application is made under this particular legislation. On the other hand, an application may be heard without this three-day notice requirement if the court or tribunal believes it is in the interests of justice to allow it or if there is a good reason, and that might be where an applicant realises that there is a need for an order only because of what has transpired in the proceedings that are under way. Clause 11 requires the court or the tribunal to take reasonable steps to inform relevant news media organisations of an application for a suppression order. The reason is that it is beneficial for applications to be contested, and media organisations are likely to perform this function. Clause 12 covers the restrictions on the length of time that a suppression order may remain in place, as they are not intended to remain operative indefinitely and it is necessary to set an effective time limit for an order to achieve its purpose.

Given the criticisms I referred to earlier over the high number of suppression orders made by Victorian courts and tribunals and the need for more accurate data systems to monitor whether the provisions in this bill are being applied, it is surprising that there is no provision for data gathering in the bill.

The puzzling thing is that this is another piece of legislation from a government that does very little in the way of effecting real change. As I have said, the minister's second-reading speech on this bill does not set out the problems associated with the way courts are making suppression orders, so we are not at all clear on what the provisions in the bill are meant to address. The provisions are fine, but it is difficult to see how a legislated endorsement of a presumption against the granting of a suppression order adds anything much to the longstanding practices of our courts, which everyone in our democracy supports. It is also difficult to see how an enumeration of the matters a court may consider when determining an application for a suppression order changes very much the practices followed by a court or tribunal.

The bill enshrines the right of reporters, and the media businesses and organisations they write for, to be notified of an application for a suppression order and their right to appear and be heard so that a court can hear the arguments for and against the making of an order. This is a positive step.

The coalition went to the 2010 election with a strident law and order campaign, and after three years in office it is very clear — in fact more than clear — that this government has failed. The bill before us today will do little to turn around the government's dismal record. The evidence of the government's performance on crime is in the soaring crime statistics, which undo a decade of patient work by the previous government. The Labor government was very effective in reducing crime, as was reflected in the crime statistics during our time in office. However, day after day we now see news reports that our prisons are overcrowded and stretched to breaking point, and the Chief Commissioner of Police has admitted that this overcrowding is putting prisoners and prison officers at risk.

In response to this the government has reacted by increasing the number of prison beds, despite the fact that the Human Rights Law Centre has warned that high numbers of prisoners make it very difficult for them to be dealt with in a humane way, which is what we expect. The abolition of suspended sentencing and the introduction of mandatory minimum sentences further contribute to the increase in prisoner numbers. The higher the numbers of prisoners, the higher the rate of recidivism. The evidence suggests that imprisonment has no positive impact on the rate of reoffending; in fact it makes it worse.

The government deserves to be congratulated on elevating crime prevention to portfolio status. The former Drugs and Crime Prevention Committee did some very good work formulating strategies to improve safety, such as in the emergency departments of our hospitals. It also did some good work on crime prevention through environmental design, which was referred to the commitee by the government. The views of the many experts who submitted to the committee's inquiries were always focused on early intervention and how circumstances, procedures, protocols, behaviours and environments could be adapted to prevent crime

occurring in the first place. These are the sorts of areas the government should be putting its energies into. Very few witnesses before the committee suggested that imprisonment and increasing penalties are effective strategies, yet this seems to be the message the government is sending.

Returning to the bill before us today, this is another narrowly focused bill. The bill will probably not make much difference to the way courts operate in relation to the making of suppression orders, but Labor is not opposing the bill.

Mrs COOTE (Southern Metropolitan) — I have great pleasure in speaking on the Open Courts Bill 2013, which is another example of the coalition government's approach to law and order and safety in this state. Before I begin my contribution I will talk about the contribution of the previous speaker, Mr Scheffer, who said that the opposition supports the bill. He went on to provide some good examples of the work of the former Drugs and Crime Prevention Committee. This work was very praiseworthy and in fact led to much of what this government is doing.

However, I have to take him to task; he strayed from the core business of the bill somewhat when he went on to talk about prison beds, additional numbers in prisons and overcrowding.

I remind Mr Scheffer of the huge investment that the Minister for Corrections, Mr O'Donohue has put into the new Ravenhall prison project, and highlight again to him that some of those beds are going to be for people with a mental illness. This is a really important development. Many of the people incarcerated in our prisons have a number of complex issues, including drug and alcohol dependency and mental health issues, and some have a dual diagnosis of intellectual disability. Rather than having, as Mr Finn said before, some Fitzroy legal service letting people out onto the street so they can run rampant and cause more problems for other people, once they are incarcerated because they have done something wrong we are going to deal with those vulnerable people. It has been recognised. I believe that the speaker went on a tangent and was in fact incorrect.

I would like to talk about the Open Courts Bill. It is a bill that strengthens some of our democratic principles. Democracy sets Australia apart as one of the great free countries of today's world. Often when I am at citizenship ceremonies we face perhaps 130 new people, many of whom have come from different nations. One of the things I say to those new Australian citizens is, 'Some of you will have come from very healthy democracies. Others will have come from dictatorships or a whole range of very undemocratic situations'. It is the strength of our democracy that we can go to the polling booth without being terrorised, that we do not have to live in fear, that we are not going to be murdered for our political opinions and that we can have a healthy democracy and protest.

Some speakers in their members statements today talked about freedom of demonstration. We saw a very ugly incident here yesterday where protestors stepped out of line and targeted the member for Frankston in the Legislative Assembly in a most unfortunate way. We all agree that open protest and the opportunity to demonstrate is very important, but it has to stay within appropriate parameters. But as I say, this bill reinforces the democracy that we are privileged to live in.

Members are aware of the separation of powers. We are mindful in this place all the time that the legislature and the executive wing of the government remain distinct from the judicial wing. This is a very important element of democracy, and we must keep that clear at all times. It is one of the strengths of our democracy and is to be protected. In Victoria, and federally, we divide the legislature into two separate houses: the Legislative Assembly and a house of review. Ours is a bicameral system. I remind people, should they be interested, to go back and look at the constitutional reforms brought in by the Labor government in 2002 and see exactly what those changes were. There was a lot of debate on the importance of a bicameral system, and it is important that people understand it.

Open and transparent democracy is partially held to account by the so-called fourth estate, which is our friends the journalists and the media. We have a love-hate relationship with them in many cases, but they perform a very important task. It is a pity none of them are in here today. Many of them perform the very important task of holding us to account, and we must also make certain that they are fair and reasonable. During the second-reading speech the Attorney-General summarised it in this way:

> Open justice demonstrates publicly that laws are being applied and enforced fairly and effectively. Open justice also promotes personal responsibility. Unless there is good reason to the contrary, the community is entitled to know what is being said in court where there are allegations that the conduct of an individual or organisation is in breach of the law. When an individual or organisation acts contrary to law, they should expect to be held accountable, not only to judges and magistrates, but also to the community.

Our community is demanding this more and more. They want people to be held to account, they want the parameters to be strengthened, they want to know what

those parameters are and they want people to operate within those parameters. That is why this bill is so important.

The bill's origins are in model legislation that was supported by the then Standing Committee of Attorneys-General, or SCAG. It has been implemented by the commonwealth and New South Wales. The key features of this include the common-law presumption in favour of disclosure and open courts and a codification of the grounds for restricting that disclosure. Clause 4 of this bill deals with this particular presumption:

> To strengthen and promote the principles of open justice and free communication of information … to which a court or tribunal must have regard in determining whether to make a suppression order.

Effectively this clause says that the court is still able to determine whether or not to impose a suppression order. However, when it does so it must be on the basis of a 'presumption in favour of disclosure of information'. It is extremely important to have this clarity.

I am particularly pleased to see that the Children, Youth and Families Act 2005 and other legislation is incorporated into this bill. Members will note that clause 8(2)(b) makes reference to the Children, Youth and Families Act. It is important to note that this bill does not impact that act, where courts can hear evidence in camera to protect the privacy of victims — especially children but also juvenile offenders. Clause 8(2) of the bill specifically states:

> Without limiting the generality of subsection (1), this act does not limit the operation of the following provisions …

It then lists the Children, Youth and Families Act, among others. On many occasions we have said how important it is to protect children from the rigours that would normally operate within the courts. It is important that we do not cause further trauma to children who are already traumatised. It is pleasing to see that that has been recognised and clarified in the bill.

Clause 8 sets out other acts, like the Children, Youth and Families Act 2005, and they are listed only to specify that this bill does not affect them. This is particularly important. Many times bills are introduced in this place that have inadvertent consequences. We saw that a lot under the former government, where bills were hastily brought into this place and it then had to scurry back to fix them because there were a whole lot of inadvertent consequences. It is important to see a piece of legislation come through that is thorough and deals with these issues.

One last thing I want to speak about is the interim orders. The bill provides that suppression orders must contain an end date. That is currently not the case, as courts can issue an order with no conclusion. Without this bill, the circumstances could make it very difficult in this day and age for a precise end date to be determined. The end date may not necessarily be a set date; it may instead relate to a particular future occurrence. Members may recall a suppression order that related to the first series of the television program *Underbelly*. Members would be aware that the order applied only until certain proceedings before the court had concluded, and the ban on the show was then lifted. This is one example of a future occurrence that could be stated as the end date of a suppression order: when a particular trial or court proceedings have concluded. Another example might be where a suppression order is in place to protect the identity of an undercover police officer. Such an end date might be listed as effective upon the death of that person, as privacy would then no longer be required for their protection. It is important that these aspects are clarified.

In conclusion I say that the judiciary is one of the key components of a thriving democracy. As I said earlier, we are fortunate to live in such a healthy democracy, but we must protect the divisions of power, and it is very important that we make legislation that enhances that. It is important also to remind ourselves that Victoria's legal system is one of the best in the world. We should not take this for granted, and as legislators we must treat this with the respect that it is due. The bill builds on the existing legal system to help our courts remain open and transparent, and it helps Victorians to continue to have confidence in our courts. It sets out a presumption in favour of disclosure and openness and provides specific provisions for the granting of suppression orders, such as stating the grounds and the end date. It does not change the closed court provisions of other legislation, which are in place to protect victims. I commend the bill to the house.

Mr FINN (Western Metropolitan) — It gives me a great deal of pleasure this morning to rise in support of the Open Courts Bill 2013. In rising I have to respond to my dear friend Mr Scheffer and the comments he made about this government and our attitudes on law and order, our record on law and order and our record on justice. I have to say I do not know where Mr Scheffer has been in the last three years. I thought he had been sitting over there on that back bench. Clearly he has been on another planet, because he does not understand what has happened in this place in the last three years. He does not understand that one of the reasons the people of Victoria elected this government was to inject justice into this state. That is one of the

very reasons that we were elected — and that is what we have gone about doing. Mr O'Donohue is a relative newcomer to the portfolio, but I am sure Mr O'Donohue would agree with me that the Attorney-General, Mr Clark, has done an extraordinary job — —

Mr O'Brien — Hear, hear!

Mr FINN — Supported by Mr O'Brien, I have to say. Mr Clark has been an outstanding Attorney-General in this state. I have to say — and I might have said this once before, maybe even twice; I will go for the hat trick — that on election night 2010 the thing that gave me the greatest joy, apart from the election of my friend and colleague Mr Elsbury, of course, was the fact that we would have a new Attorney-General in Victoria. We knew, and we know, what the previous Attorney-General had done to Victoria, we know what the previous Attorney-General had done to justice in Victoria, and I was absolutely delighted that that Attorney-General was gone. He was gone. I was joined by thousands — if not hundreds of thousands, if not millions — of Victorians in rejoicing in the fact that we would have an Attorney-General who did have respect for real justice and for the rule of law and was not somebody who would spend all his time involving himself in social engineering experimentation and changing laws to assist criminals.

Mr O'Brien — Soft on crime.

Mr FINN — I am getting to that in a minute, I can assure Mr O'Brien. I would have to say that if Mr Scheffer wants to find a failure on law and order, it is not this government.

Mr O'Brien — No.

Mr FINN — It is not this government. Have a look at the Attorney-General in the previous government, the one that we had for 11 years — the one who stacked the courts, the benches of Victoria, with civil libertarians and like-minded people to himself. We are still paying the price for that, and will be for some time to come. It was Rob Hulls who was the failure on law and order. So for Mr Scheffer to come in here and talk about this government failing on law and order, being soft on law and order, is just a total nonsense. It is just a total nonsense.

It just goes to show how far away from the real world the Labor Party is in this state or indeed in this country. I could make some reference to comments made by former federal health minister Nicola Roxon overnight. She made some comments about the former Prime Minister.

Mr O'Brien interjected.

Mr FINN — Indeed, Mr O'Brien, you have hit the nail on the head. A few months ago Kevin Rudd was the bee's knees and the greatest thing that ever happened for Australia, but of course overnight Ms Roxon told us what she really thought of Kevin Rudd and, it seems, what most of the Labor Party thinks of Kevin Rudd. But to return to the bill — I was not straying that far from it, I do not think.

Mr O'Brien — You were responding to my interjections.

Mr FINN — I was responding to Mr O'Brien's interjections, but I was illustrating how far away from reality the Labor Party is in this state and, as Mr O'Brien said, in this nation.

Mr Scheffer made some reference to overcrowding in prisons, and there is some overcrowding in prisons; there is no doubt about that. That is why we are building a new one and I am going to have 1000 new constituents in the not-too-distant future. At this point in time I am not sure how many of them will be able to vote, but I will have 1000 new constituents in the prison out at Ravenhall. That prison will be of great benefit to the people of this state. It will of course be of great benefit to the western suburbs because it will involve a significant financial injection.

Mr O'Brien — They might not have mourned Rob Hulls's passing.

Mr FINN — They might not have mourned Rob. I would suggest to you — —

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

Mr FINN — I was suggesting to you, Acting President, that if Rob Hulls had decided to stay and had decided that the Ravenhall prison was going to be in his electorate, his margin would have risen significantly once this prison was open and up and running. This prison will also be of significant benefit to local employment in the western suburbs, it will be of significant benefit to the local building industry and it is something that we welcome in the west. This is our contribution to the good working of justice in Victoria and to Victoria generally, because if there is one thing that is absolutely vital, absolutely fundamental to the proper maintenance and proper support of civilisation, it is justice. If we do not have a justice system that works, if we do not have a justice system that has the faith of the community, that is when we see civilisation breaking down.

I will return in a moment to some of the views of our friends opposite on law and order and crime. We know just how soft on crime Labor is, but I will get back to that in a moment, because I want to speak very briefly about the justice system. I think I might have made these comments before in this house, so my apologies if I am doubling up, but certain people have to realise that the justice system, the legal system — I would prefer to see it as a justice system, I have to say, than a legal system — is not just a way for lawyers to buy big houses and fast cars. This is about providing justice for those who have offended and about providing justice for those who have been victims.

Mr Leane — You just offended Mr O'Brien.

Mr FINN — I know Mr O'Brien. Mr Leane interjects and makes some suggestion.

Mr O'Brien — Some carpenters have big houses too.

Mr FINN — A lot of carpenters have big houses, from what I can see, and plumbers too. What I am saying — and I suggest to anybody who has driven down William Street of late and seen blokes in gowns and wigs — —

Mr Leane — They're not even lawyers.

Mr FINN — That's right. I think that is Chapel Street, actually! The reality of justice is not entrenched in the trappings of a courtroom. The basics of justice are providing that same justice for people who need it and deserve it. It is about, if needs be, locking up those who have done the wrong thing and keeping them away from those who need to be protected. Justice is about protection as much as anything else, and it is about providing victims of crime with a way of declaring that something has gone astray. It is a way of allowing them to say, 'Yes, we have been victims, we have suffered as a result of a crime and the person who has done this to us should be locked up'.

There are sadly many people in our country who over an extended period of time have not received that sort of justice. Unfortunately during the period that Rob Hulls was Attorney-General of this state justice became a laughing stock, I have to say. I have spoken to many victims. I have spoken to the victims groups and to many individual victims of crime who have told me that during the course of that 11-year period, during which the former Attorney-General held the reins in that portfolio, justice became something that was nigh on impossible to achieve and that they had completely lost faith in the justice system. It is when victims lose faith in justice that the whole of society starts to crumble. Unfortunately as a result of Labor's 11 years in office that is exactly what happened.

Mr Leane — Crime rates have gone up.

Mr FINN — Mr Leane over there says crime rates have gone up, and that is true, and you know why? Because people are actually reporting crime now, whereas when Labor was in government they knew it would be a waste of time for them to report the fact that they had been victims of crime. They knew it was a waste of money to pick up the phone and make a call; they knew that. But that has all changed now that we have a government and an Attorney-General that actually respect the law and regard justice as central to our system. That is something we never saw in 11 years under Labor and Rob Hulls as Attorney-General.

This government has been hell bent on making a justice system for the people, as it should be. That is something I hope members opposite might take into consideration. I know Mr Scheffer said that Labor was supporting the bill, but you would not know it from his speech, because he made it very clear whose side he is on — he is on the side of the crims. He wants those of us who support law and order to pull our heads in. It is the classic case of Labor being soft on crime. It has always been soft on crime. It is soft on crime now, and you have to think that it will always be soft on crime — although I am an optimist.

Mr Leane interjected.

Mr FINN — Mr Leane can lead the way. I hope Labor will one day see the light and will one day see that what I am saying is true and that justice is very important.

In the couple of minutes I have left in the time allocated for my contribution to the debate I want to say something to my former colleagues in the fourth estate, because this bill frees up some components of reporting on trials. That is something the media should not take advantage of. We have seen just this week the latest episode of trial by media, not based on reality, not based on fact, but based on what radio commentators, newspaper journalists and television reporters might think. Before the facts are known they race out and tell everybody what they think. They condemn individuals and sentence them to all sorts of weird and wonderful punishments.

The media needs to be responsible with this. We are saying we will free this up a bit, but the media has to treat it properly. The justice system in this state is far too important to be used by the media in a game of ratings. It is too important to think, 'Here is a good

yarn!'. I know what that is like; I love a good story. I love a good yarn and to be first with a story. It is great, and the buzz and the adrenaline are wonderful. I love that. But justice is more important than that. We have to have respect, not just for the victims but for the alleged perpetrators as well. Let us not string people up before we know whether they are guilty or not. People in this state are innocent until proven guilty. That is part of the justice system. This bill is a very good one and I support it.

Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation — I thank all members for their contributions to this debate, particularly Mr Elasmar, Ms Pennicuik, Mr O'Brien, Ms Mikakos, Mr Scheffer, Mrs Coote and Mr Finn. The government welcomes the support of this bill by the opposition and the Greens. I take this opportunity to make some brief remarks about the second-reading speech and statement of compatibility for the bill, which was amended in the other place. The bill itself incorporates the amendments made in the other place. For accuracy and for the benefit of members of the house and for the record I will highlight some minor matters relating to the second-reading speech and the statement of compatibility.

The amendments to the bill made changes to the grounds for suppression and closed court orders and also inserted some new notice requirements when making a suppression application, which altered the clause numbering in the bill. The second-reading speech delivered in this place referred to grounds for suppression as outlined in clause 16 of the bill. These grounds are now contained in clause 18. The second-reading speech also referred to a ground for suppression relating to a party or witness in criminal proceedings involving a sexual offence or family violence, which has now been amended to apply to a complainant or witness in such a proceeding. This maintains the status quo in the scope of this protection. This ground has also been amended to apply to a family violence offence. This change is intended to clarify this ground for suppression.

Further, the second-reading speech in this place referred to a ground for suppression where necessary to prevent prejudice to the proper administration of justice. This ground has been amended to clarify that it only applies where there is a real and substantial risk of such prejudice. In addition, the second-reading speech referred to grounds for making closed court orders in clause 28 of the bill. These grounds are now located in clause 30 following the renumbering of the clauses. The grounds for making a closed court order have been amended in the same way as the grounds for making a suppression order.

I would like to make a couple of remarks about the statement of compatibility. The amendments in the other place do not alter the bill's implications on the Charter of Human Rights and Responsibilities Act 2006. The statement of compatibility refers to a ground for suppression to avoid undue duress or embarrassment to a party or witness in criminal proceedings involving a sexual offence or family violence. As I have already indicated in relation to the second-reading speech, this ground as amended now applies to a complainant or witness in a criminal proceeding involving a sexual offence or family violence offence. Similarly, the statement of compatibility refers to a ground for suppression to prevent prejudice to the proper administration of justice. This ground has been clarified in the way I have described already in the context of the second-reading speech. The second-reading speech and statement of compatibility otherwise accurately reflect the bill as received in this place.

Finally, I make some remarks about notice requirements. While it does not directly alter the description of the bill as contained in the second-reading speech and statement of compatibility, for completeness I note that the amendments in the other place provided for one additional matter: they created a requirement that three days notice be given of the intention to make an application for a suppression order. When such notice is given the courts will take reasonable steps to notify any relevant news media organisations. This will ensure that the media is aware of upcoming suppression applications and can contest them if they wish to do so. Of course it will not be appropriate to give notice in every situation. The amendments to the bill make provision for that.

The court may hear an application for a suppression order despite a failure to give notice if there were good reasons for notice not to be given or if it were in the interests of justice that the court hear the application without notice being given. The bill does not elaborate on what might be a good reason; this will be a matter for the courts to be satisfied on a case-by-case basis. However, there is no intention that notice of a suppression order will need to be given where there is a genuine fear that giving notice of the order would endanger the very person whom the order is being sought to protect.

In many cases a prosecution will involve evidence from a criminal associate of an accused. Those witnesses might need to have their identity suppressed for their

own safety. The bill envisages that this will be a good reason not to give notice of a suppression order so that the courts may hear the application without notice.

It is also the case that the need for suppression may arise suddenly or unexpectedly during a trial. A witness may say something in evidence that should not be published, perhaps because it could prejudice another trial that is still pending. In those cases it is not expected that the court will require notice of an application for a suppression order and then wait three days before the application will be considered. It will be in the interests of justice that the court hears the application on the spot and that the trial should continue uninterrupted.

The notice provisions are designed to promote open justice and transparency in the courts. They are not intended to endanger witnesses or frustrate the smooth running of criminal trials. It is not intended that the advance notice to the court and other parties or the notification by the court to relevant news media organisations would specify the information which is sought to be suppressed. Subject to any rules of court, the notification to news media organisations under clause 11 can simply state that the notice of an application in a particular proceeding has been received. The actual notice received by the court does not need to be provided to news media organisations.

Acting President, thank you for allowing me the opportunity to clarify those matters. I again thank members for their contributions and support of this bill.

Motion agreed to.

Read second time.

Committed.

Committee

Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation) — Acting President, I seek leave of the committee to allow Mr O'Brien to sit at the table with me.

Leave granted.

Clauses 1 to 17 agreed to.

Clause 18

The ACTING PRESIDENT (**Mr Elasmar**) — Order! Ms Pennicuik will move her amendment 1, which is not strictly a test for her remaining amendments 2 to 4. Any one of those amendments could be agreed to in isolation from the other amendments as they seek to expand the capacity for the courts to make suppression orders in different contexts.

Ms PENNICUIK (Southern Metropolitan) — I move:

1. Clause 18, line 32, omit "criminal".

This is an amendment to clause 18(1)(d), one of the grounds for a proceeding suppression order in the bill, which states that:

> the order is necessary to avoid causing undue distress or embarrassment to a complainant or witness in any criminal proceeding involving a sexual offence or a family violence offence …

My amendment omits the word 'criminal' so that the clause would read:

> … in any proceeding involving a sexual offence or a family violence offence.

Clause 18 outlines the grounds for a proceeding suppression order. Those grounds include: to prevent prejudice to the proper administration of justice, to prevent prejudice to national or international security, to protect the safety of any person, to avoid undue distress or embarrassment to a party or witness in criminal proceedings involving a sexual offence or family violence offence, and to avoid undue distress or embarrassment to a child witness in criminal proceedings — and that is the subject of my amendment 2.

The explanatory memorandum states:

> These grounds substantially reflect the existing grounds for making suppression and non-publication orders in the individual courts and tribunal acts referred to above.

However:

> Additional grounds are provided to make an order where necessary to avoid undue distress or embarrassment to a —

complainant —

> to or witness in criminal proceedings involving family violence, or to avoid causing undue distress or embarrassment to a child who is a witness in a criminal proceeding.

Those are the additional grounds to avoid undue distress or embarrassment in those circumstances described in clause 18(1)(d) and (e). The effect of my amendment would be not to limit that to criminal proceedings but to allow those grounds to be the grounds for a proceeding suppression order in a civil proceeding involving a complainant or a witness in a proceeding involving a sexual offence or a family

violence offence, which could occur in the civil jurisdiction.

My argument is that the principle should be about whether there is a need to prevent undue distress or embarrassment to the complainant or the witness, rather than the principle being about what jurisdiction it is in. If this bill is providing the grounds to prevent undue distress or embarrassment in the criminal proceeding, it should provide the same protection to a complainant or witness in a civil proceeding. I am concerned that the inclusion of the word 'criminal', and therefore the exclusion of civil proceedings, may leave some complainants or witnesses in those proceedings in civil courts unable to be protected, and unable to avoid distress or embarrassment, which would not be the case if they were in a criminal proceeding.

It may be that there would be fewer circumstances where that protection would be used, but my concern is that, if that protection is being provided to witnesses and complainants in the criminal jurisdiction, it should be provided in any case where that circumstance should arise, and of course the other provisions of the bill and other statutes would apply. I commend my amendment to the house.

Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation) — I thank Ms Pennicuik for the advance notice of her amendments to enable me to consult and seek advice in relation to them. If the committee will bear with me, I would like to explain the government's response to this amendment and for the sake of clarity provide some additional information which covers the remaining amendments. As I said at the conclusion of the second-reading debate, the government welcomes the support of this bill by all parties. I note the support for the new grounds relating to complainants and witnesses in criminal family violence proceedings and child witnesses in criminal proceedings. In speaking to her amendment, Ms Pennicuik referred to those.

The government does not believe that there exists the same public interest in facilitating private civil proceedings to justify a general statutory power of suppression or closing a court to prevent distress or embarrassment, as is contemplated as a consequence of the amendment Ms Pennicuik has moved. However, there will continue to be other specific suppression and closed court regimes covering sexual offence and family violence matters for some civil proceedings, including civil proceedings seeking or varying family violence intervention orders, which will be subject to a broad prohibition on publication under the Family Violence Protection Act 2008.

In civil proceedings in the Victorian Civil and Administrative Tribunal involving allegations of sexual assault, the tribunal can make a suppression order or closed court order where necessary for any reason in the interests of justice. If a person is seeking compensation from the Victims of Crime Assistance Tribunal, there is a legal presumption that their identity and the details of their application will not be made public. Neither evidence given at a Victims of Crime Assistance Tribunal hearing nor any information that could identify the applicant or another person who gave evidence at the hearing nor the content of any documents presented at the hearing may be published unless the tribunal is satisfied that it is in the public interest to publish that information and make an order to that effect.

Additionally, some civil cases alleging conduct amounting to a sexual offence will be covered by the Judicial Proceedings Reports Act 1958. That act prohibits the identification of a victim of an alleged sexual offence or an offence involving sexual penetration, regardless of whether a proceeding in respect of that offence is pending in a court. There is no requirement that a criminal charge for one of those offences needs to have been laid before the prohibition operates, but the matter must have been reported to police to benefit from the protection if a proceeding is not in a court.

In addition, proceedings in the Children's Court will also be subject to special protection under the Children, Youth and Families Act 2005. Section 534 makes it unlawful to publish unless the president or in some cases the Secretary of the Department of Human Services allows it, subject to a test. Finally, other general statutory grounds for making a suppression order will apply to a civil proceeding. One example where an order would be warranted whether the proceeding is civil or criminal is where not making the order would place the safety of a person at risk.

In summary, the government does not support the amendment moved by Ms Pennicuik. We believe that the current statutory framework in relation to civil proceedings provides the protection that Ms Pennicuik is seeking whilst noting the overall interests of an open justice system.

Ms MIKAKOS (Northern Metropolitan) — I indicate to the committee, as I indicated in the second-reading debate, that the Labor opposition is inclined to support the Greens amendments which would extend the presumption against a suppression order — in other words, would extend the presumption of openness and transparency — to a broader range of

proceedings, including civil proceedings. I note that in his explanation the minister indicated to the committee that there are a whole lot of grounds where these matters are not typically made public for a range of reasons. I do not think the proposed amendments would in any way conflict with those protections. Those proceedings would be subject to those protections and on the additional grounds contained in the bill before the committee. I have not heard anything in the minister's explanation that would concern me in terms of the potential impact if these amendments were to be agreed to, so Labor members will be supporting the Greens amendments.

Ms PENNICUIK (Southern Metropolitan) — I thank the members of the ALP for their support of the amendments. I listened carefully to what the minister had to say. I indicate also that my office has had some email correspondence with the minister's office with regard to this amendment prior to having it prepared by parliamentary counsel. I have heard all the explanations before, particularly that a complainant or witness can be protected on the grounds of a threat to their safety, to protect the safety of the person, but that is not the same as the basis on which these additional grounds are being put. The minister mentioned that, if there is a case in the civil jurisdiction for damages, the victim will be protected under existing legislation, but there is no protection under existing legislation for the witness in that circumstance, so there is a gap.

I do not believe this amendment would do any harm, because it would still be up to the court to maintain the default position of the presumption of disclosure. It would still be up to the court to make sure that there is a credible reason and that the reasons are given and determine the specific circumstances of suppression, the time limits et cetera. I cannot see that this amendment would do any harm, but it would ensure that any witness or complainant would definitely be covered if suppression was warranted on the principle that is introduced by clause 18(1)(d), which is to avoid causing undue distress or embarrassment to a complainant or a witness.

Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation) — In response to Ms Pennicuik, and noting Ms Mikakos's comments, I thank Ms Pennicuik for noting the engagement with the minister's office in relation to these matters, and I am pleased that she was given advance notification of the government's anticipated position. I note that what Ms Pennicuik is proposing would be quite a significant departure from the model legislation. While this bill also makes some amendments to the model legislation, I make the point that this would be quite a significant departure in its move into the civil space. What is contemplated in this bill retains the current practice in the civil space, and I have outlined to the house the range of applications that currently exist pursuant to other legislation in that area.

Committee divided on amendment:

Ayes, 16

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

Noes, 20

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

Pairs

Viney, Mr	Kronberg, Mrs

Amendment negatived.

Ms PENNICUIK (Southern Metropolitan) — I move:

2. Clause 18, page 16, line 3, omit "criminal".

The amendment is to clause 18(1)(e), which currently reads that:

(e) the order is necessary to avoid causing undue distress or embarrassment to a child who is a witness in any criminal proceeding …

Again, the amendment removes the word 'criminal' to cover any proceeding in which a child is a witness, to avoid causing undue distress or embarrassment to that child. I do not necessarily wish to prosecute the arguments again, but the arguments as put forward for the first amendment apply to this amendment but even more so in terms of the need to protect witnesses who are children in any proceeding where they may be called to give evidence.

Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation) — The government will oppose Ms Pennicuik's amendment for the reasons I outlined in relation to Ms Pennicuik's amendment 1.

Committee divided on amendment:

Ayes, 15

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

Noes, 20

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

Pairs

Viney, Mr	Kronberg, Mrs

Amendment negatived.

Clause agreed to; clauses 19 to 29 agreed to.

Clause 30

Ms PENNICUIK (Southern Metropolitan) — I will not be proceeding with my amendments 3 and 4 to clause 30, in which the power to close proceedings to the public is provided and which, in every other respect, is almost a mirror of clause 18 — that is, the grounds for closing proceedings to the public are the same grounds for proceeding with a suppression order. The principle of removing the word 'criminal' from subclauses (d) and (e) has already been tested in my amendments 1 and 2. I regret that I will not be proceeding with the amendments, but the government has indicated it will not support them on the same grounds; they are basically the same amendments applied to a different clause. It would have been better if the government had supported the amendments, because I believe they would not have done any harm and they would have ensured that any potential gaps in civil proceedings, in terms of protecting witnesses, complainants and particularly child witnesses, would have been resolved. It is not that I do not commend my amendments but, as they have already been tested in my first two amendments, I will not proceed with them in this case.

Clause agreed to; clauses 31 to 67 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Motion agreed to.

Read third time.

SUPERANNUATION LEGISLATION AMENDMENT BILL 2013

Second reading

Debate resumed from 19 September; motion of Hon. M. J. GUY (Minister for Planning).

Mr LENDERS (Southern Metropolitan) — I rise to speak on the Superannuation Legislation Amendment Bill 2013. When speaking on a bill in this house, my opening remarks are often, 'The Labor Party does not oppose this bill', or, 'The Labor Party does not support this bill, for the reasons outlined by my colleague X in the Assembly', and then I will speak to a particular clause that may or may not be one of interest or worth further debate. However, this bill did not darken the Assembly chamber in any debate. This bill — à la the worst excesses of the Kennett government — sailed through the Legislative Assembly on the government guillotine without a single opposition member uttering a word or a single syllable on this bill.

Hon. W. A. Lovell interjected.

Mr LENDERS — Through you, Acting President, I say to Ms Lovell that she should perhaps reflect on what happened to this bill. The Labor Party will oppose four clauses of this bill, and I will speak to those later.

Hon. W. A. Lovell — Your members failed in their duty as members of Parliament.

Mr LENDERS — While Ms Lovell is lecturing me about the duty of my members, I might refer her to the fact that the member for Preston, Mr Robin Scott, was in the Assembly chamber from 3 o'clock until 4 o'clock, waiting for the opportunity to speak on the bill. The dysfunctional, disorganised rabble of a government would not let him speak and put this bill to the guillotine without a single member of the opposition having an opportunity to speak to it, even though the member for Preston was the sole Labor member in the chamber, sitting at the table, patiently waiting for an opportunity to speak on a piece of legislation. This disorganised rabble of a dysfunctional government rammed the bill through the Assembly without debate. The closest thing it ever had to a discussion was two weeks earlier when the minister

read the second reading in a monotone voice — that is how they are read, so I am not critical of that — and then it went through without a single voice of debate from the opposition.

Hon. W. A. Lovell interjected.

Mr LENDERS — Ms Lovell may wish to reflect on what Mr Andrews, the Leader of the Opposition and member for Mulgrave in the Assembly, did at that time, and that is her prerogative, but the inescapable fact is that Robin Scott was in the chamber waiting to speak on behalf of the opposition, and the rabble that is the government did not let him speak. The mindless rabble that is the government guillotined the bill at 4.00 p.m.

I will turn to what this bill is about rather than further talking about how the government's actions in relation to it were an outrageous replica of the Kennett government's practice of ramming bills through the Legislative Assembly without a single opposition member having had the chance to speak on them. Fortunately we have a house of review in this Parliament, and in this house we will treat the bill as it should be treated. Most of my contribution on the bill will refer to the comments of my colleague Mr Scott, and then I will turn to four clauses we have problems with. I will provide greater coverage on the bill than I normally would, given that the Labor Party finally has a chance to speak on it.

There are two parts to this bill. The first in effect makes the administration of the parliamentary defined benefits superannuation scheme the responsibility of the Emergency Services Superannuation Scheme (ESSS) board. That is a proposal that Labor supports. There is logic to the notion that members of Parliament should not be adjudicating on those few remaining issues that need adjudication, including the matter of those members of the class of 2002 who may leave before attaining 12 years service. That scheme will be moved off to the ESSS like all the other state superannuation schemes have been. It is a logical administrative detail, and Labor certainly supports that.

There is a series of benefits to this bill. Members of the Emergency Services Superannuation Scheme, as opposed to people administered by the Emergency Services Superannuation Board, will get increased rights in relation to disability claims made up to six years after the cessation of their employment. We think that is a good thing; it extends to members opportunities and rights they did not have previously. I do not need to comment on that. That is something we will support.

I am delighted the Minister for Health is here. I am disappointed that a more responsive minister was not here when I opened my contribution, one who might have made comments more informed than those of the Deputy Leader of the Government, but that is history. We are pleased with and support the retrospective disability claims that are being offered to new members, but I will speak further, both now and in committee, about existing members who will lose some of their retrospective disability claims. Certain clauses in this bill deal with a series of anomalies. We are supportive of the bill providing the ability for members of some of the schemes covered to make binding death nominations. There are a series of administrative issues that relate to how the ESSS fund deals with appointments of staff and a range of other areas. We have no particular issue with those areas of the bill.

Looking at what this bill does, we believe that the functions of the parliamentary superannuation fund being rolled into the ESSS is a strong plus, the binding death nominations being put in place is a strong plus and extending rights in relation to disability claims for ESSS members who have not had that right before is a strong plus.

Then there are the negatives of this bill. Firstly, there was too little consultation with the workforce. There was consultation, but it was not as thorough as it could have been. I am sure there was some nominal consultation.

Secondly, the right to make retrospective disability claims is being taken away from members of a number of schemes.

The house may be aware that the Emergency Services Superannuation Board administers a series of superannuation schemes, and the ones that are pertinent in relation to this bill are the revised scheme and new scheme under the State Superannuation Act 1988, the Transport Superannuation Act 1988 and the State Employees Retirement Benefits Act 1979. We take exception to clauses 18, 20, 22 and 24 of this bill because they remove existing rights. My remaining comments on this bill will refer to those particular areas.

Under any of the four superannuation schemes, at present when an injured worker has completed employment, they have an unlimited time in which they can seek disability redress from their scheme. The number of people in this situation is not excessive; it is in the dozens. However, these people were employees of the state, and they were employees under those four particular schemes or subschemes — that is, if you

were going to revise the new schemes under the State Superannuation Act. At the moment after any injured worker in this situation completes employment, as long as they have an evidentiary base and supporting material, they can go to the ESSS board and seek these benefits.

There are other people under other schemes who do not have this right at the moment, and as I said, we are supportive of others having the right to present to the board for up to six years after they cease employment. That is a positive thing. I give credit to the government for addressing that. The negative is that for people under these four schemes, their current rights disappear six years after they cease employment. From the perspective of the Labor Party, I flag that we will take the bill into committee and oppose clauses 18, 20, 22 and 24 so that the rights that workers currently have under those four schemes are not diminished.

Other than the disgraceful way in which the government did not afford opposition members with the opportunity to debate this bill in the Legislative Assembly, that is our angst with this bill. Mr Scott sat at the table in the Legislative Assembly for an hour waiting for the call, and a dysfunctional, distracted government could not cope with the fact that the other 42 members of the opposition were not there, so it went into a group huddle, or whatever it was that it did, while Mr Scott was patiently trying to get the call to speak on this important piece of legislation.

I have no idea what the Speaker was thinking, what Ms Asher, the Minister for Innovation, Services and Small Business and Leader of the House in the Assembly, was thinking or what any other government member was thinking. Presumably they were strategising about what to do in relation to the Leader of the Opposition being thrown out of the house rather than dealing with this important piece of legislation, and so for the first time since 1999 the opportunity to debate a piece of legislation was not provided in the Legislative Assembly. It is quite extraordinary. Nevertheless, we are a more rational house of review and we have the opportunity to deal with these clauses one by one.

I will conclude my remarks on that, and I flag with the minister that I will ask him questions about clauses 18, 20, 22 and 24, including about the number of people who will miss out on superannuation as a result of the changes in this bill and about the particular types of people who the changes will affect. I will also seek information on the policy intent of the government in introducing this bill. Why, given the numbers are so small, is the government seeking to remove these people's ability to lodge disability claims six years after their employment has ceased? This ability has clearly not destroyed the scheme for the last decade it has been in place. This bill seems to produce a strange diminution of the rights of workers. The Labor Party will not vote against the bill as a whole; it will only vote against these four clauses.

Mr BARBER (Northern Metropolitan) — Legislation like this might appear somewhat dry or arcane or to be an area for financial planning specialists. However, whenever we talk about superannuation we should be cognisant that we are talking about someone's enjoyment in retirement. For many people who have worked very hard in their lives, that is one of the main things they look forward to.

We know from previous debates that MPs, and particularly a certain class of MP, are very well looked after with regard to their own superannuation. Superannuation benefits for them are defined, not based on market fluctuations. If there are any details to be worked out post retirement, it is overseen by a group of their peers who have pretty much the same interests. Recently there were changes in this place that increased the superannuation of all MPs, including those like me who are out there with the hoi polloi in a contribution scheme. However, the biggest issue we have right now is that there is still a group of people — young people, casual workers and low-income workers — who are missing out entirely on getting in on the superannuation schemes that now represent the dominant way in which we expect current and future workers to be looked after in their retirements.

Under federal laws the employer of an employee between the ages of 18 and 70 only needs to make a superannuation contribution for that employee if the employee earns at least $450 before tax a month. However, people aged under 18 are only entitled to superannuation if they work more than 30 hours a week and earn more than $450 a month. There may be some variations in particular awards that could improve that in some ways. Australian Bureau of Statistics data from 2007 shows that 40 per cent of people aged 15 to 24 had no superannuation coverage at all, which means they are missing out in the early part of their working lives. Because we are talking about the law of compound interest and compounding returns, the money that you earn early on earns a return for the largest number of years, and therefore it is very important when it comes time for retirement.

We regularly see stories about people who have not been paid correctly, even where an entitlement is in place. The Fair Work ombudsman has recently pursued

cases where people have allegedly been underpaid their entitlements, including superannuation. These include a young full-time employee at an industrial clothing outlet in Melbourne's northern suburbs who was underpaid for two and a half years and a dozen employees of a Melbourne marketing and distribution business who were underpaid between August 2012 and February this year. I have no doubt this is happening every day, but very few of those stories come to light.

I do not believe we are even scratching the surface of enforcing the laws in this area or informing people about their rights, never mind the fact that we used to have organisations such as JobWatch which were well funded by government to look after workers. Now the future of JobWatch is being put in jeopardy, and it has incredible brand equity. Many people through word of mouth know that is where you go. The other government departments and authorities are much less well known and seem to change their names regularly. JobWatch is an organisation that should be supported by state and federal governments.

On top of the everyday financial problems that young people, casual workers and people on low incomes can face when it comes to being paid their entitlements, financial disadvantage is being entrenched in the superannuation system. This bill places some further restrictions on how young government workers of today will access their super benefits in the future. With an ageing population we should be improving super for the future, not limiting the benefits people can get from it.

We spend a lot of time debating equity in this house. No one party has a monopoly on the question of equity. There are different ways even to debate what equity is. However, there is a question here of intergenerational equity, and rarely do we address intergenerational equity through this place. Intergenerational equity comes in the form of investment in early years education, which is very low here in Victoria. It comes in the form of protection of important environmental assets, which will be used by people for generations to come. You would have to agree that the superannuation scheme is one of the major levers of policy when it comes to ensuring intergenerational equity between the economic benefits that are created from people's work now and the lifestyle they will be able to enjoy probably half a century from now.

It is the Parliament that needs to keep an eye on things — not in terms of what is happening today, how we can benefit from it and how we will all get re-elected under these new electoral boundaries in 12 or 13 months time, but in terms of making decisions that people 50 years from now will look back on and thank us for. As I say, this is about not just questions of environmental protection but also the very important, I would say critical, area of income protection for retirement in an uncertain future. We do not know what the world will look like 50 years from now.

On that note, the Greens will be supporting the bill. However, we share with Mr Lenders and the Labor Party concerns about the limitation on the ability to claim disability benefits after retirement — that is, the six-year cut-off — and we would like to discuss that matter with the minister in committee before considering our vote on Mr Lenders's proposition to vote against certain clauses.

Mr ONDARCHIE (Northern Metropolitan) — Thank you, Acting President, for the opportunity to rise today to speak on the Superannuation Legislation Amendment Bill 2013. Unlike my learned colleagues Mr Barber and Mr Lenders, I find this quite an exciting bill. It is exciting because it is fiscally relevant to many Victorians and we should take it quite seriously.

The Superannuation Legislation Amendment Bill 2013 amends the Parliamentary Salaries and Superannuation Act 1968 (PSSA) and the Emergency Services Superannuation Act 1986 (ESSA) to roll the Parliamentary Contributory Superannuation Fund (PCSF) into the Emergency Services Superannuation Scheme (ESSS). It amends the ESSA, the Transport Superannuation Act 1988 (TSA) and the State Superannuation Act 1988 (SSA) to introduce binding death nominations for Victoria's lump sum defined benefit schemes.

It amends the ESSA, the SSA, the TSA and the State Employees Retirement Benefits Act 1979 (SERB) such that former members will be able to make retrospective disability claims for a period of six years after ceasing employment. It amends the ESSA to provide that the CEO of the ESSS be appointed to the Emergency Services Superannuation Board, subject to the approval of the minister. It amends the ESSA to allow members to cease membership upon attaining the age of 65. It amends the SERB act to allow defined benefits to accrue beyond the age of 65. It amends the ESSA to provide that a member of the board may resign by way of written notice to the relevant minister rather than formal written notice to the Governor in Council.

The bill also rolls the PCSF into the ESSS. The parliamentary trustee administers the PCSF. Currently the ongoing administration requirements of the PCSF are delegated to the Emergency Services

Superannuation Board. In 2004 the PCSF was closed to new members. As of 30 June there were 58 contributing members, and this figure will reduce over the forward period. With only 58 active members and net assets of $344 million as at 30 June, the PCSF is a small fund. Given the number of fixed expenses the fund has, the cost per active member is relatively high compared to those other super funds. This bill will wind up the parliamentary trustee and roll the assets and liabilities of the PCSF into the ESSS — that is, the PCSF will merge with the ESSS. Under the proposed arrangements all decisions regarding the PCSF would be made by the Emergency Services Superannuation Board.

These amendments have no impact on the benefit entitlements of members of the PCSF at all. The bill contains a facility for payments to be made from the consolidated fund to ensure, firstly, that there are sufficient funds to pay the PCSF members, and secondly, that there is no financial impact on the existing schemes managed by the Emergency Services Superannuation Board.

Mr Lenders and Mr Barber talked about retrospective disability claims. At present, former members of the State Superannuation Fund (SSF) defined benefit schemes have the ability to make retrospective disability claims for an unlimited period of time after they cease employment. By comparison, members of the emergency services (ES) defined benefit scheme have no scope to make retrospective disability claims. This bill amends the ESSA, SSA, SERB and TSA to allow members of the SSF and ES defined benefit schemes to make retrospective disability claims for a period of up to six years after ceasing employment. The government believes that this is very reasonable and provides members of the ES defined benefit scheme with an opportunity to lodge a retrospective claim. In some instances members may not be aware that they are disabled at the time of ceasing employment.

In extending the ability to make retrospective disability claims to ES members, the government believes it is appropriate to place a six-year time limit on such claims. This reasonable limitation is consistent with the periods set out in the Limitation of Actions Act 1958 and will provide greater certainty to government that its liabilities under the ES and SSF defined benefit schemes have been fully extinguished. It will reduce the time, effort and costs incurred by the Emergency Services Superannuation Board in investigating claims to assess their validity.

The government also believes that a six-year limitation on retrospective disability claims by members of the SSF defined benefit scheme is very appropriate. The six-year limitation will not apply to SSF members who have already left the scheme or who leave the scheme before the relevant provisions in the bill commence.

The bill contains legislative changes to permit members of the emergency services defined benefit scheme and members of the former SSF lump sum schemes to make binding death nominations. Amendments will be required to the TSA, ESSA and SSA to facilitate this. These amendments will not alter the quantum of benefits available to any class of dependants — that is, binding death nominations will not result in higher total benefit payments by the schemes.

However, where a valid binding death nomination is in place, any dependants who are not included in the binding death nomination will not have a claim to that benefit. Binding death nominations will not be introduced for members of the pension schemes, as this would raise a number of complications, including the requirement for partners of pensioners under the revised scheme and the State Employees Retirement Benefits Scheme, the SERB scheme, to satisfy additional eligibility criteria — for example, if they were the deceased pensioner's partner for at least two years prior to the date of death. I thank you for and appreciate your interest in this matter, Acting President; I appreciate it.

The ACTING PRESIDENT (**Mr Finn**) — Order! I am all ears, Mr Ondarchie.

Mr ONDARCHIE — In the case of reversionary pensions, multiple permutations of benefits may be available depending on the existence of a spouse, the age of the spouse and the age of the children in question. Other complications include whether a partner's commutation rights would be affected and whether the eligibility requirements applicable to deferred pensions would still apply.

As it currently stands, binding death nominations are available to members of the accumulation plan of the ESSS, the ESSPLAN. As for ESSPLAN, the proposed binding death benefit nominations will be structured to be consistent with commonwealth superannuation law. These requirements include that the person or persons nominated in the notice must be either the legal personal representative or a dependant of the member and that, unless revoked by a member earlier, a binding death benefit nomination ceases to have effect at the end of the period of three years after the day it was first signed or last confirmed or amended by the member in question.

This bill also provides that the CEO of the ESSS is to be appointed by the board under the ESSA subject to the approval of the minister. I know that the minister is as excited as I am about this bill, Acting President. The bill amends the appointment process of the CEO of the Emergency Services Superannuation Scheme. In particular, section 13 of the ESSA will be amended to provide that the CEO is appointed by the board — under that act, subject to the approval of the minister — on such terms and conditions set out by the board, with the approval of the minister.

The process is similar to the current provision in that the minister retains a role in the appointment process. However, it is more efficient because it removes the Secretary of the Department of Treasury and Finance from the process. The board currently undertakes a recruitment process and then makes a recommendation to the minister. If the minister agrees to the appointment, it is only then that the Secretary of the Department of Treasury and Finance becomes involved in the process by signing the contract.

Section 13(1) of the ESSA provides that the CEO is under the control and direction of the board. Neither the Secretary of the Department of Treasury and Finance nor the minister exercises any direct control over the CEO. Given this, the government believes it is appropriate that the CEO's contract be with the board. This amendment brings the ESSS into line with the arrangements that exist with the Transport Accident Commission, the Treasury Corporation of Victoria and the Rural Finance Corporation.

The amendments to the act that allow members to cease membership upon attaining the age of 65 are something that I touched on earlier in my contribution. It is proposed to amend the ESSA to allow members to opt out of the scheme from age 65 and receive the superannuation guarantee contributions. This remedies an anomaly in the ESSA that exists as a result of the Superannuation Legislation Amendment Act 2010 — the 2010 act that I have referred to. Prior to 1 July 2010, members of the emergency services defined benefit scheme were required to leave the scheme at age 65, regardless of whether or not they retired from the workforce. Any emergency services employee who continued working beyond age 65 then received the superannuation guarantee contributions in respect of that period.

The 2010 act amended the ESSA to allow members to remain in the scheme until age 75, or as permitted under commonwealth law. Following the 2010 act, superannuation guarantee contributions were not payable in respect of members over the age of 65. This change disadvantaged members over the age of 65 who had attained the maximum benefit multiple, as they would no longer receive superannuation guarantee contributions nor accrue defined benefits.

To ensure that no member is worse off, the minimum benefit certificate was altered to ensure that members over the age of 65 who reach their maximum benefit multiple will receive a benefit equivalent to the foregone superannuation guarantee contributions. This amendment will restore the position that existed prior to the 2010 act by giving members the option of ceasing membership at age 65. However, members may remain in the scheme until age 75, or as permitted by commonwealth law. I commend the bill to the house.

Business interrupted pursuant to standing orders.

QUESTIONS WITHOUT NOTICE

Mildura Base Hospital

Mr JENNINGS (South Eastern Metropolitan) — My question is to the Minister for Health. Three weeks ago in this chamber, on 18 September, Mr Drum said:

> Minister Davis and the government have made the call that the best way forward is for the state to move back into the ownership and provision of health care in Mildura. However, there will be —

a six-year transition plan for Ramsay Health Care before Mildura Base Hospital becomes fully publicly owned and operated. However, on WIN TV last week the minister was reported as saying, 'No commitment to return to public management has been made'. So which is the correct position of the government?

Hon. D. M. DAVIS (Minister for Health) — I thank the member for his question about the very important provision of health services in Mildura. I think it is very important in this context to understand the history of the Mildura hospital and indeed to understand how we got into the very difficult scramble left by Ms Broad and her then cabinet colleagues, including Mr Thwaites, who was the then health minister, Mr Brumby and the people who refused to unscramble the problems at Mildura.

Let us be clear. In 1999 there was a decision made to build a new hospital. Ramsay built a new hospital and operated that hospital. The contract went to 2015, with an option of five years. What happened in the early 2000s, though, is that the then Labor government, despite an election promise to review the privatisation of health care in Mildura — that was its promise in 1999, never acted on — disaggregated those

arrangements so that there became an operator in Ramsay and a new owner in the motor trades association, a superannuation fund based in New South Wales. That is the history. They scrambled the omelette and made it very hard for anyone to unpick it.

The fact here is that the coalition went to the election with a promise to expand the hospital. How much, Mr Drum, do you think Labor expanded it over 11 years? Not a jot — not a centimetre of expansion, despite a growth in population in Mildura and Sunraysia, despite an increase in the number of births, despite more emergency department presentations, despite more mental health presentations.

An honourable member — What is happening now?

Hon. D. M. DAVIS — We committed the money in our first budget. There is $7 million to go in there, and some federal money, which we welcomed as well. These expansions depended on us regaining ownership of the hospital. We were not going to put public money into a hospital we did not own — reasonably enough — so the negotiation began. Members should understand that the negotiating period began in 2010 — and who was the health minister in 2010?

Honourable members interjecting.

Hon. D. M. DAVIS — Who was it? It was the now Leader of the Opposition in the Assembly, the member for Mulgrave. He was the health minister. Tell me what he did to return it to public ownership! Who did that in 2010? He did nothing. And what did the Labor candidate do? She admitted to me in a meeting that in fact — Ali Cupper, the then Labor candidate — she did nothing. She did not even advocate for the return of the hospital to public ownership. Let me explain. A long negotiation period began.

Mr Lenders — On a point of order, President, in question time yesterday, in response to Mr Tee's first supplementary question, you ruled that it was inappropriate for a person to seek a minister to call for someone to advocate for something. Now in Mr Davis's answer, as well as debating and straying from government administration, he is actually calling on a former Labor candidate to advocate for something. I put to you, President, that Mr Davis is in breach of your ruling yesterday about whether calling for action is appropriate. Secondly, he is debating the question, and I ask you to ask him to cease debating the question.

Hon. D. M. DAVIS — On the point of order, President, what I am doing in relation to this very complex ownership structure is seeking to explain to the house the history of the ownership structure and the steps the government has taken to return this important regional hospital to public ownership.

The PRESIDENT — Order! I do not believe the minister is calling on a former party candidate to advocate for a change of ownership at this point in time. He is reflecting on the fact that the advocacy was not there previously with regard to this matter. Nonetheless, in establishing that technical difference in terms of the point raised by Mr Lenders, I agree that discussing what a candidate might have said or not said in a previous election campaign is certainly leading to the minister debating the answer. I do not think it is necessarily apposite to the minister's assertion that he is providing details of ownership structures generally and what might or might not have happened in the past, because indeed the ownership circumstances were determined by the government of the day, not by a candidate of the day. To that extent it certainly would be debating the answer to discuss further what a candidate may or may not have done on a previous occasion.

Hon. D. M. DAVIS — The negotiating period under the original contract began in 2010 under the former government and under the previous health minister. They did not bring this to fruition in any way, and they made no sensible progress on the matter. But what I can tell the house is that this government has brought these negotiations to fruition and we have resumed ownership of the structure that was there.

Mr Jennings — You have?

Hon. D. M. DAVIS — We have indeed resumed ownership of the structure. That is a historic change, and I can indicate that the tender has gone out, has come back and is being assessed in my department as we speak.

Mr Jennings — The tender for what?

Hon. D. M. DAVIS — The tender for the expansion of the Mildura hospital, the $5 million expansion of mental health facilities, the expansion of the emergency department — all of those important steps are in train now, and we will be making announcements very soon about the commencement of that construction. We could not do that until that negotiating was done. The hospital's ownership, or the operation of the hospital, will be rolled over from 2015 to 2020, and indeed — —

The PRESIDENT — Order! Time, Minister.

Supplementary question

Mr JENNINGS (South Eastern Metropolitan) — I was a bit conflicted there, President, because the minister's time was up, but it in fact was the first time in 4 minutes he had got around to saying anything apposite about the question, so I will provide him with an opportunity now and ask: was Mr Drum correct on 18 September in saying that in fact the state will assume not only ownership of the hospital but the management of it as well, or was the minister correct on 9 October in saying that the government will not assume the management of the hospital?

Hon. D. M. DAVIS (Minister for Health) — I was pleased and in fact proud to be in Mildura to make an announcement with the Deputy Premier. Mrs Millar and Mr Crisp, the member for Mildura in the Assembly, were with me as well to make that announcement that the physical infrastructure of the property was coming back into public ownership. We are very proud of that because it means we can go forward with the expansion. The operation of the hospital will be rolled over, consistent with the original contract, from 2015 to 2020, and there is a two-year period at the end that is available for further negotiation. No final decision has been made beyond that, and the negotiation period will be exactly that — a negotiation period.

But let me be quite clear: the key thing here is that it was a coalition government that brought the hospital back into public ownership and it is a coalition government that is expanding it. It was Ms Broad and Labor who disaggregated it, and it was Mr Andrews, as the former Minister for Health, who failed to return it to public ownership. It is our government that has put this — —

The PRESIDENT — Order! I thank the minister.

Vocational education and training consumer rating website

Mr P. DAVIS (Eastern Victoria) — I direct a question without notice to the Minister for Higher Education and Skills. Has the minister any plans to better inform businesses on how their particular training needs can be met?

Hon. P. R. HALL (Minister for Higher Education and Skills) — I thank my colleague Mr Davis for his question on this very important matter. Today I can offer Mr Davis and fellow members of the Legislative Council advance notice of a website that will be launched next week which is going to be of significant benefit to businesses and their employees, providing them with important information about training opportunities and training quality in Victoria.

Members may recall that I felt one of the deficiencies of the training system in Victoria that I inherited was a lack of consumer knowledge. I thought we needed to do more to advise people about what training was relevant to them, what the purpose of the training was, whether they might get a job at the end of it and what the quality of the training might be. It is very difficult for people to rate the quality of a product like training when it is being delivered by a number of providers across the state. The Victorian Skills Gateway was an important information tool for users of our training system.

The new website, which we will launch next week — rateyourtraining.com.au — will serve two purposes. It will first of all allow employers or employees who have undertaken a course to go online and rate the training they have received against 15 different criteria, giving each of those criteria a star rating of between 1 and 5 stars. The other purpose it will serve is that once that information is aggregated from a number of participants, it will be averaged and people will be able to go online and look at a specific subject area of training and compare the ratings that have been assigned to the different providers of that training and therefore make a judgement as to the appropriateness of a particular provider providing that training to them.

It is important to record that while this is a tool that has been developed by the department and will be managed by the department, all data input is controlled by users. All ratings will be put in by businesses, employers or students who have undertaken particular courses, so it really is a website for businesses constructed by businesses with their data input.

When you are recording it, one of the frequently asked questions will be, 'How can you be assured that this is a fair dinkum contribution towards the website?'. Upon rating the training received, that rating will only be validated by the individual putting in an email address. The system will prevent you from putting in further contributions to make a further rating of a provider in the same study area for a period of six months. Therefore any one individual cannot go to the same study area and put in multiple ratings and artificially bump up the figures in the rating system.

This is going to be a valuable addition to the information that is available to people to help them make a choice about training quality and what is appropriate for them. It will be launched next Thursday,

so I encourage members to explore it next Friday. Again, the address is www.rateyourtraining.com.au, and links will be provided from the skills gateway website, the department website and the websites of a number of industry associations who are supporting this initiative.

Regional rail link

Mr BARBER (Northern Metropolitan) — My question is for the Minister for Planning, who is the responsible authority for the regional rail link (RRL) project. Because the minister likes making up the rules as he goes along, local residents are now finding themselves in a great deal of difficulty with respect to the mitigation of noise of the project under construction. The guidelines the minister put in place only set trigger intervention levels, not an actual noise performance standard. Therefore the construction of noise barriers and what they would impact on is being determined by the construction body itself — for example, it says that noise standards for habitable rooms only apply if the habitable room is on the ground floor, not on the second floor. Will the minister now intervene to write a performance standard to protect residents from the noise that will result when this project is operating?

Hon. M. J. GUY (Minister for Planning) — I was not going to engage in a political discussion of Mr Barber's question, but his preamble may have changed that. I find it a bit odd that the Greens oppose the east–west tunnel and that they also oppose a rail project. I am wondering what they are in favour of when it comes to transport in a city of 4.5 million people.

This project is very important. It is one this government, on coming to office, rescued from the depths of financial despair. It is now on track. Parts of the infrastructure for the project are opening earlier than scheduled. The noise requirements, as they have been set out, will work well for this project.

Mr Barber interjected.

Hon. M. J. GUY — That is what the government believes. I believe that the project as determined so far will work well and that the construction phase is going well. If Mr Barber has further issues he wants to raise with me about individual issues, I would welcome him to do that by way of correspondence.

Supplementary question

Mr BARBER (Northern Metropolitan) — I will raise them right now with respect to a number of problems with the approach the minister has set up through his guidelines. The first is that intervention will only occur when modelling shows that thresholds may be breached. There is no requirement that that be assured. It is only a trigger to look at options. There is no noise standard. If the noise modelling proves to be inaccurate when the project is up and running, the project company says it will not do any further intervention at that point because it does not have to. If it is all about the money, as the minister says it is, will he require the regional rail link to investigate better, upgraded noise mitigation options, including high-quality noise barriers, to ensure the protection of residents?

Hon. M. J. GUY (Minister for Planning) — Mr Barber is probably aware that it is investigating noise mitigation right now. It is having conversations right now with residents.

Mr Barber interjected.

Hon. M. J. GUY — Those conversations are not finished. I respect that Mr Barber has an issue with them — —

Mr Barber interjected.

The PRESIDENT — Order! Mr Barber has asked his question.

Hon. M. J. GUY — The process is not finished, and RRL is engaging in those conversations right now. I would have thought that it is appropriate for those conversations to be completed and for RRL to come back with recommendations to government about where it thinks they sit and then ask it to assess those recommendations by way of issues Mr Barber raises as well from the RRL recommendations back to the government and back to me.

East Werribee employment precinct

Mr ELSBURY (Western Metropolitan) — My question is for the Minister for Planning, the Honourable Matthew Guy. Can the minister inform the house what action the government has been taking to bring new employment opportunities to Melbourne's growing western suburbs?

Hon. M. J. GUY (Minister for Planning) — I thank Mr Elsbury for acknowledging Mr Finn's role in the East Werribee employment precinct as well as congratulating those two members for Western Metropolitan Region on their work in this chamber and as part of this government. I inform the chamber about a fabulous new initiative for Melbourne's western

suburbs that will once and for all progress the East Werribee employment precinct, which has been a concept for so long. That will now be an actuality as a major source of jobs for Melbourne's growing western suburbs and, importantly, a major centre for jobs in the area between Melbourne and Geelong. It will play a part in the future sustainability of Melbourne as contained in the government's planning blueprint, *Plan Melbourne*.

I went with the Premier, Mr Elsbury and Mr Finn to launch the East Werribee employment precinct, which is going to be, as I said, so pivotal to the future sustainability of Melbourne's western suburbs. Importantly, this government does not believe in establishing an employment suburb, which over the next few decades will be home to more than 50 000 jobs, without putting infrastructure in place first. That is why we put $40 million in the previous budget to build the Sneydes Road interchange to get people out of Point Cook, either to Melbourne or to Geelong or into the employment precinct, and that is why we need to build that infrastructure right now. Mr Elsbury and I recently went down and launched those piling works to build that piece of infrastructure right now. The budget also contained around $30 million of major road infrastructure upgrades to lead into the precinct, and that will assist with its accessibility issues.

If we are going to build a city of the future in Melbourne that is sustainable, we need to ensure that these employment precincts have infrastructure put in place early. What I find astounding — and no doubt Mr Finn does, and no doubt Mr Elsbury does — is not that this concept was not acted on over the 10 years before we came to government. What I find astounding is not the fact that it has received such an overwhelmingly positive response from those who live and breathe the western suburbs, particularly the Wyndham City Council. I am somewhat disappointed that the local members of Parliament, Mr Pallas and Ms Hennessy, the members for Tarneit and Altona respectively in the Assembly, did not support this project and do not support this project. It will be a project that will benefit Melbourne's west. This will be a project that will offer tens of thousands of jobs to their constituents and to the city of Wyndham.

Mr Leane — When?

Hon. M. J. GUY — Mr Tee can ask, 'When?' — Mr Leane, sorry. Members on that side of the house all morph into a Charlie Brown sound; I cannot work it out. The reality is that there has already been investment, as Mr Davis knows, in the health precinct. We already have construction jobs in the road network.

Mr Leane — Where?

Hon. M. J. GUY — Go down there! I encourage Mr Leane to leave the eastern suburbs and look at the new bridge that is being built, which we are paying for and which is happening. Labor members have form. They oppose the east–west link, they oppose the port of Hastings, they oppose Fishermans Bend, they oppose a third airport, like they opposed CityLink and the new museum. These people have form on opposing everything, and we have form in government, both in the 1990s and now, on getting on and building everything. That is what differentiates a coalition government and a Labor government. Labor opposes everything, like the East Werribee employment precinct. We are building everything, and we put the money in the budget to prove it.

Teacher performance assessment

Mr LENDERS (Southern Metropolitan) — My question today is to the Minister responsible for the Teaching Profession, Mr Hall. Earlier this year, when the government signed its agreement with the Australian Education Union, the Premier made the statement that there were no quotas for performance pay. In question time on Tuesday the minister made the observation that there were no quotas for performance pay of teachers going forward. I draw the minister's attention to the media articles today where a regional director told principals that unless they achieve quotas of 20 to 40 per cent of teachers not passing to the next progression scale, their own performance pay will be docked. Will the minister direct the Department of Education and Early Childhood Development to carry out the Premier's and the minister's wishes, or will he leave this in abeyance?

Hon. P. R. HALL (Minister responsible for the Teaching Profession) — I am happy to answer this question in part; the member can read my answer on Tuesday of this week because it goes in part to the same issue. But I want to make sure that we correct this first of all. What I was speaking about on Tuesday, and what was being said very clearly through the enterprise bargaining agreement (EBA), was not about performance pay; it was about performance assessment of teachers and performance assessment of principals. There was no agreement in the EBA about an introduction of a performance pay system, nor are we changing from what was agreed to under the EBA.

This is not a question about performance pay. It is a question about implementing a system whereby the performance of teachers and principals is assessed under a structure that is being developed in conjunction

with principals now, and there are guidelines that have been suggested, as I referred to in my answer to a question on Tuesday — that is, that we want to know about good performance ratings and we want to know about bad performance ratings. Therefore, what we have said very clearly is that where a principal has signed a positive performance rating for more than 80 per cent of their staff, we want to know why, because there are probably some good, positive lessons to be learnt from it. Where those positive performance ratings are less than 60 per cent, again it is very much in our interest to know why so that we can move in and assist them.

We expect that principals will make those assessments on their merit, and as such we have said quite clearly that there are no caps or quotas per school on all these matters, but we expect them to be applied in a rigorous way, in a fair way and based upon merits, part of which will be judged upon the improved learning outcomes achieved within those schools.

Supplementary question

Mr LENDERS (Southern Metropolitan) — I listened carefully to the minister's answer, and he did not say he would direct the department, but I have a supplementary question for the minister. If any of the 1600 principals in government schools progress more than 80 per cent of teachers up the increment scale, will the minister guarantee that their own performance pay will not be docked because they progressed more than 80 per cent of teachers up the increment scale?

Hon. P. R. HALL (Minister responsible for the Teaching Profession) — Notwithstanding that I think this supplementary question is identical to that which was framed in the principal question to me on Tuesday, I will respond in this way. As I have said to Mr Lenders and to members of the house in my answers on Tuesday and today, we expect principals to make assessments and judgements based on the merits of the performance of a staff member throughout the year. What we have said is that if more than 80 per cent of teachers get positive performance assessments, the principal will be required to validate that. We do not want principals — and I am not suggesting that they do it now — to just go through and tick a box and say that everything is fine, without giving due consideration and serious consideration, and judging it on the merits.

What I say in response to Mr Lenders is that no, there is no threat to a principal's pay or performance where they make assessments on the merits and where they can justify the positiveness of the assessments they have made.

Technology sector jobs

Mrs COOTE (Southern Metropolitan) — My question is to the Minister for Technology, Gordon Rich-Phillips. Can the minister update the house on how the coalition government's Technology Plan for the Future is creating high-skilled ICT jobs in Victoria?

Hon. G. K. RICH-PHILLIPS (Minister for Technology) — I thank Mrs Coote for her question and her interest in the Victorian ICT industry and indeed in the Victorian government ICT plan. In 2011 the Victorian government launched Victoria's Technology Plan for the Future, which is a $150 million package focused on biotech, ICT and small tech. The ICT element of the plan is very much focused on creating an environment which encourages innovation, creating an environment which encourages investment and creating an environment which encourages job creation.

Earlier this month I was delighted to be visiting nSynergy at Southbank for the launch of its new LiveTiles product. nSynergy is a great success story for Victoria. It was founded a decade ago by two young Victorians and now has 10 offices around the world. They are young, innovative Victorians who developed a concept in ICT which they exported around the world, and they have expanded their business around the world. I was delighted to join them at their offices in Southbank for the launch of the LiveTiles product, which is built on the Microsoft SharePoint platform.

It is particularly significant because last month I was delighted to join the Premier in Bendigo for the launch of SharePoint Factory, which is a project developed in collaboration with a university in Bendigo to offer the development of SharePoint skills in ICT for the Bendigo community. This is an area of ICT skills base which is in great demand across Victoria and in great demand across Australia. Having that training facility in Bendigo is going to mean that Victoria can provide the SharePoint skills that we need to continue to grow our ICT sector.

nSynergy is a great example of where SharePoint has been used to develop products and platforms which are now being exported around the world. As a consequence of the development of that LiveTiles product by nSynergy, it expects to see jobs grow by 120 in its Victorian operation over the next three years. That is a fantastic outcome for Victoria's ICT sector. I was also pleased to announce this month that Readify, which is an ICT services company in Victoria, is also expanding its workforce, by 50 new staff over the next three years.

This highlights the great success we are having in ICT in Victoria. Since 1 July this year, we have already seen more than 390 new jobs created in ICT in Victoria. It highlights why Victoria is leading Australia in ICT, and it highlights why Victoria is a great place to do business.

Mentone Gardens aged-care facility

Ms MIKAKOS (Northern Metropolitan) — My question is to the Minister for Ageing. The minister may be aware that Parklane Assets, trading as Mentone Gardens, the previous owners of a registered supported residential services (SRS) facility, went into voluntary administration on 12 June and that the new owners are not taking on quite significant debts, leaving more than 30 unsecured creditors, mostly residents, at risk of losing all their security deposits of up to $400 000 each. In addition about 12 staff who have lost their jobs are owed approximately $40 000 in superannuation. I ask: on what date did the minister's department become aware of financial issues at Mentone Gardens?

Hon. D. M. DAVIS (Minister for Ageing) — I thank the member for her question. I do not know the exact date, but I can find that exact date for her. I can indicate that Mentone Gardens is an SRS facility. It is an SRS that falls under the new arrangements, although a number of people made arrangements with Mentone Gardens before new regulations came into effect. My department has been closely working to ensure that the best outcome can be provided there. There have been meetings of creditors. At first administrators were appointed down there and they have now been replaced by liquidators. As the member would understand, this is an important matter and we are certainly working to get the best result that we can for everyone.

Supplementary question

Ms MIKAKOS (Northern Metropolitan) — I look forward to receiving the exact date, hopefully later today, of when the minister's department became aware of the financial issues at Mentone Gardens. The minister's spokesperson, Ashley Gardiner, is quoted in yesterday's *Mordialloc Chelsea Leader* as saying that the minister's department was investigating Mentone Gardens prior to it going into voluntary administration in June. If the minister's department knew this business was in trouble, why did the minister not take active steps prior to June to ensure that residents' security deposits were secure, and what steps is the department considering now of potentially charging the previous owners under the offence provisions of the legislation?

The PRESIDENT — Order! I will allow the minister to answer, but I suggest that there are actually two questions in that supplementary question and they are about quite separate matters. Given the importance of this issue to people, I will allow the minister to answer, but members need to be careful that in supplementary questions they go to one question rather than to multiple issues.

Hon. D. M. DAVIS (Minister for Ageing) — As I said, the department has sought to do everything that it can to assist. It has acted entirely appropriately within the legislative and regulatory powers that it has. We are seeking to do everything that we can within the law to deal with the matters that obviously impact on residents. Let me be clear: matters that relate to any fraudulent activities will be matters for the police.

Crime prevention strategies

Mr RAMSAY (Western Victoria) — My question without notice is for the Honourable Edward O'Donohue, the Minister for Crime Prevention, and I ask: can the minister update the house on how local communities are benefiting from the Napthine government's crime prevention strategies?

Hon. E. J. O'DONOHUE (Minister for Crime Prevention) — I thank Mr Ramsay for his question and his interest in crime prevention initiatives and crime prevention strategies. As members would be aware, the crime prevention portfolio is a creation of this government. This government has a clear suite of policies when it comes to preventing crime and engaging with local communities. In a bipartisan manner, I would like to thank Mr Scheffer on his contribution to the debate on the Open Courts Bill 2013 and his endorsement of the creation of this portfolio. Perhaps members of this house could come together more often when it comes to crime prevention initiatives.

As I said, the crime prevention portfolio that this government has created and resourced to the tune of $35 million over four years is all about partnering with local communities to deliver local solutions to crime and perceptions of crime. I was very pleased to join Mr Ramsay recently at Wyndham Vale to announce funding in partnership with the Wyndham City Council for an innovative crime prevention initiative, the Kids Tackling Tagging project. Graffiti is a scourge, and the Wyndham City Council has already developed a range of initiatives to tackle graffiti. The Kids Tackling Tagging project builds on the work that Wyndham City Council has done. I acknowledge Cr Marie Brittan, the

deputy mayor, who joined me and Mr Ramsay at that announcement.

Students from Manor Lakes College will partner with the council in delivering this project. The particular area in Wyndham Vale has a skate park which is a known graffiti hot spot and hangout for local youths.

Honourable members interjecting.

Hon. E. J. O'DONOHUE — Members of the opposition and the Greens may scoff at the concept of tackling graffiti. It shows again how out of touch they are with their communities and just what a concern graffiti is to the Victorian community.

Mr Barber interjected.

Hon. E. J. O'DONOHUE — I endorse the Wyndham City Council's project which Mr Barber is scoffing at and mocking. I endorse the work of that local community in applying to the Victorian government for these funds. The Victorian government is very proud to partner with the Wyndham City Council.

In his contribution to the debate on the Open Courts Bill, Mr Scheffer endorsed the notion of crime prevention through environmental design. I would like to touch on another project that the coalition government has delivered. In June Mrs Peulich and I were pleased to join the mayor of the City of Casey in announcing $249 000 from the Public Safety Infrastructure Fund to redesign and upgrade Cranbourne Place Park by installing new lighting and fencing, opening up lines of sight, making new paths and making the park again an inviting place for families and the community. The park had become run down and had become a known crime spot. It made it difficult for the police to monitor. I was very pleased to join with the mayor of the City of Casey, Cr Amanda Stapleton, and Cr Geoff Ablett and Cr Gary Rowe last Friday to unveil and see the new park. It is a great initiative and a great endorsement of environmental design and the impact that it can have on crime.

Ordered that answer be considered next day on motion of Mr LENDERS (Southern Metropolitan).

Hospital performance data

Mr JENNINGS (South Eastern Metropolitan) — My question is for the Minister for Health. I understand that very soon there will be a new report published by the Australian Institute of the Health and Welfare regarding our hospital activity in Australia and, indeed, in Victoria. When previous reports have shown a reduction in beds and activity such as elective surgery under the minister's government, the minister has asserted that there are more beds and increased activity. To assist Victorians to have their own view of the facts, when will the minister release Victorian hospital performance data, which has been due at any time since June 2013?

Hon. D. M. DAVIS (Minister for Health) — I thank the member for his question. He will understand that the annual cycle for the Australian Institute of Health and Welfare on much data is a very predictable cycle. There is a whole list of reports.

Mr Jennings — More predictable than yours.

Hon. D. M. DAVIS — No. They come out with great regularity. The infrastructure side of things comes out in the March-April-May period each year. I think there is some Australian Institute of Health and Welfare data out today. The figures will come out in the normal time.

Mr Jennings — Today?

Hon. D. M. DAVIS — Not on the area Mr Jennings is talking about, but other data is out. The institute releases things in a regular cycle.

In terms of the annual data to the end of 30 June 2013, that will come in the normal way in the reports of hospitals and in the reports of the Department of Health. It will be released in the normal way in the normal period. In terms of quarterly data that is released by the government, we release it quarterly. It gets released around every quarter. The data, as it is prepared by the department, will be released quarterly.

Let me also indicate, just to assist Mr Jennings a little further, that there is information that is released in real time. If Mr Jennings wanted to go and look at hospital bypass or queues, for example, on the performance website, he would see the status of emergency departments in real time, right now, around the state. Mr Jennings can go away to have a look at that — he will be able to knock himself out and watch that closely.

I indicate that there is a whole tranche of data that is released quarterly these days by the new government that was not released by the previous government — queues data, for example, and data that relates to hospital-initiated postponements. There is a whole tranche of additional data, such as transfer time by ambulances, that is released by this government but was kept secret by the previous government. It was hidden. There are more than 10 items relating to hospital

performance that are released by this government that were never released by the previous government and were hidden because they were simply too embarrassing for the previous government. There is real-time data that Mr Jennings can go look at now. There is quarterly data that is released, strangely, quarterly, and the annual data gets released every year.

In terms of the Australian Institute of Health and Welfare, Mr Jennings will understand that it releases a whole range of data. In terms of the government's focus on better outcomes for our hospitals, there are massive capital projects being built around the state, whether it be the $447 million rebuild of Box Hill Hospital or the $1 billion building of capacity at the Victorian Comprehensive Cancer Centre. We heard about Monash Children's yesterday and how the previous government failed to build the Monash Children's, but this government is getting on with the task of building the Monash Children's. We are proceeding with building that in every single budget.

Mr Drum interjected.

Hon. D. M. DAVIS — Bendigo Hospital, as Mr Drum is pointing out, is another major capital project that is under way.

But there were some clouds on the horizon and some things that hit our hospitals last year, as Mr Jennings would appreciate. The previous federal government ripped $50.2 million out of the national partnership agreement money for elective surgery. That fell off on 30 June the previous year. As Mr Jennings will remember — it was something that his party supported fulsomely and voted in favour of — midyear the previous federal government decided to rip out $107 million of funding from this financial year and $475 million from the previous 2012–13 year. The former federal government ripped that money out.

The PRESIDENT — Order! I thank the minister.

Supplementary question

Mr JENNINGS (South Eastern Metropolitan) — The minister knows that my request was for facts, as distinct from a number of fictions that he just perpetrated. I am interested in the facts. I am interested in the next sitting week, when there are 100 outstanding Victorian hospital annual reports due to be tabled. Next sitting week is the last opportunity. Will any — just one — of those 100 reports have any table or any information about the availability of new beds? It was promised not only by the minister at the last election but also by his previous Premier that hospital annual reports would indicate the new beds that had been provided by his government. Will one of the reports do that in the next sitting week?

Hon. D. M. DAVIS (Minister for Health) — I can indicate that today there were three annual reports tabled: Mallee Track Health, Terang and Mortlake Health Service and the Royal Victorian Eye and Ear Hospital. Mr Jennings may wish to go and examine those. The other annual reports will be tabled in the usual way, in the usual cycle. He should be prepared to examine those closely.

But as I was saying previously, the $368 million that was ripped out in the three years going forward from 1 July this year and the $107 million that was ripped out last year has had a significant impact on our health system. The $107 million ripped out midyear did impact on the performance of the Victorian health system. Less surgeries were delivered than would have been if the commonwealth government, under former Prime Minister Julia Gillard and then Minister for Health Tanya Plibersek, had not ripped money out of our system midyear. It was something that was supported by Mr Jennings's party, both at a federal and state level. The cuts to health care supported by Labor were outrageous.

Regional and rural hospitals

Mrs MILLAR (Northern Victoria) — My question is to the Minister for Health. Can the minister update the house on recent progress on country hospital capital projects?

Hon. D. M. DAVIS (Minister for Health) — I can inform the house — and this follows on a little from the previous question — that I, Mrs Millar and others, such as Peter Walsh, the Minister for Agriculture and Food Security, spent time looking at a number of key country hospitals. At Swan Hill we saw four projects, totalling more than $24 million, including the $18 million rebuild of residential aged care at Swan Hill.

At Charlton we saw the progress on the $22.7 million rebuild of that hospital. It is going to be a fantastic facility for the people of Charlton and that district. As people will remember, that hospital was lost in the floods of 2011. I know that Mr Drum and Ms Lovell are also very strong supporters of that hospital. The board and Kathy Huett, the CEO, have pulled together with the town to deal with the difficulties they faced. First, the primary care tents were put in to provide urgent services and then the demountables, and now there is the $22.7 million rebuild of the Charlton hospital.

I was also happy to visit Echuca hospital to see its $65.6 million rebuild, following a $40 million election commitment by the state coalition in the lead-up to the last election. It is well on the way to being built, with additional commonwealth money that was put in, and that was very welcome.

At Numurkah the site of the old hospital has been cleared, and the $18.3 million hospital rebuild is progressing very well. We saw the plans, and the ambulance station will be built next door.

There are other projects being carried out across country Victoria as well. In Kerang a $36.6 million rebuild is occurring, and in Healesville I recently had the pleasure of announcing a $7.8 million rebuild, along with Cindy McLeish, the member for Seymour in the other place. Her strong commitment to and advocacy for that hospital saw the upgrading of that project, which will see additional services delivered. There are also projects under way at Charlton, Swan Hill, Kerang and Echuca — all of those key country hospital projects are progressing very fast to provide better services for people across country Victoria.

This stands in stark contrast to the previous government, which over 10 years provided just 17 per cent of capital spending for hospitals in country Victoria, despite 27 per cent of the Victorian population living in country Victoria. That was the record over a decade under the previous government, but we are injecting massive new spending. Mr Drum and Ms Lovell would understand the importance of the $630 million project for the Bendigo Hospital. There is also country hospital spending in our major regional centres of Ballarat and Geelong, and we are very proud of the spending that is occurring overall in country Victoria.

In the future this will be looked upon as a period in which major country hospitals were rebuilt on a significant scale, providing services and guaranteed futures for those hospitals for the next 50 years. All of the important hospital projects at Echuca, Numurkah, Swan Hill, Charlton, Kerang and Healesville are proceeding very fast.

Supplementary question

Mrs MILLAR (Northern Victoria) — Can the Minister for Health inform the house of the additional services that will be delivered at the Healesville and District Hospital?

Hon. D. M. DAVIS (Minister for Health) — I can indicate in response to the supplementary question that the $7.8 million rebuild of the Healesville hospital is a very important project. It will see a new operating theatre and renal dialysis unit as well as an expansion of the community health centre. These are very important projects. Eastern Health has worked with the government to get those projects into place. Some of the funding will come from the Rural Capital Support Fund. Eastern Health has also contributed directly to the larger project that will deliver greater security for Healesville and district into the future. There will be additional services at the site in the form of 200 surgical, endoscopy and gynaecological procedures annually and the capacity for more than 300 specialist outpatient appointments in cardiology, endocrinology, gastroenterology and respiratory medicine. Cindy McLeish has been a very strong advocate for the Healesville hospital.

The PRESIDENT — Time!

QUESTIONS ON NOTICE

Answers

Hon. D. M. DAVIS (Minister for Health) — I have answers to the following questions on notice: 9332, 9453, 9454, 9486, 9508, 9517, 9531, 9534, 9560, 9565, 9830–2 and 9837.

SUPERANNUATION LEGISLATION AMENDMENT BILL 2013

Second reading

Debate resumed.

Mr LEANE (Eastern Metropolitan) — It is always a pleasure to speak on superannuation bills and to track back to when unions and workers were involved in initiating the particular benefits for people in the future. I remember that when I was an apprentice — —

Mr Lenders — You would have been a good apprentice.

Mr LEANE — I was actually a pretty good apprentice. A lot of the elderly tradesmen — —

Mr Drum — Best 11 years of your life?

Mr LEANE — Yes, Mr Drum, it was the best 11 years of my life. A lot of the elderly tradesmen back in those days were the ones who pushed for superannuation, even though they knew they would not be the beneficiaries of it. How they pushed for it in their particular industries was to forego percentages of their pay rises. A lot of times the pay rise would be linked to CPI. If the CPI was running at, say, 3 per cent at that

time, they were prepared to put 1.5 per cent into super and establish a superannuation fund even though, at the end of the day, they were not going to be the great beneficiaries of that particular scheme.

Moving on to the bill, without giving away too many secrets to members of the Assembly and members who are present here, I can divulge that when you are going to speak on a piece of legislation it is always beneficial to look in *Hansard* at what was said in the Assembly during the previous sitting week.

Mr Ondarchie — Don't you write your own stuff?

Mr LEANE — It is always good to get some clues, Mr Ondarchie, and to see what members of your particular party had to say on the bill.

Mr Ondarchie — Cut and paste, was it?

Mr LEANE — I do not think anyone down there would claim of that to one of my speeches as being attached to one of theirs, Mr Ondarchie, but if you look in *Hansard* at the debate on this particular piece of legislation and try to go through that process on this bill, you will find there is actually no contribution from a member of the opposition — not one. Given that we know how excellent Hansard staff are and given how much we appreciate their work, surely there is no way that Hansard would have made a mistake and not recorded a contribution from an opposition member in the Assembly. I then find out that my assumption is right, that there was no contribution on this bill from the opposition, which sets a standard that goes back, I think, through the last couple of parliaments. In fact I think that standard was set the last time the coalition was in government.

Here we go again; it is Groundhog Day. A piece of legislation has been introduced which, as Mr Lenders said in his contribution, reduces rights for some participants of superannuation funds, so there are concerns, and here we go again. In the Assembly the government used its 'numbers' — and I deliberately say that in inverted commas — to push through a piece of legislation without any contribution from the opposition, and I have to say that it is a sad time for democracy in this state when we have gone back to those days. In terms of the clauses pointed out by Mr Lenders, there are concerns. They have the potential to reduce benefits to participants of superannuation funds. This side of the house will never agree to something like that, because of the rich history of this entitlement, where it goes back to and where our party goes back to.

Motion agreed to.

Read second time.

Sitting suspended 12.56 p.m. until 1.03 p.m.

Committed.

Committee

Clauses 1 to 17 agreed to.

Clause 18

Mr LENDERS (Southern Metropolitan) — As I flagged in my contribution during the second-reading debate, the Labor Party will oppose clause 18. The comments I intend to make on clauses 20, 22 and 24 are identical to those I will make on clause 18 except that they apply to different acts. Deputy President, through you, and with the informal leave of the Council, I propose to address all four clauses when I speak on clause 18 and then test it in a division, so that the four clauses do not need to be approved in separate divisions. If the house is relaxed, I will ask the minister questions on all four clauses rather than on clause 18 alone, as the principles are essentially the same.

As I mentioned in my contribution, for the first time in this millennium a bill has gone through the Assembly without opposition members having had a chance to speak on it, but I am sure the minister will eloquently deal with that now. The principal problem the Labor Party has with this is in clause 18, which amends the State Employees Retirement Benefits Act 1979, or the SERB act. If a person has a disability that was incurred while they were employed by the state, obviously leaving causation and all the other issues aside, and six years and one day after the event they seek to commence legal action or go to the fund to seek redress from, in this case, the board, will that person no longer have a right to seek redress if this clause is passed?

I will debate this to show the context of what I am concerned about. Currently the state of Victoria affords a person this right. I am sure the minister will confirm the figures I have, but I think that under all these clauses 51 people last year sought — —

Hon. G. K. Rich-Phillips — Over four years.

Mr LENDERS — It might make it easier if I ask the minister the number and it can go on the record. Again with the leave of the committee, can the minister inform the house of how many people affected by each of these four schemes — that is, the SERB act under clause 18, the State Employees Retirement Benefits Act 1979 under clause 20, the State Superannuation Act 1988 under clause 22 and the Transport Superannuation

Act 1988 under clause 24 — successfully claimed this disability benefit in the last year?

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I can say to Mr Lenders that I am not able to give Mr Lenders a breakdown between the individual schemes, but over approximately the last four years to November 2012 the Emergency Services Superannuation Board considered 51 retrospective disability claims by members of state superannuation funds. It covers the four schemes we are considering in Mr Lenders's questions.

Mr LENDERS (Southern Metropolitan) — I ask the minister how many of those were of a duration greater than six years?

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — With respect to the period when the claims were made, 39 were made in the six-year period after the person retired from their public sector role and 12 were after that six-year period.

Mr LENDERS (Southern Metropolitan) — I thank the minister for that response. The proposition I put to the committee is that these clauses should be rejected. We have had a review of the legislation and, to give credit to the government, as I said in the second-reading debate, most of the things in this bill are good things that the opposition wholeheartedly endorses. I do not want to sound like I am a nit-picking whinger, which I may be accused of, but in the case of these 12 individuals, I would put the following situation to the committee and ask the minister for a response. The superannuation schemes have gone under massive reviews. By definition, the original scheme under the State Superannuation Act — which obviously no-one is left in because it is not getting amended — the revised scheme, the new scheme and the whole iteration of schemes have always been adjusted and done on the basis of affordability for the state as much as the rights of members.

Here we have a situation where there are 12 individuals, and if we look at the next period of time there will presumably be another 12 individuals, or even less, who will be disadvantaged by this, given the ageing nature of the funds, as people move through. If my memory is correct, the last time that these four funds would have received new members would have been probably in about October 1992. I do not think any of these four funds would have received a new member since about that time. The quantum we are talking about here is presumably, from the point of view of the state superannuation funds, petty cash at best. In schemes that have tens of thousands of members and, without going to the annual report, probably in the order of $10 billion or more in assets, petty cash is a generous way to describe these tens of thousands of dollars. And this is a group of people that is only going to diminish, because no-one new has come into these funds since 1992. What is the public policy for such a small number of people losing a right? I cannot think how it could be managing the bottom line of the funds.

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I will, firstly, go to the point Mr Lenders made that a small group of people will lose a right, because that is not a characterisation that the government would support with respect to these provisions. The reason I say that is that these four provisions only apply prospectively to members who retire from the schemes. Currently we have a situation with the state super funds where a member who has retired to date is entitled to lodge a retrospective disability claim at any point after they retire. What we are proposing to do with the legislation before the chamber today is say that in future members of the schemes who are currently employed will have a six-year period in which to lodge a retrospective disability claim. This will not affect anyone who has already retired; it will only affect people who are currently still working and will retire in the future.

The second point to make is around what we are talking about with retrospective disability claims. In order to make a retrospective disability claim, a person must demonstrate that they were permanently disabled at the time they retired. This does not relate to claims where a person had an injury or condition which subsequently developed into a disability; this only applies where someone actually had the disability at the time they retired. This will not apply retrospectively to those who have already retired; it will only apply to those who will retire in the future. Part of proceeding with these amendments will of course be to inform retiring members in the state super funds of their entitlement to make a retrospective disability claim. The purpose is to provide certainty to the emergency services super board as to its future exposure with respect to retrospective disability claims.

This is being done at a time when a new entitlement for retrospective disability claims is being introduced for the emergency services defined benefit scheme. Currently emergency services personnel have no entitlement to make a retrospective disability claim. It was the government's view that at the time of introducing the emergency services entitlement, which could be claimed for up to six years after retirement, it was appropriate to put the same constraint on future

state services retirements. That then gives the trustees and the actuaries of the scheme clarity around their future liabilities because it defines the period of future liabilities.

Mr LENDERS (Southern Metropolitan) — The minister's answer has convinced me even more strongly that we can get all the benefits he has suggested for new members and keep the benefits for old members by voting against these four clauses. On my count, there are seven public sector employees in the chamber at the moment — and let us assume there are thousands outside listening. I am being very tongue in cheek; let us assume there are another seven. I do not know the status of the public sector employees here — whether they are casual or whether they are in a new scheme or a revised scheme — but my bold suggestion is that of the seven public sector employees in the chamber one of them is in the defined benefit superannuation schemes, and I think he knows who I mean. My point is that this is a very esoteric area that affects a very small number of people but affects them in a significant manner.

Given the sample I have drawn generalisations on of the seven public sector employees in this chamber, I ask the minister how the government will explain this to public sector employees? The minister is saying that this is retrospective, people have rights for six years and all the rest of it, but I would like him to explain to me how a public sector employee anywhere in the government sector who is covered now could realistically be expected to understand that their rights are being diminished — and their rights are being diminished. If they have a right to make a disability claim for six years that is gone after six years and one day, how does the government expect that to be communicated without an expensive campaign that is probably going to cost more than actually paying the benefits to this declining group of people, and there is a very small number of them? I am interested to know how the minister intends to do this.

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — In terms of the numbers, there are approximately 22 000 active members remaining in state super schemes, who will ultimately go on to retire. Inevitably with the retirement of those people there will be communications from the Emergency Services Superannuation Board about their entitlements. The intention is that the new provision which limits retrospective disability claims to six years will be part of that communication. I do not accept Mr Lenders's proposition that this will lead to an increased burden. It will be communicated to those retiring public servants consistent with the other communications they will receive when they retire.

On the point of whether it is taking away a right, Mr Lenders and I will probably disagree on interpretation. As Mr Lenders knows, under commonwealth superannuation law it is not possible to remove an accumulated superannuation entitlement. In preparing this legislation the state was careful not to infringe on those commonwealth statutes. A serving member of the public service in one of these schemes does not have a right to make a retrospective disability claim while they are a serving member. That right starts when they retire. It is semantics and it is esoteric, but the government disagrees with Mr Lenders' proposition that we are removing a right. There will be a different right, and that will be a right to make a claim over a six-year period once the person retires rather than the current unrestricted right. I do not accept the proposition that it is removing a right.

Mr BARBER (Northern Metropolitan) — I have a question for the minister. If a person becomes permanently disabled due to workplace injury, exposure or environment, I presume it would be picked up as a WorkCover claim. If they were disabled as a result of an accident on the road, it would be picked up by the Transport Accident Commission. Can the minister tell me what sorts of disabilities arising from what sorts of causes have been paid for by claims under this provision in the past?

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — The entitlements under the superannuation legislation do not infringe or take away from entitlements under WorkCover, the Transport Accident Commission et cetera. As to the cause of existing claims, I am unable to give Mr Barber that information. I can say that the claims have tended to be mental injury claims.

Mr LENDERS (Southern Metropolitan) — This is my final question to the minister — depending on his answer of course. What is the correlation or crossover with these claims, which the minister says are predominantly mental injury claims, with any relief that a person would have under the new national disability insurance scheme?

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I can inform Mr Lenders that my advice is that there will be no impact by virtue of the fact that this is a defined entitlement and a defined benefit scheme. The interaction of the national disability insurance scheme is to be determined, but these entitlements will not be impacted.

Committee divided on clause:

Ayes, 20

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

Noes, 17

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

Pairs

Kronberg, Mrs	Viney, Mr

Clause agreed to.

Clause 19 agreed to.

Clause 20

Committee divided on clause:

Ayes, 20

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

Noes, 17

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

Pairs

Kronberg, Mrs	Viney, Mr

Clause agreed to.

Clause 21 agreed to.

Clause 22

Committee divided on clause:

Ayes, 20

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

Noes, 17

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

Pairs

Kronberg, Mrs	Viney, Mr

Clause agreed to.

Clause 23 agreed to.

Clause 24

Committee divided on clause:

Ayes, 20

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

Noes, 17

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

Pairs

Kronberg, Mrs	Viney, Mr

Clause agreed to.

Clause 25 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

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

That the bill be now read a third time.

In doing so, I thank Mr Ondarchie, Mr Barber, Mr Lenders and Mr Leane for their contributions.

Motion agreed to.

Read third time.

BUSINESS OF THE HOUSE

Sessional orders

Hon. D. M. DAVIS (Minister for Health) — I seek to move government business notice of motion 631 with modifications. The modification is in point (1), which says, 'a motion to refer a bill in government business'. It might be worth me reading it in its entirety.

Ms Pennicuik — I cannot hear the minister.

The PRESIDENT — Order! Mr Davis will come closer to the microphone. Mr Davis is moving the motion that has been circulated. He has drawn attention to the fact that there is a slight wording change to what is on the notice paper. What I need to establish is: is leave granted for Mr Davis to pursue this motion in the amended form?

Leave granted.

Hon. D. M. DAVIS — I move:

That the sessional orders adopted by the Council on 11 October 2011 be amended as follows:

Insert the following new sessional order after sessional order 3 —

'PROCEDURAL MOTIONS

4. In Standing Order 6.13 insert —

"(l) a motion to refer a Bill in Government Business to a Standing or Select committee or any other parliamentary committee pursuant to Standing Order 14.11(a).".'.

The intent of this motion is to correct an oversight in the standing orders — that is, where a bill is proceeding in government business in particular, effectively a procedural motion can be moved to refer that motion to a committee. That is entirely appropriate. But it is, in effect, a procedural motion, and that should be a 30-minute motion. That is what this sessional order will do. That is consistent with Senate practice, where such motions are treated as procedural motions, and I think that is a good practice to follow.

This was discussed. I think I can, without revealing trade secrets or enormous confidences, say that this has been discussed by the parties at the Procedure Committee. I think I can say that it has occurred — the Clerk is getting very tetchy there.

Honourable members interjecting.

Hon. D. M. DAVIS — And there has been broader consultation with the parties as well. That broader consultation related to the fact that the non-government parties sought to have an arrangement whereby during non-government business they would in effect be able to have a longer debate on a non-government bill or, where there was a government bill on which they sought to have a longer debate, they could move that motion in non-government business time, parallel, as it were, or alongside the actual bill. Through such a motion in non-government business, there could be a discretion for a longer debate to occur.

I do not think this is a controversial point in itself. It is simply a tidying up, and in the sense that this is in the form of a sessional order, it can be trialled through this process. If there needs to be some change made to standing orders, that could be done at a time towards the end of the Parliament so that it would apply into the new Parliament after 2014.

I should say by way of broader discussion that the parties have begun some discussions about further reforms of standing orders into the new Parliament, and I think this is the appropriate time sequence. I can indicate to coalition members and indeed to non-government members that the various party leaders will be consulting with their party members to seek to establish what standing order changes may be appropriate into the new Parliament, and there will be discussions on that in forthcoming months.

Obviously there is a long list of matters that have been referred from this place to the Procedure Committee and they will be appropriately discussed there, but I indicate that I am sure all parties will appropriately discuss any changes to the standing orders they may wish to make with their respective party members. I

think a number of useful changes can be made, but today I think this is a sufficient step.

Mr LENDERS (Southern Metropolitan) — President, rather than risk your wrath and your directing the Usher of the Black Rod to fling me into a dungeon were I to in any way break a confidence in revealing what may or may not have hypothetically happened at a Procedure Committee meeting, I am pleased to say that there have been discussions between parties. Mind you, President, if you invite me to move a motion to send Mr Davis to the dungeon, you may encourage me to do so. I think I am being facetious.

On a very serious note, the Labor Party was concerned when the Leader of the Government put a motion on the notice paper without consultation, and we are pleased that there has been a discussion between parties on this. We think the form of the motion as it now is — which is that it applies to government business and does not stop the non-government parties having a longer debate on referring legislation to a legislation committee — is an improvement to it.

I concur that it is always appropriate for the Procedure Committee to have things referred to it. That actually improves the way this place runs. In the last two Parliaments I have been involved in similar discussions, which I think were fruitful. They were sometimes very long, but they were fruitful. Ms Pennicuik is nodding. The merit of the motion we have before us is essentially that after a second-reading debate there will be a half-hour allocated during government business for the debate of a procedural matter if any member of this house wishes to seek that the legislation be referred to a legislation committee. We are supportive of that, and we are supportive of a process where these things are reviewed at the end of the Parliament. I support the motion in its amended form.

Ms PENNICUIK (Southern Metropolitan) — The Greens will support amended notice of motion 631, as moved by Mr Davis. We certainly were concerned earlier today when we thought we were going to be facing this motion only a very short time before the actual meeting of the Procedure Committee. As others before me have already confessed to the chamber, we did discuss this matter at the Procedure Committee. I will not have to be put on the rack to get that confession out of me. It was there that it was agreed we would act consistently with the Senate — I am always happy to look at Senate procedure and for this chamber to adopt that where it is appropriate — and it was agreed to restrict the scope of the motion to government bills in government business time so that it does not impinge on the capacity of non-government parties to address general business as we see fit in non-government business time on Wednesdays.

Mr Lenders says we have had long and fruitful discussions at the Procedure Committee, and we certainly have had those. We have also sometimes had long and not so fruitful discussions, but I will not go into detail there. In preparation for the motion that I thought was facing me first thing this morning, as the Government Whip had advised me at the beginning of the week, I had some analysis prepared — and I thank the table office for preparing that. The chamber might be interested to know that in fact since the commencement of this Parliament there have been some 29 attempts to refer bills to the legislation committees.

Mr Lenders — Did any succeed?

Ms PENNICUIK — Mr Lenders pre-empts me by asking whether any succeeded, and in fact 4 of the 29 have succeeded. They were the Environment Protection Amendment (Beverage Container Deposit and Recovery Scheme) Bill 2011, put forward by my colleague Ms Hartland; the Road Safety Amendment (Car Doors) Bill 2012, put forward by my other colleague, Mr Barber; the Accident Compensation Legislation (Fair Protection for Firefighters) Bill 2011, also put forward by my colleague Ms Hartland; and the bill which remains a mystery, the Wills Amendment (International Wills) Bill 2011, put forward by Mr Hall.

While by agreeing to this motion for the amendment of the sessional orders we are agreeing to make debate on referring legislation a procedural motion with a 30-minute time restriction, it is interesting to note that of those 29 debates that have occurred the average time was 15 minutes, so we are actually fixing a problem that does not exist. The longest debate was 44 minutes, and the shortest was 1 minute. That is very interesting.

Nevertheless, the Greens are happy to support the motion as amended because, as I said, it follows Senate practice in terms of government bills. At the end of some of these new procedural motions and as we try them out in the future, as Mr Davis said, I will really be looking forward to some of those bills actually arriving at the legislation standing committees.

Motion agreed to.

The PRESIDENT — Order! I indicate that, seeing as three speakers referred to the Procedure Committee, I have considered reopening the dungeon, but I thought it might be just as easy to have the three of them locked in one room together for the rest of the afternoon. I will defer.

LEGAL AND SOCIAL ISSUES LEGISLATION COMMITTEE

Reporting date

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

> That the resolution of the Council of 23 October 2012 requiring the Legal and Social Issues Legislation Committee to inquire into and report by 29 November 2013 on the performance of the Australian Health Practitioner Regulation Agency be amended so as to now require the committee to present its report by 13 March 2014.

This is a very simple extension of the work of the Legal and Social Issues Legislation Committee. It is an important committee. It is an important reference. There have been significant developments in this area during the period that the committee has been meeting, and I know a number of health ministers around the country are watching closely the work of the Legal and Social Issues Legislation Committee in Victoria. I can indicate to the chamber that the Queensland Minister for Health and the Queensland Parliament took significant steps to modify the arrangements that were in position in that state, as well as steps to modify the national scheme. They have taken back to Queensland responsibility for complaints management, and that is due to a number of serious deficiencies that operated in Queensland in arrangements with the Australian Health Practitioner Regulation Agency.

There are a series of questions around the country that this committee could look closely at to see how we can improve the operation of the Australian Health Practitioner Regulation Agency and the registration board matters that apply in the 14 registered professional groups that are part of the national registration and accreditation scheme. The changes in Queensland are of particular note, and I urge the committee to look closely at the issues that drove them and ensure that we are in a position to have the very best system in operation in Victoria. That will require more time, and I know the committee has requested that, but I certainly see the need for a report then.

I say also that one of the impacts of the committee's examination of the doctors health program and the nurses health program has been that the national registration groups responsible for registration in those areas have reconsidered their earlier decisions to cease funding for the doctors health program and the nurses health program. The committee can take significant credit for examining those issues and for in effect shining a spotlight on those areas. I indicate that that is a good result. The government has strongly supported both the doctors health program and the nurses health program. We see them as important matters in terms of protection of individuals and the workforce in the health area. They enable proper support for people in need of that support, but they do it in a way that is nimble, effective and ensures that the primary aim of the registration systems, which is the protection of the public, is adhered to closely.

The national boards have now indicated that they will financially support the doctors and nurses support programs in Victoria. I put clearly on the record that I welcome that. I note that there is no institutional clarity as to how long that funding will remain in that position, and we need to get long-term guarantees for those programs, which under the previous Victorian registration arrangements were funded into the longer term. We need to think carefully about that, but I welcome the steps of those two boards to recognise the importance of the doctors and nurses health programs.

Ms MIKAKOS (Northern Metropolitan) — The Labor opposition will not be opposing this motion and the extension of the reporting date by three months. I indicate to the house that we do not do so lightly. Obviously there has been some interest both from professionals working in the health sector and from the various organisations that represent them and have made submissions and given evidence to the committee during the course of this inquiry, and there is some interest also from complainants who have had some dealings with the medical boards, the Australian Health Practitioner Regulation Agency and other organisations.

There are some expectations that we would have reported to the Parliament by the end of this year, so to extend the date by a further three months is obviously going to be of some concern. I hope the three-month delay is not going to then delay the government's response to whatever the committee recommendations are, and that this will be able to occur prior to this Parliament finishing its work towards the end of next year. I just make that point.

I am not pre-empting any of the findings or recommendations of the committee. We too agree that having a complaints system in place that the Victorian public can have confidence in is absolutely essential, and that is why we are agreeing to this extension to enable the committee to further hear from relevant organisations that are able to assist us by coming and informing our final recommendations.

I also add that the Leader of the Government in his contribution talked about the importance of this

committee. I certainly agree that this committee and all the upper house committees are important. It has been disappointing that they have had very little work to do during the term of this Parliament. It is important that the government think about these issues going forward in terms of making sure that we actually utilise the upper house committee system in as effective a way as possible. Labor will not be opposing this motion, and it hopes that the committee can produce a worthwhile report and some worthwhile recommendations.

Ms HARTLAND (Western Metropolitan) — The Greens will support this motion, but I would like to add that I agree with the statement made by Ms Mikakos. I also have grave concerns about the way the upper house committees are used and the fact that only government motions are permitted to be sent to those committees. There have been dozens of references attempted to be made that the government has refused. If we are going to have a proper upper house committee system, it should be used for referral of legislation, and Ms Pennicuik has just highlighted the number of pieces of legislation that have been attempted to be sent to the committees but have not been successful.

If we are going to have a proper upper house committee system, let us use it where it can be bipartisan and used effectively for interesting issues. I am still not totally convinced that this is a reference that should have taken as long as it has, and I am quite sure that the government is using it for its own political means, but the Greens will not oppose this extension.

Ms CROZIER (Southern Metropolitan) — I rise to speak in support of the motion that has been put to the chamber this afternoon, and I thank both Ms Mikakos and Ms Hartland for agreeing to support the extension. I will just make a few comments in relation to the inquiry. This reference, to my mind, is important, even though I know other members may have different views. It is about protecting the Victorian public. It is the responsibility of government to take in concerns about complaints, and essentially this reference looks at many of those issues.

We heard from a number of witnesses who came forward during the course of the inquiry. They provided submissions to the committee and some very worthwhile evidence. The minister referred to the issues occurring in Queensland and the change in that government's response to those important issues and about it taking the issue of protecting the Queensland public very seriously. As I said, in Victoria we need to be doing the same thing.

I am pleased that a number of members on the committee have extensively delved into the issues. The committee as a whole has concluded that this matter needs to be extended, and that is why this motion is before the house today. A number of public hearings need to be conducted and more evidence needs to be heard. I am sure that following the conclusion of those final hearings and receiving that evidence, the committee will be able to present a very worthwhile and meaningful report to this house. Hopefully the report will help to further protect the Victorian public by highlighting any issues and ensuring that those very worthy programs that are run to protect doctors and nurses, as alluded to by the minister in his contribution, are dealt with in an appropriate manner.

Motion agreed to.

SUCCESSION TO THE CROWN (REQUEST) BILL 2013

Second reading

Debate resumed from 19 September; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Mr ONDARCHIE (Northern Metropolitan) — It is a pleasure to rise today to speak to the Succession to the Crown (Request) Bill 2013. I start by saying:

> God save our gracious Queen,
> Long live our noble Queen,
> God save the Queen.

This bill is more than the simple procedural updating of legislation. It strongly demonstrates our cultural and political ties with Great Britain, as well as our respect for diversity and equality. Those traditions have given us ideals of representative democracy, bicameral parliaments, common law and responsible government. We do not take those traditions lightly. We are lucky in here to have a strong upper house to evaluate government, critique government and hold government to account.

We are lucky to have a Governor-General who can make unbiased decisions in exceptional circumstances, such as during the 1975 constitutional crisis when the then Whitlam government could not get supply through the upper house in Canberra. On 11 November 1975 the Governor-General of the day made the right decision and terminated a bad government, the Whitlam government. I agree with the then Prime Minister, Gough Whitlam, when he said on that day, 'God Save the Queen, long may we say God save the Queen' — and I agree, God save the Queen.

Importantly this bill reflects modern ideas as well, with priorities for male heirs over female heirs being abolished and monarchs being allowed to marry Roman Catholics. This stays quite true to the conservative value that change should not happen just for change's sake, but rather we accept that changes have to and should occur, but they should represent the best elements of the past.

We are also lucky to have inherited such a strong respect for capitalist liberal democracy, where government is limited, it is responsible to the voting public and ideas can be freely debated without government censorship. Those are the true ideals of a Liberal conservative government.

Mr Lenders interjected.

Mr ONDARCHIE — It is interesting that Mr Lenders interjects. I long for the day when he will have something nice to say about somebody, but today he sets out to marginalise Victorians.

The main object of the bill is to alter the commonwealth act to change the law relating to the effect of gender and marriage on royal succession consistent with changes made to that law in the United Kingdom so that the Sovereign of Australia is the same person as the Sovereign of the United Kingdom.

Section 3 of the proposed commonwealth act set out in the schedule to the bill provides that it is not intended that the proposed commonwealth act should affect the relationship between the sovereign and the commonwealth, states and territories as existing immediately before its enactment.

Proposed section 5 provides that the definition of 'Crown' in the proposed commonwealth act will mean the Crown in all of its capacities.

Mr Finn interjected.

Mr ONDARCHIE — I know my learned colleague Mr Finn is a great supporter of the monarchy. He is a great supporter of good Liberal values. He is a great supporter of the freedom of people to debate under the protection of the common-sense approach, tragically not being displayed by those opposite today. I know, Acting President, you would never pass judgement in any capacity on a speaker on their feet, and allow them to do so.

The ACTING PRESIDENT (**Ms Pennicuik**) — Order! Mr Ondarchie should make his contribution through the Chair.

Mr ONDARCHIE — Through the Chair, I am reminded of the views of my learned colleague Mr Finn.

Proposed section 6 provides that in determining the succession to the Crown, the gender of a person born after 28 October 2011 — by United Kingdom time — does not give that person or that person's descendants precedence over any other person, whenever born. That change means there will be no priority for male heirs over female heirs and allows an older daughter to precede her younger brother in the line of succession for all royal births occurring after 28 October 2011 — the date of the Commonwealth Heads of Government Meeting in Western Australia when the 16 realms of which Her Majesty is the sovereign agreed to the change.

Mr Lenders interjected.

Mr ONDARCHIE — Proposed section 7 removes the disqualification from succeeding to or possessing the Crown as the result of marrying a person of the Roman Catholic faith. The effect of this provision is that marriage to a Roman Catholic will not disqualify an heir from succession. The removal of the disqualification applies both to marriages occurring before the commencement of the section if the person concerned is alive at the commencement of the section as well as to marriages occurring after the commencement of the section.

Mr Lenders interjected.

Mr ONDARCHIE — Mr Lenders interjects with, 'We only had to wait 300 years'. Here is another example of a government getting on with something. I have to say that those opposite can take a lesson about this being how governments get on with something. After 11 years of talk and after 11 years of inaction by the former government on a whole range of activities, here is this Napthine coalition government getting on with the job, such as providing more police and protective services officers and a whole range of activities that will deliver a budget surplus in this year. Victorians have long been waiting — —

Ms Hartland — On a point of order, Acting President, I am wondering about the relevance of Mr Ondarchie's contribution. As I understand, it is to be about the Succession to the Crown (Request) Bill, not about the budget.

Mr ONDARCHIE — On the point of order, Acting President, I remind you that in fact Mr Lenders opened the door for activity when he said that we have been

waiting for such a long time. He opened the door for discussion about government action.

The ACTING PRESIDENT (**Ms Pennicuik**) — Order! I remind Mr Ondarchie that he is speaking on the bill and not the budget. What Mr Lenders may have said by way of interjection is irrelevant. I ask the member to keep to the bill at hand.

Mr ONDARCHIE — Acting President, I could not agree more with that. What Mr Lenders says is irrelevant. Let me say that I will be quoting that line very often. As you rightly point out, Acting President, what Mr Lenders has to say is irrelevant.

The ACTING PRESIDENT (**Ms Pennicuik**) — Order! It is irrelevant as to whether it should impinge on what Mr Ondarchie says in his contribution to the debate.

Mr ONDARCHIE — Acting President, were you qualifying what you said?

The ACTING PRESIDENT (**Ms Pennicuik**) — Yes, I was.

Mr ONDARCHIE — Clearly Mr Lenders's comments do need qualification. That is true.

Section 8 of the proposed commonwealth act disqualifies a person from succeeding to the Crown if they are disqualified from succeeding to the Crown under subsection 3(3) of the Succession to the Crown Act 2013 of the United Kingdom. Subsection 3(3) of the Succession to the Crown Act 2013 of the United Kingdom provides for the consequences of a person's failure to obtain Her Majesty's consent before marrying if that person, when the person marries, is one of the six persons next in line to the throne — that is, the person and the person's descendants from the marriage are disqualified from succeeding to the throne. The effect of this item is that the sovereign's consent to marriage will be required for only the first six people in the line of royal succession.

Proposed section 9 confirms that each act of England or Great Britain specified in schedule 1 to the proposed commonwealth act, so far as that specified act is part of the law of the commonwealth, a state or a territory, is amended or repealed as set out in schedule 1 and any other item in schedule 1 has effect according to its terms.

Proposed section 11 provides that, so far as they are part of the law of the commonwealth, a state or a territory, the following are subject to the proposed commonwealth act: article II of the Union with Scotland Act 1706 of England; article II of the Union with England Act 1707 of Scotland; article second of the Union with Ireland Act 1800 of Great Britain; and article second of the Act of Union (Ireland) 1800 of Ireland.

These four acts deal with the succession to the Crown, the first two referring among other things to the prohibition relating to marriage to a Roman Catholic and the second two referring to succession according to existing laws and to the terms of union between England and Scotland. Through this, I am reminded of the wonderful work of the royal family.

Mr Lenders interjected.

Mr ONDARCHIE — If I can be heard over the irrelevance from across the chamber, I would like to remind the house of the great work of the royal family, particularly Prince William when he visited those tragically affected by the 2009 bushfires up around the area where I live and beyond. When he visited the Kinglake area that day, he did an absolutely wonderful job. He met as many people as he could and he even donned an apron and cooked sausages on a barbecue.

Mr Finn interjected.

Mr ONDARCHIE — I am reminded that Her Majesty Queen Elizabeth II visited Melbourne just last year. She travelled down St Kilda Road on a Melbourne tram. She and her entire family are great supporters of us in Victoria. Now we welcome Prince George Alexander Louis of Cambridge to his parents, the Duke and Duchess of Cambridge. I remind the house that he is to be baptised next week, on 23 October, and that is a wonderful thing.

Mr Finn interjected.

Mr ONDARCHIE — Some people call that christening, but you do not actually Christ somebody; you baptise somebody.

On a personal note, I am delighted to say that the Premier, for whom I am the parliamentary secretary, as well as the Prime Minister, Tony Abbott, share my passion for the British monarchy, as do several members in this chamber, including my learned colleague Mr Finn.

I have also been very lucky in my business life to have accompanied Prince Andrew during my time working in the United Kingdom. His Royal Highness Prince Andrew was very gracious in opening up a business venture that I was involved in in the south-west of England. An Australian company was directly involved

when we opened a brand-new business facility with 80 employees. His Royal Highness very kindly offered to come down by helicopter to Bristol, where he officially opened our building. He spent an enormous amount of time, more than was allocated, talking to the employees and contractors involved about their work and he congratulated us on that new business venture in the United Kingdom. It was great support and is another example of what an important role the royal family play in the development, the morale and the uplifting, if I may say, of communities. We have seen great examples of that here in Victoria over many years.

I know that when my learned colleague Mr Finn speaks on this bill he will talk about the benefits of the royal family. He and I have had conversations about how wonderful the members of the royal family are for us in Victoria, and I concur with his views. Members of the royal family have done an enormous amount of work for charity over many years, and I greatly admire the work that they have done. On our television stations that I am a regular viewer of we see functions that are run through the charitable foundation of Prince Charles. We also see things like the Royal Edinburgh Military Tattoo that raise money for charity. It is a wonderful effort by our remarkable royal family.

I have great admiration for the work that Princess Anne does and that Prince Edward and Sophie, the Earl and Countess of Wessex, do. I have already mentioned Prince Andrew. I admire the work of the entire royal family, which we are seeing being picked up by the next generation. Prince Harry was in Australia recently, and I have talked about Prince William and Kate, the Duchess of Cambridge. Now we welcome Prince George, who over time will no doubt make a significant impact on the lives of the Victorian, other Australian and commonwealth communities across the globe.

I am delighted to say that this is a very important bill that supports what is great about Victoria and Australia and the commonwealth. I commend this bill to the house with great support. May God save the Queen.

Mr FINN (Western Metropolitan) — It gives me enormous pleasure to rise in this house today to support this bill. In supporting this legislation I can tell the house that I stand here a very proud supporter of Australia's system of government and Australia's constitutional monarchy.

We heard from some speakers a couple of weeks ago, one of whom was Ms Hartland, who seemed highly amused by the whole thing; from memory, Ms Pulford was another one. There was a great deal of flippancy and amusement about this piece of legislation. I have absolutely no idea why that would be the case, because what we are talking about here today is not Her Majesty, not Prince Charles, not Camilla and not Prince Harry, Prince William or anyone else. We are talking about Australia's system of government, which has made us the envy of the world. It is something that members opposite should take into consideration. Australia has been able to grow into this great symbol of international freedom as a result of our system of government.

It is worth pointing out that Her Majesty Queen Elizabeth II is not just Queen of England; she is the Queen of Australia. My recollection is that it was Gough Whitlam, who is not exactly known as a monarchist, who made her Queen of Australia. She is the Queen of Australia, and quite frankly, that is something that we should celebrate. I will speak about the contribution Her Majesty has made to our nation and our world a little bit later on, but it is worth noting that Her Majesty is the Queen of Australia. We are not just talking about something foreign over there somewhere; we are talking about our own monarch.

People say to me, 'Your background indicates that you would not be a monarchist'. Coming from Irish and German heritage as I do, that is probably a fair assumption. The Irish have had more than their share of conflicts with the British, and the Germans have had the odd run-in with the Poms as well. If I were throwing bombs in Belfast, if my family had never come to Australia, yes, I may well have been a republican. If I were roaming the streets of Ulster somewhere throwing bombs at the constabulary, there is a fair chance I may well have been a republican, but I am not. I am an Australian. I love this country. I love what this country has allowed me to do. I love what this country has allowed my family to do over generations. I want what is best for Australia. There is no doubt in my mind that our constitutional monarchy is the best system of government that we could have.

You hear republicans banging on about the fact that they want a republic. They want to get rid of Her Majesty the Queen. A lot of republicanism is driven purely by anti-British bigotry. I have no great reason to love the Poms, apart from the fact that they have given this country a great justice system and a great political system. They have set Australians on a path which we have taken under our wing and run with, and for that I am very grateful. I hear people say to me, 'You are of Irish heritage; you should hate the Poms'. I do not hate the Poms, and I feel sorry for anyone who does. To try to justify changing our system of government, which is an extremely good one, on the basis of hating someone

or something does not make any sense at all — in fact it is rather sad.

The republicans can tell us what they do not want. They want to get rid of the Queen and the monarchy, but they can never tell us what they do want. They can never tell us what sort of system they want to replace this great system that we have in Australia today. They cannot tell us whether they want a directly elected president or a president elected by the Parliament. There are all these theories from republicans as to what they want. They sit around in coffee houses in Carlton for days on end. I have to say, with a view to our friends in Sydney, that a fair bit of it goes on in Paddington and Darlinghurst as well. But here in Melbourne republicans sit around for weeks, months and years on end, endlessly looking at their navels and discussing what sort of republic we should have and what they want. After all these years they still cannot tell us what sort of republic they want. I say to republicans, 'Instead of rabbiting on ad nauseam, get with the game'. We have a great system of government in Australia. It is something we as Australians should be very proud of because we are leading the world in so many ways.

If you want to know how good our system of government is, have a look at the United States at the moment. If you go to the United States, you will find a hell of a lot of people over there who are desperately keen for their own monarchy. Some have suggested that Barack Obama has ascended to the role of monarch. I am not suggesting that, but some others have. At the moment the situation is that the US government has completely shut down because of a conflict between the executive and the legislative wing of the US government.

That may or may not be solved. There are some suggestions at the moment that it may be solved very soon — and that is a good thing, presumably — but it is not the first time this has happened. This happens on a regular basis. I recall it happened about the time I was in the United States back in 1995 when Bill Clinton was President. I think it happened when George Bush was President, and now it has happened again with Barack Obama as President.

That could not happen in Australia, because we have a representative of the monarch. We have a Governor-General, an independent umpire who, as that independent umpire did in 1975, will ensure that Australia and its government continue. Whilst many republicans use the argument that 1975 is the reason we should become a republic, I advance the argument that 1975 is exactly the reason we should not. What happened was that the Prime Minister and the government could not get supply through. They could not get the money they needed to run the government, and the government was proposing that it continue that way. We were on the verge of there being not a single public servant in the federal sphere in Australia who had a zack to spend at Christmas in 1975.

In fact, more to that, the government at the time was actively overseas looking to raise money illegally, just to keep the government going. The democratically elected Parliament was saying, 'No, we will not give you the supply'. The Prime Minister at the time was saying, 'I do not care; I will do it anyway'. We had a situation that was just beyond the pale. It was untenable in every way, and I regard the Governor-General at that time, Sir John Kerr, as one of the great heroes of Australian history. He was a man who came from a Labor background, who knew what was going to come his way if he did his duty, but he did it anyway. That is true heroism.

He called in Gough Whitlam, the Prime Minister at the time, on Remembrance Day 1975 and he asked, 'Can you get supply?'. The Prime Minister answered no. He then called in the opposition leader and asked, 'Can you get supply?', to which the opposition leader answered yes. At that point the Governor-General knew his duty. He dismissed the Prime Minister, appointed the caretaker Prime Minister, allowed the government to continue and allowed hundreds of thousands of Australians to continue with their lives in the way they would want to do.

That would not have happened without the Governor-General. Indeed, as Mr O'Brien points out, the decision was overwhelmingly confirmed a month later, on 13 December 1975, when Malcolm Fraser was elected Prime Minister with the biggest majority in Australia's history, which just goes to show that sometimes you can get things wrong — but it was confirmed by the electors of Australia. So 1975 is a great example of exactly why the system we have works, and I am very proud to say that. When people say to me, 'Your Irish and German heritage means you should be a republican', I say that I do not really care how the Irish run things and I do not really care how the Germans run things. I am an Australian and I want what is good for Australia, and this system of government, our constitutional monarchy, is good for Australia. What is good for Australia is all that matters to me.

This bill could be postponed for another 50 or 60 years. It was largely brought about because we did not know the gender of the baby that Prince William and his wife, Kate, were having. We now know, of course, that

Prince George Alexander Louis of Cambridge is the heir a couple of rungs down, and this particular legislation, whilst important, is not of immediate importance.

Mr O'Brien — We should send it off to a committee!

Mr FINN — No, I do not think we need to do that. It is pretty clear what we need to do, and it is very important that we allow a female who is first born of the heir or of the monarch to ascend the thrown. If you want to see how well a female can do the job of monarch, just have a look at the one we have now. What a marvellous role model Her Majesty is, and what a great job she has done for so long. She is aged 85 or 86, and she does not seem to have any intention of giving the game away. She is continuing with her duty to her people and to the realm, and of course Australia is a very important part of that. In fact many would say Australia is the shining light in the commonwealth, and when you have a look at the mother country you would have to agree with that. It is pretty stuffed.

The bill also allows the monarch to marry a Catholic, and I think that is a very good thing. Some would say, 'Why don't you allow the monarch to be a Catholic?', and I have some sympathy with that, strangely enough, but at the same time one would have to ask how a Catholic can be the head of the Church of England. That would cause mass confusion on a number of levels, and I think we could probably live without that. I am very happy that at least a Catholic can be married to the monarch without any implications, and I think that is a very good thing indeed.

I first met our current Prime Minister, Tony Abbott, when he was the executive officer of Australians for Constitutional Monarchy about 20 years ago. He and I share a love for the monarchy that is also shared by many millions of Australians. One has only to look at the polls to see that Aussies love the Queen, they love the royals and they love the monarchy. As for a republic, no way.

Mr RAMSAY (Western Victoria) — I must say it is quite hard to make a contribution after Mr Finn's eloquent contribution that had very little to do with the bill, I might add. It was more about the republic debate, which I am more than happy to entertain the chamber with at another time. When Mr Finn was making his contribution I got very excited, thinking that perhaps I could provide an alternate view to Mr Finn's in relation to the discussion around whether Australia sees fit at this particular time to move towards a republican model. But as I further read through the second-reading speech I realised that this bill is nothing about the merit or otherwise of having a republic in this country and more about succession. Therefore I will keep my contribution to the merits of the bill and point out that its key objective is to facilitate uniform changes to the laws relating to royal succession across Australia, consistent with changes made to the law in the United Kingdom. It will ensure that the Sovereign of Australia is the same person as the Sovereign of the United Kingdom.

The bill also implements the decision of the Council of Australian Governments to request that the commonwealth Parliament enact under section 51(xxxviii) of the Australian constitution an act to change the law relating to royal succession and royal marriages, which I might add Mr Finn did touch on eventually. The bill also makes consequential amendments to certain acts. Those proposed changes will provide that there will be no priority for male heirs over female heirs, that marriage to a Roman Catholic will no longer disqualify an heir from succession and that the sovereign's consent to marriage will only be required for the first six persons in the line of royal succession.

Across the Commonwealth of Nations, leaders of the realms that comprise the 16 nations of whom the Queen is head of state have agreed to these proposed changes to the rules of royal succession. This bill forms an important part of the process for effecting those changes in Australia and implements the April 2013 decision of the Council of Australian Governments. All other states have agreed to make a similar request to the Australian Parliament under section 51(xxxviii) of the constitution. When the Australian Parliament enacts its legislation in the terms, or substantially in the terms, set out in schedule 1 to the bill it will put an end to the current priority of male heirs over female heirs in the line to the throne, and I think that is the crux of this bill. This is appropriate in our modern society.

As Mr Finn said, I am sure members will join me in congratulating the Duke and Duchess of Cambridge on the birth of their son. Nonetheless, the changes in this bill will mean that in the future royal succession will not be dependent on a person's gender, and an older daughter will no longer be overtaken by her younger brother in the line of succession.

The bill also facilitates changes to relevant laws to remove the bar on succeeding to the throne by reason of marrying a person of the Roman Catholic faith. These existing laws, which are discriminatory, will be appropriately amended. Succession to the throne in each of the realms across the commonwealth is

governed by both common law and statute. While each realm shares the same monarch, the procedure for effecting changes to the rules of royal succession across the commonwealth varies between the realms. The bill is based on a model developed under the auspices of the Council of Australian Governments. The approach taken in the bill — namely the cooperative state request and commonwealth consent scheme, which relies on section 51(xxxviii) of the Australian constitution — has been informed by advice from solicitors-general of the Australian jurisdictions.

The bill calls for uniform national changes to the laws of royal succession to make them consistent with changes to those laws in the United Kingdom. As I stated, succession to the throne in each of the realms across the commonwealth is governed by both common law and statute. The provisions contained in this bill are both symbolic and practical in nature — and those are not just my words — and make significant changes that reflect our commitment to the principles of equality and opportunity for all, which is shared by others throughout the Commonwealth of Nations. Clause 4 of the bill prescribes that the enactment of this legislation or the subsequent commonwealth legislation is not intended to affect the existing independent relationship between the sovereign and the state of Victoria, and this is an important protection. Clause 5 is a key provision of the bill and sets out the Victorian Parliament's request to the Australian Parliament under section 51(xxxviii).

Section 6 of the proposed commonwealth act as set out in schedule 1 to the bill provides that in determining the succession to the Crown the gender of a person born after 28 October 2011 does not give that person, or that person's descendants, precedence over any other person, regardless of when that person was born. The date of 28 October 2011 is the date when the 16 commonwealth realms came to this agreement at their meeting in Perth. This is consistent with the equivalent provision in the United Kingdom Succession to the Crown Act 2013. The operation of this section ends the system of male preference so that in the royal succession older daughters will no longer be overtaken by the younger sons.

It is duly fitting that the proposed change to remove the priority for male heirs comes during the reign of our much-vaunted monarch, Her Majesty Queen Elizabeth II. I concur with Mr Finn's comments that she has been an important part of the Australian way of life. In many of the halls I visit across country Victoria the first photograph I see is of Queen Elizabeth II — a little bit dusty and a little bit askew, but nevertheless sitting front and centre behind the stage of the country halls. I must confess that our former national anthem, *God Save the Queen*, is probably better remembered by those of my generation than by the new generation, and unfortunately the traditional singing of the national anthem as we knew it then does not occur regularly in schools these days, which is probably a sad reflection on the loss of connection with the monarchy and its traditional values.

Having said that, in contemplating this change it is duly fitting that the two greatest and longest serving monarchs of our nation during its recent history have both been female. In this great state, which was named in her honour when it was created as a separate colony in 1851, and in this place where her statue watches over us in Queen's Hall — also named after her — we duly remember Queen Victoria, the great-great-grandmother to Her Majesty Queen Elizabeth, for her achievements during her remarkable 63-year reign from 1837 to 1901. It is interesting that over this period Queen Victoria was astonishingly served by 35 prime ministers across the realms, including 10 from the United Kingdom, and she was on the throne when our first Prime Minister, Sir Edmund Barton, assumed office. Like our own Queen, Queen Victoria saw many politicians come and go. She saw many military conflicts and periods of financial turmoil, and she reigned with strength and dignity. I note again that those are not only my words; they are the words of other members who previously made contributions in this place.

It is important that we reconfirm the enormous contributions that our queens have made over a long period in times of many challenges. I never quite knew 15 minutes was so long, Mr Finn.

Mr O'Brien — It is when you're speaking!

Mr Finn — I could have gone for another 15, easily.

Mr RAMSAY — Yes, but I'm talking about the bill.

Mr O'Brien — Tell us your views about the republic.

Mr RAMSAY — I am more than happy to talk about the republic, but as I said initially in my speech, this is not the time or place to have a debate about whether or not Australia should become a republic. Suffice to say what I am doing in this contribution is reconfirming the way modern society sees our present system as a commonwealth in relation to the succession of the Crown. I fully support the detail of this bill, which provides greater equity and fairness in relation to succession and marriage for those in line to the

monarchy. I think Mr Finn is right in that this bill is not large in substance but it does better reflect modern society, it removes some discrimination and it provides greater fairness and equity to those in the line of succession. I commend the bill to the house.

Mr O'BRIEN (Western Victoria) — It is with great pleasure that I rise to make my own personal contribution on the Succession to the Crown (Request) Bill 2013. It is an important bill, and it has been the subject of a very interesting debate not only in this country but in many other parts of the commonwealth. In a sense, all the places which remain constitutional monarchies tied to the Crown of England are affected in one way or another by the issue of succession to the English monarchy. In that regard it is appropriate that I, too, send my congratulations to the Duke and Duchess of Cambridge, and the young Prince George. I join Mr Finn in also commending the present monarch, Elizabeth II, on her long reign.

I will inject my contribution with a number of personal anecdotes to explain my particular standpoint on some of the issues that have been raised in this debate, particularly by courageous speakers such as Mr Finn, and in more obtuse contributions, such as that just provided by Mr Ramsay. I will have to explain the issues from my standpoint, which is a fairly typical Australian one. In the great debates around the monarchy, Catholic and Protestant, Irish and English, there are perspectives from all sides. Ultimately in my contribution to some of the issues raised I would like to add my personal remarks on what I believe is a particularly Australian solution to some of these constitutional questions that are extremely important for the reasons outlined by Mr Finn — that is, we have a terrific Westminster democracy, we have a terrific system of government and it is one that is tampered with at your peril.

There is a quote from Winston Churchill that has been repeated by many others, and it applies to my view of both the legal system and the parliamentary system we have — that is, it is the worst form of government, apart from all the others. That is because humans are imperfect, and therefore checks and balances need to be placed into the system. Ultimately sovereignty and respect for authority, for the rule of law and for the will of a democracy need to be worked through in our constitution with a mixture of convention, practice, sensibility and the democratic election of representatives, but with ultimate power being carefully exercised by a sovereign. That is something that I hold dear, and it is something that I know speakers on all sides have been mindful of in making their contributions in relation to the questions raised by these bills.

Some of these questions have led nations to battle and have resulted in significant issues throughout society. If one takes a longer view of history, there is no reason why some of them, in another age and in a less harmonious environment than we presently exist in, may not raise themselves again. That is why they are ultimately important questions. My contribution will perhaps be light — that would be down to my Irish heritage — but I will make a serious point on occasion.

Coming to my mother, which I should do, because this relates to the Queen — —

Mr Finn — Is your mother related to the Queen?

Mr O'BRIEN — I will get to that too, Mr Finn. My mother won a prize shortly after the end of World War II and was given the benefit of presenting an essay to the Queen. She had that great honour, as I understand it, when the Queen visited. In the photo we can see that she was one of the students who got to present a calligraphy version of an essay called 'Why I like the Queen'. I can only remember a few lines, but some of the views expressed in that essay were on the very matters of stoicism and courage that Mr Finn mentioned in his contribution, as did Mrs Millar. I must commend Mrs Millar on her contribution. She talked about the role of the Queen in coming through World War II as the hope of the commonwealth world into the 1950s, during the beginning of the Commonwealth of Nations at the end of the British Empire.

We suspect in our family that many of the paragraphs may have had some input from my grandfather, because a seven-year-old used phrases such as, 'Now that we have banished the Hun from the shore', which were probably a bit over the top for my mother, but she nevertheless won the prize. The rest of the poem is somewhere in the royal archives.

The reason I raise that is that we were blessed, or cursed, both on my mother's and my father's side. I will start with my mother. Her father was a Freemason, which is a particular form of secularism or Protestantism, whichever way you look at it. I do not know much about it, because it was kept secret from me.

Hon. R. A. Dalla-Riva interjected.

Mr O'BRIEN — That is right. My grandfather married a Catholic, which meant an English-Welsh Freemason married an Irish Catholic. They had to have

a non-approved marriage, and my mother was the result.

Mr Finn — BYO goat at the wedding, was it?

Mr O'BRIEN — I am not sure. We will not go there, Mr Finn. As a result, there were some strong monarchist views but also a bit of Irish rebellion from my grandmother's side. My father's side was even worse. My first understanding of the world through my father was of the scourge of England, the terrible things that they had done to the poor Irish and why we could never sell our land because it was the land our grandfathers had been deported from their homeland on. On my grandmother's side, there was a fierce monarchist who loved the Queen. These schools of thought and argument that have been entangled across the Irish and English worlds are the same disputes that I can identify in the strands of my family.

From the Irish side of my name, the O'Briens — there are so many of us, one would not know which strand necessarily comes from there — are reputed to be descended from the greatest king of Ireland ever and the only one to successfully unite the whole country in its long, sorry history, Brian Boru, who ruled from 1002 until 1014. This government is blessed to have an O'Brien in both houses. There are many O'Briens and there are many O-apostrophe surnames in this country as a result of the traditions of the Irish clan system.

Mr Finn — Finn used to be O'Finn.

Mr O'BRIEN — It used to be O'Finn. One day it might be Senator O'Finn. Royalty in Irish history is very interesting, and it shows us something about the English system of royalty because the Irish had conventions of elected and rotating monarchies. The north, which was generally dominated by the O'Neills, would elect the leader of the various clans to be the O'Neill and this person claimed the high kingship. However, in the south the O'Briens, the O'Donohues and others would occasionally contest it. This is one of the problems for Irish history. As a result of not having a clear succession they were not able to unify as quickly as England was under Alfred the Great, who took a previously elected system of kingship and stamped hereditary rule on England from that point on. It has remained in England, apart from a minor hiccup in 1066, when William the Conqueror came in, the odd bit of a dispute and the Civil War, which touches on some of the issues in the bill in relation to the Catholics and the power of the Parliament versus the Crown.

This also relates interestingly to Australian and Victorian history, and colonial history before that. The great age of the British Empire enabled Westminster democracy to spread from England to many parts of the world. One can see the continuing evidence of this in leading world institutions such as the United Nations and in democratic countries such as the United States, Australia and other commonwealth countries. England has at times had its battles with the European Union.

Mr Finn interjected.

Mr O'BRIEN — Canada as well, as Mr Finn says. One can see the great legacy of British democracy reflected in the Westminster system, but Britain had its challenges, and dealing with the issue of Catholics was a particularly difficult one. This bill will remove some of the prejudices that have existed. These were at times terrible prejudices. Whatever Oliver Cromwell did for parliamentary democracy in England, he was very brutal in Ireland in his treatment of Catholics. Those memories remain.

For a bit more O'Brien history, it is said that the O'Brien part of Ireland, Clare, is the only part that English troops never entered under Cromwell, because we had Baron Inchiquin. He was a brutal Protestant O'Brien who managed to murder and martyr the Catholic O'Briens but did a deal with the King of England to keep his title and sovereignty and also his coat of arms, which resembles the three lions of the Crown of England.

The role of the Catholics in relation to the Protestants throughout English history has been a thorny one, as it has been more recently in the 20th century. This bill will see an improvement from the Catholic Church's perspective and therefore from the entire Christian world's perspective in terms of moving towards more harmony amongst the Christian churches and fewer petty divisions. New Pope Francis is trying to break down some of the hierarchical rules in the Catholic Church. That is a debate for another day, but this bill will improve that step.

It will also improve the situation in relation to the priority of male heirs over female heirs. A number of us have remarked that this new convention may be theoretically possible for 80 years before there is practical success, but who knows what will happen with succession laws. The important thing is that the bill recognises and removes an unnecessary and sexist obstacle to female succession.

I said in my maiden speech that one of my other ancestors was an advocate for women's suffrage in Victoria. I would like to take us to the Victorian role here, because the Victorian Parliament is one in which

Catholics got a say very early on. In fact some of the first premiers were Catholic. The Eureka rebellion, whichever way you look at it, led to this chamber — the seat of government at the time — embracing general elections. While the right to vote was initially confined to men, when extended to women it embraced what we now understand as Westminster democracy.

That takes me to another part of our tradition that was mentioned by Mr Finn which it is important to bring into the context of the debate. That is the question of where the Westminster democracy of the state of Victoria sits in relation to issues of republicanism, succession and the monarchy. I emphasise that these are my personal views, but this is the sort of bill where one ought to be able to speak freely. My personal views on the question of sovereignty are easy to discover because they have been published and available for anyone to read.

I made a submission to the Senate inquiry into an Australian republic, because Westminster democracy and constitutional monarchy were being debated in a way that did not touch on the real issues and the real treasures of Victorian parliamentary democracy. I proposed a thing called a 'sovereignty model', which was different to all the other models. It was arguably a variation on the McGarvie model. It was not a model for a republic as so defined; it was a statement of what is important about the Australian version of Westminster democracy. With no disrespect to Mr Finn or my mother's arguably strong monarchist views, I think that the institution most beneficial to Australia's democracy, above even that of the sovereign, is Governor-General at the federal level and Governor at the state level.

Mr Finn — They are effectively the head of state.

Mr O'BRIEN — As Mr Finn says, they are the de facto heads of state of Australia. They are actually separately stated in the constitution. The republic debate as it was led by the Australian Republican Movement sought to proceed in a way that did not recognise the role of the Governor-General as distinct from the role of the actual sovereign, being the Queen of England. I believe that the debate severely miscarried and that the move to a republic with a directly elected president would have brought about a more dangerous constitutional situation than we presently have.

That model was put forward as second in line after the model that was actually chosen to go to the referendum, and it has been used in subsequent debate, because the republicans seem to consider it absolutely necessary to merge and diminish the role of the governors and the Governor-General with that of the Queen and to introduce a singular and — from an Australian perspective — foreign role of president. As is often said, we have a president in our system; at the moment Mr Ramsay is the Acting President. This is quite an important issue — —

The ACTING PRESIDENT (**Mr Ramsay**) — Order! Mr O'Brien, as Acting President I have listened at some length to your contribution and I am waiting for the point when you come back to the bill, which is not so much about compromising sovereignty as about the succession.

Mr Finn — On a point of order, Acting President, I do not wish to challenge you or show any disrespect to your position, but I feel that Mr O'Brien must be defended at this point in time. In fact he has been giving quite a detailed explanation of the constitutional importance, background and history of the need for this legislation. I have found his address to this house today historically and constitutionally interesting and relevant to this bill.

The ACTING PRESIDENT (**Mr Ramsay**) — Order! Thank you, Mr Finn. I do not see the point of order.

Mr O'BRIEN — Thank you. I urge those who might be similarly minded to be patient. I did say I would get to the point, and it is a serious point.

I was describing the present role of the Governor-General and the proposal in most republican models to simply merge that representative with the Queen. What we have in our role of Governor-General or Governor is not unique to Australia, but it is unique to the colonial aspects of the Westminster system. The Governor, which is a role older than that of the state parliaments, was originally appointed directly by the Queen, or by the Queen on recommendation of the British cabinet. It has evolved into quite a different role, particularly since the convention has moved from nominating British lords and other leaders of the British admiralty and other positions to well-regarded Victorians or Australians. In a sense the Governor or Governor-General in Victoria and Australia is an appointed but non-controversial head of state.

It may be the Governor's role to exercise the powers of the Queen and, as Mr Finn has put it in his contribution, generally to act on the advice of the government of the day, especially in relation to appointments and the like. But occasionally and importantly, as Mr Finn outlined in relation to the Governor-General, when engaging in

issues such as dismissal of governments and other high constitutional matters, the Governor's role is to exercise independent judgement.

That is why the Westminster system places its trust in these governors, and it is different to the role of the sovereign. It is a very Australian way of having a Westminster democracy, in that a good Australian, be they a good runner, in the case of Mr Landy, a good judge, in the case of Justice Gobbo, a scientist, in the case of Mr de Kretser — —

Mr Finn — Sir James Gobbo.

Mr O'BRIEN — Yes, Sir James Gobbo.

Mr Finn — Sir Brian Murray.

Mr O'BRIEN — Sir Brian Murray, yes. I do not say this in reference to Brian Murray, but they may not always be a good Governor, but that is the nature of these institutions. What we are looking for is constitutional certainty, constitutional predictability and ultimately faith by the people of Victoria in this case that the system is working well for them. A republican model, which may ride roughshod over that history, would transform the role of Governor into that of a president, particularly an elected president, and that would bring notions of mandates and of politicians. If you are running for an election — —

The ACTING PRESIDENT (**Mr Ramsay**) — Order! The bill, as I understand it, does not require that Australia transition from a monarchy to a republic. It talks about a succession in relation to heirs and — —

Mr O'BRIEN — Acting President, I ask you not to editorialise.

The ACTING PRESIDENT (**Mr Ramsay**) — Order! Mr O'Brien, I ask you to come back to the bill.

Mr O'BRIEN — I am talking about the succession to the Crown, sovereignty and the issues that have been raised by Mr Finn and others as to how we have a safe democracy.

The ACTING PRESIDENT (**Mr Ramsay**) — Order! Back to the bill, thank you, Mr O'Brien.

Mr O'BRIEN — If I could conclude, what we need to understand is that in relation to succession, the election or the succession that could take place in England in relation to the English monarchy does not necessarily have to affect our principal protections in a constitutional sense, which are the roles of the governors and Governor-General, and they are our best protection. For example, the biggest constitutional question would be if England were to amend its situation, become a republic or somehow lose its powers in a European Union arrangement — and I see Mr Finn nodding as if to say, 'God forbid that would happen!'. Such a change would raise very strong questions in relation to our constitution and to this bill of what we would do in Victoria. We would not have a clear situation of what would happen with the succession of Prince Albert or a female succession, whether a king could marry a Catholic or whether a queen could marry a Catholic; we would be left with a constitutional quandary. What we need to know is what is important to our Westminster democracy.

What I seek to place on record in relation to my contribution is the importance of making as few unnecessary constitutional amendments as possible to our monarchical system. If we were to consider becoming a republic, we should consider the role of the election to the Crown in England — the very matters contained in this bill — but retain the present arrangements with the governors and the Governor-General in Australia. That could be quite easily done with a referendum to alter this bill and alter the constitution in relation to the role of the Queen, but the role of the governors and of the Governor-General could be preserved and should be preserved so that as many of our traditions in Victoria as possible could be preserved. That is what I call the ultra-minimalist option. It is different to McGarvie, who unfortunately, like Kevin Rudd, went into too much detail in his proposal. It is certainly different to the Australian Republican Movement's preferred direct election. If it is to be a direct election, it could be a direct election in England. With those words — —

Mr Finn interjected.

Mr O'BRIEN — Mr Finn's other point is that a republican referendum requires a majority not only of the total voters but of the — —

The ACTING PRESIDENT (**Mr Ramsay**) — Order! Mr O'Brien, this bill is not about a public referendum.

Mr O'BRIEN — Mr Ramsay, I am going to conclude my contribution.

The ACTING PRESIDENT (**Mr Ramsay**) — Order! Mr O'Brien, you do not refer to the Acting President — —

Mr O'BRIEN — I note there were no points of order, Acting President.

Mrs PEULICH (South Eastern Metropolitan) — I rise to also place on record some remarks on the Succession to the Crown (Request) Bill 2013. I note the interesting contributions that were made by previous speakers, who reflected on the importance of Westminster democracy, on the traditions of the royal family and on the affection in which the royal family is held. Underpinning all that is also what this bill does reflect, and I am not sure we have got down to that, even though it is not deemed to be necessary.

I will not stray far from the bill, but I will place on record that I am not a republican and I am not a monarchist per se; I am a constitutionalist. We have an amazing constitution, which has given us economic and political stability, but at the same time I have enormous admiration for the traditions and history represented by the royal family. They are a great asset to the United Kingdom and to the commonwealth in having bequeathed to us the traditions of the Westminster system and a great and vibrant democracy.

It is amazing that it is now 2013 and we are only now passing these laws, which are no longer required given the birth of a baby boy to the Duke and Duchess of Cambridge, or there is not the same urgency for them. It has taken so long to have the legislation changed, which we understand is happening at the request of the royal family. The bill reflects the attitudinal and social changes in relation to the status of women in line to the succession of the throne, but equally it reflects the diversity of our communities, including our religious communities and their equality within the law. It is interesting that even though this legislation is not necessary at the moment the stewards of our traditions, such as the royal family, are not immune to attitudinal and social change, which ultimately this legislation reflects in the best traditions of our Westminster system and our Western world, which holds dear an egalitarianism that is unmatched by other political systems.

This bill facilitates those changes, not in a unilateral manner, as Mr O'Brien commented on, and it calls upon the collaboration and support of the states in passing legislation that reaffirms the importance of the states in our system of government. The bill changes the laws of succession consistent with changes made to the laws in the United Kingdom, and it implements the April 2013 decision of the Council of Australian Governments, with all of the other states and territories having agreed to a similar request to the Australian Parliament under section 51(xxxviii) of the Australian constitution. The bill includes a request to enact an act to provide that, firstly, there will be no priority for male heirs over female heirs. This was in preparation for the possibility that the Duchess of Cambridge would give birth to a baby girl. Secondly, marriage to a Roman Catholic will no longer disqualify an heir from succession. Thirdly, the sovereign's consent to marriage will only be required for the first six persons in the line of royal succession.

In reflecting on the status of women, whilst we in Australia pride ourselves on the independence of women and on being the flag-bearers of women's rights and of women having the right to vote, if we look at the mass media and the way women are portrayed even today, we see that there is still an underlying lack of equality in those images.

As I look at some of the quotes that I have chanced upon while doing a bit of research for this speech I reflect on an expectation that exists. These words from Sophie Tucker — although perhaps a little funny and a little quirkily expressed — in *Women Who Date Too Much* sum up the attitudes that many have about women:

> From birth to 18 a girl needs good parents, from 18 to 35 she needs good looks, from 35 to 55 she needs a good personality, and from 55 on she needs cash.

We would certainly not say that about men. We would not see looks or being of the appropriate physical presentation as being quite as critical to our male counterparts as they are to women. Women who carry excessive weight are often ridiculed to a much higher degree than males. Even in an egalitarian nation such as Australia there is not quite the equality in terms of image, perceptions and attitudes and in terms of various professions that women are only now beginning to break into at the highest levels.

Over history sexism and discrimination against women have also prevented them from playing a full and equal role in many faiths — whether in a church, a mosque, a synagogue or a temple. The discrimination has often been attributed to a higher authority and has provided a reason for the deprivation of women's rights across the world for centuries. We are now moving out of that darkness. In the past it has been used as an excuse for slavery, violence and forced prostitution, some of which continues in other parts of the world and perhaps sometimes even in pockets of our own society and communities. This history of discrimination has been used as an excuse for genital mutilation and national laws that do not consider rape a crime. It has been used to deny women access to education, health facilities, employment and influence within their own communities.

Religious leaders in perhaps less democratic nations around the world have had the power to interpret their holy teachings in ways that either enhance the status of women or subjugate women. So it is refreshing, enlightening and uplifting to see changes to the laws that govern succession to the throne that will finally bring the bastions, the stewards of our history, into the modern world — where women will not be disbarred from succession to the throne on the basis of their gender.

This attitude is probably widespread, particularly among a lot of young people, including young men, and I want to pay tribute to them. Young men expect women to be treated with equality, just as much as young women expect that treatment. They have often seen their mothers, their grandmothers and their aunts denied the opportunities and benefits that come from equal treatment. They see this sort of injustice as deserving of being consigned to history. This legislation is symbolic, even though it is not necessary. The Duke and Duchess of Cambridge gave birth to a boy, so it is not critical, but it is a welcome change that reflects the broader changes in society.

The legislative changes also mean that being a Roman Catholic will not automatically disqualify an heir from succession. This reflects the advances made in the Western world and the recognition that, irrespective of their faith and provided that they observe the laws of the land, people should be entitled to equal treatment. That is enshrined in various human rights charters and will also now be enshrined in the laws of succession.

Lastly, the sovereign's consent to marriage will be required only for the first six persons in the line of royal succession. It is refreshing to see that, notwithstanding the duties of their office and the impact that has on their private lives, many members of the royal family now have greater freedoms and liberties than was the practice in the past.

Honourable members interjecting.

Mrs PEULICH — I did say that I am not a republican. I am not a monarchist per se; I am a strong constitutionalist. Part of the reason for that is that I do not draw upon the English traditions because I was not born here. I am an immigrant; I immigrated to Australia as a 10-year-old. But I have been able to see that constitution provides such benefits as a strong and stable political and economic system which has been welcoming to so many immigrants from right around the world. Many of them have come from highly oppressive cultures and countries and have flourished in this wonderful nation of ours.

Mr O'Brien — They have made a great contribution to our democracy.

Mrs PEULICH — Thank you, Mr O'Brien. I will respond to that interjection because that means it goes into *Hansard*. It was a very complimentary interjection. I am a strong advocate for the constitution and a strong admirer of our royal family, in particular the Queen. She has had many challenges, many of which have been very difficult to deal with, especially given that she and her family are in the public eye. The Queen has the admiration of people right around the commonwealth and the world for the dignified manner in which she has not only carried herself and fulfilled her role but also guided younger members of the royal family to accept their responsibilities in the important English Westminster tradition.

What does the bill actually do? As I said, it facilitates uniform changes to the laws across Australia relating to royal succession and royal marriages, consistent with the changes made to the laws in the United Kingdom. This will ensure that the Sovereign of Australia is the same person as the Sovereign of the United Kingdom.

At the time of the October 2011 Council of Australia Governments meeting there was a meeting of representatives of the realms, the 16 nations of which the Queen is the head of state. This meeting agreed to support the proposed changes to the United Kingdom rules of royal succession so that male heirs will not take priority over female heirs. That is welcomed as it is a strong symbol of how far we have advanced as a society and how dramatically views have changed.

I must say President Barack Obama is not a great political idol of mine. However, I share with him one view. An article in the *Ladies' Home Journal* of September 2008 reports him as having said:

> The best judge of whether or not a country is going to develop is how it treats its women. If it's educating its girls, if women have equal rights, that country is going to move forward. But if women are oppressed and abused and illiterate, then they're going to fall behind.

What he is recognising there is the important role that women play in rearing children and shaping and formulating the attitudes and aspirations of a nation. This is a very important bill which symbolises social change that has obviously been unfolding through the decades and seems to be accelerating. I believe it is finally catching up to changes widely accepted here in Australia. That does not mean we cannot progress further. We can, and we should.

There are many more men than there are women. Able women are not represented in the same numbers across

boards, across governments and across the higher echelons of the corporate world, so there is room for great advancement. There are reasons for that. Of course many women welcome and embrace their responsibilities as parents and often cherish the time they spend rearing their children. I must say even as someone who in many ways is seen as a career woman, I cherish the time I spent with my son when he was born, and in hindsight I would have welcomed the opportunity to spend more time with him. I thoroughly enjoyed that role and see that role as probably the pre-eminent role in my life. That might be one of the reasons women are not quite represented in the same numbers but I think there is still enormous progress needed. It is legislation such as this which is finally catching up with reality. With those few words, I commend the bill to the house.

Hon. D. M. DAVIS (Minister for Health) — I thank honourable members for their contribution to this debate. It is a debate that cuts across party lines on a number of levels. It is a debate that shows very clearly the adaptability of our country's institutions, and shows the bonds across the commonwealth. I particularly pay tribute to UK Prime Minister David Cameron for the leadership he showed in modernising the monarchy in this way. He is a great moderniser and a great leader in that respect.

I also note in passing the enormous contribution our current monarch has made and the great stability and focus she has provided. She is a figurehead across the commonwealth, including in our own state, and a person of exemplary character. The reality is that her leadership and her example is noted across the commonwealth and even more broadly than that.

With those few comments I take on board the contributions of members across the chamber and thank them for those contributions, noting that this is a bill that will be supported by all in the chamber. My views on the durability and strengths of our institutions are further reinforced by the bill.

Motion agreed to.

Read second time; by leave, proceeded to third reading.

Third reading

Motion agreed to.

Read third time.

WORKPLACE INJURY REHABILITATION AND COMPENSATION BILL 2013

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer); by leave, ordered to be read second time forthwith.

Statement of compatibility

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (charter act), I make this statement of compatibility with respect to the Workplace Injury Rehabilitation and Compensation Bill 2013.

In my opinion, the Workplace Injury Rehabilitation and Compensation Bill 2013, 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 Workplace Injury Rehabilitation and Compensation Bill 2013 rewrites the Accident Compensation Act 1985 and the Accident Compensation (WorkCover Insurance) Act 1993. Its purposes are to simplify the provisions applying to the rehabilitation of injured workers and compensation in relation to injuries or deaths arising out of accidents or diseases in the workplace on or after 1 July 2014. It also seeks to streamline the provisions of the Accident Compensation Act 1985 and the Workers Compensation Act 1958, which continue to apply in respect of injuries or deaths arising out of accidents and diseases in the workplace before 1 July 2014. In addition, the bill provides a single gateway for claims for compensation whether under the bill or the Accident Compensation Act 1985. The bill also provides for the registration of employers and the payment of WorkCover premiums and repeals the Accident Compensation (WorkCover Insurance) Act 1991. Various consequential amendments to other acts are also included in the bill.

Human rights issues

Right to equality

Section 8(3) of the charter act provides that every person is equal before the law, is entitled to the equal protection of the law without discrimination, and has the right to equal and effective protection against discrimination. 'Discrimination' for the purposes of the equality right means discrimination within the meaning of the Equal Opportunity Act 2010, and can involve either direct or indirect discrimination.

Under the Equal Opportunity Act 2010, 'direct' discrimination occurs where a person treats, or proposes to treat, a person with a relevant attribute unfavourably because of that attribute. There are therefore two elements to direct

discrimination: a person must be treated unfavourably, and the unfavourable treatment must be because the person has a relevant attribute. The Equal Opportunity Act 2010 also prohibits 'indirect' discrimination, which occurs when a person unreasonably imposes a requirement, condition or practice that has the effect of disadvantaging a person with a relevant attribute. Relevant attributes include, for example, age, race, sexual orientation, religious belief, and disability.

Different treatment of persons based on disability

There are a range of clauses within the bill that are relevant to the right to protection from discrimination on the basis of disability. Disability is broadly defined under the Equal Opportunity Act 2010 to include, for example, the presence in the body of organisms that may cause disease; the total or partial loss of a part of the body; malfunction of a part of the body, including a mental or psychological disease or disorder; malformation or disfigurement of a part of the body; and behaviour that is a symptom or manifestation of a disability. Where the bill treats a person unfavourably because of any of these aspects of disability, this may amount to discrimination, and so may limit the right to equality.

Under clause 570, the approval of a person providing a professional service under the bill may be suspended or revoked on a range of grounds, including where the authority has found that the ability of the person to practise is affected because of the person's physical or mental health or the person's incapacity. These grounds also enable the authority to determine that the costs of any relevant services provided during the suspension are not payable by the authority or a self-insurer. This clause further allows the authority to refer the conduct of a person to a relevant regulatory body. Under clause 571, the authority can make determinations where a relevant body has found that a person's ability to practise is affected because of physical or mental health or incapacity. These determinations relate to costs for services which would otherwise be payable by the authority or self-insurer.

These provisions may constitute unfavourable treatment on the basis of disability. A person may have their provider approval suspended or revoked on the basis that their mental or physical health (which may amount to a disability) prevents them from providing the relevant services, or because of behaviour that is a symptom or manifestation of a disability and which affects the provision of the relevant services. However, if the clauses do involve unfavourable treatment on the basis of a disability, and therefore impose a limit on the right to equality, in my view, any limit is clearly justifiable for the reasons set out below.

Clauses 570 and 571 serve the important purpose of protecting injured workers from professionals who are unable to properly provide relevant services under the scheme. The clauses apply where the authority is concerned about the adequacy, appropriateness or frequency of a professional service being provided under the scheme, and the authority's powers are intended to be exercised only in circumstances where a person's ability to practise is genuinely adversely affected. The clauses are structured to enable flexibility in responding to particular circumstances, so that where the adverse effects of a person's physical or mental health or incapacity are only short term in nature, the person's provider approval may be suspended, rather than revoked. Further, the bill provides important protections to ensure that the authority's powers under this division are properly exercised: clause 572 requires that a person be notified and given the opportunity to make submissions before any determination is made, while clause 574 enables a person to seek review of the authority's decision at the Victorian Civil and Administrative Tribunal. For these reasons, I consider that any limit on the right to equality that may be imposed by clauses 570 and 571 is reasonable and demonstrably justifiable in accordance with section 7(2) of the charter act.

Clause 39 provides that a worker is entitled to compensation under the bill for injuries that arise out of, or occur in the course of, employment. This clause differentiates between how persons are treated based on the type of injury that they suffer. Clause 40(1) provides that no entitlement is available if the injury is a mental injury caused wholly or predominantly by: management action (or a decision to take, or not to take, management action) that is taken on reasonable grounds; any expectation by the worker that any management action or decision would or would not be taken; or an application for a councillor conduct panel to make a finding of misconduct against a councillor under section 81B of the Local Government Act 1989. Additionally, subclauses 40(2) and (3) limit compensation for heart attack injuries, stroke injuries, diseases, or pre-existing injuries, unless the worker's employment was a 'significant contributing factor'.

The operation of clause 39 may involve a limit on the right to equality by treating people unfavourably on the basis that they have particular types of disability. The provision imposes both a higher threshold for compensation for certain injuries (in the case of heart attack injury, stroke injury, disease, or pre-existing injury) and a restriction on access to compensation in relation to particular injuries in specified circumstances (in the case of mental injury). However, for the reasons set out below, any limits on the right to equality that may be imposed by clause 39 are reasonable limits that are demonstrably justifiable in the context of the scheme.

With regard to subclause 40(1), which concerns mental injuries, the purposes of the limit are threefold: to protect the capacity of employers to regulate workplace productivity and performance; to ensure that employees comply with their contractual obligations; and to protect the financial viability of the scheme and its ability to provide compensation for genuine workplace injuries. The singling out of mental injuries in this context reflects the challenges that the assessment process presents for determining psychiatric or mental illness that is alleged to arise from reasonable management action. The assessment of mental or psychiatric injuries is not assessed in the same manner as physical injuries; rather, the diagnosis of mental injuries relies on self-reporting and mental state or behavioural examination by clinicians. As a result, diagnosis turns on clinical judgement and consideration of the subjective viewpoint of claimants, and is more susceptible to abuse or fabrication by workers than physical injuries. There are also particular difficulties involved in establishing a causal link between a reasonable management action and a mental injury. Psychiatric injuries are frequently caused by multiple factors including a worker's personal life, interpersonal relationships and personality factors. The specific exclusion of mental injuries caused by reasonable management actions and decisions is therefore considered necessary to discourage fraudulent claims in circumstances where the scheme is particularly vulnerable to abuse, and in circumstances where it is difficult to establish a causal connection between a person's mental injury and events occurring in the workplace.

Additionally, subclause 40(1) does not limit the right to equality any more than is necessary. It does not involve a blanket exclusion of mental injury claims based on management action. Rather, it applies only to the specific circumstances where injuries are caused by a reasonable management action or decision, an expectation of the worker, or, in limited circumstances, where the conduct of a councillor is investigated. A worker who has been affected by unreasonable management actions or decisions is still entitled to make a claim.

With regard to subclauses 40(2) and (3), which concern heart attack injuries, stroke injuries, diseases and pre-existing injuries, the purpose of any limitation on the right to equality imposed by these provisions is to target compensation under the bill to circumstances where there is a genuine connection between a worker's injury and their employment. The higher threshold for compensation for the specified types of injury reflects the fact that these injuries are less likely to have a direct causal link to the employment of the worker. In particular, individual susceptibilities and lifestyle factors commonly play a role in heart attack, stroke and disease. These injuries, as well as pre-existing injuries, are treated differently to other kinds of injury because it is considered that employers should not be liable for injuries that simply arise in the workplace, but are not sufficiently connected with the employment of the worker. Notably, workers who suffer these kinds of injuries are still able to access compensation; the subclauses merely require that the employment must have been a significant contributing factor. This achieves the purpose of the clause without going any further than is necessary, and for these reasons, I consider that any limits imposed on the right to equality by clause 40 are reasonable and demonstrably justifiable in accordance with section 7(2) of the charter act.

Similar considerations arise with regard to subclause 243(7), which limits the availability of early provisional payments to assist dependants of a deceased worker in cases where heart attack, stroke or disease was a material factor in the death. While this subclause may involve a limit on the right to equality, the limit is reasonable because the question of causation with regard to these types of injury is considerably more involved than is the case for other injuries that result in a worker's death. It would be inappropriate to provide provisional payments to dependants in these instances, before the claim has been accepted. I therefore consider that any limitation imposed on the right to equality by subclause 243(7) is reasonable and demonstrably justifiable in accordance with section 7(2) of the charter act.

The type of injury suffered by a worker also affects the availability of compensation for non-economic loss under clauses 211, 212, 213 and 214. In particular, compensation for non-economic loss is available for physical injuries involving an impairment of 10 per cent or more, whereas compensation for non-economic loss involving a psychiatric impairment is only available for impairments of 30 per cent or more. Clause 211 also differentiates between spinal impairment and other injuries, while clause 213 provides a specific regime for assessing non-economic loss compensation for industrial deafness injuries and clause 214 specifies the amount of non-economic loss compensation available for the loss of a foetus.

These clauses enable workers who are most in need of compensation due to a significant injury to access a lump sum payment without needing to pursue costly and lengthy common-law proceedings. Arguably, the imposition of a higher threshold for psychiatric injuries in determining access to compensation could be considered to be unfavourable treatment that is based on the nature of a person's disability. To the extent, if any, that this clause imposes a limitation on the right to equality, I consider that the limit is reasonable and justifiable in accordance with section 7(2) of the charter act for the reasons set out below.

The limit serves the important purposes of protecting the financial viability of the compensation scheme and its role in compensating claims for genuine workplace injuries, and protecting the scheme from wrongful claims. As noted above, there are various difficulties associated with assessing the degree of psychiatric injury, particularly lower levels of psychiatric injury. Additionally, psychiatric injuries are rarely caused by a single event — they frequently involve additional causal factors of the kind discussed above. The challenges involved in accurately assessing the degree of psychiatric injury and determining the causal relationship between a psychiatric injury and a person's employment mean that these types of claims are particularly vulnerable to abuse. Further, a lower threshold for psychiatric injury could involve the imposition of significant costs on the compensation scheme that would undermine its ongoing viability. The current provision does not absolutely limit compensation for psychiatric injury, and compensation remains available for those with moderate to severe psychiatric injuries. Taking these considerations into account, in my view it is reasonable to provide a higher threshold for providing compensation for non-economic loss for psychiatric injuries.

I have also considered the aspects of the bill that impose different assessment schemes for persons with spinal injuries, injuries causing industrial deafness, and injuries involving the loss of a foetus. In my view, the bill does not impose any unfavourable treatment on persons with these injuries. The specific clauses relating to these types of injury in the bill are more beneficial to potential claimants than would be the case if these injuries were assessed as ordinary physical injuries. The clauses reflect the view that the approach adopted in the medical guides that are ordinarily used to assess physical injuries under the bill is inadequate for the purposes of properly compensating people for these types of injuries. As such, these clauses do not limit the right to equality.

Under clauses 325 and 327, the test for bringing common-law claims for damages requires psychiatric injury to be 'severe', as compared to the lower threshold of 'serious' for physical injury. For the reasons set out above in relation to the different thresholds applying to compensation for non-economic loss, I consider that any limit on the right to equality imposed by these clauses is reasonable and demonstrably justifiable.

A final issue concerning differential treatment on the basis of the nature of a person's disability arises under clauses 56 and 325. Clause 56 sets out that in assessing the degree of impairment under the bill, regard must not be had to secondary psychiatric or psychological injuries arising out of a physical injury. Clause 325 also requires that physical and psychiatric injuries be assessed separately in the determination of whether a person has a 'serious injury'. These clauses may have unfavourable outcomes for persons who have related psychiatric and physical injuries, as they may not be able to access certain compensation or benefits because their secondary injuries may not be considered in the assessment of impairment, or because their injuries cannot be

combined to allow them to meet the requisite thresholds for bringing common-law claims.

In my view, any limit on the right to equality that may be imposed by these clauses is reasonable and demonstrably justifiable in accordance with section 7(2) of the charter act. Physical and mental injuries are assessed separately because, for the reasons set out in the discussion above, they attract different threshold levels and benefits. Further, providing compensation for secondary injuries that emerge as a result of an initial workplace injury may dilute the focus of the scheme on workplace injuries and compromise its ongoing financial viability. The requirement to exclude secondary psychological injuries from the assessment of compensation for impairment is also appropriate because the benefit for physical injuries contains an element for pain and suffering; if secondary psychological injuries were not excluded, this could result in a worker being compensated twice in respect of the same injury. I also note that while secondary psychiatric injuries are excluded, it is still possible to receive compensation for both physical and psychological injury, provided that each injury is a direct result of a work-related incident.

For the reasons set out above, I consider that these clauses do not impose any unreasonable restrictions on the right to equality.

Different treatment of persons based on age

There are a number of clauses within the bill that differentiate between persons on the basis of age. These clauses are discussed below.

Subclause 203(4) provides that a determination of impairment resulting from an injury to a worker who is a minor cannot be made until the worker turns 18. This could arguably be considered unfavourable treatment on the basis of age, as it restricts young persons from making a claim for compensation (such claims cannot be made until the degree of impairment has been assessed). However, in my view, the treatment is not unfavourable. The full consequences of some injuries do not manifest until a person has reached adult age (at least 18 years) — for example, it is difficult to assess the full impact of an acquired brain injury until the person has reached an age at which full development of mental capacity can be assessed and compared to an average adult. This clause ensures that the full extent of an injury can be included in the assessment of impairment so that appropriate compensation can be made.

Clause 241, which sets out the pensions available for dependants of a worker who dies as a result of a workplace accident, provides that children of deceased workers cease to be dependants at the age of 16, unless the child is studying full time or is a full-time apprentice, in which case he or she ceases to be a dependant at the age of 25. While this clause may be considered to treat persons over 16 or over 25 unfavourably on the basis of age by limiting their access to a benefit, in my view, any limit on the right to equality is reasonable and justifiable. The provision of pensions is intended to compensate persons who would otherwise be relying on the income of a deceased worker. The cut-off age of 16 (for non-students and non-apprentices) reflects the fact that such persons would be able to generate their own income through working. For students and apprentices, the cut-off age of 25 allows a sufficient period to complete an apprenticeship, tertiary or vocational training that would equip a person to enter the workforce. The clause is based on the assumption that most adults would have ceased training or study by the age of 25, and would not be dependent on their family member's earnings. As such, I do not consider that this clause imposes an unreasonable limit on the right to equality.

Certain other clauses, including clauses 229(2) and 237, provide benefits to young persons or their families that are not available to persons over a certain age. In my view, these clauses reflect the different needs and situations of young persons as compared to independent adults, and do not treat any person unfavourably on the basis of age.

Various clauses within the bill also treat persons differently depending on whether they have reached (or are nearing) the retirement age of 65 years. Clauses 164 and 171 provide that a person is not eligible for certain payments under the bill if he or she has attained retirement age. This includes weekly payments under part 5 of the bill. In some circumstances, alternative payments are available for persons who have reached retirement age, such as payments under clauses 169 (injury after retirement) or 170 (incapacity after retirement). However, the overall effect of the provisions is that a person who has reached retirement age may not be able to access the same level of compensation as a person who has not reached that age. These provisions of the bill could therefore be considered to treat older persons unfavourably because of their age. However, to the extent that these provisions limit the right to equality, I consider that the limit is justifiable for the reasons set out below.

The retirement age set in the bill reflects the age that eligible workers are able to access other forms of income support, such as the commonwealth aged pension and superannuation. The financial viability of the scheme is dependent on loss of income compensation being paid to those who are injured and unable to work at an age where they would be expected to work. The bill goes no further than is necessary to protect the viability of the scheme — the clauses recognise that there is an age at which most people will cease working, but also ensures that compensation is payable to those who continue to work beyond the normal retiring age and are then injured. If a person continues to work beyond the age of 65 years, or is injured within 130 weeks before attaining that age, he or she would still be entitled to receive up to 130 weeks of weekly payments, which is consistent with the amount that most other workers may receive under the bill. In this respect, the 130-week cap reflects the total of the first and second entitlement period which applies to other workers under part 5. Additionally, the prescribed retirement age of 65 only applies in respect to loss of income (weekly payments) compensation. The worker may still have an entitlement to medical and other services, non-pecuniary compensation for permanent impairment or access to common-law damages. As such, I consider that the limits imposed on certain forms of compensation for workers who have reached retirement age are reasonable and demonstrably justifiable in accordance with section 7(2) of the charter act.

Right to a fair hearing

Section 24(1) of the charter act provides that a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Limitations on proceedings being brought

A range of clauses in the bill have the effect of limiting or prohibiting the bringing of proceedings in particular circumstances. The fair hearing right is relevant to these clauses, as the right has been held to encompass a right of access to the courts to have one's civil claims submitted to a judge for determination. However, the right to access the courts is not absolute, and may legitimately be limited by the needs and resources of the community and individuals.

Clause 78 enables employers to request written reasons from the authority where it has decided to accept or to reject a claim for compensation relating to weekly payments or the death of a worker. Subclause 78(3) provides that no proceedings may be brought against the authority with regard to questions or matters arising under that provision. This clause may affect the fair hearing right of employers who have requested reasons under clause 78. In this regard, I note that while only persons have human rights under the charter act — corporations do not have human rights — the definition of employer under the bill includes a person. To the extent that individual persons are affected by subclause 78(3), I consider that the clause is unlikely to involve a limit on the right to a fair hearing, as there are other avenues for review of decisions of the authority to accept or reject claims. Employers are able to object to the substantive decision to accept the claim, and may request that the authority review its decision. Employers may also appeal such decisions to the Supreme Court.

Subclause 80(4) provides that no proceedings may be brought in relation to a refusal by the authority to grant an employer permission to lodge an out-of-time objection to a decision in respect of liability. In my view, this clause does not limit the right to a fair hearing of employers because the employer would already have had a 60-day opportunity to lodge an objection. If the employer falls outside that time frame, this is a beneficial clause which allows the authority to grant an exemption from the rules. Taking the review and appeal processes as a whole, I consider that not being able to appeal a decision refusing to grant an exemption does not limit the right to a fair hearing.

Similar considerations apply in relation to subclause 264(3) and its effect on the fair hearing right of workers. That provision provides that proceedings must not be brought in respect of decisions of the authority to consent to, or refuse to consent to, the bringing of proceedings where the worker is unable to commence proceedings due to the operation of clauses 335(2)(b) or 333, or in respect of a decision by the authority under section 134AB(20), 134AB(20A), 135A(6A) or 135A(6B) of the Accident Compensation Act 1985 (AC act). Subclause 264(3) applies where a person has not complied with the necessary time frame for seeking the leave of the court to bring proceedings, or where a person is seeking to bring proceedings without first holding a conference, which is usually a mandatory step under the bill. The provision enabling the authority to allow a proceeding that a person could otherwise not bring is a discretionary, beneficial provision. In my view, restricting appeal or review of such decisions is an appropriate measure to limit the costs and administration of the scheme, and does not impose any unreasonable limit on the right of access to the courts.

Clause 208 provides that no appeal lies from a determination or opinion as to the degree of a permanent impairment of a worker or as to whether a worker has an injury which is a total loss. While this engages the right to a fair hearing of a worker, employer or self-insurer seeking to dispute such a finding, in my view it is reasonable to provide that no appeal lies from a determination of the kind referred to in this clause. The worker has already had the opportunity to dispute any initial determination of the authority or self-insurer regarding these matters by seeking to have the matter determined by the medical panel under clause 207. The medical panel is an expert panel which is best placed to determine such medical questions, and in accordance with subclause 313(4) of the bill, its opinion is final and conclusive on any court, body or person. Medical panel opinions may still be judicially reviewed by the Supreme Court on the basis that the panel committed a legal error, such as taking into account an irrelevant consideration, misconstruing the legislation under which the panel acts, or failing to observe the rules of natural justice and procedural fairness. I therefore consider that this clause does not limit the right to a fair hearing.

Subclause 243(10) provides that proceedings must not be brought in respect of any question or matter arising out of a decision of the authority or self-insurer under that section. The section enables the authority to make provisional payments to persons that appear to be entitled to compensation in respect of the death of a worker. The right to a fair hearing for potential claimants who may be eligible for a provisional payment is engaged by the clause, but in my view the right is not limited. The restriction on proceedings reflects the fact that the authority's decision under this provision is a preliminary decision. If the authority determines not to make a provisional payment, the claimant may still claim his or her full rights to compensation under the bill. I consider that this provision is a reasonable restriction on the right of access to the courts. It would be unnecessarily cumbersome for these types of preliminary decisions to be the subject of review or appeal proceedings given that a person who is not granted provisional payments still retains their full rights to bring a claim for compensation under the bill.

Subclause 313(5) provides that proceedings must not be brought in respect of the adequacy of a statement of reasons given by the medical panel, other than proceedings seeking an order that further reasons be given or proceedings on the ground that the reasons contain an error of law. This amendment is designed to ensure that inadequate reasons alone do not provide a basis for legal challenge and therefore a basis for quashing an opinion. Rather, there is the ability to seek further reasons and to establish if the reasons contain any error of law. This is the standard of review usually required for tribunals that are exercising an expert function rather than a judicial or adjudicative function and does not, in my view, limit the right to a fair hearing.

A number of clauses in the bill regulate the right of workers to bring common-law actions for workplace injuries. Firstly, common-law damages are restricted to workers with serious injuries. Subclause 335(2) provides that if an impairment is assessed as less than a 30 per cent impairment, a worker cannot bring proceedings for damages unless the authority or self-insurer is satisfied that the injury is a serious injury and issues the worker with a certificate, the worker makes an application under subclause 328(2) or a court other than the Magistrates Court gives leave to bring the proceedings on the basis that the court is satisfied that the injury is a serious injury. Clause 339 provides that if a worker has failed to satisfy a court that an injury is a serious injury, even if the worker then obtains a determination that the degree of impairment is 30 per cent or more, the worker is not entitled

to recover damages for that injury. Second, workers seeking damages for economic loss must also demonstrate a permanent loss of earning capacity of 30 per cent or more to satisfy the test of serious injury under subclause 325(2). This is set out in subclause 325(2). Third, there are minimum thresholds for economic loss and pain and suffering that must be met before a court can award common-law damages. These are set out in clause 340. Fourth, there is an offer and counteroffer process that must take place before a worker can bring a claim, which is set out in clause 333. Fifth, there are costs implications that flow from the offer and counteroffer process set out in subclause 344(2) that may deter a worker from commencing proceedings.

To the extent that the clauses listed above may be considered to be procedural barriers to bringing a common-law claim for damages, the right in section 24 of the charter act of access to a court will be relevant. It is important to note that access to common-law damages sits alongside the statutory scheme of benefits to injured workers. In this sense the total package of compensation must be considered. The barriers to accessing common-law damages listed above are designed to encourage the settlement of claims and preserve the financial viability of the scheme. Accordingly, in my view, these clauses are compatible with the fair hearing right in section 24 of the charter act.

Immunities

A number of clauses in the bill grant legal immunities to particular persons or bodies when performing functions under the bill. Where an immunity clause creates a procedural bar to bringing a claim, the right to a fair hearing may be relevant.

Clause 541 provides that the convenor of the medical panel and a member of a medical panel have the same protection and immunity as a judge of the Supreme Court. This clause does not limit the medical panel's obligation to act fairly and lawfully in carrying out its obligations under the bill; rather, it prevents the bringing of proceedings against members of the panel or the convenor of the panel. Additionally, subclause 537(8) provides that consultants engaged for the purpose of providing expert advice to a medical panel are not personally liable to any action, claim or demand in relation to functions performed or powers exercised, if the matter or thing was done or omitted in good faith. As liability is not transferred to any other body, this clause may restrict access to the courts. The question is whether this is a reasonable and proportionate measure; if it is, then the fair hearing right will not be limited.

In my view, these measures are reasonable and proportionate. In particular, the degree of immunity provided to the panel convenor and its members is necessary to maintain their independence, so that they can, and can be seen to, fulfil their statutory function impartially and without fear or favour. The immunity serves to attract and retain quality practitioners to the panel. It also protects the finality of the decisions of the panel from collateral attack through personal suit against individual members. The immunity does not leave an aggrieved worker without any means of redress; as noted above, medical panel opinions may still be judicially reviewed by the Supreme Court on the basis of legal error, including failure to observe procedural fairness. More generally in relation to accountability, panel members are required to meet the legal and ethical standards that regulate health practitioners. I therefore consider that the right to a fair hearing is not limited by clauses 541 and 537(8).

Clause 570 provides that where the authority reviews the conduct of a professional service provider in certain circumstances under the bill, section 21A of the Evidence (Miscellaneous Provisions) Act 1958 applies as if the authority or a delegate of the authority were a commission appointed by the Governor in Council to conduct the review. This, in effect, confers on the authority the privileges and immunities in respect of any acts done in relation to the inquiry as if the act had been done in relation to an action in the Supreme Court. While this protects the authority from suit, in my view it does not limit the right to a fair hearing, because other avenues for appeal and review exist. In particular, a person whose rights have been affected by a determination of the authority may seek review of the decision at the Victorian Civil and Administrative Tribunal.

Subclause 499(3) provides that employees of the authority are not liable for things done in good faith for the purposes of performing a duty or carrying out a power or function of the authority. This clause does not limit the right to a fair hearing because a person affected by actions of employees of the authority is still entitled to bring an action against the authority itself.

Right to test the evidence

The fair hearing right incorporates the principle of 'equality of arms', which requires that each party must have a reasonable opportunity to present their case to the court under conditions which do not place them at a substantial disadvantage when compared with the other party. Generally, parties should have the opportunity to test the evidence against them.

Subclause 489(2) is relevant to the right as it provides that a notice of the authority's assessment of a premium or adjusted premium is 'evidence' that the assessment was made and is correct, except in review or appeal proceedings (in which it is proof in the absence of proof to the contrary). In my view, this clause does not limit the right to a fair hearing. The provision is primarily designed to prevent employers defending an action for the recovery of a premium on the basis that the premium was incorrectly calculated. There are already review and appeal processes in the bill to enable employers to challenge the assessment of premiums. The certificate will streamline the debt recovery process. In the context of review and appeal proceedings, as indicated above, the certificate will be proof in the absence of proof to the contrary.

Clause 556 requires a court to provide the authority, on request, with a certificate with particulars of a relevant conviction or finding of guilt, and of the concentration of or presence of alcohol or a drug, in relation to a worker. Such a certificate is conclusive proof of the particulars set out in it.

This clause is relevant to the right to a fair hearing because a person whose entitlement to compensation is affected by the matters contained in the certificate is unable to challenge the contents of the certificate. However, the provision does not limit the right to a fair hearing, because the person would have already had a fair hearing regarding the matters contained in the relevant certificate when the person was originally convicted of the offence (and in any subsequent appeals). This clause simply prevents relitigation of matters which have already been decided by a court.

Freedom of expression

Section 15 of the charter act provides that every person has the right to freedom of expression. Section 15(3) makes the right subject to such lawful restrictions as are reasonably necessary to respect the rights and reputation of others, or for the protection of national security, public order, public health or public morality.

Prohibited conduct relating to touting for claims

Clause 560 provides that a range of activities constitute 'prohibited conduct' for the purposes of the bill. Some of the conduct may include expressive conduct to which the right to freedom of expression is relevant. For example, subclause 560(1)(a) provides that it is prohibited conduct for a person to knowingly make a false or misleading statement for the purpose of encouraging someone to make a protected claim and to use the services of the agent (or another person from whom the agent receives any payment in connection with the claim). Subclause 560(1)(e) prohibits making unsolicited contact by telephone, personal approach or other prescribed means with a person who is not a client, for the purpose of encouraging that person to make a protected claim and use the services of the agent (or the services of another person from whom the agent receives payment in connection with the claim).

In my view, clause 560 does not limit the right to freedom of expression either because the relevant conduct does not fall within the scope of the right to freedom of expression (on the basis that misleading and deceptive conduct is unlikely to be covered by right to freedom of expression), or because the restrictions on the conduct fall within the internal limitations on the right. Prohibiting conduct of the kind referred to in subclause 560(1) is reasonably necessary to respect the rights of others, and to protect public order; it discourages behaviour that could constitute harassment of persons who may be entitled to make claims, and further deters persons from encouraging others to make spurious or unwarranted claims.

The right of freedom of expression may also be relevant to clause 566 of the bill, which provides that the authority may make a direction prohibiting an agent from acting for any person in connection with any claims or in connection with specified types of claims. Such an order may be made where a person has persistently engaged in prohibited conduct.

These orders could potentially restrict an individual's right to freedom of expression, to the extent that such interferences restricted an individual's ability to communicate ideas and information. However, I consider that any restriction would fall within the internal limitations on the right, in that they are reasonably necessary to respect the rights of others, and to protect public health and public order.

Right not to be subjected to forced medical treatment

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

A number of clauses within the bill require that workers making claims for compensation under the bill must submit to medical examination or assessment. Clause 26 provides that the authority or self-insurer may require a worker who has made a claim for compensation to submit at reasonable intervals to a medical examination by an independent medical practitioner provided and paid for by the authority or self-insurer. Clause 203 requires a worker who has made a claim for compensation for non-economic loss to attend an independent examination at the request of the authority or self-insurer for the purpose of obtaining assessments as to the degree of permanent impairment resulting from any injury for which liability is accepted. Clause 113 provides that a worker who has an incapacity for work must (so far as is reasonable) participate and cooperate in any assessment for the purposes of capacity for work, rehabilitation progress, or future employment prospects. Clause 309 provides that a conciliation officer, the court, the authority or a self-insurer may, at any time, require a worker who claims compensation under the bill or the AC act to submit himself or herself for an examination by a medical panel on a date and at a place arranged by the convenor of medical panels. Under clause 308, the medical panel may also ask a worker to submit to a medical examination by the panel or a member of the medical panel.

Clause 112 provides that a worker who has an incapacity for work must (so far as is reasonable) use an occupational rehabilitation service provided in accordance with the bill or the AC act and cooperate with the provider of that service. I note that this differs from the other clauses discussed in that it requires a worker to participate in rehabilitation services, rather than simply requiring a worker to undergo an assessment or examination.

Workers who refuse to undergo assessments or examinations, or who refuse to participate in occupational rehabilitation services, may have their rights to compensation limited or suspended, and their claims may not be able to progress.

In my view, most of these requirements would not involve 'medical treatment' for the purposes of the charter act, as the nature of the assessment or examination is, in most cases, unlikely to involve any procedures which could constitute medical treatment. While 'medical treatment' is not defined in the charter act, it is defined in the Medical Treatment Act 1988 (Vic) as the carrying out of an operation, the administration of a drug or other like substance, or any other medical procedure. Although it is conceivable that an examination might require, for example, the taking of a blood sample, in most cases assessments under the act are carried out based on evidence (such as pathological tests) received from the worker themselves. As such, it would be unusual for an examination to involve a medical procedure.

To the extent that an examination may involve a medical procedure of the kind that may amount to 'medical treatment', in my view any limitation on the right not to be subjected to medical treatment without consent is reasonable in all the circumstances. The medical examinations and assessments required under the bill are for the important purpose of determining a person's eligibility for entitlements under the WorkCover scheme, and will only be required as reasonably necessary for this purpose. In my view, there is no other way of accurately assessing a person's medical condition. The viability of the scheme relies on accurate assessments. Further, I note that a person may refuse to participate in any examination or assessment, although this may compromise their entitlements to payments under the bill. For these reasons, I consider that to the extent that the bill limits the right in section 10(c) of the charter act, any such limitation is reasonable and demonstrably justifiable in accordance with section 7(2) of the charter act.

Right to privacy

Section 13(a) of the charter act provides that all persons have the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. There are a considerable number of clauses within the bill that involve restrictions on people's privacy in various circumstances. However, for the reasons outlined below, I consider that none of these restrictions on privacy are unlawful or arbitrary, and so they do not impose a limitation on the right to privacy.

Medical examinations and assessments

As discussed above, various clauses within the bill require workers to submit to medical examinations and assessments. While these clauses may require the sharing of very personal information, these examinations and assessments are clearly necessary in order to properly administer the scheme, and to prevent people from making fraudulent or inaccurate claims for compensation. Only those workers who decide to make a claim for compensation under the bill will be subject to requirements that they undergo such examinations and assessments. The circumstances in which these requirements can be made are clearly set out in the bill. Additionally, the bill protects personal information by providing at clause 588 that any information obtained under the bill, the AC act or the Workers Compensation Act 1958 (WC act) must not be used for any purpose except as authorised by or in respect of a matter or for a purpose arising under the bill. In my view, these clauses therefore fall within the internal limitations on the right to privacy, as they do not involve any arbitrary or unlawful interference with privacy.

Information-gathering powers

The right to privacy is relevant to several clauses within the bill which provide powers of entry, inspection, search, and questioning, and the power to require that documents or information be provided in certain circumstances.

Clauses 130 to 135 provide such powers for return-to-work inspectors. Under clause 130, an inspector may enter any place that the inspector reasonably believes is a workplace at any time during the work hours of the workplace. Clauses 133 and 134 set out that the inspector's powers upon entry to a workplace include, inter alia, the power to: inspect and examine things and make enquiries at the workplace; bring any equipment or materials that may be required; seize anything that may afford evidence of an offence against the bill, the AC act or the WC act; take photographs or other measurements or recordings; and require persons to produce documents or answer questions put by the inspector. Under clause 142, a person must not, without reasonable excuse, refuse or fail to provide such assistance as an inspector may reasonably require for the performance of his or her functions under this division.

These inspections are likely to primarily involve inspection of business premises, and I note that the owners of such premises have a limited expectation of privacy. However, even if the exercise of the power to enter workplaces will interfere with a person's privacy, home or correspondence, in my view such interference is lawful and is not arbitrary. The powers are necessary to monitor compliance with the regulatory scheme. The bill limits the exercise of the powers by requiring that inspections occur during work hours, and by providing that, except by consent, inspection powers are not exercisable in relation to a part of a place that is only used for residential purposes (see subclause 130(2)). Additionally, clause 131 requires inspectors to notify occupiers of their entry, and provide cards identifying themselves. The powers are necessary for the proper regulation of the scheme, and are in the interests of promoting public health and safety. I therefore consider that any interference with privacy that may occur in the exercise of these powers is neither arbitrary nor unlawful.

Division 3 of part 13 of the bill provides more general powers of questioning and inspection. Clause 552 deals with questioning powers, and provides the authority with power to require any person to furnish the authority with such information as the authority requires, or to attend and give evidence before the authority or before a person authorised by the authority. The authority may also require that a person produce books in his or her custody. These powers may only be exercised for limited purposes set out in the bill.

Clause 553 provides a general power of inspection for the purposes of determining whether the provisions of the bill, the AC act or the WC act are being or have been contravened or generally of enforcing the provisions of the bill or these acts. Under clause 553, a person authorised by the authority may: enter, inspect and examine any premises; require a person in those premises to give information and produce books; inspect, examine and make extracts from or copies of any books on those premises; and exercise such other powers as are necessary. Clause 554 provides that it is an offence to obstruct or hinder a person exercising powers under clauses 552 and 553 without reasonable excuse.

Stronger search powers may be authorised under clause 558, which provides that a magistrate may issue a search warrant to search premises, including by breaking open cupboards, drawers, and other containers. These powers may be exercised by a police officer, together with any other person named in the warrant. Items may be seized, but may only be retained for as long as is necessary to make copies, unless the magistrate authorises retention for a longer period. Persons who would be entitled to inspect a book if it were not taken pursuant to the search warrant must be able, at all reasonable times, to inspect that book. A magistrate may only issue a search warrant if the magistrate is satisfied that there are reasonable grounds for suspecting that there are on any particular premises books which are relevant to determining whether the provisions of the bill, the AC act or the WC act have been contravened or to assessing a premium under the bill.

These clauses may restrict privacy by requiring people to share information and respond to questions as required by the authority, and by enabling police officers and persons authorised by the authority to enter into private premises and inspect private documents, and, pursuant to a warrant, to search premises. In my view, however, these restrictions fall within the internal limitations on the right to privacy, as they are neither unlawful nor arbitrary. The powers are necessary to monitor compliance with the regulatory scheme, and may only be exercised for the purposes specified in the relevant clauses. Powers of inspection must only be exercised at reasonable times. Search warrants are subject to the oversight of the Magistrates Court, and, as outlined above, protections are in place to ensure that any items seized during a search are not held for longer than necessary. Further, any information obtained in the exercise of any of the relevant powers must only be used for the purposes of the bill, the AC act or the

WC act (see clause 588). I therefore consider that these provisions are compatible with the right to privacy.

I note that to the extent that a person may be required to attend to give evidence before the authority at a particular place and time in accordance with clause 552, the bill may limit the right to freedom of movement in section 12 of the charter act. To the extent, if any, that this right is limited, I consider that the limit is minor in nature and clearly justifiable in accordance with section 7(2) of the charter act.

Information sharing

The bill also authorises the sharing of private information in a range of specified circumstances. For example, clause 555 provides that the Chief Commissioner of Police may give the authority any information in his or her possession or control that the authority requests for the purpose of assessing a person's entitlement to compensation. The information must relate to the commission, or alleged commission, of certain offences under the Road Safety Act 1986 or the Crimes Act 1958 involving conduct to which the authority considers the injury may be attributable, or must be information that the authority considers may comprise serious and wilful misconduct to which the authority considers the injury may be attributable.

In my view, this clause does not involve an unlawful or arbitrary interference with privacy. The sharing of the relevant information is necessary for the authority to assess claims under the bill where a person's involvement in an offence may affect their entitlement to compensation. The use of the information is subject to the authority complying with any agreement entered into between the authority and the Chief Commissioner of Police, and any relevant standards established by the Commissioner for Law Enforcement Data Security. I therefore consider that the clause is compatible with the right to privacy.

Overall, I consider that the clauses in the bill that enable or require the sharing of private information are appropriate measures that are necessary for the proper administration of the accident compensation scheme. Protections are in place to ensure that private information is not used for purposes other than purposes authorised or required in the bill, and the circumstances in which private information can or must be shared are set out clearly and thoroughly. I therefore consider that these clauses do not involve any arbitrary or unlawful interference with the right to privacy in section 13(a) of the charter act.

Registers including private information

Clause 17 provides that employers must keep a register of injuries. The register is an open record and must be kept in a place readily accessible to workers employed in the workplace. The register discloses to all relevant employees personal information about injured colleagues. The register is likely to contain private information such as the name and job title of workers, and the details of injuries. In my view, however, the recording and viewing of this information does not impose any arbitrary or unlawful restrictions on the right to privacy. Information is recorded on the register following notification of an injury by an injured worker or at the request of an injured worker. In these circumstances, the injured worker volunteers personal information for the purposes of bringing his or her injury within the scope of the scheme. The register of injuries is an important mechanism for the efficient and effective reporting of injuries by workers and assists workers to meet the requirement that employers be notified of an injury within 30 days of the worker becoming aware of it. The register encourages workers to report injuries and encourages employers to maintain occupational health and safety standards by making the safety record of the workplace transparent to those with a direct interest, particularly workers. In these circumstances, my view is that clause 17 does not limit the privacy right of injured workers under section 13 of the charter act.

Division 2 of part 10 provides that the authority must maintain a register of employers that includes any employer who employs one or more workers and to whom no exemption applies. Clause 436 requires registered employers to notify the authority of certain changes in circumstances, including changes to the employer's name, trading name, postal address, or workplace activities. I note that the WorkCover scheme continues to act as a safety net for all workers, regardless of whether or not their employer has registered with the authority and complied with their WorkCover obligations.

It is possible that some of the information included on the register of employers could be considered private information protected by section 13 of the charter act. However, any restriction on privacy involved in the recording and viewing of this information is unlikely to be arbitrary or unlawful. Keeping accurate records of this information is necessary for the authority to manage the workplace injury scheme. I therefore consider that clause 17 is compatible with section 13 of the charter act.

Prohibition on providing certain services or acting in relation to claims

The right to privacy in the charter act may, in some limited circumstances, protect against arbitrary or unlawful interferences in a person's participation in employment. For example, the right to privacy might be limited by a very broad measure that banned public officials from gaining employment in the private sector.

This aspect of the privacy right is relevant to clause 566 of the bill, which I referred to above in relation to freedom of expression. This clause provides that the authority may make a direction prohibiting an agent from acting for any person in connection with any claims or in connection with specified types of claims. The authority must first be satisfied that the agent has persistently engaged in conduct that the authority reasonably believes constitutes prohibited conduct and as a result is not a fit and proper person to act in connection with claims to which the direction relates. The authority must have given the agent a reasonable opportunity to make written submissions to the authority on the matter. An agent may seek review of the decision at VCAT.

As these measures are not broad restrictions on employment, and are limited to restricting a person's ability to do a particular kind of work in relation to WorkCover claims, I consider that clause 566 does not interfere with the right to privacy in relation to a person's professional life.

Right to reputation

Section 13(b) of the charter act provides that a person has the right not to have his or her reputation unlawfully attacked. An

attack on reputation will not be unlawful if it is permitted by a law that is accessible and precise.

This right is relevant to clause 568 of the bill, which provides that, where the authority suspends the payment of costs to a person on the suspicion that he or she has committed a relevant offence, the authority must notify the relevant professional body and, where relevant, Medicare Australia. Clause 570 also enables the authority to refer conduct of a professional service provider to a relevant professional regulatory body for investigation.

These clauses ensure that professional bodies can conduct their own enquiries and take steps to adequately regulate the relevant profession, in circumstances where a question has been raised regarding the conduct of one of their members. As any harm to a person's reputation will be permitted by the bill, in provisions which are clearly formulated and accessible to the public, I consider that these clauses do not enable any unlawful attacks on reputation.

Clause 605 provides that if a court convicts a person or finds a person guilty of an offence against the bill, the AC act, the WC act or regulations under the bill, the court may make an adverse publicity order that requires the offender to publicise the offence, its consequences, the penalty imposed and any related matter, or to notify a specified person or class of persons of these details. In my view, this is clearly not an unlawful attack on reputation. Such orders may only be made by a court, and will only be made in circumstances where a person has been convicted or found guilty of an offence.

Presumption of innocence

Section 25(1) of the charter act provides that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law. This right is relevant to a number of provisions in the bill.

Reverse onus provisions

Clause 575 provides that it is an offence for an employer or prospective employer to engage in discriminatory conduct for a prohibited reason. This covers circumstances where the employer or prospective employer has, for example, refused or failed to offer employment to an applicant, and the dominant reason was because the applicant has given an employer notice of an injury, or has taken steps to pursue a claim for compensation against an employer. If all the facts constituting the discriminatory conduct are proved, the employer (or prospective employer) bears the burden of adducing evidence that the reason alleged in the charge was not the dominant reason why the employer (or prospective employer) engaged in the conduct.

Clause 575 is relevant to the right to be presumed innocent because it involves a presumption that an employer or prospective employer's reason for engaging in allegedly discriminatory conduct was a prohibited reason unless the employer adduces evidence to the contrary. However, pursuant to section 72 of the Criminal Procedure Act 2009, this onus is an evidential onus only. Once the employer, or prospective employer, has adduced some evidence that the alleged prohibited reason was not the dominant reason for the conduct, the burden of proof shifts back to the prosecution to prove the elements of the offence.

Courts in other jurisdictions have generally taken the approach that an evidential onus on an accused does not limit the presumption of innocence. Additionally, subclause 575(6) is based on matters within the knowledge of the relevant defendant — that is, the existence of another reason for engaging in the allegedly discriminatory conduct. Further, the penalty for the offence is a pecuniary fine and does not involve imprisonment, and the purpose of the shift in onus is to further the legislative scheme that promotes public health and safety. Consequently, even if the provision limited the right to be presumed innocent through imposing evidential onuses upon defendants, it would be reasonable and justifiable under section 7(2) of the charter act.

Shifting evidential burdens also arise in relation to clauses 134(2), 142, and 554(2), which are all offence provisions that prohibit persons from engaging in particular conduct 'without reasonable excuse'. For example, subclause 134(2) provides that a person must not, without reasonable excuse, refuse or fail to comply with a requirement to produce a document in his or her possession or control, or to answer any questions put by an inspector.

I do not consider that section 25(1) of the charter act is limited by these clauses because there is only an evidential burden on the accused to show a defence (a reasonable excuse) and the prosecution still bears the onus of proving the essential elements of the offence. I consider this is appropriate in respect of each of these offences because the existence or otherwise of a reasonable excuse is a matter that will generally be in the peculiar knowledge of the defendant. Additionally, the offences involve pecuniary fines only, not terms of imprisonment, and are in the context of enforcing a regulatory scheme that promotes public health and safety. As such, I consider that these provisions are compatible with the right to be presumed innocent.

While the above provisions impose evidential burdens only, I note that one aspect of the bill does impose a legal burden on persons accused of a criminal offence. Subclause 575(7) provides that it is a defence to a proceeding for discriminatory conduct if the employer or prospective employer proves that the conduct was necessary to comply with the bill, the AC act, the WC act or the Occupational Health and Safety Act 2004 (OHS act), that the worker or applicant was unable to perform the inherent requirements of the employment, or that the worker was engaged in fraud or dishonesty in relation to the giving of notice of the injury or the pursuit of the claim. This clause imposes a legal burden on the accused, by requiring that they prove certain matters in order to defend themselves against an allegation of discriminatory conduct.

The right to presumption of innocence is therefore limited by subclause 575(7). Whether a statutory presumption imposing a legal burden of proof is an unreasonable limitation on the right to be presumed innocent will depend on all the circumstances of a particular provision. This includes the nature of the matters to be proved by the accused, the seriousness of the offence and the punishment that may flow from a conviction. While the bill limits the right to be presumed innocent, I consider that the limitation is reasonable and demonstrably justified in accordance with section 7(2) of the charter act for the following reasons.

First, I note that ensuring adequate enforcement of the prohibition on discriminatory conduct is an essential element of the accident compensation scheme, as it enables injured workers to make claims without fear of retribution.

Second, I consider that the risk that the provision may allow an innocent person to be convicted of the offence is negligible. The prosecution is required to prove that the accused engaged in discriminatory conduct. As indicated above, the defendant bears an evidential onus in respect of the reason for the conduct. If the defendant has raised evidence of another reason, the prosecution must prove that the discriminatory reason is the dominant reason for engaging in the prohibited conduct. Subclause 575(7) in effect acknowledges that there are some limited circumstances where even if the prosecution can prove these aspects of the offence, an employer may nonetheless have had a valid reason for engaging in the conduct constituting discrimination.

Imposing an evidential onus instead of a legal burden of proof in relation to these offences is not a reasonably available option. Where the employer relies on the conduct being necessary to comply with the bill, the AC act, the WC act or the OHS act, or relies on the fact that the worker was unable to perform the inherent requirements of the employment, these are matters that will generally be in the particular knowledge of the employer, and proving these aspects of the defence (if genuine) should not be a difficult task for an employer. Where the employer seeks to rely on a defence based on a claim that the worker has engaged in fraud or dishonesty in relation to the claim, it is reasonable to require that the employer prove these aspects of the defence. Alleging that another person has been fraudulent or dishonest is a serious accusation, and should not be made without proof. In these circumstances, I do not consider that the imposition of a legal burden goes beyond what is necessary and reasonable to achieve the purpose of the provision.

As such, I consider that the elements of the offence and defence achieve an appropriate balance between the rights of the accused and the need to protect people from discriminatory conduct. The provisions support the legitimate objective of protecting a worker from discrimination on the basis that he or she was exercising his or her rights to make a claim under the bill.

For the above reasons, I consider that the limit imposed on the right is a reasonable limitation that is demonstrably justifiable in a free and democratic society, in accordance with section 7(2) of the charter act.

Action taken on suspicion of offence

Clause 568 provides that if the authority reasonably suspects that a person providing a professional service has committed a relevant offence, the authority may determine that payment of costs for a professional service provided by that person be suspended. Unless a person is charged with an offence, the suspension expires after six months, or at the time that the authority determines that it will not bring proceedings.

In my view, suspension of payment while an offence is being investigated is a reasonable measure which does not limit the presumption of innocence. The clause does not impose any penal consequences on the accused; rather it simply prevents the authority from having to pay costs to a person while the possible offence is being investigated. This is appropriate, because if a person has actually committed an offence, the authority would not be liable to pay those costs. This clause saves the authority from having to seek to reclaim money wrongly paid to persons who have committed relevant offences. Further, it is not an indefinite suspension, and if the suspension is lifted or six months pass without the person being charged, then all moneys owing will become payable.

Right against self-incrimination

Section 25(2)(k) of the charter act provides that a person charged with a criminal offence is entitled not to be compelled to testify against himself or herself or to confess guilt. The Supreme Court has held that this right, as protected by the charter act, is at least as broad as the common-law privilege against self-incrimination. It applies to protect a charged person against the admission in subsequent criminal proceedings of incriminatory material obtained under compulsion, regardless of whether the information was obtained prior to or subsequent to the charge being laid.

This right is relevant to clause 597 of the bill, which provides that a person may refuse to give information or do any other thing that the person is required to do by or under the bill, the AC act or the WC act if to do so would tend to incriminate the person. However, this protection does not apply to the production of a document that the person is required by the bill, the AC act or the WC act to produce.

The privilege against self-incrimination generally covers the compulsion of documents which might incriminate a person. However, the protection accorded to the compelled production of pre-existing documents is considerably weaker than that accorded to oral testimony or to documents that are required to be brought into existence to comply with a request for information. I note that some jurisdictions have regarded an order to hand over existing documents as not constituting self-incrimination.

The primary purpose of the abrogation of the privilege in relation to documents is to assist the authority to enforce penalty provisions or to prosecute offences by employers and others who assist or facilitate the execution of responsibilities imposed on employers under the bill. Importantly, clause 597 provides a partial immunity, in that a document (or evidence obtained as a result of the production of that document) cannot be used in proceedings against the person other than criminal or civil proceedings under the bill, the AC act or the WC act, or in relation to proceedings for an offence against the Crimes Act 1958 which arises in connection with a claim for compensation under the AC act or the bill. Any limitation on the right against self-incrimination is therefore appropriately tailored and minimal. For the above reasons, I consider that clause 597 imposes a reasonable limitation on the right against self-incrimination.

Conclusion

For the reasons set out above, I consider that the bill is compatible with the human rights set out in the charter act.

The Hon. Gordon Rich-Phillips, MLC
Assistant Treasurer

Second reading

Ordered that second-reading speech, except for statement under section 85(5) of the Constitution Act 1975, be incorporated into *Hansard* on motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

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

That the bill be now read a second time.

Incorporated speech as follows:

This bill honours a government election commitment to recast the Accident Compensation Act 1985 and the Accident Compensation (WorkCover Insurance) Act 1993 into a single act that is simpler and easier to use.

It also delivers on a government commitment to reduce regulatory burden associated with workers compensation legislation, by simplifying the legislation relating to rehabilitation and compensation for injured workers, and making it easier for employers and workers to read the legislation and understand their rights, obligations and responsibilities.

The bill is of the highest importance to Victorian workers and employers. Although Victorian workplaces have never been safer, many Victorians are still affected by workplace injury and death every year and the importance of the workers compensation legislation to the Victorian community cannot be overstated.

Scope of the bill

The bill recasts the Accident Compensation Act and the Accident Compensation (WorkCover Insurance) Act into a single piece of legislation to govern workers compensation insurance, payment of premiums, rehabilitation for injured workers, and compensation in relation to workplace injuries and deaths.

The rewrite has restructured the legislation, removed or streamlined obsolete and redundant provisions, identified opportunities to streamline compliance requirements and improved readability. Importantly, the rewrite has been undertaken on a 'no-benefit-change' basis.

The bill includes drafting improvements that simplify the legislation and make it easier to understand and navigate. Some of the key improvements are:

- a more logical structure and sequence;
- the style and language of some outdated provisions in the legislation have been modernised, and various provisions have been restructured to make them easier to read and understand;
- flow chart diagrams in the bill provide a visual snapshot to aid understanding of various processes that are described in the bill;
- the removal of various redundant or superfluous provisions.

The bill includes a number of minor amendments aimed at removing ambiguities, clarifying the intention of various provisions, and correcting a number of drafting anomalies. The bill also includes a number of minor policy changes that improve administrative processes or reduce scheme costs and regulatory burden. Such provisions do not impact the entitlements of injured workers.

The wording of some of the more complex and heavily litigated provisions of the Accident Compensation Act have been reproduced in the bill.

Structure of the bill

As noted earlier, the bill has been structured to give it a more logical sequence, with the parts used most often at the beginning of the bill, and the parts for more specific audiences, such as self-insurers and non-WorkCover employers, placed later in the bill.

It represents a significant drafting improvement, particularly when compared with the way that provisions are ordered in the Accident Compensation Act.

Further benefit is also achieved by combining legislation related to compensation and legislation related to insurance into one piece of legislation. This means that employers will not need to look at multiple acts to understand their obligations and responsibilities.

Flow charts

New visual aids have been included in the bill, with flow chart diagrams to assist workers and employers understanding important processes and obligations.

The technical and procedural nature of insurance legislation means that it can be difficult to read and understand for people who are not lawyers. The new flow charts in the bill will assist workers and employers to understand important obligations and claims processes in the bill.

Application of the bill

This bill will replace the Accident Compensation (WorkCover Insurance) Act, which will be repealed entirely. Relevant provisions from the Accident Compensation (WorkCover Insurance) Act have been consolidated into the bill to create a more comprehensive and streamlined piece of legislation. This means that compulsory workers compensation insurance and payment of premium will now be determined according to the provisions of the bill.

The bill will apply to workplace injuries and deaths arising out of or in the course of employment on or after the commencement date. The existing benefits schemes in the Accident Compensation Act will be retained for workers with injuries arising before the commencement date.

In future all claims will be made under this bill whether for compensation under the bill or under the Accident Compensation Act. Entitlements for claims will then be determined according to the relevant benefits scheme in place at the date of injury. A small number of claims for injuries that arose before 12 November 1997 will continue to be lodged under the Accident Compensation Act.

The premium provisions under this bill set out the new premium legislative framework under which all employers are insured for WorkCover claims through the operation of the act rather than under a contract of insurance. The bill will apply to all employers who are required to pay premiums pursuant to the bill and the premiums order for the 2014–15 premium year, as well as employers who are exempt. The Accident Compensation (WorkCover Insurance) Act will be repealed upon commencement of the bill but will continue to

apply to employers who have an obligation to pay premiums before the commencement of the bill.

Various provisions setting out entitlements and obligations for certain older periods of time will be retained in the Accident Compensation Act. There are approximately 20 different benefit schemes that govern claims for compensation under the Accident Compensation Act. Various complex transitional rules applying to existing benefits schemes will also be retained in the Accident Compensation Act, such as the transitional rules relating to the calculation of pre-injury average weekly earnings and the calculation of weekly payments.

This approach has also been taken to ensure that the bill will provide a streamlined piece of legislation that will be easier to apply for future workplace injuries and deaths.

While the Accident Compensation Act will be retained as a benefits scheme for injuries arising prior to the commencement of the bill, a large number of provisions in the Accident Compensation Act will be repealed where it is unnecessary to have two sets of provisions covering the same matters.

Administrative and minor policy changes

The bill includes a number of administrative and minor reforms to remove ambiguities and correct drafting anomalies, improve administrative efficiency and reduce regulatory burden for workers, employers and others.

For example, part 2 of the bill provides that in the rare circumstance where a worker does not supply a medical certificate when lodging their claim form, as required by the legislation, the worker will now be able to attend conciliation to resolve their claim instead of having to go directly to court to do so.

Three changes have been made to the return-to-work provisions in part 4 of the bill. The first change is to address a contradiction in how the employer's obligation to return a worker to work after an injury is expressed in the legislation. This contradiction has been removed and the bill now makes clear that the one-year period in which an employer is required to return a worker to work includes any time during which a worker is not fully fit for work.

The second change addresses an anomaly arising from provisions that govern where an employer disputes a return-to-work improvement notice. Under the Accident Compensation Act, these provisions meant that where an employer disputes a return-to-work improvement notice, the one-year period in which an employer is required to return an injured worker to work would continue counting down. The bill addresses this anomaly and makes clear that the period in which a worker must be allowed to return to work does not include any period in which an improvement notice is disputed.

The third change in part 4 of the bill is to clarify that the return-to-work obligations of workers are only enforceable 'to the extent reasonable'. This is consistent with how the return-to-work obligations of employers are expressed under the legislation.

There are a small number of minor changes to clarify benefit provisions and to address anomalies. These include a change to the pre-injury average weekly earnings provisions to ensure that workers who take leave at less than their full rate of pay prior to being injured have their PIAWE calculated based on their normal rate of pay.

The bill makes clear that where a worker is engaged in employment, but does not have a current work capacity because their employment does not constitute 'suitable employment' within the meaning of the bill, their weekly payments must reflect the income they are earning from their employment.

The bill also ensures better decision making in relation to impairment benefit claims by making clear that these claims may be suspended where insufficient factual information has been provided to support such a claim.

The bill addresses an anomaly arising under the Accident Compensation Act whereby a partially dependant partner of a deceased worker is excluded from compensation. The bill makes clear that partially dependant partners are entitled to share in compensation whether the deceased worker has full dependants or no other dependants at all.

Minor changes have been made to medical panel procedures in order to improve the efficiency of medical panel referrals. The changes include amendments relating to time limits for the submission of material to a medical panel after a matter has been referred.

The bill clarifies that the requirement for a medical panel to give written reasons for its medical opinion means that the standard of those reasons should reflect a tribunal of medical experts. This will ensure that a medical panel's reasons cannot be challenged on the basis that they are inadequate and allow panels to continue to operate efficiently and effectively.

All employers will be covered by WorkCover insurance under the bill and will be required to be registered with the authority.

The bill introduces a right for employers to seek review of their premium notices at the Victorian Civil and Administrative Tribunal if they are dissatisfied with the Authority's review decision. This right complements the existing right employers have to seek review in the Supreme Court.

Part 14 of the bill sets out various amendments to the Accident Compensation Act. Some provisions remaining in the Accident Compensation Act have been amended for consistency with minor changes reflected in provisions in the bill such as I have outlined. This will ensure that anomalies in the legislation are corrected for all workers and employers, and that certain amendments to decrease regulatory burden are also made to the Accident Compensation Act. A large number of provisions from the Accident Compensation Act have been repealed as they are no longer required.

Regulatory impact assessment

A regulatory impact assessment undertaken by PricewaterhouseCoopers has found that the bill is expected to reduce administrative costs by an average of $2.3 million per annum (over the first 10 years following implementation). This includes savings for WorkCover scheme-insured businesses and claims agents, who will spend less time referring to legislation in relation to claims, premiums and other obligations.

Section 85 Constitution Act 1975

Hon. G. K. RICH-PHILLIPS — I wish to make a statement under section 85(5) of the Constitution Act 1975. I make the following statement under section 85 of the Constitution Act 1975 of the reasons why it is the intention of a number of clauses in the bill to alter or vary section 85 of the Constitution Act 1975. These clauses are consistent with the corresponding provisions of the existing legislation.

Clauses 264, 265 and 266 set out the jurisdiction of the County Court and the Magistrates Court in respect of certain matters arising under the bill, the Accident Compensation Act 1985 (Accident Compensation Act) and the Workers Compensation Act 1958.

The exclusive jurisdiction conferred on the courts by clauses 264(1), 265(a), 265(c) and 266(3) is intended to prevent proceedings being brought directly in the Supreme Court in relation to a question or matter arising under the legislation (unless otherwise specified).

The limitation is intended to provide more efficient and accessible dispute resolution under the scheme and that disputes in connection with statutory benefits and the determination of serious injury are heard in the same forum. The limitation on the jurisdiction of the Supreme Court in clauses 264, 265 and 266 is necessary and proportionate.

Clause 264(3) prohibits proceedings being brought in relation to decisions of the authority regarding serious injury applications and the discretion of the authority to consent to common-law proceedings outside statutory time limits. The provisions do not relate to decisions about the merits of a claim. There are various other rights of review at different stages in the common-law process. For these reasons the limitation is a necessary and appropriate measure to ensure workers who comply with the serious injury determination process under the legislation have access to an efficient common-law process.

Clause 6(2) of the bill provides that the authority may give guidance to a person whose claim is governed by the Workers Compensation Act 1958. Clause 6(3) provides that no action lies against the authority in the exercise of its discretion to provide such guidance. This is consistent with how claims under the Workers Compensation Act 1958 are dealt with in practice.

Clause 78(3) limits proceedings that may be brought against the authority in connection with written reasons that may be requested by an employer for a decision to accept or reject a claim for compensation. This limitation only applies to a request for reasons for a decision and not the decision itself. The limitation is therefore reasonable as an employer has a right of review in connection with a decision to accept or reject a claim on certain grounds.

That right of review is set out in clauses 79 to 90 of the bill. The process includes internal review by the authority followed by a right to appeal to the Supreme Court. This right is limited by clauses 80(4) and 83(8) where an employer makes an out-of-time application for review or is deemed to have withdrawn their application.

The limitations ensure the exercise of WorkCover's discretion to allow an objection that is made out of time is not reviewable. The discretion is meant to allow the authority to consider the reasons for a failure to lodge an objection within the period specified in the legislation. These limitations are reasonable because they reduce disputation and provide a degree of finality and certainty for the parties impacted by the decision, in particular, the injured worker. An employer who objects within time still has access to the Supreme Court.

Clause 208 states that no appeal lies to any court or tribunal from a determination or opinion as to the degree of permanent impairment resulting from an injury, or as to whether a worker has an injury which is a total loss injury.

The limitation ensures that there is finality in the medical opinion of the panels. This recognises that medical experts are best equipped to ultimately determine medical questions and avoids unnecessary costs of disputes involving medical determinations.

Clause 227 limits proceedings against workers for recovery of any costs which the authority, self-insurer or employer is liable to pay in connection with medical and like services. The restriction on proceedings is necessary to protect workers from actions or proceedings that should be initiated against the authority, employer or self-insurer, who is liable for the payments.

Clause 243 provides that no proceedings may be brought in respect of any decision relating to the discretion of the authority to make provisional payments of certain death benefits where it appears a person may be entitled to compensation as a result of the death of a worker.

The nature of a decision under those provisions is preliminary and it is not ultimately determinative of an entitlement. A person who is not entitled to a

provisional payment may still claim the same compensation under the other death benefits provisions, and the person would have full rights of review under those provisions. Allowing review of a preliminary decision under clause 243 would be inefficient and result in unnecessary legal costs being incurred. The limitation is therefore a reasonable and necessary restriction.

Clause 313(4) sets out that a medical panel opinion is to be adopted and applied by any court and must be accepted as final and conclusive. The provision is intended to prevent any court reviewing the merits of a medical panel opinion, however does not limit the court's ability to hear matters reviewing questions of law.

Clause 313(5) provides that no proceedings may be brought in relation to a medical panel opinion on the basis that the statement of reasons given by the medical panel is inadequate and therefore give rise to an error of law. The same limitation is included in clause 626(8) to amend section 68 of the Accident Compensation Act in the same terms.

Each of these limitations on the right to bring proceedings is reasonable because members of a medical panel are medical experts who are best equipped to determine medical issues but they are not legally trained. Permitting a right to bring proceedings in connection with the adequacy of written reasons of a panel would mean that the standard of reasons required of it would be equivalent to that of a court. It would undermine the efficiency and timeliness of the medical panel process and impede the efficient delivery of compensation and timely resolution of disputes under the WorkCover scheme.

However, it is not the intention of this provision to limit the power of the Supreme Court to hear applications for judicial review in relation to reasons that are so inadequate as to amount to a jurisdictional error on their face.

Clauses 354, 355 and 356 provide that legal costs in certain common-law matters must only be recovered in accordance with the relevant legal costs order made under those provisions by the Governor in Council. This has the effect of limiting the courts usual jurisdiction with regard to costs.

The provisions provide for certainty in legal costs and help to maintain the overall costs of the common-law scheme at a sustainable level for the benefit of workers, employers and the broader community. The relevant legal costs order sets out specific processes for recovery of legal costs in common-law matters and incentives to encourage parties to resolve disputes. These arrangements can only be effective if the usual jurisdiction of courts with regard to costs is limited.

Clause 369 states that the authority has discretion to issue proceedings to seek recovery of compensation costs against negligent third parties. The authority also has a discretion to disperse costs that are recovered, including the excess that an employer must pay to a worker who makes a claim for compensation. Clause 369(9) provides that no proceedings may be brought to challenge the exercise of those discretions by the authority. This limitation is reasonable as the employer's liability to pay an excess is limited to a worker's income for 10 days and it would be counterproductive to allow for disputation for such a small sum of money.

Clause 426 states that no proceedings may be brought in respect of any assessment of tail claims liability relating to the non-WorkCover employer provisions.

The limitation is necessary to ensure that an incentive remains for employers who exit from Victorian insurance arrangements to effectively manage their tail liabilities incurred prior to their exit. If the employer could dispute the assessment of their liability incurred prior to exiting, then it may decrease the incentive to effectively manage these claims. Any assessments are unlikely to be significantly greater than those under the premium system, and the restriction applies equally to the employer and the authority, meaning that the authority is also bound by the actuarial assessment.

Clause 456 sets out a process under which employers may apply for a refund of part or all of their WorkCover premium. This is a mandatory process that must be completed before an employer can bring proceedings in court. The limitation on the right to bring proceedings is reasonable because an employer who is dissatisfied with the outcome of their application can then bring proceedings for a refund.

Clause 458 provides that the right of an employer to bring proceedings in connection with their WorkCover premium notice is governed exclusively by part 10 of the bill. Part 10 of the bill provides for an internal review process for employers who wish to dispute their premium notice. The limitation on the right to bring proceedings is reasonable because an employer who is dissatisfied with the outcome of their application for review can bring proceedings in connection with that notice at the Victorian Civil and Administrative Tribunal or the Supreme Court. The provision of a mandatory internal review process allows for improved

timeliness and efficiency in the resolution of disputes regarding premium notices.

Clause 463 confers discretion on the authority to allow an employer to make an application for review of the premium notice outside of the required 60-day period. No proceedings may be brought in connection with the exercise of this discretion by the authority. The limitation on the right to bring proceedings is reasonable because the discretion would operate to prevent an employer from being unfairly excluded from making an application for internal review because of circumstances beyond their control. However, for applications for review that are made out of time that do not invite the exercise of the authority's discretion, the limitation is reasonable so as to allow certainty and finality in the resolution of disputes about premium.

Clauses 577 and 607 set out a specific process for a worker to request the authority to pursue a prosecution in relation to unlawful discriminatory conduct or a breach of return-to-work obligations under the bill. Clauses 577(7) and 607(7) limit the ability to challenge a decision by the authority to bring or not to bring such a prosecution.

The limitation on the right to bring proceedings is reasonable as the bill already provides an appropriate mechanism whereby the exercise of the authority's discretion under this provision may be subject to scrutiny by the Director of Public Prosecutions.

Clause 604 allows the authority to accept a written undertaking in connection with an alleged contravention of the bill as an alternative to criminal prosecution. Clause 604(4) provides that no proceedings may be brought against the exercise of the authority's discretion to accept a written undertaking. This limitation on the right to bring proceedings is reasonable as the ability to challenge such a decision would unfairly impinge on the authority's prosecutorial discretion.

Incorporated speech continues:

Conclusion

Victoria's workplaces have never been safer in terms of injury rates. Victoria recorded a record low injury rate in 2011–12. In addition, the premium cut announced by this government for 2012–13 further enhances Victoria's position as having the lowest average premium rate in the country, and the lowest average rate in Victoria's history. We are proud of these achievements in maintaining safe workplaces and low premiums, while still providing quality benefit support for injured workers.

This bill will further strengthen the workers compensation scheme in Victoria by providing simplified legislation that will make it easier for employers and workers to understand their important rights, responsibilities and obligations.

The bill will also reduce administrative burden on employers and improve the efficient delivery of compensation to injured workers. This improved legislation will consolidate Victoria's position as the leader in workers compensation in Australia.

I commend the bill to the house.

I wish to advise the house that the bill was amended in the other place in respect of clauses 200, 269, 313 and 333, and consequential amendments were made. The amendments are provided for members in the bill.

Debate adjourned for Ms PULFORD (Western Victoria) on motion of Mr Leane.

Debate adjourned until Thursday, 24 October.

FISHERIES AMENDMENT BILL 2013

Introduction and first reading

Received from Assembly.

Read first time for Hon. P. R. HALL (Minister for Higher Education and Skills) on motion of Hon. G. K. Rich-Phillips; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Hon. P. R. HALL (Minister for Higher Education and Skills), Hon. G. K. Rich-Phillips tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (charter act), I make this statement of compatibility with respect to the Fisheries Amendment Bill 2013.

In my opinion, the Fisheries Amendment Bill 2013, as introduced to the Legislative Council, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill amends the Fisheries Act 1995 (the act). The bill establishes a new Fisheries Advisory Council (the council). The council will be a cross-sectoral, expertise-based body that will provide advice to the Minister for Agriculture and Food Security on strategic matters relating to the management of Victoria's fisheries.

In addition, the bill makes several miscellaneous amendments to the act to improve fisheries management outcomes, including streamlining the existing provisions which enable the department to levy commercial fishers for the provision of government services and giving the department more flexibility to determine the method for calculating levies;

replacing the requirement for the minister to publish a new fisheries notice in its entirety in a local newspaper with a requirement to publish the notice on the department's website and a notice of the making of the fisheries notice in a local newspaper; and amending the definition of 'rock lobster' to reflect new scientific information on the classification of the species.

Human rights issues

Provision of personal information

Clause 5 of the bill amends section 145A of the act to enable the secretary to supply contact details of both commercial access licence holders and individual quota unit holders (such as names, business addresses, business telephone numbers) and the number of licences and quota units held to representative bodies (organisations which represent commercial fishing interests, seafood industry interests, aquaculture interests or recreational fishing interests).

Section 13 — right to privacy

Section 13(a) of the charter act provides that a person has the right not to have his or her privacy unlawfully or arbitrarily interfered with. The right to privacy is relevant to clause 5 of the bill, however I consider that the provision of information to representative bodies under this bill is compatible with the charter act, as it is neither unlawful nor arbitrary.

Clause 5 affects licence-holders and quota unit holders, who have voluntarily become subject to this provision through applying for or obtaining a licence and/or participating in a regulated industry. The provision of information will only occur under prescribed circumstances and serves the purpose of enabling both access licence holders and quota unit holders to be contacted by representative bodies regarding their views on existing or future management arrangements. The amendment is not expected to have any major impact on access licence holders and quota unit holders as any response to enquiries from a representative body will be on a voluntary basis. Further, the information or views sought by the representative body will provide quota holders with an opportunity to have input into improvements to existing or future management arrangements.

In addition, the existing section 145A subsections of the act provide the necessary protection for privacy. Section 145A(2) provides that the secretary must not supply any such details if, in the opinion of the secretary, it would not be in the public interest to do so. Section 145A(3) allows the secretary to impose conditions in relation to the supply of any details under this section and s 145A(4) provides for penalties should a person breach, or aid, abet, counsel or procure the breaching of such a condition. The act also provides for penalties for any improper use of information obtained during the course of a person's duties under the act (s. 147).

Appointment of Fisheries Advisory Council membership

Clause 4 of the bill establishes a new Fisheries Advisory Council (the council), which will be a cross-sectoral, expertise-based body that will provide advice to the Minister for Agriculture and Food Security on strategic matters relating to the management of Victoria's fisheries.

The council will consist of 14 members appointed by the minister, including an independent chairperson, four members from the Victorian commercial fishing sector, one member from the commonwealth commercial fishing sector, four members from the Victorian recreational fishing sector, one member from the Victorian recreational fishing business sector, one member who represents the interests of the Aboriginal community, one fisheries ecologist and one economist.

Section 18(2)(b) — taking part in public life

Section 18(2)(b) of the charter act provides that a person has the right and is to have the opportunity without discrimination to have access, on general terms of equality, to the Victorian public service and public office.

When viewed in isolation, new section 93(f) provides for unfavourable treatment on the basis of race, by providing that the minister appoint one Aboriginal person who, in the opinion of the minister, has knowledge and experience of Aboriginal fishing and represents the interests of the Aboriginal community. However, it is my view that new section 93(f) does not amount to a limit on the right to take part in public life, as new section 93(f) refers only to the appointment of 1 of 14 positions on the council. Even if new section 93(f) was to be considered discriminatory, the aim of the differentiation is to achieve a legitimate purpose, which is the effective and efficient fulfilment of the council's functions to advise the minister on strategic matters relating to the management of fisheries at the request of the minister. The new section also furthers the purpose of protecting the cultural rights of Aboriginal persons pursuant to section 19(2) of the charter act, discussed below.

Section 19(2) — cultural rights

Section 19(2) of the charter act provides that Aboriginal persons must not be denied the right to enjoy their identity and culture and maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

The bill promotes this right through the requirement to include an Aboriginal person in the council who has knowledge and experience of Aboriginal fishing and represents the interests of the Aboriginal community. Fishing is considered an integral part of the cultural and economic life of Aboriginal communities and this bill ensures that these interests are represented on the membership of the council.

Conclusion

I consider that the bill is compatible with the charter act because, to the extent that some provisions may engage human rights, those rights are not limited.

Hon. Peter Hall, MLC
Minister for Higher Education and Skills
Minister responsible for the Teaching Profession

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:

Fisheries Advisory Council

The primary purpose of this bill is to improve Victoria's fisheries management framework by establishing a new Fisheries Advisory Council.

In 2010, as part of our election commitments, the government released its *Plan for Agriculture*. The government's plan included the following policy statements:

> in relation to commercial fishing — 'amend legislation to reinstate an effective and proactive consultation process with industry'; and
>
> in relation to recreational fishing — 'legislate to reinstate a consultative process that involves all the peak bodies in the industry'.

These policy commitments will be delivered through this bill which establishes an advisory council in legislation.

The bill will amend the Fisheries Act 1995 (the act) to establish the council as a cross-sectoral body whose purpose is to provide advice to the Minister for Agriculture and Food Security on strategic matters relating to fisheries management.

The council is being embedded in legislation to both fulfil the government's election commitment and demonstrate the government's long-term commitment to effective consultation with commercial and recreational fishers.

The council will build understanding and consensus with all fishing sectors on improvements to fisheries management arrangements. It will also advise on means to introduce more efficient and flexible fisheries management arrangements, securing access to resources, stewardship incentives and ways to optimise value from the use of Victoria's fisheries resources. More specifically, possible issues the council may consider include:

> management of commercial fishing, recreational fishing and Aboriginal fishing interests;
>
> promotion of co-management of fisheries and improved governance;
>
> statewide policies in relation to fisheries licensing, management, research and compliance;
>
> matters relating to intergovernmental agreements and arrangements related to fisheries; and
>
> issues related to the security of access to resources in particular fisheries.

The council will consist of 14 members appointed by the minister including:

> an independent chairperson;
>
> four members from the Victorian commercial fishing sector;
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> one member from the commonwealth commercial fishing sector;
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> four members from the Victorian recreational fishing sector;
>
> one member from the Victorian recreational fishing business sector;
>
> one member who represents the interests of the Aboriginal community;
>
> one fisheries ecologist; and
>
> one economist.

The number and composition of council members has been chosen to obtain a broad range of expertise and experience in order to maximise the quality of advice provided to the minister and build understanding and commitment across sectors on improvements to fisheries management arrangements.

The number of members reflects the diverse nature of the various commercial and recreational fishing sectors in Victoria. Each sector has unique challenges, potential solutions and different perspectives and views on fisheries management.

Members of the council will be appointed by the minister for up to three years and members will not hold office for more than two terms to ensure a rotation of members.

Funding has been allocated for the council and the Department of Environment and Primary Industries will provide secretariat support to the council.

Miscellaneous amendments

The bill also makes a number of miscellaneous amendments to the Fisheries Act 1995, including:

> enabling the secretary to supply contact details of both commercial access licence holders and quota unit holders and quota holding details to representative bodies that are funded through levies payable by fishers;
>
> streamlining the existing provisions of the act which enable the department to levy commercial fishers for the provision of government services and providing the department with more flexibility to determine the method for allocating charges;
>
> replacing the requirement for the minister to publish a new fisheries notice in its entirety in a local newspaper with a requirement to publish the notice on the department's website and a notice of the making of the fisheries notice in a local newspaper.

I commend the bill to the house.

Debate adjourned on motion of Mr LEANE (Eastern Metropolitan).

Debate adjourned until Thursday, 24 October.

TOBACCO AMENDMENT BILL 2013

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (the charter act), I make this statement of compatibility with respect to the Tobacco Amendment Bill 2013.

In my opinion, the Tobacco Amendment Bill 2013, as introduced to the Legislative Council, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The purpose of the bill is to prohibit smoking in certain public outdoor areas, to restrict further the promotion and display of tobacco products, to make it an offence to threaten, assault or intimidate an inspector who is exercising a power under part 3A of the Tobacco Act 1987 (the principal act) and to make other miscellaneous amendments. It is intended that the smoking bans will further limit the exposure of children and families to second-hand smoke, denormalise smoking, minimise the littering of cigarette butts and improve public amenity at public swimming pool complexes, children's playgrounds, skate parks and outdoor sporting venues in Victoria.

Human rights issues

The bill engages the right to privacy and the right to be presumed innocent.

The right to privacy — section 13 of the charter act

Section 42A(1) of the principal act empowers the Secretary to the Department of Health to collect from tobacco manufacturers the names and addresses of persons carrying on tobacco retailing businesses in Victoria. Currently, section 42A(3) provides that the secretary may only disclose information acquired pursuant to subsection (1) to the extent necessary to enable an inspector to carry out functions under the principal act.

The bill will substitute a new section 42A(3) into the principal act. The effect of this amendment will be to broaden the secretary's power to disclose the names and addresses of Victorian tobacco retailers.

The new section 42A(3) engages section 13 of the charter act, which provides that a person has the right not to have his or her privacy unlawfully or arbitrarily interfered with. This provision does not limit the right to privacy, as the interference with privacy is neither unlawful nor arbitrary. The interference is not unlawful, as the new section 42A(3) specifies in detail the precise circumstances in which the names and addresses of Victorian tobacco retailers may be disclosed. The interference is not arbitrary, as section 42A(3) only permits the disclosure of Victorian tobacco retailer information to the extent necessary to administer the principal act, to assist tobacco retailers to comply with their legislative obligations and to further the purpose and objects of the principal act.

The right to be presumed innocent — section 25(1) of the charter act

The bill will introduce section 36QA into the principal act, which will make it an offence for a person, without reasonable excuse, to intimidate, threaten or assault an inspector who is exercising a power under part 3A of the principal act. The maximum penalty for this offence is 60 penalty units.

This provision engages section 25(1) of the charter act, which provides that a person charged with a criminal offence has the right to be presumed innocent until proven guilty according to law.

Section 72 of the Criminal Procedure Act 2009 provides that if an act creates an offence and provides any excuse upon which an accused wishes to rely, the accused must present or point to evidence that suggests a reasonable possibility of the existence of facts that would establish the excuse.

Section 36QA imposes an evidential burden on an accused person who would be required to put forward evidence to support the existence of a reasonable excuse. The purpose of imposing an evidential burden on an accused is to allow them to avoid liability for breaching section 36QA of the principal act if they are able to prove that they had a reasonable excuse.

The evidentiary burden is imposed upon an accused person, as it is the accused person who would have knowledge of the excuse. Section 36QA does not impose a legal burden. This is because after an accused has adduced evidence to support the existence of an excuse, the prosecution must prove beyond reasonable doubt the absence of the excuse raised. The offence introduced by section 36QA is punishable by way of a pecuniary penalty. There is no prospect of imprisonment for the defendant.

I consider that section 36QA is compatible with the charter act as it does not limit the right to be presumed innocent until proven guilty.

Conclusion

I consider the bill is compatible with the charter act because it does not limit any human rights protected by the charter act.

Hon. David Davis, MP
Minister for Health

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

Our children must understand that smoking is highly addictive and harmful to health.

Today, I am here and very proud to introduce a number of significant reforms that are designed to prevent future generations of Victorians, our children, becoming smokers, and to protect Victorians from the harmful consequences of smoking.

This bill represents a most important step in the Victorian government's tobacco control agenda.

The work we are undertaking here will also make a significant contribution to achieving the objectives of both the Victorian Public Health and Wellbeing Plan 2011–2015 and the Victorian Health Priorities Framework 2012–2016.

In Victoria approximately 4000 people die from smoking each year. That is approximately 4000 mums and dads, brothers and sisters, uncles and aunties, team members and friends. And that is something that we are not willing to tolerate.

Since the passage of the Tobacco Act 1987 there has been bipartisan support for a wide range of legislative reforms to reduce smoking rates and discourage the uptake of smoking, particularly by children and young people. This has included bans on tobacco product display and advertising, banning smoking in a range of settings to denormalise smoking, helping quitters from relapsing and protecting Victorians from second-hand smoke.

It is important to note that legislation, while important, forms just one part of an integrated public health response to tobacco control.

Each year we invest over $8 million in tobacco control in Victoria to support quit smoking programs, antismoking advertising, programs targeted towards groups with the highest level of smoking, and education and enforcement activities.

The last annual survey of smoking prevalence in Victoria found smoking rates are at the lowest ever at 13.3 per cent in 2012, down from 14.4 per cent in 2011 and 21.2 per cent in 1998. At least 86 per cent of the Victorian population are now non-smokers. This continuing decline shows our investment is paying dividends, but we can do more.

We know that children are impressionable, that seeing people smoke increases the likelihood that they will become smokers as adults. We also know that children are more susceptible to the dangers of second-hand smoke.

Research has shown that the younger people start smoking, the more likely they are to become regular addicted smokers. No parent wants to see their child become a smoker.

We must continue our work to denormalise smoking at a whole-of-community level, ensuring that children do not grow up to see smoking as a normal part of everyday life.

In December 2012 the Victorian government banned smoking on all patrolled beaches, and in March this year tobacco products were excluded from shopper loyalty and rewards programs.

Recreational and sporting activity is an important, healthy, fun activity in children's lives. There should be no perceived association between smoking and recreational and sporting activity where children are present. Regulatory bans and the creation of smoke-free public places reduce the normalcy of seeing people smoking and reinforce the message that smoking has harmful health consequences.

Outdoor smoking bans

This bill will amend the Tobacco Act 1987 to prohibit smoking in public outdoor areas that children and young people commonly use for recreational and sporting activity.

Smoking will be banned:

at outdoor children's playground equipment

at outdoor skate parks

at outdoor areas within the perimeter of public swimming pools

at outdoor sporting venues during under-age sporting events.

The bans will apply to public places as defined in the Tobacco Act 1987.

Public consultation conducted by my department revealed strong community support and has helped shape the scope of these bans. We thank all who provided their valuable input to this important reform.

Smoking will now be banned at thousands of venues and locations across our state where children congregate and enjoy healthy outdoor activities.

Smoking will be prohibited at or within a 10-metre radius of outdoor children's playground equipment and skate parks that are open to the public. Smoking bans at children's playgrounds have been introduced in New South Wales, Queensland, Western Australia, South Australia and Tasmania, so this amendment brings Victoria into line with the majority of other Australian jurisdictions. Victoria will be the first jurisdiction to introduce a statewide smoking ban at outdoor skate parks.

Smoking will be banned at outdoor areas at public swimming pools within the perimeter of the swimming pool complex. Statewide smoking bans for outdoor public swimming pools exist in New South Wales and Tasmania that are similar to Victoria's proposal.

Smoking will also be banned at or within a 10-metre radius of outdoor public sporting venues during under-age sporting events. The ban will apply anywhere within 10 metres of a sporting venue, which includes but is not limited to:

a. playing field, track, arena, court, rink, or similar area where the sporting activity takes place

b. any permanently or temporarily erected public seating at an outdoor sporting venue

c. any seating, marshalling area, warm-up area, podium or other part of the outdoor sporting venue which has been reserved for the use of competitors or officials, and

d. any part of the outdoor sporting venue which is used to conduct the under-age sporting event.

The ban will apply to outdoor public sporting venues during sporting events which are predominantly organised for, or participated in by, persons under the age of 18 years. This includes training sessions and breaks in play. Victoria will be the first jurisdiction to introduce a smoking ban specifically for under-age sporting events. This government is leading the way to create smoke-free environments where children and adolescents can enjoy healthy recreational activities.

Whilst I acknowledge the proactive work of many councils which have already implemented smoking bans at children's playgrounds and some sporting grounds and facilities, these bans will ensure there is statewide consistency.

Local councils and the Municipal Association of Victoria (MAV) have been integral in reducing smoking prevalence in Victoria through initiatives such as the introduction of local laws, promoting public health and providing education and enforcement of the Tobacco Act 1987 in local communities. I would like to take this opportunity to say thank you and I look forward to continuing this partnership to implement these new reforms.

I would also like to acknowledge those sporting clubs that have introduced 'no smoking' policies at their venues. I applaud these clubs for their commitment to providing safe and healthy environments for competitors and spectators. It is not the government's intention to override these policies, but to provide legislative backing that will support clubs in implementing their policies, and to ensure young competitors and their families and friends can enjoy a smoke-free atmosphere at under-age sporting events.

To ensure Victorians are informed about these new bans, we will undertake an extensive public awareness and community education campaign and make 'No smoking' signs available for councils to install in their local areas.

We know that most people disapprove of smoking around children, and to this end we are confident the community will respect and comply with these outdoor smoking bans. Over time it is expected the bans will achieve high levels of voluntary compliance with little need for intervention. We know from similar outdoor smoking bans in other states and territories that these bans are largely self-enforcing with high levels of compliance.

Council inspectors appointed under the Tobacco Act will be empowered to educate the public and, where necessary, enforce the bans, including issuing an on-the-spot fine of $144. The maximum penalty for breaching a ban is over $720.

I am confident Victorians will see the substantial public health and amenity benefits, immediately and in the long term, that these initiatives will bring.

Restricting promotion and advertising of tobacco and technical amendments to the act

We are also introducing other reforms to further restrict the promotion and advertising of tobacco, and some minor technical amendments to ensure the act remains relevant and effective.

Certified specialist tobacconists

Tobacco product display and advertising are visual cues that prompt people to smoke. Currently in Victoria, specialist tobacconists are able to apply for certification that exempts them from tobacco product display bans.

We intend to close this avenue, which will limit the visibility of tobacco products and create a fairer playing field among tobacco retailers by stopping new applications for specialist tobacconist certification and therefore the tobacco product display ban exemption.

There are approximately 145 certified specialist tobacconists in Victoria that have an exemption to the tobacco product display bans. Existing certified businesses will not be affected and will continue with the exemption. However, if the business transfers ownership, ceases, has its certification cancelled or moves location, it will not be able to reapply for certification.

Tobacco price notices/boards

Price notices or price boards that advise customers of tobacco product availability and price must adhere to prescribed requirements relating to size, content and the manner in which the content is set out or displayed. The bill allows for the form a notice takes to be prescribed in the Tobacco Regulations 2007.

Whilst this amendment is unlikely to affect most retailers who use a price board in the traditional means, being able to prescribe the form of a price notice will allow the government to respond to emerging innovative methods that are used to highlight or advertise tobacco products.

Creation of an offence to intimidate, threaten or abuse an inspector

The bill will make it an offence to intimidate, threaten or assault an inspector who is exercising a power under the act. This amendment will offer greater protection for inspectors, and reinforces the important work they perform in helping to ensure compliance with Victoria's tobacco control laws.

Packing and labelling of tobacco products

Due to the introduction of the commonwealth government's comprehensive tobacco plain packaging legislative framework, the packing of tobacco provision in the act that prescribes how tobacco products must be labelled is no longer required and will be repealed.

Greater use and disclosure of tobacco retailer information for communication purposes

Currently, the Tobacco Act 1987 places limitations on the disclosure of information in the Department of Health's tobacco retailer database, which contains tobacco retailer names and addresses acquired under the Tobacco Act 1987.

Information is generally only able to be disclosed where it relates to inspectors carrying out their functions under the act.

An amendment to the act will now allow the secretary, to the extent necessary, to also disclose information about tobacco retailers acquired under the Tobacco Act 1987 to another person to:

enable the secretary to perform his or her duties or functions or to exercise his or her powers under the act or the regulations;

enable the tobacco retailers identified by the information to be informed about their obligations under the act, the regulations or another law of Victoria or the commonwealth in relation to the sale of tobacco products;

to further the purpose or objects of the act.

This amendment will enhance collaboration between government departments and facilitate communication and compliance with regard to the retail sale of tobacco.

I commend the bill to the house.

Debate adjourned for Mr JENNINGS (South Eastern Metropolitan) on motion of Mr Leane.

Debate adjourned until Thursday, 24 October.

PROFESSIONAL BOXING AND COMBAT SPORTS AMENDMENT BILL 2013

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

For Hon. W. A. LOVELL (Minister for Housing), 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 Professional Boxing and Combat Sports Amendment Bill 2013 (the bill).

In my opinion, the bill, as introduced to the Legislative Council, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill seeks to amend the Professional Boxing and Combat Sports Act 1985 (the act) with the objective of upholding the integrity of the professional boxing and combat sports industry whilst maintaining a balance with the act's current purposes of controlling professional boxing and combat sports, reducing the risk of malpractice and promoting safety.

The bill amends provisions in the act to allow the Professional Boxing and Combat Sports Board (the board) to consider whether an applicant for a licence is a fit and proper person and to consider public interest when determining whether to issue or renew a licence to act as a promoter, trainer, matchmaker, referee, judge or timekeeper.

The bill provides for the board to vary, suspend or cancel existing licences issued to a person if, in the board's opinion, that person is not a fit and proper person to hold a licence or it is no longer in the public interest for that person to hold a licence.

The bill specifies circumstances whereby a person is automatically prohibited from obtaining or holding a licence under the act, and makes a number of other amendments to the act and other legislation to give effect to the bill's objective.

Human rights issues

Section 13 of the charter act provides that a person has the right not to have his or her privacy unlawfully or arbitrarily interfered with, and not to have his or her reputation unlawfully attacked. Section 15 of the charter act provides for freedom of expression, including the right to seek and receive information. Section 24 of the charter act provides that a person has the right to a fair hearing.

These rights are engaged by clauses 6 and 9 of the bill which provide that, where the board decides to refuse a licence, holds an inquiry to determine a licensee's continued suitability, or decides to vary, suspend or cancel a licence, the applicant is not entitled to be provided with detailed reasons for that decision if those reasons relate to advice provided by the Chief Commissioner of Police that was based on protected information. 'Protected information' refers to information the disclosure of which is likely to: reveal the identity of, or endanger the safety of, members of the police force, informants, or others involved in an investigation or subject to an investigation; risk compromising an ongoing police investigation or disclosing police investigative methods; or otherwise not be in the public interest.

Rights under sections 13, 15 and 24 of the charter act are also engaged by clause 21 of the bill, which sets out a special procedure for review of decisions by VCAT. A person who has been refused a licence, or whose licence has been modified, suspended or cancelled by the board, is entitled to seek a review of the board's decision at VCAT unless the decision was made on the grounds that the person is a 'prohibited person' (as discussed below). If the board informs VCAT that its decision was based on advice from the chief commissioner, and the chief commissioner subsequently informs VCAT that advice to the board was based on evidence that included protected information, then a special review procedure applies. A special counsel is appointed to represent the interests of the applicant. The special counsel undertakes to keep confidential any evidence disclosed during proceedings.

Proceedings are held in closed session excluding the applicant and the public, and also excluding members of the board if they are not privy to the protected information. VCAT must first determine whether the information has rightly been

classified as protected information. If VCAT determines that any of the material constitutes protected information, the hearing of the remainder of the proceeding must also be closed to the extent that it relates to the information. If VCAT determines that the criminal intelligence is not protected information, the remainder of the proceedings are conducted as a normal session.

The board can change its decision at any time before VCAT makes a final determination on its review of the board's decision, or the chief commissioner may ask the board to reconsider its decision without the benefit of protected information. Either action will result in the VCAT proceedings being brought to a close.

It is important that criminal intelligence remains confidential. To release it publicly, or even to the applicant, may compromise an ongoing police investigation, or the safety of investigating officers. There is also a need to avoid abuse of the licensing and appeals regime by those seeking to discover what criminal intelligence is held by Victoria Police in relation to themselves or others.

The concept of a 'fair' hearing is a mutable one that requires a balancing of competing interests to be undertaken. It is reasonable to limit the right to a fully adversarial procedure where necessary due to a strong countervailing public interest, such as the need to protect police investigative techniques, avoid compromising an ongoing police investigation, and ensure the safety of investigating officers and informants. The provisions ensure that all available information relevant to an applicant's probity can be considered by the chief commissioner when providing advice to the board, as well as by VCAT when reviewing a decision of the board, while ensuring that there is no disclosure of information which could place persons at risk or compromise police investigations.

Comparable provisions to those proposed in the bill appear in other Victorian acts:

Sections 150A–E of the Private Security Act 2004 define the process, powers and parameters for a review by VCAT in relation to the licensing of security agents where protected information is involved.

Section 74A of the Casino Control Act 1991 and section 35E of the Racing Act 1958 define the process, powers and parameters for a review by VCAT of exclusion orders made by the Chief Commissioner of Police.

Part 4 of the Criminal Organisations Control Act 2013 provides for protection of criminal intelligence used in creating control orders (it should be noted that the provisions in that act are more stringent than those proposed in this bill, which is appropriate as there are serious penalties for contravening a control order).

Section 56(2) of the Freedom of Information Act 1982 controls the disclosure of documents by VCAT if an exemption from release under the FOI act has been claimed for documents that are the subject of an application for review.

A person who has been refused a licence or had their licence cancelled cannot seek a review of the board's decision at VCAT if they are a 'prohibited person'. This is a reasonable limitation on the right to a fair hearing as there is no absolute right of access to court and, as the bill stipulates that a prohibited person cannot be issued or hold a licence, VCAT would have no scope to make a decision other than that made by the board. VCAT is not prevented from considering whether a person meets the definition of prohibited person if there is a dispute as to whether the definition applies to that person.

The right to privacy is also engaged by a number of clauses relating to the collection and disclosure of information (particularly clauses 6, 14, 15, 24 and 25). These clauses do not unlawfully or arbitrarily interfere with the right to privacy as the information to be collected is for a specified purpose, and provision has been made for information to be disclosed only for certain purposes.

Conclusion

For the reasons given in this statement, I consider that the bill is compatible with the charter act.

Hon. Wendy Lovell, MLC
Minister for Housing

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

The government is proud to support a wide range of sports in Victoria. This includes professional boxing and combat sports, which are contests conducted for profit, or where contestants participate for monetary reward or, with limited exceptions, where the public pays an entry fee to attend the contest.

In 1975 Victoria became the first Australian jurisdiction to introduce a law to control professional boxing contests to ensure the safety of contestants. This followed a commonwealth inquiry into boxing and combat sports and the death of a young man after a tent boxing fight in Geelong in late 1974. An additional law to control martial arts was introduced in 1986 and was subsequently amalgamated with boxing legislation in 1996 to bring all professional contests in the fields of boxing and martial arts under the control of one board. Further amendments in 2001, including a change of name to reflect the focus on professional contests, resulted in a fully integrated scheme for regulation of professional boxing and combat sports.

The Professional Boxing and Combat Sports Act 1985 establishes a board that, among other functions and duties, licenses people to act as promoters, matchmakers, trainers, judges and referees. Under the current act, the board must issue or renew a licence to any person who has submitted the correct paperwork and fee, has an appropriate knowledge of the act and its regulations as well as contest rules, and agrees to comply with any conditions that would be placed on a licence. There is no provision in the current act for the board

to consider an applicant's character or reputation, or to refuse to grant a licence for any reason besides a lack of knowledge of the act, regulations, rules and conditions.

Fit and proper person tests are part of regulatory controls over professional boxing and combat sports in New South Wales, South Australia, Western Australia and Tasmania. Regulatory frameworks that license other activities in Victoria — such as firearms, involvement in the gaming industry, liquor sales, private security, real estate agents and motor car traders — also include either a 'fit and proper person' or some other form of character test.

As with all sports, the Victorian government wants professional boxing and combat sports to be run by people of good character and reputation. This is important not only to ensure that community expectations are met but also to uphold safety while reducing the risk of malpractice.

This bill will amend the Professional Boxing and Combat Sports Act 1985 to provide for the board to consider the probity of industry participants, with the objective of upholding the integrity of the professional boxing and combat sports industry whilst maintaining a balance with the act's current purposes of controlling professional boxing and combat sports, reducing the risk of malpractice and promoting safety.

The bill amends criteria for issuing licences to participate in the professional boxing and combat sports industry — including the roles of promoter, matchmaker, referee, judge and trainer — by allowing the Professional Boxing and Combat Sports Board (the board) to consider whether a person is a fit and proper person to hold a licence and whether it is in the public interest for that person to hold a licence.

In practice, the board will give regard to available information relating to a person's character, honesty, probity and reputation, which may include financial matters as well as criminal activity. This bill provides for application forms to be changed so that pertinent information can be sought from people when they apply for a licence, and also provides for the board to request further information from an applicant before making a decision.

The bill defines circumstances whereby a person is automatically prohibited from obtaining or holding a licence under the act. These circumstances involve:

> being convicted of an indictable offence and sentenced to imprisonment for 10 or more years;
>
> being subject to a control order under the Criminal Organisations Control Act 2012 (either as an individual or as a member of a declared organisation);
>
> being subject to an exclusion order by the Chief Commissioner of Police in relation to the casino or racecourses; and
>
> comparable convictions and sentences, as well as comparable orders, in other states or territories.

As part of considering the probity of applicants, the bill provides for the board to refer applications to the chief commissioner, who must provide advice to the board within 28 days. That advice may take a number of forms, such as advising that an applicant is automatically prohibited from obtaining a licence, or giving a view as to whether an applicant is a fit and proper person or whether it would be contrary to the public interest to issue a licence to that person. The board must give special consideration to advice that indicates an applicant is not a fit and proper person or that it is not in the public interest to issue a licence, and the chief commissioner must give reasons to the board so that it can have confidence to rely on that advice when making its decision.

The bill also includes provisions to protect sensitive information used by the chief commissioner when providing advice to the board in the event that the board's decision is reviewed by VCAT. These provisions are similar to existing statutes and have been adapted to reflect the fact that the chief commissioner provides advice to the board, which is the decision-maker.

It is important that criminal intelligence remain confidential. To release it publicly, or even to the applicant, may compromise an ongoing police investigation, or the safety of investigating officers. There is also a need to avoid abuse of the licensing and appeals regime by those seeking to discover what criminal intelligence is held by Victoria Police in relation to themselves or others.

If VCAT receives an application for review of a decision by the board to refuse, not renew or to cancel a licence, VCAT must ask the board whether the reasons for its decision were based on advice provided by the chief commissioner; if that is the case, VCAT must then ask the chief commissioner if any of the advice provided to the board was based on protected information.

If advice provided by the chief commissioner was based on protected information, then VCAT must follow special procedures to protect sensitive information. These procedures are largely based on provisions in the Private Security Act 2004 and have been developed in consultation with VCAT.

The special procedures include appointing special counsel to represent the applicant, and also to represent the board if it is not privy to any protected information, and conducting all or part of the hearing as a closed session. There are also measures to prevent release of protected information when VCAT makes its decision.

The board can change its decision at any time before VCAT makes a final determination on its review of the board's decision, or the chief commissioner may ask the board to reconsider its decision without the benefit of protected information. Either action will result in the VCAT proceedings being brought to a close, which has the intent of providing a final recourse to protect sensitive criminal intelligence.

The bill provides for the board to vary, suspend or cancel existing licences if it determines that an existing licensee is not a fit and proper person or that it is not in the public interest for that person to continue to hold a licence.

The bill changes the means of controlling timekeepers from being listed by the board to being formally licensed, so that this role is subject to the same probity considerations as other roles relating to professional contests.

The bill creates a duty for a licensed promoter to neither employ nor enter into any business relationship or arrangement relating to a professional contest with any person who has been refused a licence or had their licence cancelled

because they are not a fit and proper person to hold a licence or because it is not in the public interest for that person to hold a licence. This will prevent controls from being circumvented, for example, by people who have either been refused a licence or had their licence cancelled using other people without criminal histories as a front for their operations.

Similarly, to ensure that the intent of the act is upheld, a person who has been refused a licence or had their licence cancelled because they have failed to meet probity requirements will be barred from reapplying for at least 12 months. People who are automatically prohibited will only be able to reapply if their circumstances change so that they are no longer prohibited from obtaining or holding a licence under the act.

The bill also makes several amendments to the act in order to facilitate its overall objective, including new powers for the chief commissioner to share information with the board, controls for disclosure of information relating to probity by the board and staff of the department, and repeal of powers relating to delegation and review of decisions that will no longer be appropriate once the act is amended.

I commend the bill to the house.

Debate adjourned for Mr TEE (Eastern Metropolitan) on motion of Mr Leane.

Debate adjourned until Thursday, 24 October.

CORRECTIONS AMENDMENT (PAROLE REFORM) BILL 2013

Introduction and first reading

Received from Assembly.

Read first time for Hon. E. J. O'DONOHUE (Minister for Corrections) on motion of Hon. G. K. Rich-Phillips; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Hon. E. J. O'DONOHUE (Minister for Corrections), 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 Corrections Amendment (Parole Reform) Bill 2013 (the bill).

In my opinion, the bill as introduced to the Legislative Council is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The purpose of the bill is to amend the Corrections Act 1986 to provide that safety and protection of the community is paramount in parole decisions; to alter the constitution of the adult parole board; and to provide for registered victims to be notified of a prisoner's release on parole.

Human rights issues

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

Right to privacy — notice of release on parole to be provided to victims

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

The right to privacy is relevant to clause 3 of the bill, which inserts a new s 30A(1A) and (1B) into the Corrections Act 1986 to provide that if the adult parole board determines to release a prisoner on parole, the secretary must give a person included on the victims register at least 14 days notice before the release of the prisoner, unless the secretary reasonably believes the notice might endanger the security of any prison; or the safe custody and welfare of the prisoner or any other prisoner; or the safety or welfare of the offender; or the safety or welfare of any other person; or the board determines that the notice period should be waived. In my view, clause 3 does not limit the right to privacy as it does not amount to an interference with privacy that is either unlawful or arbitrary.

The nature of the information to be released, and the audience to whom it will be provided, are clearly confined and serve the legitimate purpose of ensuring that victims of crime are informed about matters of direct relevance to them. Only the date of a relevant prisoner's release on parole must be provided. Moreover, only persons on the victims register will be given notice of a relevant prisoner's release on parole.

Inclusion on the victims register is by application only and is restricted to people falling within a defined category of victims.

'Victim' is defined in s 30A of the Corrections Act 1986 to mean a person who has had a criminal act of violence committed against them; a family member of a person who has died as a result of having a criminal act of violence committed against them; a family member of a minor or a person incapable of managing his or her affairs due to mental impairment, who has had a criminal act of violence committed against them; and a person who is or was the spouse of a prisoner or offender who is subject to particular orders or applications for particular orders (for example, an extended supervision order under the Serious Sex Offenders Monitoring Act 2005) and has a family violence intervention order in relation to that prisoner or offender.

'Criminal act of violence' is defined to mean a specified list of offences, including sexual offences, stalking, kidnapping and other serious offences.

Persons other than 'victims' may be included on the victims register only if the secretary is satisfied that there is a history of family violence committed by the prisoner against that person; or the person has a substantial connection to the offence for which the prisoner is detained or subject to a certain order.

It is appropriate that persons on the victims register be notified of a relevant prisoner's release on parole. They may

need to make personal arrangements to ensure that they feel safe following the prisoner's release on parole, or to avoid inadvertent contact with the prisoner.

Provision of information to this category of persons cannot be viewed as arbitrary.

Further, under s 30A(3) of the act, information must not be given in circumstances where the secretary reasonably believes that security or safety may be at risk, and new clause 12 provides that the board may determine that the notice period should be waived in the circumstances. Such circumstances may include that the prisoner is terminally ill, or about to enter witness protection.

Finally, s 30H of the act provides that persons to whom information is disclosed under s 30A must treat that information in an appropriate manner that respects the confidential nature of the information, and s 30I provides that it is an offence to publish, or cause to be published, or solicit or obtain for the purpose of publication, such information.

In my view, clause 3 is therefore appropriately confined and subject to adequate safeguards, and is compatible with the right to privacy as protected by s 13(a) of the charter act.

Edward O'Donohue, MLC
Minister for Corrections

Second reading

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I advise the house that the bill was amended in the other place to clarify an ambiguity in respect of clause 4, which amends section 61(2) of the Corrections Act 1986. I move:

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

Motion agreed to.

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

That the bill be now read a second time.

Incorporated speech as follows:

The bill will amend the Corrections Act 1986 to implement the first tranche of legislative reforms arising from the measures identified in the Review of the Parole System in Victoria, undertaken by former High Court Judge Ian Callinan, AC.

The review was released on 20 August 2013 and identified 23 measures for improvement to Victoria's adult parole system, and the government committed to swiftly implement a number of administrative and legislative changes recommended in the report.

Mr Callinan undertook the most comprehensive review of Victoria's parole system in the decades-long history of that system. Failures had occurred in the parole system leading to tragic consequences. The details of these cases are well known to members of this house. The coalition government, and the Victorian people, rightly believe these tragedies to be unacceptable.

Mr Callinan found that the system had become too far skewed in favour of the offender and away from victims, their families, and the broader community. The coalition government agrees, and a long-term process of reform in the parole system continues with this bill.

Other measures identified in the Callinan review will require further detailed consideration to ensure their most effective implementation. This work is being undertaken and a cabinet task force led by the Premier has been established to consider the complex legal changes required.

In summary, the bill will implement the legislative reforms identified for swift action by amending the act so as to:

enshrine in the act that safety and protection of the community is the paramount consideration in considering whether parole should be granted, varied, revoked, cancelled, or cancellation of parole revoked;

allow for the appointment of a full-time chairperson of the adult parole board;

introduce time limits for appointment to the board of not more than nine years in total;

ensure registered victims are given at least 14 days notice of a prisoner's release on parole;

require the board to include in its annual report the number of persons convicted, during the reporting period of a serious offence committed while on parole.

The bill also provides that retired superior court judges and retired intermediate court judges from any Australian jurisdiction are eligible to be appointed as members.

The Governor in Council may appoint as deputy chairperson a member of the board who is eligible to be appointed chairperson, to exercise the functions and powers of the chairperson when the chairperson is unable to perform the duties of chairperson or is absent or the office is vacant.

Turning to the bill in greater detail:

Paramount consideration in parole decisions

In accordance with measure 7 of the report, the bill will amend the act to enshrine that safety and protection of the community is the paramount consideration in considering whether parole should be granted, varied, revoked, cancelled, or cancellation of parole revoked.

Chairperson and membership of the board.

In accordance with measure 9 of the report, the bill will allow for the appointment of a full-time chairperson to the board.

As a consequence, the bill will also broaden the class of persons eligible to be appointed members of the board to include sitting and retired Victorian Supreme and County Court judges, as well as retired superior court judges and retired intermediate court judges from the other Australian jurisdictions. One of these members is to be appointed chairperson.

Retired superior court judges includes retired judges of the supreme courts of the other states and territories, as well as retired High Court, Federal Court and Family Court judges.

Retired intermediate court judges means retired judges of the district courts of the other Australian jurisdictions.

Term of office

In accordance with measure 10 of the report, the bill will amend the act so that no member of the board is able to serve for more than nine years in total.

In order to provide an appropriate level of flexibility, the exception to this new rule will be that a person who is eligible to be appointed chairperson, who has previously been appointed to the board in any capacity, is to be eligible to be appointed as chairperson for an additional term or terms not exceeding three years in total. This exception will only apply where the person has not been appointed to the board in any capacity within the previous 12 months.

The current appointments to the board are not disturbed by these amendments and will be left to run their course.

Registered victims to be given 14 days notice of the release of a prisoner on parole

In accordance with measure 12 of the report, the bill will amend the act to ensure that registered victims are given at least 14 days notice of a prisoner's release on parole.

In order to make allowance for unusual circumstances, there will be an exception.

This exception will be:

> where (as is currently provided for in section 30A(3) of the act) the secretary reasonably believes the notice might endanger the security of any prison or the safe custody and welfare of the prisoner or any other prisoner or the safety or welfare of the offender or the safety or welfare of any other person; or
>
> the adult parole board determines that the notice period should be waived.

The reasons for either the secretary or the board determining not to give 14 days notice to a victim could include situations such as the prisoner entering witness protection immediately upon release or the prisoner being critically or terminally ill.

Board to report on further offending during parole period

In accordance with measure 21C of the report, the bill amends section 72 of the act to require the board to include in its annual report the number of persons convicted, during the reporting period, of a serious offence committed while on parole.

For the purposes of this reporting, 'serious offence' is to be a serious violent offence or a sexual offence as defined in section 77(9), which relates to the recently enacted automatic cancellation of parole provisions contained in the Justice Legislation Amendment (Cancellation of Parole and Other Matters) Act 2013.

Appointment of deputy chairperson

Recent experience, coupled with further changes to processes recommended by Mr Callinan in the report, has demonstrated the need for additional flexibility in appointing a person to exercise the functions and powers of the chairperson when the chairperson is on leave, is absent or is unable for some other reason to perform the duties of chairperson.

The current provisions, set out in section 62 of the act, provide for an acting arrangement to be put in place but only on a case-by-case basis. This means an acting arrangement can be put in place for a member for a specific or identified period of leave (or other absence), but a general acting arrangement in the event that the chairperson takes leave, is ill, is absent, or even if the office is vacant, cannot be put in place.

The bill provides for the appointment of a deputy chairperson, who can act as chairperson if the office is vacant or if the chairperson is unable to perform the duties of chairperson, or is absent.

The person who can be appointed deputy chairperson is a member who is eligible to be appointed chairperson.

Since coming to office, the government has undertaken extensive legislative and administrative reform of the adult parole system to address systemic failures that had recently come to light, but had been occurring for many years. This includes new laws providing for automatic cancellation of parole on conviction of further violent or sexual offences, and making breach of parole an offence, punishable by imprisonment to be served on top of the offender's original sentence.

Former High Court judge Mr Ian Callinan's review of the Victorian adult parole system identified further areas for reform.

This bill builds on the government's existing reforms, and implements a number of the measures recommended by Mr Callinan and identified by the government for swift implementation.

The task of reforming the adult parole system does not end here. The coalition government is committed to ongoing reform to ensure the Victorian parole system reflects the important principle that public safety is the paramount consideration in deciding what happens to offenders in this state.

This is what the people of Victoria expect and, under the coalition government, through this bill, it is what they are going to get.

I commend the bill to the house.

Debate adjourned for Mr TEE (Eastern Metropolitan) on motion of Mr Leane.

Debate adjourned until Thursday, 24 October.

ADJOURNMENT

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

That the house do now adjourn.

Water management investigation

Ms DARVENIZA (Northern Victoria) — I raise a matter for the attention of the Minister for Environment and Climate Change, Ryan Smith. The matter concerns a 2010 election commitment that was promised by the

Liberal-Nationals coalition for an independent investigation by the Victorian Environmental Assessment Council (VEAC) into the condition and management of Victoria's rivers, wetlands, estuaries and groundwater systems. In a media release of 8 November 2010 by the then shadow Minister for Environment and Climate Change, the member for Doncaster in the Assembly, Mary Wooldridge, the coalition made this commitment:

> The coalition will also initiate two important VEAC investigations which will:
>
> 1. examine the outcomes from the establishment of existing marine parks and any ongoing biodiversity threats or challenges;
>
> 2. examine the condition and management alternatives for freshwater-dependent ecosystems, such as rivers, wetlands, estuaries and groundwater.

The election promise has now been dumped despite the coalition strongly committing to the VEAC investigation prior to the 2010 election.

Following confirmation from the environment minister, Ryan Smith, that the promise had indeed been dumped, 20 leading environment, Landcare and farming groups released a joint statement in July 2013 calling on the state government to honour its election promise for an independent investigation. The Victorian National Parks Association executive director, Matt Ruchel, said that the group was dismayed that this promise, one of only a few made on the environment by the coalition before the 2010 election, was being broken. This freshwater investigation was a clear election commitment — unlike opening our parks for development with 99-year leases, which was not mentioned prior to the election.

The specific action I seek from the minister is that he stump up and show some leadership and deliver on the promises he made to all Victorians in 2010, including this promise in relation to a VEAC investigation. A number of concerns have been flagged by the 20 environment, Landcare and farming groups, including a failure to develop a vision for Victoria's rivers and wetlands that reflects the community values; a lack of adequate targets, objectives and performance indicators for rivers and wetlands restoration — for example, the target of fencing off public riverside land is 210 kilometres per year, meaning it will take 85 years to complete the job; a failure to consider groundwater and its contribution to our ecosystems; and the fact that its entire scope is limited by budgetary constraints, not ecological objectives. Clearly this needs to be looked into by the minister.

Dementia services

Ms CROZIER (Southern Metropolitan) — My adjournment matter is for the attention of the Minister for Health, Mr Davis. I raise with him an issue that was raised just recently by a constituent of mine. When the constituent came into my office, he outlined a quite alarming situation that he had come across. He said:

> I was at North Caulfield Park when an elderly woman approached and asked if I could help her get home. She knew her street name but didn't know how to get there — despite being 500 metres away. She didn't know her house number and had lost her key. By walking along the street, she was able to recognise where she lived and we found the house key on the driveway.
>
> She didn't have any family and she didn't know her neighbours. She appeared to have no support structures in place. I could not get any information to help with her safety, organise avenues for assistance or request a medical assessment.

The constituent was obviously quite distressed by this. He came in and asked about certain initiatives. This is quite timely because this afternoon I was pleased to launch Is It Dementia with the Parliamentary Friends of Dementia group with the co-convener Wade Noonan, the member for Williamstown in the Assembly. A number of other colleagues were also in attendance. It is a tremendous tool for various community and other sector groups that will really make a huge difference for people to recognise the signs of early onset dementia, or for people who have dementia.

We know that this is an increasing problem because of an ageing population in Australia. Already there are more than 321 000 people living with dementia, and this number is expected to increase by one-third to 400 000 in less than 10 years. That will have a critical impact on Victorians and the Victorian health system. It is an enormous problem for not only those people living with dementia but also their carers and their families as well as the health services, as I said.

I know that in this year's budget the coalition government allocated $1.5 million for the support of carers and that $3.3 million was allocated to Alzheimer's Australia Victoria for the education and training of its workforce and to put money into the SupportLink programs of counselling, information and education. I take this opportunity to again congratulate Alzheimer's Australia Victoria for all the work it is doing, especially launching and making the public aware of this very good initiative that, as I said, was launched today.

With all that in mind and with this increasing problem, could the minister outline what new funding initiatives

the government will be putting into place for dealing with some of these issues into the future?

Western Highway Bacchus Marsh link

Mr RAMSAY (Western Victoria) — The matter I raise is for the Minister for Roads, Minister Mulder, and it relates to Woolpack Road in Bacchus Marsh. Just prior to the recent federal election, the current federal member for Ballarat, Catherine King, announced funds for Halletts Way, which is a western interchange from the Western Highway into Bacchus Marsh. I note that in the recently announced Melbourne planning strategy Bacchus Marsh is one of those towns nominated for an extension of population growth, as is Ballan. The situation at Bacchus Marsh is that for many years now, as part of the Anthonys Cutting project, a consensus could not be reached on moving heavy traffic from the Geelong Road to the Western Highway. Even though a number of options have been proffered by VicRoads, there have been a number of challenges on providing the best option.

I raise a matter for the minister tonight because it is becoming more urgent now, given that the federal government has allocated specific money for the western interchange and we are yet to reach a consensus on an option for what is known as the Woolpack option for moving heavy traffic. It is becoming more critical for the town at Bacchus Marsh and will be more so in the future, given the population corridor that has been nominated for Bacchus Marsh, that a consensus be reached so that the preferred option on heavy traffic movement meets the concerns of all stakeholders in Bacchus Marsh.

Mr O'Brien — Including the Avenue of Honour.

Mr RAMSAY — Yes, that is right. I know that Mr O'Brien has also had an active interest in this longstanding issue. Over time a number of concerns have been raised by a number of the affected parties. I raise the matter because the time is nigh for a decision to be made. I ask that the Minister for Roads advise the council and the stakeholders in the precinct how we are to retain the announced funds from Regional Development Australia through the federal government and also be able to provide a solution to the heavy traffic problem on Woolpack Road.

Victoria Police bands

Ms PENNICUIK (Southern Metropolitan) — The matter I raise tonight is for the attention of the Minister for Police and Emergency Services. It is in regard to the recent decision taken by the Chief Commissioner of Police to disband Victoria Police Showband and the Code One rock band and to civilianise the Victoria Police Pipe Band. I must say that I was very surprised to hear about that decision. I note that this matter has been raised by Ms Allan, the member for Bendigo East in the other place, and this morning by Mr Eideh by way of a members statement.

Members of Parliament received a letter dated 20 September from a group called BandTogether, whose members are spouses, partners, families and supporters of the Victoria Police bands and have formed a support and advocacy group to reverse this decision and have the bands resourced appropriately, including recruiting a drummer and a sound technician. The group is not affiliated with any organisation or political party. Its members simply want to support the Victoria Police bands because they know that they are a great community asset. I think everyone would agree with that. I am sure that everybody in this place has heard one or more of those bands performing over the years. While I have often been critical of the extension of police powers by both governments while I have been in this place, I do support the police in having fair industrial rights and their outreach to the community. I think they should do more of it, and the police bands are certainly a very successful way that they have been able to do that over the years. The letter states:

> All bands promote a positive image of Victoria Police community and … engage in over 650 performances per year …

This week members of this place received another letter from BandTogether, alerting us to the calendar of performances of the police bands, which public events they will be playing at in or near our electorates and encouraging us to go along to those performances. I note that there are quite a lot of performances coming up until the end of the year but that they have not been booked for 2014.

The BandTogether group also says in its letter of 20 September that that morning they heard the Premier say on ABC radio that Victoria is in strong economic shape and the budget will be in surplus, as the government has announced in its financial statements. The group asks: if this is the case, why are the bands being disbanded? My request is that the minister look into this issue and do all he can to preserve the Victoria Police bands now and into the future.

Moyston Recreation Reserve

Mr O'BRIEN (Western Victoria) — My adjournment matter is for the Minister for Sport and Recreation, who is also the Minister for Veterans'

Affairs. The matter relates to the substandard condition of facilities at the Moyston Recreation Reserve. I ask the minister to give consideration to providing assistance to upgrade this local facility.

Mr Leane interjected.

Mr O'BRIEN — I am sure Mr Leane would query the relevance of this facility, but I believe that upon consideration he would regard it as one of the great institutions of Victorian sport, because it is the home of Australian Rules football. Thomas Wills came from Moyston. The Moyston Willaura Football Netball Club is a terrific sporting institution, but it struggles like many other regional communities because it has substandard facilities in comparison to its eastern suburban cousins. I mean no disrespect to the eastern suburbs.

Moyston is in a rain shadow. It gets very dry there in drought seasons, and I have personally experienced those conditions. The Moyston Willaura Football Netball Club calls for its poor facilities, particularly the netball facility, to be urgently upgraded. Retaining young kids in country areas these days is a challenge, and combined football netball clubs like the Moyston Willaura Pumas provide a great family atmosphere. This is something perhaps not enjoyed to the same degree in the city. These small country football netball clubs provide whole-of-community activities. They are not just sporting facilities we are investing in; we are investing in community growth, the retention of young people in the area and the provision of healthy alternatives to the scourge of drugs — a matter which Mr Ramsay is looking into. We aim to get more people more active more often, and this is the principal objective of the Minister for Sport and Recreation.

Moyston in western Victoria is home to 350 people. After some struggles on the field the football team was successful in making the grand final this year.

Mr Ondarchie interjected.

Mr O'BRIEN — We made the preliminary final in the reserves and were unsuccessful. That is another sore point. But that is irrelevant, and I return to my call for the minister to look into this situation and give it his earnest and due consideration.

Responses

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — A number of members raised matters this evening. Ms Darveniza raised a matter regarding Victorian Environmental Assessment Council inquiries, and I will pass that to the Minister for Environment and Climate Change.

Ms Crozier raised a matter concerning dementia assistance and support, and I will pass that on to the Minister for Health.

Mr Ramsay raised a matter regarding roads in the Bacchus Marsh region, and I will pass that on to the Minister for Roads.

Ms Pennicuik raised a matter relating to the various Victoria Police bands, and I will pass that on to the Minister for Police and Emergency Services.

Mr O'Brien raised a matter about Moyston Recreation Reserve facilities, and I will pass that on to the Minister for Sport and Recreation.

I have responses to five matters raised by members previously on the adjournment.

The PRESIDENT — Order! The house now stands adjourned.

House adjourned 5.01 p.m. until Tuesday, 29 October.