PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SEVENTH PARLIAMENT

FIRST SESSION

Thursday, 21 February 2013

(Extract from book 2)

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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, Ms Broad, Mrs Coote, #Ms Crozier, Mr Drum, Mr Finn, #Ms Hartland, #Mr Leane, #Mr Lenders, #Mr Ondarchie, Ms Pulford, Mr Ramsay and Mr Somyurek.

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

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

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

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

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

 # Participating member

Joint committees

Accountability and Oversight Committee — (*Council*): Mr O'Brien, Mr O'Donohue. (*Assembly*): Ms Kanis, Ms Richardson and Mr Wakeling.

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

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

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

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

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

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

Family and Community Development Committee — (*Council*): Mrs Coote, 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 Graley, Mr Wakeling and Mr Weller.

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

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

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

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

Scrutiny of Acts and Regulations Committee — (*Council*): Mr O'Donohue. (*Assembly*): Mr Brooks, 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

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FIFTY-SEVENTH PARLIAMENT — FIRST SESSION

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

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Mr G. JENNINGS

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

Deputy Leader of The Nationals:
Mr D. DRUM

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Atkinson, Hon. Bruce Norman	Eastern Metropolitan	LP	Leane, Mr Shaun Leo	Eastern Metropolitan	ALP
Barber, Mr Gregory John	Northern Metropolitan	Greens	Lenders, Mr John	Southern Metropolitan	ALP
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Coote, Mrs Andrea	Southern Metropolitan	LP	Mikakos, Ms Jenny	Northern Metropolitan	ALP
Crozier, Ms Georgina Mary	Southern Metropolitan	LP	O'Brien, Mr David Roland Joseph	Western Victoria	Nats
Dalla-Riva, Hon. Richard Alex Gordon	Eastern Metropolitan	LP	O'Donohue, Mr Edward John	Eastern Victoria	LP
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Elasmar, Mr Nazih	Northern Metropolitan	ALP	Pulford, Ms Jaala Lee	Western Victoria	ALP
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Guy, Hon. Matthew Jason	Northern Metropolitan	LP	Scheffer, Mr Johan Emiel	Eastern Victoria	ALP
Hall, Hon. Peter Ronald	Eastern Victoria	Nats	Somyurek, Mr Adem	South Eastern Metropolitan	ALP
Hartland, Ms Colleen Mildred	Western Metropolitan	Greens	Tarlamis, Mr Lee Reginald	South Eastern Metropolitan	ALP
Jennings, Mr Gavin Wayne	South Eastern Metropolitan	ALP	Tee, Mr Brian Lennox	Eastern Metropolitan	ALP
Koch, Mr David Frank	Western Victoria	LP	Tierney, Ms Gayle Anne	Western Victoria	ALP
Kronberg, Mrs Janice Susan	Eastern Metropolitan	LP	Viney, Mr Matthew Shaw	Eastern Victoria	ALP

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THURSDAY, 21 FEBRUARY 2013

Thursday, 21 February 2013

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

PETITIONS

Following petitions presented to house:

Schools: funding

To the Legislative Council of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the house the Baillieu state government's decision to cut $555 million from Victorian schools. In particular, we note:

1. funding for the VET and VCAL programs has been cut, meaning thousands of students are now missing out on opportunities;

2. the education maintenance allowance, the School Start bonus and the conveyance allowance have either been slashed or scrapped;

3. the Premier's broken promise to teachers means students will miss out on camps, excursions and other opportunities.

The petitioners therefore request that the Legislative Council urges the Baillieu state government to guarantee no further cuts to education funding will be made in the upcoming 2013–14 Victorian budget.

By Ms BROAD (Northern Victoria) (63 signatures) and Mr LEANE (Eastern Metropolitan) (226 signatures).

Laid on table.

PAPERS

Laid on table by Clerk:

Falls Creek Alpine Resort Management Board — Report for the year ended 31 October 2012.

Lake Mountain Alpine Resort Management Board — Report for the year ended 31 October 2012.

Legal Profession Act 2004 — Practitioner Remuneration Order 2013.

Mount Baw Baw Alpine Resort Management Board — Report for the year ended 31 October 2012.

Mount Buller and Mount Stirling Alpine Resort Management Board — Report for the year ended 31 October 2012.

Mount Hotham Alpine Resort Management Board — Report for the year ended 31 October 2012.

A proclamation of the Governor in Council fixing an operative date in respect of the following act:

Road Safety Amendment Act 2012 — Section 5 — 20 February 2013 (*Gazette No. S54, 19 February 2013*).

BUSINESS OF THE HOUSE

Adjournment

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

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

Motion agreed to.

MEMBERS STATEMENTS

Schools: funding

Ms TIERNEY (Western Victoria) — As a result of the Baillieu government's education cuts families have missed out on assistance with paying for schoolbooks for their children, uniforms, transport costs and excursions. Some families who previously relied on assistance through the education maintenance allowance may simply have to say to their children that they will have to miss out on one or more excursions this year. Other families have not had the money up-front to purchase all the books needed for the school year.

The Baillieu government has taken away fundamental programs that children need to give them the best opportunity to learn and to participate fully in their schooling. The Baillieu government's cuts, whether they are to the education maintenance allowance, the Victorian certificate of applied learning, Free Fruit Friday, the School Start bonus or the School Focused Youth System, are hurting schools and families. Even last year the Warrnambool College principal said that the Baillieu government's cuts were 'a direct hit to the heart of the disadvantaged' and 'a hit to the notion of equality and an egalitarian society'. It is disgraceful that students who are most at risk are the ones increasingly bearing the brunt of the Baillieu government's cost-saving measures.

Victorian Disability Sector Awards: nominations

Mrs COOTE (Southern Metropolitan) — I would like to encourage all members of this place to talk to their local communities about the Victorian Disability Sector Awards. These awards are held annually and are an opportunity to recognise people in one's community

for the excellent work they do in and around the disability sector. Individuals are encouraged to nominate teams and businesses that have made a difference to the lives of people with a disability for the 2013 Victorian Disability Sector Awards. Nominations for the 2013 awards can be made across nine different award categories that recognise excellence in service, advocacy and personal community support for people with a disability.

When announcing this year's awards the Minister for Community Services, Mary Wooldridge, said:

> These awards are an important opportunity to publicly acknowledge the innovation and commitment of individuals and organisations that provide services and support to people with disability.

I encourage everyone to put an announcement in their local papers and to speak to the groups that they are aware of, because this is a great opportunity. I know from the award presentation nights that I have been to before that there are some really uplifting examples of what people are doing within our community. It is a really worthwhile thing to do, and members will be surprised at the work that is being done in their communities in the disability sector. All members should avail themselves of this opportunity and encourage nominations.

Teachers: remuneration

Ms BROAD (Northern Victoria) — Last week the Deputy Leader of The Nationals in the Assembly, Mr Walsh, under the heading 'Strike action', in the Swan Hill *Guardian* explained the government's policy of paying the best teachers in schools a performance bonus and ensuring that graduate teachers had the opportunity to be paid a performance bonus if they were the best teachers in the schools, in contrast to making Victorian teachers not the worst paid but the best paid in the nation, as promised by Mr Baillieu.

Mr Walsh does not appear to be constrained in his statements by the confidentiality agreement that the Minister responsible for the Teaching Profession, Mr Hall, has used as a shield to avoid answering Mr Lenders's questions about teacher negotiations. Meanwhile 100 per cent of teachers at Swan Hill Specialist School took strike action. Teachers across the river in New South Wales earn $3000 to $5000 more than teachers in Victoria, with the result that teachers in government, Catholic and independent schools along the border in Victoria are looking at teaching jobs in New South Wales. Mr Baillieu should honour his promise and fix this problem.

Ballan District Health and Care: redevelopment

Mr KOCH (Western Victoria) — Last week the Baillieu government delivered on an election pledge to expand Ballan District Health and Care with the opening of a $2 million state-of-the-art redevelopment. Ballan District Health and Care is owned by the community and services the rapidly expanding population of the Moorabool shire. The Baillieu government is committed to ensuring that this facility remains a community hospital in the long term.

It is important to invest in Victoria's regional health services and infrastructure, and to deliver modern, new facilities and equipment that meet the needs of growing communities. This is why the coalition committed $2 million to the capital redevelopment of Ballan District Health and Care. This contrasts with the behaviour of the member for Ballarat East in the Assembly, Geoff Howard, who opposed any funding towards this redevelopment. On 2 November 2010, in the *Melton Leader* and *Moorabool Leader*, Mr Howard described the then Baillieu opposition's commitment as reckless and uncosted. Not surprisingly, smaller communities in the Ballarat East electorate cannot reason with their current representative.

Despite this negativity, the Baillieu government recognised the need to update the facilities at Ballan to enable the provision of the highest standards of patient care. Now in government, we are proud to deliver on our commitment to the community of Ballan, which was sorely neglected by the Labor government and the local member, who opposed this important investment. Like the Ballan community, I am pleased to see this commitment being fulfilled. It will also assist in delivering the vital task of retaining general practitioners in this regional centre.

Lyndhurst electorate: by-election

Mr BARBER (Northern Metropolitan) — Last week I was able to personally thank Mr Tim Holding, the former member for Lyndhurst in the Assembly, for all of his years of public service and wish him well in his life after politics.

There will be a by-election in the electorate of Lyndhurst. Some people think by-elections are a drag, but this by-election will mean that at least for a short period the people of Lyndhurst will be the centre of political attention. The Greens will preselect a strong candidate to deal with the issues of local public transport, education, health and the environment.

Public transport was one of the biggest vote-changing issues in the last state election. I believe it will be in the next. The buses in this area follow long, winding routes and do not connect very well with trains. Some of them finish servicing the area early in the evening, well before the last train has run, which means that people have to catch taxis or have a long walk home. The new housing developments in Keysborough South and large parts of the industrial areas of Dandenong South are not serviced by buses at all. That means that your first qualification to work there is to have a drivers licence.

People at Keysborough South are still waiting for a commitment on a future primary school, which is desperately needed right now. The Liberal Party will not run a candidate in the by-election; the Greens are the only ones offering an alternative. We were the only ones who opposed the expansion of the Lyndhurst tip, and we have a new local councillor, Matt Kirwin, who has been already doing a great job for those citizens.

Hospitals: federal funding

Mr DRUM (Northern Victoria) — The lies of the federal Labor government just keep getting bigger and more disgusting. In November 2012, in a desperate attempt to hang on to a shambolic lie that Labor would deliver a budget surplus — which was promised over 500 times — the Prime Minister, Julia Gillard, and Tanya Plibersek, the federal Minister for Health, decided to tell Victorians that our population had shrunk by 11 000 people and that federal Labor was going to cut $107 million out of the health system in Victoria in the current financial year. We all know that the financial year was half finished when they made that announcement.

Within weeks of announcing and implementing these cuts to our hospitals, federal Labor reneged on its promise to deliver a surplus in the 2012–13 year but it did not reverse these cuts to hospitals, continuing to claim that Victoria's population had not risen by 70 000 people, as is commonly accepted, but that it had fallen by 11 000 people — only Labor could believe that. During the last two months the Labor Party in Victoria has thrown its support and weight behind these funding cuts to our hospitals and voted against motions in this house calling for the funds to be reinstated. The member for Bendigo West in the Legislative Assembly actually released a brochure supporting these funding cuts based on a somewhat modern-day miracle performed by Wayne Swan, the federal Treasurer, whereby he was able to make 80 000 people disappear overnight.

Amid all of these lies we now have the unbelievable situation where the federal health minister is trying to tell more lies so she can back way from these funding cuts and reinstate $107 million to hospitals in Victoria. Whilst Labor in Victoria has supported these cuts, I congratulate the state Minister for Health, David Davis, for taking up the fight to Julia Gillard.

Australian Surfing Awards

Mr LEANE (Eastern Metropolitan) — I want to pay tribute to an absolute Australian sporting star, Stephanie Gilmore, who was recently was inducted into the Surfing Hall of Fame. Stephanie Gilmore has won five world surfing championships. When you think about it, you know that that is an amazing effort. She deserves all the credit she can get. Other winners in the 2013 Australian Surfing Awards include the male surfer of the year, Joel Parkinson — there were no surprises there; and rising star Jack Freestone, who is just amazing to watch. We wish them all well and want them to keep ripping up.

Cricket: women's world cup

Mr LEANE — Speaking of great Australian sporting stars, the Southern Stars Australian women's cricket team has pulled off its sixth world championship in the one-day cup. We should all be very excited and proud for them, send our congratulations to captain Jodie Fields and the whole team, and keep supporting them. We want them to keep winning, because it is good to see us win in cricket.

Hospitals: federal funding

Hon. D. M. DAVIS (Minister for Health) — I am happy to see that $107 million will be restored to Victorian hospitals, but I note the federal government will need to follow up with the $368 million it proposes to take from our hospitals over the next three years on the basis of a dodgy and flawed population formula. I have to say the extraordinary thing is that those opposite voted in favour of these cuts in this chamber, in an act of treachery, cowardice and shame. It was a shameful act to vote in favour of these cuts for these hospitals by the federal government.

I note the Prime Minister has been very selective in the way she has approached this and has decided to return the $107 million to Victoria for this financial year. The idea that she would cut in the way she did and in the way the federal Minister for Health, Tanya Plibersek, did — in the middle of the financial year — is extraordinary mismanagement of our system by the federal government. I note the deafening silence from

the other side and the failure of Labor members of Parliament, federal and state, to stand up for Victorian hospitals and their weakness and cowardice in the face of the Prime Minister. But I have to say this is a win for Victorian patients, and the next step is the $368 million that needs to be returned because of the federal government's cut.

Greensborough Bowls Club: retractable shade system

Mr ELASMAR (Northern Metropolitan) — On Saturday, 16 February, I attended Greensborough Bowls Club to participate in the launch of its new retractable shade system. The event was organised by Banyule City Council, together with the executive committee and the chairman of the bowling club, Mr Wayne Zealey. The hot weather did not deter bowling club members from attending the function. They can all now enjoy bowling under the shade, whether the climate is hot or cold or raining, for that matter. I thank the organisers of the event. I know all bowling club members will appreciate their retractable shade system for many years to come.

Department of Sustainability and Environment: firefighters

Mrs PETROVICH (Northern Victoria) — The Department of Sustainability and Environment (DSE) sustainably manages a broad range of land, water, fire and biodiversity projects with and for Victorian communities. In March and June of last year when floods swept through Victoria, DSE played a large role in the emergency response and relief effort, along with the State Emergency Service and the Department of Primary Industries. The floods impacted on communities and agricultural activity in 33 local government areas.

When the flood effort moved from the emergency phase into recovery, DSE and Parks Victoria began assessing the damage to assets on public land, such as swimming pools, sporting facilities, walking trails, caravan parks and parking areas. We live in the land of 'droughts and flooding rains', and this year it is the accompanying high fire danger that threatens our communities through dry conditions.

I was very saddened to hear of the deaths last week in Harrietville of two dedicated DSE firefighters, 19-year-old Katie Peters from Tallandoon and 34-year-old Steven Kadar of Corryong. This tragic event highlights the dangers that DSE personnel, and particularly firefighters, are exposed to in the line of duty. As Parliamentary Secretary for Sustainability and Environment I have seen firsthand the outstanding work that our DSE firefighters undertake to protect the Victorian community and our environment. Much of their important work is done behind the fire lines and rarely seen. They are unsung heroes who deserve our gratitude and admiration.

I extend my deepest sympathy to the families, friends and colleagues of these two firefighters, many of whom are still working to control the devastating Harrietville fire. My thoughts are also with the Corryong and Mitta Valley communities, which have lost two wonderful young people.

Our fire season is far from over. Lightning strikes over the weekend started approximately 380 new fires. DSE staff will continue to work with the Country Fire Authority, Parks Victoria and the Department of Primary Industries, along with visiting firefighters, in an effort to put these fires out.

HEALTH SERVICES AMENDMENT (HEALTH PURCHASING VICTORIA) BILL 2012

Second reading

Debate resumed from 7 February; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Mr SCHEFFER (Eastern Victoria) — I rise to make some remarks on behalf of the opposition on the Health Services Amendment (Health Purchasing Victoria) Bill 2012. This bill enables registered community health centres and 11 women's health centres to enter into contracts with Health Purchasing Victoria so as to get better value for the goods they buy and the services that are provided. This bill is another of the rather narrowly-focussed pieces of legislation that the Victorian public service prepares for the government and, in the fine tradition of the Victorian public service, these bills generally tend to be good legislation that the opposition can support.

The opposition supports the bill because we believe it will make a positive contribution to the operation of community health centres and to women's health centres. Community health centres and women's health centres are close to Labor's heart and we pay respect to the fact that it was the Whitlam government in the 1970s that put community health centres at the centre of local health delivery for the first time when the commonwealth directly funded them. Those of us who were around at that time remember how important this initiative was and the fantastic difference it made, especially to people living in regional and rural areas

who also benefitted from the Whitlam government's direct funding of regional hospitals.

Community health centres — or services, as they are sometimes known — continue to do well some 40 years on, and in Victoria today there are around 100 such centres that operate from more than 350 locations, which is a pretty wide coverage by any measure. There are many community health centres all over Eastern Victoria Region, which provide an array of health-related information and education programs to help people with chronic conditions such as diabetes, asthma, alcohol and drug issues and problem gambling. They also do an excellent job promoting health messages to specific populations such young people, seniors, carers, people with disabilities and members of Aboriginal communities as well as providing programs specifically targeted to particular special needs — that is, the needs of women, men and children as special cohorts. These days it is difficult to imagine a world without these services, and it is good to take a moment to recognise again the foresight and the legacy of the Whitlam Labor government.

The second-reading speech points out that Health Purchasing Victoria has been in operation for around 12 years, and it was, as members will recall, set up in 2001 in the early days of the previous government. It is an independent statutory authority, and it works with business, public hospitals and health services, assisting them to get hold of supplies and consumables more cheaply, or in its words it claims to achieve best value supply chain outcomes for Victoria's health sector. I cannot help reflecting that 'best value supply chain outcomes' is a Don Watsonian phrase if ever there was one.

The second-reading speech also sets out the new areas that Health Purchasing Victoria should focus on, and they are all commendable. The speech reminds us that the changes made in 2008 to the Health Services Act 1988 did not define community health centres as a health-related service, and this meant that they were unable to access the benefits of obtaining the supplies they needed through Health Purchasing Victoria.

Clause 3 of the bill makes clear that registered community health centres and women's health services are health or related services. Specifically the bill includes in its schedule the 11 women's health services that, under this bill, will be eligible to participate in Health Purchasing Victoria's procurement schemes. Community health centres and women's health services, as I have indicated in my opening remarks, are critical elements of community infrastructure. Their role in health promotion in the context of rising rates of serious chronic diseases, such as type 2 diabetes, heart disease and respiratory illness, is as important as ever.

The inquiry into environmental design and public health conducted last year by the Environment and Planning References Committee of this house heard expert evidence that, despite very significant improvements in the range of government education programs and preventive health initiatives over recent decades, more people are vulnerable to a range of non-communicable diseases, owing to a lack of physical activity, poor diet, alcohol consumption and smoking. Researchers have understood for quite a long time that there is a complex interaction between the natural built environment and social environment on public health and wellbeing. The current inquiry into crime prevention through environmental design in Victoria being conducted by the Parliament's Drugs and Crime Prevention Committee is traversing some of the territory that was covered by the Environment and Planning References Committee's inquiry into environmental design and public health.

The new communities that are springing up in growth areas such as Casey and Cardinia in Eastern Victoria Region urgently need government infrastructure investment to help them avoid these chronic diseases that are on the rise. It is no secret that there is deep unease in the growth corridor communities over this government's lack of commitment when it comes to investing in health services as well as in schools, kindergartens, children's centres, accessible public transport and roads. The work undertaken by the Parliament's committee shows very clearly how infrastructure investment and planning — the layout of streets and lanes, the availability of public transport and the design of active public spaces — can encourage increased physical activity and, consequently, better health.

It is clear that the role of community and women's health centres in health promotion and education is critical to improving our health. New approaches are urgently necessary and in some instances are being developed and looked at. One example of where this thinking is taking place is Selandra Rise in the city of Casey — a 1500-lot demonstration housing project being developed by a partnership comprising land developer Stockland, the City of Casey and the Victorian government's Places Victoria.

In May last year Dr Cecily Maller, a senior research fellow in the centre for design at the college of design and social context at RMIT University, published a paper entitled *Master Planned Communities and the Re-formation of Cities for Health and Wellbeing — the*

Case of Selandra Rise. The paper 'explores residents' social practices to reveal connections between spatial and social features, daily routines and health and wellbeing'. Dr Maller writes that the key objective is to build a healthy community through focusing on social practices rather than relying on individualised behaviours. Dr Maller says:

> The working hypothesis for the research is that a place-based community that provides different (better) material infrastructures relevant for health and wellbeing and also tackles common understandings and practical knowledge (mostly occurring through social and community programs), will recruit residents into new practices or reconstruct or reconfigure existing practices, resulting in increased health and wellbeing.

I think this is a very fruitful future direction for community and women's health centres, and the early results of the research seem to confirm some of what we already know — that is, that in those communities chronic conditions seem to be rare, although that may be because of the relative youth of the participant cohort of the study. Some residents, on the other side, did mention depression, allergies, weight issues and work stress. Dr Maller, reports, however, that most residents indicated an interest in taking up more opportunities for exercise, most of them consumed alcohol moderately, only some — not many — smoked, and there was a likelihood of most cooking being undertaken at home. But on the other side, there was only a low interest in healthier eating or in growing vegetables at home.

The point I am making is that while community and women's health centres have made and are making a contribution to the improved health and wellbeing of Victorians, the evidence is showing that some new and emerging health issues are being tackled in new ways that include smarter urban design and work on social practices — the way people behave in communities — that can have a beneficial effect on the wellbeing of individuals and communities.

Returning to the provisions of this very slight bill, it is clear it will assist community and women's health centres. But in a dramatically changing environment a greater and smarter public investment could be made in them.

Ms HARTLAND (Western Metropolitan) — Because Mr Scheffer has gone through the bill in great detail, I will not go over it again. It is a very straightforward bill, which gives community centres and women's health centres the ability to be able to purchase through Health Purchasing Victoria. It is perfectly sensible, and the Greens will be supporting it. I would just like to add a few words about the importance of community health centres. Before I became a member of Parliament I worked for five years for the Western Region Health Centre. Many people may not have seen the program I worked in as being health related — it was the Older Persons High-Rise Support program — but it did a great deal of work to keep people healthy. Health centres conduct all these other amazing programs that some people do not always see as health related, but they are incredibly important. The entire community health sector is incredibly important, especially the women's health sector with the work it does around violence against women and with its preventive health work. With those few words, the Greens will be supporting the bill.

Ms CROZIER (Southern Metropolitan) — I am also pleased to rise to speak on the Health Services Amendment (Health Purchasing Victoria) Bill 2012, and I am pleased that those opposite also support the bill. As has been highlighted, the bill amends the Health Services Act 1988 to expand the range of health or related services in relation to which Health Purchasing Victoria performs functions and exercises powers to include registered community health centres and women's health services. As Mr Scheffer and Ms Hartland have said, those two sectors do a great service to the Victorian community in a number of areas. As someone who has worked in women's health for 10 years, I concur as to the tremendous work they do. I am therefore very pleased that these two areas have been provided for in this very sensible piece of legislation.

The bill enables a much more streamlined procurement process. Victoria's public hospitals spend more than $1.6 billion, or approximately 14 per cent of total hospital expenditure, each year to procure supplies and consumables. Health Purchasing Victoria contracts cover approximately 23 per cent of the total $1.6 billion spend on supplies and consumables.

In the area I represent, Southern Metropolitan Region, there are a number of important community health centres that provide crucial maternal and preventive health services. As someone who has worked in the area of chronic disease, specifically in the area of diabetes management, I understand very clearly the significant impact and importance of the work that is conducted by clinicians and other people who work in those areas. Chronic disease is a significant problem for our health services, our community and of course for our overall health budget. I am pleased that there are a number of terrific health centres right across the region that are doing significant work, not only in that area but in other areas of maternal health and chronic disease.

They include Bayside Health, Bentleigh Bayside Community Health, Inner South Community Health Service and MonashLink Community Health Service, and all provide tremendous service.

I am pleased that the minister has been able to look at this. I know that this was part of the strategic goal that he highlighted that came out of the Auditor-General's 2011 report entitled *Procurement Practices in the Health Sector*. Six significant areas were highlighted. This bill addresses some of those areas. I will not go through what they are; I think they are pretty straightforward. I just want to make a couple of comments in relation to the minister's ability in this area, because not only has he taken the lead in identifying those areas and putting together a plan and a strategic framework around what needs to be done here in Victoria but he has also stood up for Victorian patients.

That has been demonstrated in the last few months after the preposterous cut to hospital funding that was imposed by the Gillard government in conjunction with the federal Treasurer, Wayne Swan, and the federal health minister, Tanya Plibersek. They took $107 million out of the Victorian health service budgets midway through the financial year based on some adjustments to population figures which we know hinged on an absolutely ridiculous assumption. Newspaper headlines prove that. Today's *Herald Sun* contains an article titled 'Prime Minister Julia Gillard reverses Labor's Victorian hospital funding cuts', and the *Age* has published an article titled 'PM backtracks on hospital cash cut'. I am pleased that there is finally acknowledgement at a federal level; even Senator Richard Di Natale states in the *Herald Sun* that:

> It appears that the government manipulated ABS data to justify the cuts.

I would have to agree with Senator Di Natale.

Mr Finn — Don't do it again.

Ms CROZIER — I advise Mr Finn that I have to agree with Senator Di Natale on this occasion only because I think it was absolutely preposterous to say that we had a reduction in population. Minister Davis should be commended for the work he has done in arguing this case so effectively, standing up for Victorian patients and going in to bat for health services. The fact is that hospitals, health services and Victorian patients knew this was an absolutely ridiculous assumption. To have the leader of the handbag hit squad, Ms Plibersek, coming up with that pathetic criticism of the Baillieu government yesterday was as pathetic as the Treasurer, Wayne Swan, assuming that the population had decreased in Victoria. She should take a leaf out of the book of her friend Ms Roxon, the former federal Attorney-General, who was another member of the handbag hit squad, and take a walk. Ms Plibersek's credibility on this issue has been shot. Minister Davis's standing up for Victorian patients has been proved, and that will be absolutely welcomed by health services, Victorians and hospitals.

Nevertheless, the funding cut will still have an impact and will continue to have some ongoing effects on hospitals and health services. The cut was made and health services had to adjust their management processes accordingly. As somebody who has worked in the health system I understand the complexity and difficulty of going through that process. The level of funding was agreed to by the federal and state governments, and health budgets were set. When budgets are set they should not be cut midway through a financial year.

In my own area of Southern Metropolitan Region those cuts were going to have a significant impact on two major health services that cater for a large population of Victoria. The funding shortfall was to be over $7 million for Alfred Health, and for Southern Health, which includes Monash Medical Centre, the funding shortfall would have been in excess of $13 million. That is a direct cut to patient services, and patients know that there are now increased waiting lists because of the decisions made by hospitals that have had to restructure their management systems. We have heard what has been happening over the last few months.

I am pleased that the Victorian government has fought hard against the federal government's cuts, which were absolutely brutal and unjustified; there is no doubt about that. I particularly want to pay tribute to the hospital boards' clinicians and the communities that fought for their hospitals and patients on this matter. They absolutely know it was a ridiculous assumption on the part of federal Treasurer Wayne Swan to cut the budget based on a reduction in population.

However, we still have a long way to go, because those cuts of over $107 million were for this financial year, and we still need to fight for a further $368 million over the next three years. I am sure the Minister for Health, Mr Davis, along with Premier Baillieu, who have taken the lead on this, will be arguing our case and wanting to get that money back into hospital services to assist Victorian patients.

Again I say that I am pleased those opposite are not opposing the bill. I again commend the minister for his work in this portfolio area. The amendments will make

a sensible adjustment to community and maternal health services across Victoria. I also again commend him on the work he has done to force the federal Labor government to backtrack on its cuts to the Victorian health budget in this financial year.

Mr FINN (Western Metropolitan) — I rise with a great deal of pleasure to support the Health Services Amendment (Health Purchasing Victoria) Bill 2012 this morning. Over a long period of time I have had a great deal to do with community health centres. Firstly, as a member of Parliament I had a close working relationship with a number of local community health centres, particularly Sunbury Community Health Centre, when I was the member for Tullamarine in a previous incarnation. I have to say that back then — and I assume now — that community health centre was one of the best in the state. It does a great job. In more recent years I have had further to do with that community health centre through the early intervention programs it runs for children with autism, as my son attended there. I can recommend the program it runs. It made the world of difference to my son. He started there when he was about three or four, and it made a huge difference.

Community health centres do a wonderful job. I think they are largely underrated in the community, which is sad, because they should be given the accolades they are due. They reach out to people who would otherwise be left alone — the elderly, the vulnerable and obviously the sick. Many people in the community are helped through community health centres, but sometimes those centres are seen as the poor relation of the health system. That should not be the case, but I regret that it is.

I was pleased to hear this morning that the federal government has done another backflip, this time on the $107 million that it had ripped out of the Victorian health system.

Mr Leane — Are you happy about that?

Mr FINN — I am very happy about that. I am happy that Prime Minister Julia Gillard has finally admitted that the federal Treasurer is a goose. I am delighted that the Prime Minister has finally admitted that her Treasurer, Wayne Swan, has not got the first idea what he is doing. I am delighted to hear that the Prime Minister of this country says her Treasurer is a total idiot. He has not got the first idea what he is doing. How can you have a Treasurer of this nation who cannot count? It is staggering, and clearly he cannot read either. I mean, he is innumerate and illiterate — a total dill — and it is very encouraging to hear the Prime Minister of this country tell the truth perhaps for the first time in her life. She has actually told the truth this morning, and that makes it a red letter day for us all. I might write about it in my diary, and every year we might celebrate 21 February as a great day of national celebration — that is, the day that Julia Gillard told the truth, which is something we are not used to in this country.

The federal government has caused pain and suffering to many sick people who, you would have to say, do not deserve or need the stress of the federal government cuts to funding. After all that we have finally got a situation where the federal government has admitted that it was wrong, and the justified allocation is again being directed to hospitals and the Victorian health system. You look up to Canberra, as one reluctantly does from time to time, and you see the three stooges of Australian politics — the Prime Minister, Julia Gillard, the federal Minister for Health, Tanya Plibersek, and the Treasurer, Wayne Swan. I heard Tanya Plibersek being interviewed on the radio this morning by Neil Mitchell. She clearly has been taking lessons from her leader, Julia Gillard, because she too lies through her teeth. She absolutely lies through her teeth. She did it again this morning, and she has done it time and time again.

Mr Leane — On a point of order, Acting President — —

Mr FINN — Here we go. What is going on with Mr Leane?

Mr Leane — There are all sorts of things going on with me, Mr Finn. The point of order is that I am not sure that it is appropriate for a member of the chamber to refer to members of the federal Parliament as liars. A number of unparliamentary terms were used during the last 8 minutes and 40 seconds of the member's contribution.

Mr FINN — On the point of order, Acting President, the standing orders clearly state that members of federal Parliament and members of any other Parliament are not protected. They are not given the protection that Mr Leane is seeking to give them just at the minute. Secondly, as justified as it may have been, I have to point out that at no time have I referred to Tanya Plibersek as a liar. I said she lied, and by God she has, but I have not referred to her as a liar.

The ACTING PRESIDENT (Mr Ondarchie) — Order! Thank you, Mr Finn, but I uphold the point of order on this occasion. I remind the chamber of President Smith's ruling of 12 November 2009 when he

said that members should refrain from making imputations concerning members from other parliaments which could be regarded as personally derogatory towards them. I ask the member to withdraw.

Mr FINN — I will withdraw very reluctantly.

The ACTING PRESIDENT (**Mr Ondarchie**) — Order! I remind Mr Finn that just a withdrawal will be fine.

Mr FINN — I withdraw, and I wish I had heard that ruling by President Smith, because clearly that is in contravention of the standing orders of this Parliament. That ruling is in contravention of our standing orders and, as I have said to the current President, I do not believe that any Presiding Officer of this Parliament should have the ability to rewrite the standing orders.

Mr Barber — On a point of order, Acting President, Mr Finn is now reflecting against the ruling of a former President, which is in exactly the same vein as if he had reflected against you, Acting President.

The ACTING PRESIDENT (**Mr Ondarchie**) — Order! I accept Mr Barber's point of order.

Mr FINN — I think the point has been made. Members of the opposition are very keen to protect the decaying government in Canberra, a government that is disintegrating before our very eyes, and we should remind the electorate whenever we can that this crowd opposite are in the pockets of Julia Gillard. They are in the pockets of Tanya Plibersek. They are in the pockets of Wayne Swan and the crew in Canberra that is screwing Victoria over at every opportunity. That crowd over there are the ones who put their own — —

Mr Leane — On a point of order, Acting President, back on unparliamentary terms. I am not too sure if 'screwing' is a parliamentary term that we use in this particular chamber.

Mr FINN — I said 'screwing over', which is totally different from 'screwing'.

The ACTING PRESIDENT (**Mr Ondarchie**) — Order! I will not uphold the point of order in this case.

Mr FINN — Shaun is having a big day. I will not go on for too much longer. As I said, I think the point has been made. I hope the people of Victoria realise just how severely they have been betrayed, not just by the Gillard government but by the Victorian ALP. I sincerely hope the people of Victoria know and accept that they have been totally and comprehensively betrayed by the Labor Party.

Hon. M. P. Pakula — Are you making the same speech again?

Mr FINN — Here comes the Leader of the Opposition! I am sorry — Mr Pakula has entered the chamber. He has managed to get off the phone for long enough to come in here — or perhaps he already has the numbers. Perhaps he does not need to make any more phone calls, so he has wandered in here. It is a marvellous honour. It is a delight to see him here in one of his last appearances in this chamber, and I welcome him. It is a rarity. I should say to Mr Pakula that we in the western suburbs will miss him. When he goes to Lyndhurst, we will miss him — not that we see him all that often. As we know, it is a very long way from Werribee to Black Rock, and he does not make the trek very often. But, nonetheless, we will miss him. When he replaces the member for Mulgrave in the other place, Daniel Andrews, as Leader of the Opposition, I will wave to him on the telly.

Mr Leane — My point of order relates to relevance, Acting President. I think there have been rulings before on talking about what happens within political parties — —

The ACTING PRESIDENT (**Mr Ondarchie**) — Order! Thank you Mr Leane, I understand your point of order and I uphold it. I am sure Mr Finn has some other substantive things to say in his contribution. I ask him to continue.

Mr FINN — Indeed I do, Acting President. I had not actually intended to speak for this long, but the provocation from the other side of the house, I am sure you will agree, has led me to go a little bit further than I would otherwise have done.

The ACTING PRESIDENT (**Mr Ondarchie**) — Order! Mr Finn will continue on the bill.

Mr FINN — I am reaching out to Mr Pakula in the way that a caring, sharing, compassionate person would. I am with him. I say to him, 'I am with you, brother; don't you worry about that!'. I am with him as he attempts — —

The ACTING PRESIDENT (**Mr Ondarchie**) — Order! Back to the bill, Mr Finn.

Mr FINN — Certainly, Acting President. This is a particularly good bill. It is not a big bill — —

Hon. M. P. Pakula — And I haven't read it. I have no idea what it's about.

Mr FINN — Mr Pakula has not actually read the bill. He comes in here and starts yelling at me; fit to burst, he is. He is fresh off the telephone, having got the numbers for his nomination for the seat of Lyndhurst — —

The ACTING PRESIDENT (**Mr Ondarchie**) — Order! I am sure Mr Finn has read the bill. Go back to it, please.

Mr FINN — Certainly. As I said, it is a particularly good bill; I might actually take it home and read it to the kids tonight. It is a good bill and I commend it to the house. In Victoria we will have great difficulty between now and 14 September fighting off the attacks of the federal government. I am delighted to say that at least one of them has failed. This is a red letter day for Australia. This is the day that Prime Minister Julia Gillard told the truth — that has never happened before. I welcome the bill, I commend it to the house and I am delighted that members of the opposition and the Greens will be supporting it today.

Mrs COOTE (Southern Metropolitan) — What can I say coming after Bernie Finn, who gets it right? He understands what politics is all about and he gets it absolutely right. His contribution to the debate on the bill highlighted exactly what was needed to show how absolutely and utterly hopeless the federal government is. Mr Finn's contribution pretty much said it all for the coalition, and he built on the very good work of Ms Crozier. I too am very pleased to know that the opposition parties are supportive of the bill. It is fabulous timing. Every so often in this place the ducks are in a row, and today is one of those days. When the Health Services Amendment (Health Purchasing Victoria) Bill 2012 was first put on the notice paper, who would have thought today was going to be such a momentous day? It is a momentous day because members of the coalition have been able to highlight the inadequacies of the federal government.

Ms Crozier reminded me before about the handbag hit squad. Who are its members? There is the Prime Minister, Julia Gillard. As Mr Finn rightly said, she has been found wanting in so many areas, and today she has had to backtrack quite dramatically. The detail, of course, is murky, which is what she is so good at. Then we have Tanya Plibersek, the federal Minister for Health, who we see on *Q&A* and on all those other programs we watch. She is absolutely and utterly holier than thou. She has been made to back down too. She has been vilifying Victoria and saying that Victoria's health system is not up to scratch, but she has had to backtrack.

Now, who was the third person in the handbag hit squad? It was none other than former federal Attorney-General Nicola Roxon — and what happened to her? The heat was on in the kitchen, so she got out. From what I can gather, she told the Prime Minister when she was appointed Attorney-General that she was going to resign, but this expedient Prime Minister decided that she wanted to have an all-women affair, so she appointed her to the job regardless. As Nicola Roxon rightly said, she was not working to 200 per cent and therefore she needed to get out. The handbag hit squad is in absolute disarray. Its members should pack their bags and go home. We have seen a backtrack from Ms Gillard today.

I would like to take this opportunity to congratulate our very own Minister for Health, David Davis. He put Victoria's position out there time after time. In fact it was not just Minister Davis; it was also the CEOs of the health services and the hospitals in Victoria. They could see the political ploy that the federal government was trying to pull off. But I think that seeing this sudden mea culpa from Julia Gillard and Tanya Plibersek means the polls in Victoria must be looking very bad for the Labor Party. They must be going backwards at a rapid rate, because that would be the only reason that they have suddenly found this money. But, as Mr Finn so rightly said, it goes back to the federal Treasurer Mr Swan — or Mr Goose. I mean, what an absolute lightweight he is.

Mr Leane — On a point of order, Acting President, relating to a previous ruling about referring to federal members of Parliament in an unparliamentary way, Mrs Coote actually parroted Mr Finn with the 'goose'.

The ACTING PRESIDENT (Mr Tarlamis) — Order! There is no point of order, but I ask members to show some respect for their parliamentary colleagues in other places.

Mrs COOTE — It is obvious that Mr Leane backs Mr Rudd. You can see that. He is making a feeble attempt here today to deflect attention away from Julia Gillard, but we know he is a Rudd man. We know he is out there stirring, telling them — —

The ACTING PRESIDENT (**Mr Tarlamis**) — Order! I ask Mrs Coote to come back to the bill and remain relevant to it.

Mrs COOTE — I think I was being very relevant, Acting President, with all due respect, because if in fact Mr Rudd takes over, where does that leave this deal?

What is going to happen? I know Mr Leane is working very hard to make certain that Mr Rudd gets back in again.

In any case, the bill is a very good small, straightforward bill. Although it is straightforward it gives me an opportunity to talk about some of the health services in my electorate of Southern Metropolitan Region. It is important to understand that the community health centres in the inner south do a remarkable job. There are some very challenging issues in this area. We have some of the most disadvantaged and vulnerable people in Victoria. We have a lot of people with drug and alcohol-related issues, people who are homeless and people who have intellectual disabilities, and we have a big mental health problem too, so the work that the community health centres do in the inner south is absolutely remarkable.

Across Victoria there are 38 registered community health centres. All of them will benefit from the passage of this bill. There are 16 community health centres in rural and regional Victoria. The member for Bentleigh in another place gave a very eloquent description of what the community health centre means to her constituents, and I commend her on her contribution. The Inner South Community Health Service operates four clinics in Southern Metropolitan Region. One is in South Melbourne, in Coventry Street; one is in Prahran, in Malvern Road near Chapel Street; two are in St Kilda — one in Inkerman Street near the corner of Barkly and Grey streets and the other in Mitford Street in St Kilda south. I know the staff and other people in those clinics are very dedicated and do excellent work.

The vision statement of the Inner South Community Health Service is very poignant. It says the service's vision is for 'a healthy and inclusive community'. I believe that it has achieved that. The service sees its mission as being:

> To develop and deliver quality health services that respond to the needs of our communities, with a particular focus on engaging those who may not readily access mainstream services …

As I said before, many of its clients are particularly challenging and indeed are amongst Victoria's most vulnerable people.

Including women's health services is another extremely important element of this bill. There are 11 women's health services located across Victoria, which are listed in new schedule 6 to the bill. Those are: Gippsland Women's Health Service; Multicultural Centre for Women's Health; Women's Health and Wellbeing Barwon South West; Women's Health East; Women's Health Goulburn North-East; Women's Health Grampians; Women's Health Loddon Mallee; Women's Health in the North; Women's Health in the South-East; Women's Health Victoria; and Women's Health West.

Women's Health Victoria's vision is 'Women living well — healthy, empowered, equal'. It is a not-for-profit, statewide women's health promotion, information and advocacy service and it works with health professionals and policy-makers to influence and inform health policy and improve service delivery for women.

I would also like to touch on something that nobody else has mentioned in this place, which relates to purchasing. We often forget when we are talking about many of these large areas like health or education that there are flow-on effects when changes occur. I know the Minister for Manufacturing, Exports and Trade, Mr Dalla-Riva, speaks about the flow-on effects from the manufacturing industry, but it is important to understand that there are flow-on effects in small business as well. The purchasing opportunities for all the organisations I have listed today are vast, and benefits will flow not just to the services themselves in terms of what they buy in but also to other small businesses around them through their dealings with them. An enormous number of opportunities will be provided for small businesses in the health sector, which I think are going to be affected by this bill.

As an aside, on the subject of health in the inner south, Mr Scheffer and I were the last members of the former Monash Province, which was an excellent electorate. We were the stalwarts out there and I have to commend Mr Scheffer for the excellent work I know he did with the inner south at that time, because he is very highly regarded. I think that still stands today although he is not in the area.

In conclusion, the bill allows these valuable health services, which help so many vulnerable people in society, to access Health Purchasing Victoria to procure their goods and services and it will ensure that their resources stretch further and will enable them to operate more effectively. I commend the bill to the house.

Mrs KRONBERG (Eastern Metropolitan) — I am pleased to rise and make a contribution to debate on the Health Services Amendment (Health Purchasing Victoria) Bill 2012. Just as a bit of background, Health Purchasing Victoria is an independent authority which was established in 2001 under section 129 of the Health Services Act 1988 to improve the collective purchasing power, bargaining power and economies of scale of the

Victorian public health services and hospitals. The major function of Health Purchasing Victoria is to work in partnership with public health services and businesses to facilitate access to the supply of goods and services on best value terms.

Health Purchasing Victoria currently tenders 30 contract categories and over 366 individual contracts with a current total value of approximately $425 million. The product categories include both services and goods across a broad range of items, such as office requisites, pharmaceuticals, medical consumables and medical equipment. For the period 2008–12 Health Purchasing Victoria has achieved $122 million in cumulative savings and this amendment to the act is being made so that the savings that come from that collective purchasing power can be realised by community health centres and women's health services across the state. The benefits that will percolate through the health centres' operating expenses are going to be of direct benefit to the people of Victoria. People, particularly those who come from disadvantaged settings, will directly benefit from improved circumstances in the area of equipment and consumables and clearly also in the area of service provision. The cumulative savings to the health sector were achieved through a combination of cost savings and, importantly, cost avoidance.

The bill amends the Health Services Act 1988 to expand a range of services, the functions performed and the powers exercised by Health Purchasing Victoria. When this bill is passed community health centres and women's health services will be covered by it. The bill also amends the definition of 'health or related service' in section 3(1) of the Health Services Act 1988 to include registered community health centres. There are 11 women's health services and 38 registered community health centres across the state, 22 of them located in metropolitan Melbourne and 16 in rural areas.

While we are focusing on metropolitan community health services, I want to shine a spotlight on the fine work done by staff at Nillumbik Community Health Service, situated on Main Road, Eltham. The service delivers to a range of people in its catchment area. The service level is simply wonderful and the staff's dedication to tasks is peerless. The people I have come to know and admire are to be commended for their brilliant service to the community in and around the Eltham and in the wider catchment area of the shire of Nillumbik. I shine the light on them. I am very pleased, and people will be very pleased about the benefits that will go to Nillumbik Community Health Service.

Because a number of us are wearing teal ribbons on our lapels today, it is important we recognise and put a focus on an aspect of women's health. The legislation will bring extra flexibility and cost-saving opportunities to the 11 women's health centres. This may enable more women to avoid the scourge of ovarian cancer. In Australia 1200 women every year are diagnosed with ovarian cancer. Unfortunately of those 1200 the percentage of women who succumb to the disease and die is high; about 800 die from the disease. There is no detection test. Pap smear tests do not help in the detection or diagnosis of ovarian cancer.

Everyone needs to know the symptoms, which include abdominal pelvic pain, increased abdominal size or persistent abdominal bloating, the need to urinate often or urgently and difficulty in eating, or feeling full quickly. The message to anybody listening to my contribution to the debate today is that if these symptoms persist for two weeks, women should see their general practitioner and ask, in conjunction with their practitioner's support, about the possibility they might have ovarian cancer.

While on the subject of ovarian cancer and the benefits that the passing of this bill will have on women's health centres around the state, I want to reflect on a fine Liberal woman who left us in 2012. Thelma Mansfield was someone I knew and have admired during my almost 30 years in the Liberal Party.

Mr Finn — A very good woman.

Mrs KRONBERG — A very fine woman. Just like our fine parliamentary colleague Georgie Crozier, Thelma Mansfield was a nursing professional who gave so much to the community through her professional expertise, but even a nursing professional was not able to be one step ahead of this silent killer, ovarian cancer. It is very important that women have this knowledge and are encouraged to be vigilant. That message applies to the general practitioner community as well.

While I am talking about the issue of health, it is very important that I stress this: at long last, after the obscene wrangling, lying, prevarication, denials and — —

Mr Finn — Deceit.

Mrs KRONBERG — Deceit — I pick up that comment and would like that to echo today, Mr Finn. In a very convoluted sense, a bitter and twisted federal government and a bitter and twisted agent of the bitter and twisted Prime Minister Julia Gillard, Tanya Plibersek, the federal Minister for Health, deprived the people of Victoria and health practitioners of

$107 million. Victorian people on elective surgery waiting lists must have been seized with terror and panic when they found out their surgery was delayed. While those people were writhing in agony, the political games, the distortion and the lies emanating from the federal government have continued up until the present point.

I need to put on the record that the federal government has to be held to account for its conduct and for the convoluted ways in which that $107 million will come back to Victoria's health system. It is a very convoluted process. Over the next three years an outstanding debt of $368 million will be withheld on a basis involving the same distorted interpretation of population figures.

At this time it is worth referring to some comments made by a fine journalist. He thinks the same way as we do and holds up our philosophical base very well through his regular appearances on the ABC's *Insiders* on Sunday mornings. Quite often Piers Akerman is outnumbered three to one, but he holds our end up very well. I want to congratulate Piers Akerman on his professionalism and the important contribution he made this very day at 6.30 a.m. He says the following in relation to the fandango, the lies, the distortion and the deceit of the federal government, Julia Gillard and her acolyte Tanya Plibersek, and I quote:

> Typically, the Gillard government has lied about the action.

Wait for this, let it soak through and percolate through every fibre of your being. This is the delicious one. This is absolutely delicious. This eclipses the handbag hit squad. God bless Piers Akerman! What a skilful narrative he has provided us with. I am going to say it, and I am hoping I am allowed to say it:

> In doing so, the disgraceful Tanya Plibersek, one of Gillard's kitchen coven of men-hating Emily's Listers, has been further revealed as a failed health minister.

I put a little mathematical statement under this: QED, that which is proven absolutely. He continues:

> Both Gillard and Plibersek attempted to blame the Victorian Liberal government for the federal Labor-Green-Independent minority government's stuff-up.

Even the Greens have their exit strategy paved and activated. Even the Greens see this disgrace. How extraordinary! Imagine me congratulating the Greens on anything. Piers Akerman continues:

> But the Victorian government has been supported in its claims that the Gillard government used outdated figures to justify its slashing of the hospital budget.
>
> According to reports in the *Herald Sun*, the architect of Medicare, John Deeble, slammed the federal government's budget cuts and described the misuse of population figures to justify them as 'contentious' and 'extraordinary' in a submission to a Senate inquiry.
>
> 'They deliver cuts that should be spread over several years in just a single year' …

I can see Wayne Swan squirming on a pike of his own making here; the man who cannot count, who has always been out of his depth, who is thoroughly discredited and who promised something that was never deliverable — a surplus. They were going to do anything to engineer a surplus, configure any arrangement of figures, any form of creative accounting, to deliver a surplus. And now we are heading for what? A $10 billion deficit.

Hon. M. P. Pakula — I don't think you know the difference. Are you the Victorian government or the federal opposition? What are you?

Mrs KRONBERG — I am a proud member for Eastern Metropolitan Region, and I am here to castigate fully the state Labor opposition for its silence on this behaviour by the discredited Gillard government and the flawed and deceitful federal health minister. I noted when I checked what the speaking list order was that Gavin Jennings, the opposition spokesman — —

Ms Hartland — On a point of order, Acting President, in my six years in this Parliament I think this is one of the most disgraceful debates that I have heard, considering that most of the comments have no relevance to the bill. Also the level of sexism and name-calling that has occurred in this debate is appalling.

The ACTING PRESIDENT (**Mr Tarlamis**) — Order! I uphold the point of order. The member is straying very far from the bill, and I ask her to come back to the bill. In doing so, I remind members to be careful about their reflections on their parliamentary colleagues in other places.

Mrs KRONBERG — Thank you very much for your comments, Acting President. I think it is very relevant when we are talking about a way to improve cost savings and address cost avoidance throughout the health system in Victoria that we draw attention to the conduct and the action of the federal government and the federal health minister. I think it is also very important. We want the best outcome possibly achievable for Victorians who access health services in this state, and the wider improvements and benefits that come from the amendments in this bill for the 11 women's health centres and the 22 medical centres around the state are very important also.

The truth will out: I know it will provide a measure of comfort — —

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

Motion agreed to.

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

Third reading

Motion agreed to.

Read third time.

COURTS LEGISLATION AMENDMENT (RESERVE JUDICIAL OFFICERS) BILL 2012

Second reading

Debate resumed from 7 February; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Hon. M. P. PAKULA (Western Metropolitan) — It gives me pleasure to rise to speak about this bill. I will try to speak about the bill without intemperate or incoherent ranting and raving.

Mr Finn — That is a very unfriendly thing to say.

Hon. M. P. PAKULA — If Mr Finn thinks it is directed at him, it must be a sign of a guilty conscience, because I did not mention his name. But I will try to behave in a parliamentary manner rather than carrying on like a pork chop.

This is a bill which to some extent, and to some extent only, implements a long-held opposition by the Liberal-Nationals coalition to changes that were made by the Bracks government in 2005 for the appointment of acting judges. I say to some extent because if you go back and look at the comments made by members of the then opposition in 2005 about the reforms implemented by the Bracks government, you would expect a bill that is very different to the one before us today. You would expect a bill that makes far more substantial changes. The reality is that the basic architecture of the 2005 legislation has been left in place. There are some changes at the margin, but the bill is nowhere near as extensive as you would expect given the strident nature of the opposition to the 2005 bill that we heard from the member for Kew in the other place, then shadow Attorney-General and now the Minister for Corrections, Mr McIntosh — His Honour Justice McIntosh or Agent-General McIntosh as he might be about to become, if the rumours are to be believed — —

Mr Barber interjected.

Hon. M. P. PAKULA — All we know, Mr Barber, is that a seat has got to be found somewhere, so it might be Agent-General McIntosh, it might be His Honour Justice McIntosh, it might be Chief Commissioner McIntosh — who knows? But at the time he was the shadow Attorney-General — —

Mr O'Brien — I thought you were going to talk about the bill.

Hon. M. P. PAKULA — Thank you, Mr O'Brien, for bringing me back to the point, and I will.

We are not going to oppose the bill. We will move a small number of amendments. Ms Pennicuik is gesturing as if to say, 'What are they?', and I concede that there has been a bit of miscommunication between the opposition, the Office of the Chief Parliamentary Counsel, the clerks and the Greens party, but these are amendments which go to the question of whether it is for the Attorney-General or some other person — in our view, the head of jurisdiction — to determine whether a reserve judge should be able to continue to earn income from any other source. I will explain that amendment so that members have a full understanding of it, and I apologise for the oversight in not conveying that to the Greens party.

Right now any practising lawyer with sufficient experience can be appointed as a reserve judge. The real effect of this bill is that a reserve judge will only be able to be appointed from the ranks of retired judges. Reserve judges have been used in Victoria in one way or another for decades, and it is important to have a pool of experienced practitioners, whether they be retired judges or otherwise, who can deal with backlogs, with temporary increases in court load et cetera. We have seen in recent days — I think it is now three — Supreme Court trials aborted as a result of insufficient legal aid funding. Every one of those aborted trials is going to lead to a court backlog somewhere down the road. This is what the opposition has been saying for over a year now: that a reduction in legal aid funding or a failure to have legal aid funding keep pace with the other changes that have been made by the government to the criminal justice system will lead not only to disadvantage and unfairness for individuals but to a significant backlog in the court system, and we are seeing the fruits of that right now.

It is important to have a pool of reserve judges. The Bracks government widened that pool. The former government said those judges could be drawn from members of the legal profession, including barristers, solicitors, academics, interstate judges and the like. The coalition always opposed that change. It consistently said it would reverse it. I do not concede that it has actually reversed it at all. As I said, most of the basic architecture of the 2005 legislation remains in place, but this bill constricts it to an extent, and given the long-held and publicly stated view of the coalition, it is not for the now opposition to oppose the bill in those circumstances.

The bill allows the Attorney-General to appoint as many reserve judges to Victorian courts as are necessary for transacting the business of the court. Under the changes before the house today, a reserve judge will have to be under 75 years of age but have previously served as a judge of the court to which he or she is being appointed or of an equivalent court in another Australian jurisdiction. Significantly, reserve judges can be appointed to the Court of Appeal, so at least in a strictly legal sense that is an extension of the current situation. It is not as overtly stated now that reserve judges can be appointed as appeal court judges, so it can at least be argued that the government is actually widening the remit of reserve judges to that extent, but also, significantly, a reserve judge is eligible for reappointment as a reserve judge after a period of five years.

That is why in one fundamental sense we say this is really not so different after all to the changes made in 2005, because if you read Mr McIntosh's critique, it is not about whether someone is a barrister or a solicitor; it is about the fact that these judges were being appointed for a limited period of time and could then be reappointed. In other words, their appointment and reappointment were at the whim of the Attorney-General of the day. That supposedly totally politicised the system and supposedly left these reserve judges subject to political interference and political influence. If the government really meant what it said in opposition, it would not have a situation where these reserve judges were subject to reappointment by the Attorney-General — but it does.

I ask the government to explain why, if it wants to approach this matter with such rectitude and is so interested in the perception of independence for the court system, it is bringing in a situation where reserve judges, having been appointed for five years, can be reappointed at the whim of the Attorney-General. If the coalition really meant what it said back in 2005, these reserve judges would be appointed once and then not again, but that is not the change the government is making.

As I said, the main criticism of the reforms in 2005 was the critique that they undermined judicial independence. The argument run at the time by the then opposition was that an acting judge might feel pressure from the Attorney-General to be favourable to the government. At this point it is worth making the very important observation that there is not a single example that anyone can point to of this ever having happened. I understand that the members of the Supreme Court took their own view about the appointment of reserve judges but the lower courts did adopt the reforms. I do not think the government can point to any examples in the eight years since the 2005 bill was enacted of an acting judge behaving in anything other than an absolutely proper judicial way, despite being an acting judge. That might be why this bill in effect retains the appointment of judges who do not have permanent tenure.

The only thing that the government has really done by virtue of introducing this bill is to reduce the pool from which acting judges can be drawn. There will still be acting judges, they will still have limited tenure and the Attorney-General will still be able to reappoint them and decide whether those acting judges can earn outside income. The only thing the government is changing through this bill is rather than being able to draw acting judges from an extended pool, they will be able to be drawn from only a small pool — that is, of retired judges.

By doing that, the government seems to be implying that a retired judge who is brought back to the bench can be trusted not to be improperly influenced by the government of the day, but a senior barrister cannot be so trusted. In the person who I imagine will be the main government speaker we have a former barrister who I am sure would look at his colleagues and in his quiet moments concede — maybe privately, maybe publicly — that the notion that a senior barrister who is appointed an acting judge would be influenced in that way by a government of the day is a suggestion that really demeans the profession, does it no credit and is totally unwarranted in the current situation and certainly in reviewing what has occurred over the past eight years.

If the government means what it says, that there is a risk or the perception of partiality by having judges who are appointed temporarily and are subject to reappointment, to the extent that that risk has existed, it continues to exist as a consequence of the bill. As I said, the basic architecture has not been changed. The

only thing that has changed is the pool of individuals from which acting judges can be appointed, so the same conflict of interest that the then opposition raised back in 2005 continues to exist; it simply does not exist amongst as wide a group of people.

It is reasonable to point out also that in a situation where you have ongoing court backlogs, by reducing the pool of individuals who can be appointed as acting judges you run the very real risk of the situation arising where the government of the day cannot find enough people to do the job that needs to be done to ensure that court backlogs do not get out of control. As a logical proposition, most judges and magistrates who retire from courts do so because they do not want to be judges and magistrates anymore. If they wanted to stay on as judges and magistrates, they would to do so until the retirement age. The idea that there will be a whole swag of retired judges ready to step in as acting judges might be a little bit unrealistic. It would be a great shame if the political posturing of the government on this issue led to even more backlogs and delays as the pool of eligible candidates is reduced.

As I indicated earlier, the bill provides explicitly for acting judges to sit on the Court of the Appeal. By implication, that extends the importance, power and responsibility of judges who do not have tenure by expressly permitting them to serve on the state's highest court, hearing the most contentious cases. Again it brings into question the bona fides of the government in terms of its members apparent horror of the notion of acting judges. Apparently it is a terrible thing for the justice system to have acting judges, but it is okay for them to sit on the Court of Appeal.

The matter of continued paid work was raised by the member for Altona in the other place. At the time I heard the Attorney-General say, 'Well, that's exactly the same as the situation now'. It is true that under the current legislation an acting judge can continue to carry out work with the approval of the Attorney-General.

I go back to the point that the government is apparently bringing into legislation the view that it has held since 2005 and reversing the changes made by the Bracks government in 2005 — righting the wrongs of 2005. If that is the case, it is worth going back to what the member for Kew in the other place, now the Minister for Corrections, said in 2005 about the notion of judges being able to practise law with the permission of the Attorney-General. I seek the indulgence of the house while I make reference to the comments of the member for Kew at the time. He said:

> Most importantly, it is an issue about the perceived impartiality of our courts. At the end of the day it is the citizens of the state that may very well suffer if there is a perception — you do not have to demonstrate 'actual' — that someone is dependent on the government for their continuing appointment as a judicial officer in this state. It is even as simple as saying, when you get down to the issue, that during the course of their acting judgeships under this current legislation they are dependent upon the Attorney-General to give them permission to continue to practise law in this state.

He went on to say:

> What happens if the Attorney-General says no? Most importantly in those particular circumstances, the continuation of that regime is very much dependent on the decision of the executive.

The member for Kew went on to say a number of things that make it clear that at the time of his initial opposition to the 2005 legislation he was entirely unsupportive of the notion that the Attorney-General should be able to determine whether an acting judge can continue to serve as a practising lawyer and thereby earn additional income. If the government is going to be as good as its word and serious about its claim that it is redressing what it sees as the great evil of the 2005 legislation, then it should be put to that test. If Mr McIntosh said it was good enough in 2005, it should be good enough in 2013. That is why the opposition will move three amendments to the effect that, rather than it being a decision of the Attorney-General as to whether or not an acting judge is able to continue to practise law, it will be a decision of the Chief Justice of Victoria, the Chief Judge of the County Court or the Chief Magistrate, as the case may be. We think it is a sensible amendment that gives voice to the view the opposition put in 2005 and, if it is serious, it will have no problem accepting in 2013.

In conclusion, we do not object to the bill. We think some of the rhetoric from the opposition of the day about the existing legislation was out of order and has been proved to be incorrect by the passage of time. The suggestion that the 2005 bill would lead to a rampant absence of judicial independence has not been borne out at all. Moreover, we think the changes made in this bill are fairly minor. The basic architecture of the 2005 legislation remains in place. The things the then opposition objected to in 2005 remain in place. You will still have acting judges, judges without tenure and judges who are subject to the Attorney-General's whim as to whether or not they will be reappointed. We have never had the concerns the Liberal Party had about the notion that senior legal practitioners would somehow be corrupted by that.

However, let us not let the government get away with the notion that it is fundamentally changing this situation. All it is doing is narrowing the pool. It is

retaining the Attorney-General's discretion over whether the acting judges continue to practise law outside their acting judgeships. If the government has any bona fides on this matter, it will accept the opposition's amendments. I commend the bill to the house.

Ms PENNICUIK (Southern Metropolitan) — The Courts Legislation Amendment (Reserve Judicial Officers) Bill 2012 will amend the Constitution Act 1975, the Supreme Court Act 1986, the County Court Act 1958 and the Magistrates' Court Act 1989 to replace the existing acting judicial officers scheme with a new reserve judicial officers scheme. The amendments abolish the office of acting judge and establish an office of reserve judge in the Magistrates Court, the Supreme Court and the County Court. It replaces the offices of acting judge and acting magistrate with the new offices of reserve judge and reserve magistrate.

Reserve judges and magistrates will be former judges and magistrates who are under the age of 75, serving interstate and federal judges, or serving interstate magistrates. Reserve magistrates will also be able to serve as coroners and Children's Court magistrates. The bill will also make consequential amendments to other legislation, such as the Judicial Remuneration Tribunal Act 1995 and the Judicial Salaries Act 2004.

Reserve judicial officers will be engaged by the Attorney-General to serve in the courts on a short-term, as-needs basis, and that is an important point. A reserve judicial officer may exercise powers only when engaged, and an engagement cannot be revoked. Reserve judicial officers may be removed from office only by Parliament on the same grounds as judges and magistrates and may not undertake business and professional activities during an engagement without the approval of the Attorney-General, which is a point made at some length by Mr Pakula. I understand that he may have amendments. I have still not sighted them, despite the fact that he has given his contribution to the debate. I cannot say whether or not we will support those amendments, because I have not seen them. Reserve judicial officers receive a salary based on those of judges and magistrates and set by the legislation.

Mr Pakula said the bill basically does not change anything, but the bill does change things. The situation reverts to the position prior to 2005, when reserve judicial officers were retired judges and serving interstate judges. The expanded regime put in place with the 2005 amendments was such that barristers, solicitors and legal academics could serve as judicial officers.

The point needs to be made that the Supreme Court has never appointed an acting judge under the current regime, which is not exactly a vote of confidence in the system. That system has been criticised for diminishing judicial independence, particularly because it allows practising lawyers to be appointed as acting judges and magistrates when they have not otherwise been so appointed — that is, when they have not actually been appointed to the judiciary. It has been said that there is a risk they will be perceived as less impartial than other judicial officers and be dependent on the favour of the Attorney-General of the day. The minister made the point that the bill has been developed in consultation with the judiciary.

The Greens will support the bill, but I will make the following comments. I would suggest that the whole idea of or rationale behind having reserve judicial officers for the higher courts and reserve magistrates for the Magistrates Court and limiting their selection to the pool of retired and interstate judges is, as I understand it, not that they are there to deal with routine backlogs in the court. If there are ongoing backlogs in the courts and not enough judges to sit in the courts, the answer is to appoint more judges. The reserve judges system is not meant to deal with a shortage of judges. The shortage of judges should be dealt with by the appointment of more judges.

The reserve judges system should be used in exceptional circumstances when there are particular cases — for example, one that springs to mind is where a judge in the Victorian system is charged with an offence. It may be more appropriate to use a reserve judge from interstate to hear such a case. That is one example, but a reserve judge may be used in other exceptional cases. We support the changes the government is making, given the rationale that reserve judicial officers should not be used as a matter of course. The fact that they are basically interstate judicial officers or retired judges means there are not a lot of them to be used in circumstances other than those exceptional circumstances in any case.

The opposition has also raised the issue of reserve judicial officers not having permanent tenure. I agree it would probably be better that retired judges in the Victorian system be appointed as reserve judges until the age of 75. In the case of interstate judges it is obviously different. In that circumstance they are being used or appointed to sit on particular cases, and it would probably be impossible for the Victorian system to appoint them as reserve judges until their retirement age because they are appointed under the system of another state, or under the federal system in the case of federal judges. That would therefore not even be possible. The

point is, however, that the use of reserve judicial officers should be in exceptional circumstances and not as a matter of course.

As I said, reserve judicial officers should not be used to deal with backlogs in the court. If there are backlogs in the courts and not enough judges, we need more judges appointed as ongoing judges, and if there are not enough magistrates, we need more magistrates appointed as ongoing magistrates. If there are backlogs in the courts, we also need to use mediation more often as well as other systems for resolving issues before they get into the courts. Unfortunately this government has wound back the use of such mechanisms to keep people out of the courts and resolve disputes before they get into the courts, particularly disputes that end up in the Magistrates Court.

It needs to be said that the changes to the sentencing regime that have been brought in by this government are also putting more pressure on the courts. These include the changes that unfortunately went through on Tuesday introducing minimum mandatory sentences, which I might say were supported by the ALP. They will also increase pressure on the higher courts, as people will be less inclined to plead guilty to offences and more inclined to try their luck in the court so that they do not face a mandatory minimum sentence.

I also note that the ALP has made the point about the issue of reappointment by the Attorney-General. The ALP lead speaker in the Assembly, Ms Hennessy, the member for Altona in that place, suggested that reappointment would perhaps be best done by the heads of the jurisdictions. I am not sure that that would necessarily be an answer either; I am not sure that that would preserve absolute independence in decision making or prevent any perceived bias or any perception of bias by the community. I would suspect and understand, however, that if the Attorney-General were going to reappoint reserve judges or magistrates, the Attorney-General would do that in consultation with the relevant head of the jurisdiction in any case.

I also make the point that the reappointment of a reserve judge or magistrate who is a retired judge or magistrate would, I think, not occur often. By virtue of their progression through the judicial system — their having been, for example, a practising barrister, then having been appointed as a judge, having served for perhaps 15 years and then having retired — such judicial officers will probably not have that long before they reach the age of 75. The number of reappointments, then, may be very few. As I said, I would understand and suggest that those reappointments would be done in concert with the heads of jurisdiction.

This discussion also highlights a relevant need. If people are wanting to see more independence in judicial appointments, we could look at the need for a statutory body to preside over those judicial appointments. This would overcome all the arguments about conflict of interest. Such a body could be modelled, for example, on the Judicial Appointments Commission that operates in the United Kingdom. In 2003 the UK government announced its intention to change the system for making appointments to judicial officers in England and Wales. The reform was an important step towards strengthening the drive to officially enshrine judicial independence in law, enhancing accountability and ensuring greater public confidence. In March 2005 the relevant act enshrined in law the independence of the judiciary and changed the way judges are appointed. The commission was formally established on 3 April 2006.

The Judicial Appointments Commission has regular meetings with the Lord Chancellor — I often find it quite strange reading out the titles they still use in the UK — the Lord Chief Justice, the Senior President of Tribunals and the Judicial Appointments and Conduct Ombudsman. They work closely with the representative bodies of the candidates, including the Law Society, the Chartered Institute of Legal Executives and the General Council of the Bar. They also work closely with groups that represent underrepresented candidates, such as the Black Solicitors Network, the Society of Asian Lawyers, the Association of Women Solicitors, the Association of Women Barristers and the Lawyers with Disabilities Division. In addition they maintain contact with members of other professional bodies, other government departments and academia.

The members of the commission come from a wide range of backgrounds and are drawn from the lay public, the legal professions, tribunals, the magistracy and the judiciary. The specific make-up of the commission means it has a breadth of knowledge, expertise and independence. There are 12 commissioners, including a chairman, who are appointed through open competition, with the other three selected by the Judges Council. The chair of the commission must always be a lay member, and of the other 14 commissioners, 5 must be judicial members; 2 must be professional members, one barrister and one solicitor; 5 must be lay members; 1 must be a tribunal member and 1 must be a lay justice member.

They are appointed in their own right and are not representatives of the professions they come from. The

diverse make-up of the commission means that each member brings knowledge, expertise and independence of mind. In addition the Judicial Appointments and Conduct Ombudsman investigates complaints about the judicial appointments process and the handling of matters involving judicial discipline or conduct. The Ombudsman's office also assumed its responsibilities on 3 April 2006 and is independent of the government and the judiciary. That is a model we could follow instead of squabbling over whether it is the Attorney-General or the heads of jurisdictions who make and remake these appointments.

I now have Mr Pakula's amendments in front of me, but I will need to sit down and look at them to understand what they aim to do. The issue here is the ability of reserve judges and magistrates to undertake other paid activities when they are acting as reserve judges or magistrates. We have been advised that it would be difficult to foresee a circumstance where that would be granted. I suggest such would occur only under exceptional circumstances or in a circumstance which would have nothing to do with the exercise of their judicial powers. One example put forward is the giving of a lecture at a university for which a reserve judge or magistrate was paid a fee but which did not constitute ongoing paid work while they were engaged to act as a reserve judicial officer. I will be interested to hear how Mr Pakula explains his amendments. This will be relevant in the Greens' decision as to whether or not we will support the amendments. Otherwise the Greens will support the bill.

Mr VINEY (Eastern Victoria) — My contribution will be very brief. I would like to thank Mr O'Brien for allowing me to speak slightly out of order. In light of Ms Pennicuik's contribution there may be some confusion as to whether or not Mr Pakula was circulating his amendments. I am doing so on his behalf so that all members can be aware of the opposition's proposed amendments to the legislation. I think that was his intention. I do not know whether it was expressed in the right words, but it is my understanding that he is keen for the amendments to be circulated. In making this very brief contribution I reiterate the view of Mr Pakula that the opposition is not opposing the legislation but is proposing some amendments that it thinks are appropriate and will improve the bill. With those words I thank the house for allowing me to clarify that situation.

Opposition amendments circulated for Hon. M. P. PAKULA (Western Metropolitan) by Mr Viney pursuant to standing orders.

Mr O'BRIEN (Western Victoria) — It is with great pleasure that I rise to speak on behalf of the government in support of the Courts Legislation Amendment (Reserve Judicial Officers) Bill 2012 and to respond to the comments made by the Labor Party and the Greens. In beginning my response I would like to open with the following words:

> An independent and impartial judiciary is an indispensable part of a genuine democracy.

They are the opening words of an article headed 'Acting judges are bad for democracy' by the Honourable Xavier Connor, QC, who was a retired federal court judge and an Australian Capital Territory Supreme Court judge at the time of writing the article. He has now passed on. He was also a noted member of the bar council and a contributor to the legal profession over many years in various roles. He was a man of outstanding ethics and integrity and was well admired by many. I did not know Xavier Connor, but I do know his son, Paul Connor, and in relation to the younger Connor I could use the time-honoured phrase, 'The apple doesn't fall far from the tree'.

There are several other aspects of this article that I would like to take members to. It was published in the opinion section of the *Age* of Tuesday, 16 November 2004, and was the result of a loud protest by a number of very senior judges, a large proportion of the bar and the Law Institute of Victoria to the proposals of the then Attorney-General, Mr Hulls, and the former government to bring in the system that is presently in place of permitting the courts to appoint acting judges.

This was a very controversial proposal by Mr Hulls. It was not the only controversial proposal by Mr Hulls, but it was a very controversial one, and it was quite vigorously opposed by the profession in a number of articles. The reasons for the opposition of the profession to the system the former government put in place to permit the appointment of acting judges are still apparent today, and that is why I wish to respond to Mr Pakula's suggestion that by introducing this bill the government will not be curing the impartiality problems that were created in the system by the legislation put forward by Mr Hulls.

I will explain it as best I can. The previous government put in place a system of acting judges, or part-time judges as they are called, in the context of the previous system whereby judges were appointed, in the main, on a permanent basis with tenure. There was also a capacity for reserve judges — reserve judges being retired judges and ex-magistrates who could continue to serve in the role that they had served in with tenure as permanent judges for many years. To fill the backlogs

that occasionally occur in the court system — or particularly acute backlogs, because I think there has been a problem with court backlogs over many years — these reserve judges could be drawn upon for the experience and the impartiality that they had gained over many years as tenured, full-time judges or magistrates.

What Mr Hulls as Attorney-General did with that existing system, which was supported by the previous government, of which Mr Pakula was a part, was introduce a system of appointing people as acting judges, or part-time judges, who had not been judges before and who, most importantly, were showing clearly by accepting acting appointments that they might have still wished to be judges one day. That is the key difference which is drawn upon by Xavier Connor in his article, which I will take the house to, and which is at the heart of what is right with the bill before the house and what was wrong with the previous government's legislation.

It is all about the order in which one does things in life. There is a need for reserve judges to fill the ranks from time to time. Under this legislation they will in effect be appointed by the Governor in Council for a five-year period initially and then re-engaged, again for a fixed period of time, by the Attorney-General as appropriate, but during that engagement their appointment cannot be withdrawn by the Attorney-General. They have that limited tenure. But the tenure is limited because they are reserves; they were at the end of their tenured period when they were permanent judges. That is very different to the concept of acting judges, which was widely criticised.

To make good this point I will refer at some length to the article written by Xavier Connor, because he puts it quite well. He said:

> Our state government —

that is, the previous government —

> proposes to introduce acting judges. Yet security of tenure is the foundation on which an independent judiciary is built.
>
> Security of tenure is achieved by providing that: judicial officers cannot be removed from office (except for proved misbehaviour) until they reach a fixed retiring age known in advance; an adequate non-contributory pension is granted on retirement; and judicial salaries cannot be reduced during the term of judicial office.

He gets to the heart of the matter here:

> These time-honoured safeguards have proven to be the best way to secure independence from powerful government and private influence. Acting judges have none of them.

I repeat: acting judges have none of them. He goes on:

> Thus, they may have something to gain personally from deciding a case in a particular way, namely their own reappointment as acting judges or their potential appointment as permanent judges.

That is something no reserve judge who has just finished a tenured appointment as a long-serving member of the judiciary would be seeking. They might be seeking a time machine, they might be seeking the Benjamin Button pills that can take you back in life, but unfortunately not even Mr Hulls has been able to come up with either of those two inventions. Unfortunately one ages through life, and therefore the system of a retired judge being able to serve as a reserve judge is vastly different from the potential influences that could affect the Hulls method of having acting or part-time judges, which this bill is replacing.

I say, and Xavier Connor went on to say in the article:

> This is not to say that acting judges would necessarily decide cases according to their personal interests, but the mere perception that they could act in this manner must be avoided.

I know this next comment is something you would value, Acting President, with your eloquent and passionate concerns about the totalitarian influences that sometimes emanate from the opposition benches, and more particularly the current federal government and other governments of a Labor or socialist or communist persuasion. But what Xavier Connor wrote are these words:

> It is sobering to consider that totalitarian states do not have an independent and impartial judiciary. Judges in such regimes are expected to decide cases in accordance with the wishes and policies of the governments that appoint them.

He went on in the article to give his personal background and stated:

> I was admitted to practise law in Victoria in 1948 — that is, 56 years ago. I have never encountered or heard of a Victorian court that had too many judges. As the community grows, the work of the courts increases and it will always be necessary to increase the size of courts to deal with expanding demands. In any case, there is a system in place for dealing with surges and backlogs in work. Reserve judges of the Supreme Court and County Court may be appointed from the ranks of retired judges.

That was a system that was in place prior to Hulls, and that is a system —

Hon. M. P. Pakula — Mr Hulls.

Mr O'BRIEN — Mr Hulls; thank you — that we are reinstating with this bill. The article continues:

> They may be appointed between the ages of 70 and 75 and can be engaged from time to time to sit as judges for up to six months.

Then he talks about their salary and pay. The article concludes:

> One would hope that there would be no actual bias on the part of the temporary judge but, as in most matters of conflict of interest, it is the public perception that is important. An acting judge is vulnerable to government influence in a way that a permanent judge is not.

In essence that is the distinction between what the opposition put up when in government and what this bill will in effect reinstate. It is another one of the significant rollbacks of the previous Attorney-General's so-called progressive reforms, which, in terms of judicial independence, the rule of law, democracy and the separation of powers, were setbacks and incremental steps towards a more totalitarian regime. There is not much more I need to say, except refer to comments from the Victorian Bar Council that it supports this bill and it supports the 2012 scheme, which is very different to the position that it took in relation to the 2005 amendments.

The bill will establish judicial independence by amending the Constitution Act 1975, the Supreme Court Act 1986, the County Court Act 1958 and the Magistrates' Court Act 1989 to abolish the offices of acting judge and acting magistrate and replacing them with the offices of reserve judge and reserve magistrate. It also makes consequential changes to other pieces of legislation.

In terms of who can be appointed as reserve judicial officers, it is important to note that it is a Governor in Council appointment. I might have said it is the Attorney-General, but it is actually the Governor in Council who will appoint as reserve judges former judges and magistrates who are under the age of 75, or serving and retired interstate or federal judges or magistrates. Reserve judges may also act as Children's Court magistrates and as coroners.

It is interesting to note that there were many newspaper articles opposing the previous government's system, including an article by former Supreme Court Justice J. D. Phillips on 24 March 2005 headed 'The corporatising of our courts', where he said:

> There is talk now of acting judges for this court, and again, because this is a court which is exercising judicial power, such would be anathema. It is one thing to tolerate the occasional acting appointment to this court for a limited time or purpose; it is altogether different to institutionalise such temporary appointments at the discretion of the executive.

An article in the *Age* of 11 November 2004 headed 'Judges condemn Hulls plan' says:

> Judges have warned the Bracks government that its proposal to appoint acting judges could pose 'a significant threat' to judicial independence and raise constitutional questions.

The *Age*, that great journal of conservative politics, wrote about the Attorney-General's plan.

The ACTING PRESIDENT (**Mr Finn**) — Order! Mr O'Brien should be careful of misleading the house.

Mr O'BRIEN — I am not sure whether the Acting President saw it, but I had my tongue firmly in my cheek as I made that last statement. I thought that would have been obvious, but I am glad I roused Mr Finn to make those remarks in his capacity as Acting President. However, this article dated 21 March 2005 is headed 'A-G's plan gets judicial blast', and it says:

> The state government's plan to introduce acting judges has come under renewed attack. A retiring judge has suggested it is the latest step in an 'insidious' erosion of the independence of the Supreme Court.
>
> Justice John D. Phillips said the acting judges plan was 'anathema' to the court — judges must have security of tenure or the whole system was at risk in a relatively small community like Victoria.
>
> 'Our courts have been remarkably free from any taint of bias or corruption. Let it remain that way', he said.

Hon. M. P. Pakula interjected.

Mr O'BRIEN — To pick up on Mr Pakula's point, I do not make any suggestion that there have been particularly bad acting judicial appointments, or that the court is somehow tainted. Rather I pick up his point and the point made by the late Xavier Connor that it is the perception of independence that is important. At this stage I would also like to pick up a point from Murray Thompson, the member for Sandringham in the other place, who in his very short contribution on this bill was able to reach back to a quote from a Chinese philosopher on the impact of the French Revolution. In relation to the impacts of the French Revolution and whether it had had a negative impact on democracy, he said, 'It is too early to tell'. In other words, one needs to take a very long view of history. Matters of judicial independence, which have had at least 600 years of importance to the Westminster system and the separation of powers, are matters that should not be compromised. They are matters that should not be trifled with. They are matters that are in the constitution of Victoria for that very good reason, so I support Mr Thompson's remarks.

Another practical reason that there can be no suggestion of any poor appointments of acting judges is that the Supreme Court took the position in response to the legislation of not appointing any acting judges. None were appointed in the Supreme Court under the previous regime because it did not wish to engage in the exercise to which it had been invited, or which had been imposed upon it. Appointments were made to the other courts, but it is not appropriate, important or relevant for me to criticise any particular judges. Rather it is the notion of judicial independence. The incentive that was introduced into the system by the previous legislation will now be removed. In terms of the point as to tenure which was made by the shadow Attorney-General, it is that incentive that by doing the government's bidding an acting judge may become a permanent judge one day. That incentive is not there for a retired judge, and this bill restores the system to what it was previously.

There was also a detailed submission at the time from the Law Institute of Victoria (LIV), which made a number of important points on the proposed system of bringing in acting judges. The executive summary says:

> The LIV supports the government's commitment to identifying new measures for addressing the current delays and congestion in Victorian courts. The LIV has significant concerns about the proposal to introduce a system of short-term appointments of acting judges to administer justice in the civil and criminal jurisdictions of Victorian courts.
>
> In summary, the LIV submits that:
>
> (a) the government avoid implementing a system of short-term appointments of acting judges as a remedy to current delays and caseload problems in Victorian courts;
>
> (b) the government consider increasing any funding shortages in Victorian courts to enable courts to operate more efficiently and streamline procedures to decrease delays and backlogs;
>
> (c) and that the government consider providing greater flexibility to the current system of appointing reserve judges.

Hon. M. P. Pakula interjected.

Mr O'BRIEN — I am reading the concerns of the law institute, Mr Pakula, as they existed. It is important that they be put on the record. The submission continues:

> (d) adequate safeguards to protect judicial independence and prevent potential conflicts of interest were not in place;
>
> (e) appropriate limits and restrictions on the terms of acting judge appointments were not implemented;
>
> (f) appropriate education and training for acting judges, and the ability to obtain an appropriate level of experience by implementing certain and substantial terms of appointment combined with ensuring a guaranteed level of work were not applied;
>
> (g) restrictions or quotas were not placed on the number of acting appointments;
>
> (h) a transparent and open process of appointment and reappointment were not implemented …

The LIV again elaborated on those concerns in paragraph 3. At the bottom of page 4 it makes another point, which reads:

> The LIV cautions against the quick dismissal of arguments about the concept of judicial independence. Whilst the concept is often raised in the context of such debates and criticised for being overly theoretical, it is an important democratic principle which does not exist for the benefit of judges or the legal profession but exists to protect the ordinary citizen. Where greater use is made of acting judges and magistrates, mechanisms should be put in place to preserve judicial independence and to avoid potential conflicts of interest.

The conclusion reads:

> The LIV does not support the implementation of a system of acting judges. The LIV cautions the government to recognise the potential of such a proposal to erode the principle of judicial independence and the consequences that the widespread implementation and use of acting appointments may have for the judiciary, the legal profession and the community.

This is something that you, Acting President, in your many speeches about the legal profession in your capacity as a member for Western Metropolitan Region, always place at the forefront of your interpretation of how our justice system is intended to operate, which is as a system of justice, rather than as a legal system, and as a system that works for the benefit of the community.

The submission concludes by saying:

> Finally, the LIV highlights the need for the government to consider the issues raised in this submission and to ensure significant mechanisms are introduced to address them.

Significant mechanisms were introduced. They were not introduced by the previous government; they were in fact introduced by the community which elected the Baillieu government — the very community that you have identified as being important to you, Acting President, in your many roles serving your region. It was also identified by the LIV in this submission and by the Attorney-General, who formulated as an election commitment a policy to remove the system of acting judges and to replace it with the reserve judge system

that is presented in this bill and that I note the opposition is not opposing.

Warnings also came from other noted practitioners, including Mr W. Ross Ray, QC, who was chairman of the Victorian Bar. He wrote a letter to the editor that was published in the *Age* of Thursday, 3 March 2005, entitled 'A-G is wrong on acting judges'. It reads:

> The letter from the Attorney-General, Rob Hulls, on acting judges … contains serious inaccuracies.
>
> The Attorney claimed that the High Court has held that 'acting judicial office does not undermine judicial independence'. That is plainly wrong. The High Court decision, Bradley, decided last year, did not concern an acting appointment but the remuneration provisions for the Chief Magistrate …
>
> …
>
> The Attorney is wrong to support the proposal by referring to five-year appointments to VCAT. VCAT is not a court — and the Victorian Court of Appeal has so held. It is misleading to suggest that the government is somehow now constrained from appointing a wider range of people to judicial office. Acting judges are not the solution. The government can now appoint 'a wider range of people' to permanent positions.

Likewise, Mr Pakula made the point that through this bill the government is narrowing the pool of people who can be appointed as reserve judges. Yes, we are. We are narrowing the pool of people who can be appointed as reserve judges to people who were formerly judges and magistrates. That is a very sensible narrowing because, as I have said, it allows reserve judges to be drawn from a pool of people who have tenure, who have exercised judicial independence and who have served the community well and dispassionately. Yes, they may have been in the ranks of barristers at one time, but as any barrister who appears before a newly appointed judge knows, that is a line you cross once you are appointed to the court.

The nature of the bar being what it is — such that many barristers have allegiances to and friendships with opposing counsel at many times — there is already independence at the bar. The key difference between our system and that of the previous government is that, if one looks at the role of a barrister, it can be seen that a practising barrister already exercises an independent duty to the court and has, by signing the bar roll, agreed to operate as an independent practitioner. That is the substantial difference between a barrister and a solicitor in this state — the context of the independence of the bar.

Barristers have already gone through a process over many years of engaging in independence when exercising their duties to the court, which of course prevail over duties to the client. That independence requires barristers to take cases that may be contrary to their personal beliefs, but it allows that when they are appointed as judges they have a great knowledge of the ethics and independence of the court. This knowledge is also shared by serving members of our police force who operate as police prosecutors and who appear before the courts. This bill will restore the judicial independence that was taken away by the previous government and restore it to a position whereby reserve judges, in reflection of their impartiality, are able to fulfil their very important role in the community and continue their service.

I should pause to comment on one reserve judge I knew very well, the only judge I named in my maiden speech, Judge Frank Walsh. He was a County Court judge for many years. He was afflicted by polio as young man, and he has published a book on his life, which I urge members to read, which has many things to say about the ethics of judges — —

The ACTING PRESIDENT (**Mr Finn**) — Order! The level of conversation in the house is getting a little too high. I would ask members to either cease discussions or keep their voices down. I am trying intently to listen to Mr O'Brien.

Mr O'BRIEN — I urge members to read this biography of Judge Walsh *From Splints to Silks*. He not only overcame polio and walked on stilts but also served with distinction on the County Court bench for many years. Most importantly, at the conclusion of his service as a tenured judge he undertook service as a reserve judge, in which role he continued to offer service to the state and also guidance and mentorship not only to other judges but also to many barristers and other people he knew, including me.

The role of reserve judge is an important role that has been known to the state before and which this Attorney-General is reinstating. This bill represents a vast improvement in terms of judicial independence over the system of acting or part-time judges the opposition put in place when in government. It is a significant further measure by which this government is restoring independence to the courts and restoring faith in the judicial system — the faith of the community in our courts and our practice of law, and most importantly the faith of the practitioners themselves. Their lack of faith in the previous government's proposals was demonstrated by the level of opposition to those changes, and we see now a high level of support being offered by that same independent legal community for this bill.

It is important that all members support this measure. It is an important measure. We look forward to the minister answering questions in the committee stage, but I commend the Attorney-General for his diligent work in relation to this bill and other measures which are being canvassed. We look forward to further measures coming before the house in relation to the fulfilment of our election commitments. This government was elected on a very important law and order platform. We have committed to providing 1700 more police. We will provide more protective services officers. We will restore faith in the community. We will look to protect our citizens, and we will restore independence to the Victorian courts. I commend the bill to the house.

Motion agreed to.

Read second time.

Ordered to be committed later this day.

Business interrupted pursuant to standing orders.

QUESTIONS WITHOUT NOTICE

Hospitals: federal funding

Mr JENNINGS (South Eastern Metropolitan) — My question is to the Minister for Health. On 11 May 2011 he was asked a question by Ms Hennessy, the member for Altona in the Assembly, at the Public Accounts and Estimates Committee, which was, in part:

> … perhaps you could reassure the committee that all moneys received from the commonwealth for expenditure on health have been allocated to your department.

To which he answered:

> I would certainly advocate for that …

He went on to say:

> … it is a longstanding fact that Treasury and the budget process allocates funding to the departments, and indeed Treasury will do that in its own way.

Today, is the minister still of the view that the Victorian Treasury should pass on commonwealth funds in its own way?

Hon. D. M. DAVIS (Minister for Health) — The member will understand that the state government is determined to increase funding for health care in every possible way. Since this government came to power funding for health care has increased by $1.3 billion. I have to say, though, that the contrast with the commonwealth is remarkable. The cuts of $475 million that were imposed by the Gillard federal government on Victorian hospitals were nothing short of scandalous, based as they were on flawed population data. The member will understand that in a backflip yesterday the Prime Minister said that $107 million will be restored to Victorian hospitals this year. I make the point that that money is not clean in itself. Still outstanding is $368 million, which will apply starting 1 July and going forward for the next three years. That money will be withdrawn from Victorian hospitals and health services by the commonwealth government.

I can indicate very clearly to the member that we are determined to have the maximum amount spent on health care. We are determined to ensure that the money put into the pool is sent through to our hospitals. In a monumental act of sabotage of the national system we have seen the federal Minister for Health, Ms Plibersek, and the Prime Minister, Ms Gillard, make the decision today to pay money directly to hospitals and not through their own pool. They set up their own pool and within months they start undermining it. It is extraordinary that they would seek to set up a pool to pay the money through the pool and then be caught not passing the money through the pool — they got caught out cutting money from the pool, cutting $107 million this year, cutting $368 million in the next three years. They have been caught red handed, and now they want to undermine their own pool.

I can tell the member that all the money Victoria puts in the pool is passed straight through to hospitals. We live with our commitment to put money into the pool. We live with a commitment in the budget that the money goes into the pool. The commonwealth put its money in the pool, and then in December — chop! The Gillard chop occurred, and they started to pull money out of the pool. I understand that this disgraceful federal government cannot manage money, that it cannot manage it so that our hospitals can move forward in a sensible way. It is the Gillard government that cut money out of our hospitals — $107 million and $475 million over four years. It has put back $107 million, but with a fiddle. Mr Rich-Phillips, with his portfolio, will understand the fiddle that has been done there by the Gillard government. Now what we want to see is the full $368 million put in over the next three years.

Those on that side of the chamber, who disgracefully, shamefully voted to cut Victorian hospitals — —

An honourable member — Shame!

Hon. D. M. DAVIS — Shame, shame, shame, Mr Jennings! You voted in favour of the cuts and now the rug has been pulled out from under you by Ms Gillard, who has decided that she got it wrong this year and needs to put the $107 million back. Let me be clear: that lot over there voted in favour of the $107 million cut this year.

Honourable members interjecting.

The PRESIDENT — Order! Mr Lenders has mentioned there is a not a lot of cheering coming from the government side of the chamber. Government members are showing respect for the Chair, and I appreciate that. There is too much noise and interjecting coming from the opposition. It is not just interjection; it is shouting, and it is incessant and over the top. The minister retaliated in a way I also find inappropriate in that he has been gesturing to opposition members and speaking directly to them rather than directing his remarks through the Chair. The advantage of him directing his remarks through the Chair is that he will show a little bit more respect, as his colleagues are doing, because he will be talking to me. The minister has been provoked by the level and type of interjections. The minister is to continue for 11 seconds without assistance.

Hon. D. M. DAVIS — There is a simple matter here. The Victorian government lived up to its commitments. The commonwealth government did not live up to its commitments. It cut money, and the Labor Party members are the ones who voted in favour of the cuts.

Supplementary question

Mr JENNINGS (South Eastern Metropolitan) — I remind the house that the premise of the first question was that the minister declared as far back as 2011 that he could not guarantee that all commonwealth health funding was going to be allocated to health. Today in his response he has not given any guarantees to the people of Victoria that that money will be allocated from the commonwealth directly to hospitals. I provide him with the opportunity to give that guarantee. I give him the opportunity to confirm whether the payments in the commonwealth forward estimates, which the commonwealth is very concerned to ensure get straight into hospitals, will be delivered by the minister's government or whether it will be necessary for the commonwealth to continue to take it that the only way it can guarantee its funds will be delivered to hospitals is by doing it directly itself?

The PRESIDENT — Order! I will allow the minister to answer the question, but I am concerned that the supplementary question goes beyond the substantive question in the respect that it has raised issues about how the federal government is now treating the matters rather than seeking to follow up on comments the minister had made at that Public Accounts and Estimates Committee meeting and the Victorian administrative arrangements. Nevertheless, on this occasion I will let the minister answer.

Hon. D. M. DAVIS (Minister for Health) — I thank the member for his question. One thing I will say about the commonwealth forward estimates is that we now know those estimates are not to be relied upon. What this recent incident makes very clear is that the funding promises made by the commonwealth out into the distance cannot be relied upon. Victorians know — and this is true across Australia — that the commonwealth share of funding has been falling in recent years. The most recent Australian Institute of Health and Welfare figures make it clear that the commonwealth's share of funding has fallen from 44 per cent to under 39 per cent. That is a fall in the commonwealth's share of funding.

Mr Jennings — That is not the case in Victoria.

Hon. D. M. DAVIS — I have to tell you that is the case. The commonwealth's share of funding has fallen over recent years. The funding ought to be on a 50-50 basis, but it is clear it is not. It is clear the Labor Party puts Labor first and Victorians second, voting in favour of cuts and supporting its federal mates.

Vocational education and training: student fees

Mr DRUM (Northern Victoria) — My question without notice is to the Minister for Higher Education and Skills, Peter Hall. Given recent comments about the level of student contributions to vocational training courses, could the minister remind the house of the measures put in place by the coalition government to support students in accessing training programs?

Hon. P. R. HALL (Minister for Higher Education and Skills) — This is a very important topic, and I note opposition members have been fairly active in recent days in terms of their commentary about the contributions that students are making to their training programs. I am more than happy to respond to Mr Drum's question and provide the house with some information about what assistance measures are provided to students in that regard.

I will start by setting some background context to my answer by reminding members of a few other matters as well. I remind them about the inheritance that this government received when it took over Labor's misdirected, misguided training system in Victoria. Let me remind the house that in 2010–11 the budget appropriated by the then Labor government for training in Victoria was $850 million. The actual cost of training in that particular year came in at close to $1.3 billion. There was at least a $400 million unfunded component of that training activity.

I also remind the house that in 2010–11 the Victorian public paid for 9473 fitness instructor training positions when there were 632 advertised vacancies in that area that year. Therefore in terms of giving some guidance and setting priorities as to where training dollars should be budgeted for, the government went about setting a series of subsidies by considering greater and higher subsidies in those areas where there were skills shortages — construction, aged care, health care, nursing, disability, information technology, telecommunications and the like. In the last 12 months we have seen a 26 per cent increase in funding in the areas of health and social access. That very good outcome was prompted by the subsidy level that was prioritised for those areas.

In terms of all this it was well recognised that student fees would vary: some would go up and some would go down. But the contribution that students make towards their training is reflected in the value of that training to them.

In terms of the assistance measures that the government has now provided to enable fair and equal access to training in Victoria, first of all it has increased quite a number of subsidies and therefore given the incentive for providers to set a lesser fee, and that has occurred in many places. I might remind the house that the government also provide a regional loading for providers outside the metropolitan area. They receive an additional 5 per cent of that subsidy to assist in keeping down student contributions. For Indigenous students there is a 50 per cent loading applied to providers.

There is also a youth loading of 30 per cent for 15 to 19-year-olds from low socioeconomic status backgrounds who do not have a senior secondary certificate. That level of loading goes to the provider, which enables them to set lower fees for those particular students. Then students who have access to a health-care card, a pension card or who are dependents pay but 20 per cent of the scheduled fee for any particular training course. Again that means it helps them to have access to training.

I might also add that there is a zero fee for training places for young Victorians living in out-of-home care. Again that is a significant advantage for those in need. And beyond all that there is VET FEE-HELP, so any student who is undertaking a diploma or advanced diploma course does not have to pay a fee, if they take up the VET FEE-HELP offer, until their income reaches a set figure, currently $49 000 per year. They are just some of the ways that the Baillieu government is assisting students to access important training places in this state.

Wind farms: Waubra

Mr BARBER (Northern Metropolitan) — My question is for the Minister for Planning, Mr Guy. It is a condition of the Waubra wind farm's permit that it delivers, post construction, a noise monitoring report. That report has been with the minister from the day he started as planning minister and has not yet been signed off. Can the minister tell us why not?

Hon. M. J. GUY (Minister for Planning) — I am not sure that is necessarily correct. When Mr Barber says 'signed off', the company is required to prepare one and present it to the department, and it is a process from there. I gather Mr Barber is asking me why it has not been made public as opposed to being signed off.

Mr Barber — Why has it not been approved to the satisfaction of RA?

Hon. M. J. GUY — As to the RA, they are required to submit a noise report to the department for monitoring. I have gone back to the operator to ask for further information in relation to, I believe from memory, one turbine in particular, and it provided information again back to the department. I am not sure what Mr Barber is actually asking me in relation to 'signed off'. Is he asking me for it to be publicly released? Is he asking for it to be presented to Parliament? Maybe his supplementary question will clarify that.

Supplementary question

Mr BARBER (Northern Metropolitan) — On 12 February 2013 Mr Shultz, the federal member for Hume, stated:

> The Waubra wind farm —

in Ballarat, Victoria —

is not compliant with its planning approval. Under the Renewable Energy (Electricity) Act 2000, state planning compliance is a prerequisite for a power station's eligibility for commonwealth accreditation.

In other words, he is saying it should be shut down and have its funding source withdrawn as a result of this minister's department's failure to sign off on the required condition, post construction. I am asking the minister why that has not occurred. The last time the minister corresponded with the company was more than a year ago, and in fact I raised it in debate at that time. I want to know when the minister will get himself across this detail so that he can provide an answer and this sort of speculation by his party can come to an end.

Hon. M. J. GUY (Minister for Planning) — Gee, it is the first time I have heard the Greens quoting Alby Shultz in Parliament. Next thing we know they will quote Senator Barnaby Joyce to me.

I just have to say noise monitoring is a very complex methodology, as members can imagine. Each turbine has different characteristics, both in their topographical placement and in terms of the time of day and weather conditions. There is a range of factors that obviously relate to noise compliance. As I have said to Mr Barber, it is still under investigation. As he can imagine, it is not one turbine; it is a very large facility. I will take advice from my department when the final documentation comes to me. But more to the point, if Mr Barber is asking me if I will release it at that point in time or once it is all properly put together and compiled, I say to him that I will assess it once it comes to me.

Hospitals: federal funding

Mr KOCH (Western Victoria) — My question without notice is to the Honourable David Davis, the Minister for Health. In my role as a member for Western Victoria Region and a strong supporter of both Barwon Health and Ballarat Health Service, along with many other rural hospitals in my region, I ask: will the minister update the house on recent matters concerning hospital funding?

Hon. D. M. DAVIS (Minister for Health) — I thank the member for his question, and I note his strong advocacy for his local health services, his work to ensure that his local health services were not attacked by commonwealth funding cuts that were implemented — the $107 million — and that stands in stark contrast to the other members for Western Victoria on the other side of the chamber who voted in favour of cuts for their health services: cuts to Ballarat Health of $4.9 million — they voted for those; $2.8 million at Ballarat — —

Mr Leane — On a point of order, President, the minister rightly knows he should be directing his answer through the Chair and not pointing aggressively and threateningly across to this side of the chamber.

The PRESIDENT — Order! The minister knows that he is to direct his remarks through the Chair, and I also caution the minister not to debate this answer.

Hon. D. M. DAVIS — I will say $4.9 million was the commonwealth cut to Barwon; $2.9 million was the cut to Bendigo; and $2.8 million to Ballarat. All those regional services, and the smaller ones in Mr Koch's electorate, were going to be impacted on by the commonwealth cuts to hospitals. Yesterday the commonwealth belatedly made an announcement that it would restore some of the money it had decided to take from our hospitals. The loss of the $475 million it had decided to take from our hospitals, including $107 million this year, was going to have a significant impact.

The hospital announcement by the commonwealth yesterday will assist with that $107 million. Mr Rich-Phillips, as I said before, is aware of the complex fiddle that the commonwealth has engaged in here. But I know that people like Mr Koch and others in country Victoria, and in particular members on this side of the chamber, were very strongly advocating for their hospitals to ensure that the money was restored.

The loss of $4.9 million that was cut from Barwon Health by the commonwealth was going to have a direct impact on hospital admissions, on staffing and on being able to deal with the waiting list. Mr Cheeseman, the federal member representing that area, was not prepared to speak publicly in favour of Barwon Health; nor was local federal member, Mr Marles, prepared to speak up publicly in favour of Barwon Health. In Ballarat it is clear that local federal member Catherine King was not prepared to speak up in favour of Ballarat Health. She was prepared to cop a cut by Prime Minister Julia Gillard, federal Treasurer Wayne Swan and federal health minister Tanya Plibersek to those health services.

The first step in the restoration of that money occurred yesterday, with $107 million indicated yesterday. We need $368 million more to come from the commonwealth to go back to the level of funding. We know that the population fiddle was an outrageous manipulation of data by the federal Treasurer, and the

information coming out of the Senate inquiry this morning shows that the federal Treasurer — —

Mr Lenders — On a point of order, President, I put it to you that the minister is, firstly, debating, but secondly, this is about his competence to answer questions on state government administration. If the minister's premise is that the money is gone and federal people should have advocated, or if the money is not gone, how is this in any way pertinent to state administration in his response to Mr Koch's answer? He is debating the motives of federal members about a decision that is not in place.

Hon. D. M. DAVIS — On the point of order, President, let me just explain why it is directly pertinent. We now have a joint funding pool arrangement. The commonwealth indicated it would take the money out and — it is not hypothetical at all — it actually took the money out — —

The PRESIDENT — Order! Mr Davis is prosecuting the point of order, he is not expanding on the debate.

Hon. D. M. DAVIS — On the point of order, President, I am indicating that it was not a hypothetical removal of money, it was an actual removal, and now we have a promised restoration of part of the money but still with a removal that will occur from 1 July.

The PRESIDENT — Order! This particular issue has been raised in many questions in recent days, and the substantive responses have actually been the same, for the most part, on each occasion. The house is well aware of the issues and the toing and froing between the federal government and the state government. In some cases all sorts of motives and accusations have been thrown around as to who is responsible for what, including that the opposition voted for these cuts that the federal government made. I find that a fairly tenuous argument because I do not understand at what point it had an opportunity to vote in such a matter. From that point of view this is an issue that has been subject to a lot of debate above and beyond the facts of the matter. I am concerned that the responses to questions put by members do not involve debate, particularly when we have an issue like this where most of the issues that are being debated have already been debated fairly vigorously and fairly comprehensively in recent sitting weeks.

Hon. D. M. DAVIS — I can update the house on developments here, and one of the developments is the announcement yesterday by the commonwealth that it would put back $107 million into Victorian hospitals. I make the point to the house that $368 million will still be missing. I can also update the house on the fact that evidence has been led at the Senate inquiry today which directly relates to the determination by the federal Treasurer of population statistics about Victoria and about Australia. The impact of those federal determinations on Victoria is very severe. I indicate to the house that the evidence that has been led today shows that the federal Treasury ignored advice from the Australian Statistician and went on a frolic — —

An honourable member interjected.

Hon. D. M. DAVIS — You should wait to see the evidence. This is a direct impact on Victorian health services.

Mr Leane — On a point of order, President, Mr Davis is debating the answer. Despite talking quietly; he is still debating the answer.

The PRESIDENT — Order! On the point of order, I think Mr Davis has taken note of my remarks and he has been responsive to Mr Koch's question. What can Mr Davis manage in 1 second?

Hon. D. M. DAVIS — That $368 million needs to be returned.

Health: funding

Mr JENNINGS (South Eastern Metropolitan) — The answer is that the Minister can manage more in that second than he has in the last two years as Minister for Health. Will the Minister guarantee that he will restore to the Victorian health allocation the money that his government has withdrawn — —

An honourable member interjected.

Mr JENNINGS — It is a dead horse, all right. There has been $616 million of cuts that the minister has taken out and voted for by endorsing the two budgets introduced by the Baillieu government. In the two budgets $616 million has been taken out of health by this government. Will the minister take the opportunity today to restore that money to the budget and to the forward estimates, and to restore confidence in his government's administration of the Victorian health system?

Hon. D. M. DAVIS (Minister for Health) — I can indicate that the premise of the member's question is wrong and that in fact the government has increased health spending in Victoria by $1.3 billion over the last two years. What I can indicate very clearly to the member is that the Victorian government does have

savings programs; that money is reinvested in our health system, and many of those savings are achieved through things like Health Purchasing Victoria. Some of the savings have been achieved through reduced consultancies and advertising — —

Hon. M. P. Pakula interjected.

Hon. D. M. DAVIS — That was put in place by Mr Pakula's government, the previous government.

Hon. M. P. Pakula interjected.

Hon. D. M. DAVIS — Yes we have, we have reduced advertising and I have reduced advertising in the Department of Health. I can indicate also that there are fewer staff employed at the Department of Health, and many of the savings applied at the Department of Health mean less consultancies, less waste and less advertising. The number of staff is significantly less than it was when the Labor government was in power. What I can also indicate is that the Labor Party had a plan for savings of its own, and I know that the community here would be very surprised to see — if the Labor Party had been elected — Labor's financial statement 2010, fully costed according to Mr Brumby. I turn to page 23 — —

Honourable members interjecting.

The PRESIDENT — Order! Mr O'Donohue is close!

Mr Lenders — On a point of order, President, the minister has been asked a question on government administration, and much as I wish that I was part of the government administration, the issue that he is being asked about, particularly from Mr Jennings, is government administration and the last two budgets. He is now debating the answer as to what might have happened if the Victorian people had voted a different way two years ago. I ask you to bring him back to government administration — his government's administration — and to Mr Jennings's question about the $616 million of health cuts.

Mrs Peulich interjected.

The PRESIDENT — Order! One of the issues is obviously that the minister is relying to some extent on forward estimates and therefore on a set course that the previous government might have taken. I think that is relevant to his response with regard to the figures that the opposition, by its question, is asserting have been cut, as distinct from a quite different figure that the government has given in terms of its approach to health funding, so I think there is relevance in this matter. Whilst I am mindful of the point that Mr Lenders makes — and I hope the minister will be mindful of it — that answering the question ought to be relevant specifically to what has been raised and to the current government's approach, for which this minister is responsible in regard to health, I understand that there is a context factor that is relevant.

Hon. D. M. DAVIS — President, thank you for your guidance. As I was saying, the premise of the member's question is wrong. Indeed, what the government is seeking to do is to cut waste, to ensure there is no mismanagement of our health services or departments and to make sure that the money is put to front-line services.

Hon. M. P. Pakula — $616 million worth!

Hon. D. M. DAVIS — I note under 'Efficient government' in Mr Pakula's document, fully costed according to the front page, that $600.1 million is what Labor sought to save through efficient government. That is the recurrent saving that was planned by the Labor government before it lost office — $600 million. That is Labor's own figure; that is the saving it planned to make. I have already dealt with this in the chamber once before. I draw people's attention to 11 October when in this chamber I talked about Labor's savings in the health portfolio under the former Minister for Health, Daniel Andrews, who is now the Leader of the Opposition in the Assembly. They totalled more than $1 billion, and I have put that on the public record before. That is Labor's time period in government. I have put on the public record before the more than $1 billion worth of savings under Daniel Andrews. I have to say — —

The PRESIDENT — Order! I think we got it the first time. I believe the minister is starting to enter into debate on the previous administration, so I ask him to come back to the question at hand.

Hon. D. M. DAVIS — President, thank you again for your guidance. I make the point very clearly to Mr Jennings that the government is determined to run a government where money is spent on front-line services, and in the case of my portfolio, money is spent on doctors, nurses and health services. The government is ensuring that money is spent on front-line services. We are determined not to see waste in the system, money wasted on advertising and money wasted on consultancies, and we have directed the money directly into front-line services.

Hon. M. P. Pakula interjected.

The PRESIDENT — Order! Mr Pakula, that is most unhelpful. Frankly, one of the problems here is that if you are in a glass house, you should not throw stones. Mr Pakula has made an interjection that has probably not been picked up — I hope it has not been picked up — but the same interjection could be thrown by the other side to his side. I do not think that is helpful to any of us. Let us take that right out of this chamber's proceedings.

Hon. D. M. DAVIS — I have made most of the points I think are relevant. The government is committed to ensuring that money — public money, taxpayers money — is spent on service delivery to the greatest extent possible, not on excessive administrative costs, not on excessive advertising costs, not on excessive contractor costs and not on a whole range of other areas. In my portfolio area we are certainly determined to see that doctors, nurses, health workers, hospitals and health services receive the support. We make no apology for seeing front-line services as our priority.

Mr Viney — On a point of order, President, in my view you just correctly corrected a member on our side about an interjection that you thought was inappropriate. I wish to raise with you that, when Mr Lenders, Leader of the Opposition, rose to his feet a moment ago in relation to a point of order, Mrs Peulich made what I regard as a highly inappropriate interjection across the chamber that could not be interpreted in any other way than that the Leader of the Opposition had acted in some way illegally or improperly. I think that sort of interjection across the chamber is equally offensive, should not have been made and was quite unparliamentary.

The PRESIDENT — Order! I thank the Deputy President for his point of order, and I agree with him that members need to be very careful in what they say across the chamber. In fact we had an incident yesterday that I will come to later. Things get said in the heat of the moment. I did not hear what Mrs Peulich said. Mr Lenders is in the chamber and, if he found it offensive, he is in a position to respond to it and seek a withdrawal. There is a good chance he also did not hear the interjection, and I guess it is on that basis that the Deputy President has made this intervention. I do not think it is edifying for us to go back over that process right now, but I have sought — not just from Mr Pakula, because he was not the only one interjecting — more thoughtfulness about interjections and certainly less barrage involved with them. I caution all members to be very cautious about what they say, because interjections are dangerous things and do not reflect well on the house on many occasions. I thank the Deputy President for bringing that to my attention.

Questions interrupted.

DISTINGUISHED VISITORS

The PRESIDENT — Order! I take this opportunity to welcome members of a delegation from the National Hospital Organisation Tokyo Medical Centre that is undertaking a study tour to Australia and is in the gallery today. The delegation is led by Mr Sumio Matsumoto. It is a delegation that, with the Speaker of the Assembly, I had the chance to meet earlier this morning. What impresses me about this delegation is that it has some members of the team from the Tokyo hospital and particularly some young people who will be great contributors to the Japanese health system going forward. They are here extending their knowledge and, courtesy of the Department of Health in particular, visiting a number of our facilities and being involved in extensive discussions. We are very pleased to have them with us, and we are delighted that joining them as a senior adviser is Mr Hiroshi Takaku, who is one of Victoria's great allies and friends, known to many of us for his work on Victoria's behalf in Japan. We are delighted to see him here again. Welcome.

Ms Mikakos interjected.

QUESTIONS WITHOUT NOTICE

Health: funding

Questions resumed.

Mr JENNINGS (South Eastern Metropolitan) — Given that there has been a bit of an interruption, I would like to recap. I took the opportunity to clarify that the budget cuts from the Baillieu government's first two budgets were $616 million in health. The Minister for Health in effect confirmed that he interpreted that figure to be a savings figure, and he did not take up the opportunity to say that one cent of that money is coming back to health, so on that basis my purposes are satisfied. I will not ask a supplementary question.

Hon. D. M. Davis — On a point of order, President, I am not sure that there is capacity for a member, instead of asking a question, to simply make a statement in the question time period. I seek your guidance on whether we have some new standing orders where members may simply make a statement instead of asking a supplementary question.

The PRESIDENT — Order! I think Mr Jennings did stretch the process in indicating he did not have a supplementary question, so I uphold the point of order to that extent. I accept some blame in terms of my introducing the delegation in the middle of that process, but I think it was important that the delegation be acknowledged in case it had to leave.

Victorian Manufacturing Council: role

Mr P. DAVIS (Eastern Victoria) — Before directing my question to the Minister for Manufacturing, Exports and Trade, can I just observe that I find extraordinarily inappropriate the interjection Ms Mikakos made after the President's welcome to dignitaries in the gallery. It was a disgrace.

Honourable members interjecting.

The PRESIDENT — Order! Mr Davis, without assistance.

Mr P. DAVIS — Such a little person.

Can the minister inform the house on important advice the government is receiving on the future of manufacturing?

Hon. R. A. DALLA-RIVA (Minister for Manufacturing, Exports and Trade) — I thank the member for his question. We have obviously looked at the Victorian Manufacturing Council (VMC) as a major initiative of this government's manufacturing strategy. The council represents many of the facets of manufacturing in this state. I am pleased to inform the house that we have already held two meetings with the manufacturing council. On 22 November last year we held our inaugural meeting in Melbourne, and we had the second one last week at Swinburne University of Technology. The important thing to note is that we, as opposed to those opposite, have sourced members from business, industry associations and research institutions as well as having union representation, and these members are providing valuable insight and feedback on the key opportunities and challenges facing the sector.

Increasing local competitiveness and strengthening productivity is an important aspect of the priorities of VMC. It will be a strong voice for local manufacturers, as the representation on the council is from that cohort. The council reflects the government's commitment to understanding the real needs of the manufacturing industry in Victoria. We are investigating strategic opportunities and looking at the issues facing manufacturing. The council will identify where business can become more productive and competitive in new and existing markets.

Clearly the council will also be tasked with monitoring the government's manufacturing strategy 'A more competitive manufacturing industry', which was released in December 2011 and which is also backed up by $58 million to support the manufacturing sector. This strategy provides new directions in industry policy and is very clearly targeted at providing opportunities for manufacturers to become globally competitive and more efficient.

There are five key objectives of the VMC. I inform Mr Davis that the first is to advise the minister and the department on current and emerging trends. The second is to provide feedback — input and insights — to government on the state of the manufacturing sector, including current issues the government could seek to address through advocacy. The third is to undertake projects that investigate key strategic opportunities and issues facing the manufacturing sector.

We are of course also tasking the council to engage and utilise the capabilities and networks of VMC members to identify and promote Victorian manufacturing opportunities, not only in Victoria and interstate but also internationally.

The fifth objective of VMC is to monitor the progress of the Victorian government's manufacturing strategy in relation to its stated objectives, targets, outputs and outcomes and to assess the overall performance of manufacturing in Victoria through the publication of an annual report.

The list of members on the council is on the manufacturing council's website, and I look forward to their representing manufacturers. We have been getting on with the job of delivering our key election commitment to the manufacturing industry.

An honourable member — Belatedly.

Hon. R. A. DALLA-RIVA — I hear the interjection 'belatedly'. It is interesting that not one of those opposite picked up the phone when they had the Prime Minister's manufacturing task force, which was going on and on and has delivered nothing other than a rehash of existing programs. Our work has been very clearly targeted. The manufacturing council is a key component of the strategy, and we look forward to the ongoing work it has ahead of it.

Hospitals: waiting lists

Mr JENNINGS (South Eastern Metropolitan) — My question is to the Minister for Health. Is it not a fact that the minister signed statements of priorities (SOPs), which are hospital contracts, for 2012–13 as far back as August or September 2012 that consolidated elective surgery waiting lists increasing beyond 50 000 this year, up from 38 000 patients when he came to office?

Hon. D. M. DAVIS (Minister for Health) — The member will understand the process for negotiating statements of priorities with health services. He will understand that in May there is a state budget, and there is also a federal budget. Money comes forward and now, under the new system, comes to the pool, and then money is disbursed to individual health services from there. It is the responsibility of the state minister and the department to work with health services and negotiate budgets and outcomes and to do that in a predictable and effective way.

The state government in the normal way negotiated statements of priorities this year only to have an announcement made in November that the federal government was going to take $107 million from our health services via a reduction in the commonwealth's funding into the pool. I met with the board chairs of 84 of our 86 health services and have met with many of the CEOs and others who are responsible for the administration and management of our hospitals and health services across the state.

As the community will understand, the savage nature of the federal funding cuts meant that those SOPs were not able to be relied upon. You could not have a sensible negotiated outcome with health services and then halfway through the year pull the rug from under doctors, nurses and hospital administrators across the state by ripping out $107 million, as the Prime Minister, Julia Gillard, and the federal Minister for Health, Tanya Plibersek, sought to do. They started to administer those savage cuts, month by month, pulling the money out; $15.3 million was ripped out in December, $15.3 million was ripped out in January and $15.3 million more was ripped out in February. All that time — —

Mr Jennings — On a point of order, President, the minister is debating this matter. In answer to a previous question he said it was inappropriate for the commonwealth to allocate money to hospitals and that therefore he does not believe it should administer the scheme, and in this answer he is arguing that it is the administrator of the scheme. Therefore he is debating the matter ad nauseam.

The PRESIDENT — Order! I think the minister is again straying towards debating this issue. I know it is a very popular topic for him, and I know he has had — —

Hon. D. M. DAVIS — It is unpopular, actually.

The PRESIDENT — Order! The minister has had a bit of a win. I ask him to engage in a little less debate on the topic and to perhaps return to the substance of the question, because I am not sure that some of the areas he is going to now are as significant.

Hon. D. M. DAVIS — It is important to understand the process in the background of the negotiation of the statements of priorities and the fact that the statements of priorities rely on a predictable period across 12 months so that health services and hospitals can plan their cash flow and staffing. The reason I am explaining this is because the SOPs were being renegotiated on the basis that the commonwealth had withdrawn $107 million. What I want to indicate is that the withdrawal of money — the disruption that has occurred — has damaged our health services and led to the cancellation of elective surgery, the closure of a number of procedures and reductions in staff numbers in a number of health services.

The government is beginning again this process with each individual health service and hospital, working through the funding flows. Bear in mind it was only yesterday that the federal government announced it would put back $107 million. We will now begin the process with each health service of working through what is achievable and what outcome can be got in each service. What I can indicate to the house is that there will be a significant impact on our health services. There will be a significant impact in terms of reduced activity because of the disruption caused by the untimely and unseemly withdrawal of federal money.

That we are not in a normal year is the point I am trying to make to Mr Jennings. We are in a year in which there has been significant disruption caused to the process by untimely and unprecedented federal cuts to funding. We will go back to each health service, and we will work our way through the very best outcomes, as is the responsibility of the department and me, to achieve the best outcome for Victorian patients.

Supplementary question

Mr JENNINGS (South Eastern Metropolitan) — I think the minister has led us to believe that this year there may be, in effect, three statements of priorities: the ones he signed in August and September, the ones that were renegotiated because of the reduction in

commonwealth funding and now the third set that will be increased again because of the increase in commonwealth funding within this financial year. Can the minister confirm that that is what will happen? When will he give undertakings that those contracts will be in the public domain, as he is required to do under the Health Services Act 1988?

Hon. D. M. DAVIS (Minister for Health) — What I can indicate is that we will be negotiating the very best outcome for Victorian patients and Victorian communities. I can indicate that there has been significant disruption, which will be reflected in the SOPs, because of the federal cuts that have been made. I note that in previous times SOPs were released at varying points in the cycle. I note that I sought SOPs in this chamber in the previous Parliament, and I note that on 10 September 2008 there was a documents motion passed in this chamber seeking SOPs for Barwon Health and a number of other services. It took until 11 November for those SOPs, which were not publicly available for the community to peruse, to be released. I can indicate that the SOPs will be made public. We will renegotiate the outcomes in the light of the commonwealth funding reductions.

Information and communications technology: achievements

Mrs KRONBERG (Eastern Metropolitan) — My question without notice is directed to the Honourable Gordon Rich-Phillips, the Minister for Technology. Will the minister report on any recent progress in the ICT sector that highlights Victoria as a hub for technology-driven services?

Hon. G. K. RICH-PHILLIPS (Minister for Technology) — I thank Mrs Kronberg for her question and for her interest in technology-enabled business service. Mrs Kronberg, with a background as a business proprietor, would appreciate the opportunity and potential of delivering business services through online portals to drive productivity in our business sector. This is a sector with enormous growth potential. In the Asia-Pacific region business services software as a service was forecast to grow from around $390 million in 2008 to more than 4 billion in 2015 — a tenfold increase in only seven years. Australia is the fastest growing market within the Asia-Pacific region for technology-enabled business services.

Software as a service is one of the great opportunities for Victorian ICT companies. The delivery of business applications via web portals over the internet, whether they are customer resource management systems, human resources systems, payroll systems or accounting systems delivered on a fee-for-use basis on the internet, available to business operators wherever they have an internet connection, is a great potential market for Australian ICT companies. The Victorian Department of Business and Innovation (DBI) is an early adopter of software as a service, with its customer resource management system now operating on a software-as-a-service basis, allowing business development officers within the department to log in and access it wherever they are located.

That data is then available to all the business development managers within the Department of Business and Innovation who are operating out of any of DBI's offices. It really highlights the potential of the delivery of a software service as opposed to traditional business models.

Last December I was delighted to open a new office in Richmond for Xero, which is a New Zealand-founded accounting company that delivers accounting services over the internet on a software-as-a-service basis. Xero is a great success story in Victoria. This is the second head office that Xero has had in Melbourne, having outgrown the first office. It already employs around 50 people and is looking to expand that by 50 per cent. An extra 25 jobs are being created through the expansion into the new headquarters, which were opened last December.

Additionally, last year I was delighted to visit Zendesk in Melbourne. I was pleased to open its headquarters in 2011. Exactly 12 months later, in September 2012, I was pleased to return to announce the doubling of the workforce at Zendesk in Melbourne. It has established an Asia-Pacific development centre for its software-as-a-service offerings into the Asia-Pacific market. This really highlights the potential for software as a service, and it highlights the potential that Victorian companies have in developing software-as-a-service platforms and providing productivity and innovation benefits to business throughout Victoria and the Asia-Pacific and providing growth opportunities for our ICT sector.

Hospitals: performance data

Mr JENNINGS (South Eastern Metropolitan) — My final question today is for the Minister for Health. Is it not a fact that the reason the minister has not released the Victorian hospital data for the September 2012 quarter, due last October, is because the report will confirm that his administration of the Victorian health system and his $616 million cuts have seen waiting lists grow to the highest levels ever recorded, emergency department response times deteriorating and

ambulance response times placing Victorians' lives at risk?

Hon. D. M. DAVIS (Minister for Health) — I do not know that this is entirely the wisest question for the member to ask, but I welcome the question in any event. Let me be quite clear here. The data will be released in the normal way, and I make the point that our release of data is far more frequent than the previous government's.

Let me give some context to the historic release of the September quarter data. In 2004 the then Minister for Health, Bronwyn Pike, went to a half-yearly release of data. Data for the reporting period July to December 2004 was released on 15 April 2005; the July to December 2005 data was released on 13 April 2006; the July to December 2006 data was released on 4 May 2007; the July to December 2007 data, including the September quarter, was released on 13 May 2008; and the July to December 2008 data was released — wait for this, this is a doozy — on 17 July 2009. To get the July figures for 2008 we had to wait a whole calendar year under the previous government.

Honourable members interjecting.

Hon. D. M. DAVIS — Who was the health minister in 2009? It was the member for Mulgrave in the other place and now opposition leader Daniel Andrews. It took a whole year for Daniel Andrews to release July figures — one whole year!

Honourable members interjecting.

Hon. D. M. DAVIS — The community will get the data it was promised. Indeed on the websites now you can see ambulance bypass live. You can go online now — and I invite anyone in the chamber to do so — to see which hospitals are on bypass right now. That data is there. There is weekly and monthly data aggregated forward. But quarterly data will be released in the normal way, and I can indicate that we will do far better on openness and far better on the release of data than Daniel Andrews did.

Supplementary question

Mr JENNINGS (South Eastern Metropolitan) — The minister did not take the opportunity to tell the chamber that when he was asked this question this morning he indicated to the press gallery that he would release this data by Easter. Can I ask the minister whether his intention to release it at Easter is driven by his desire to collapse the September and December quarters into one? Is that his primary driver? Or is he worried, in terms of Easter, that he will be politically crucified for what that data shows?

Hon. D. M. DAVIS (Minister for Health) — I actually said 'before Easter', and it will be released in a timely way, unlike the record of Daniel Andrews. Let me be very clear. Much of the data the member seeks is already up on the websites now; much of the data is already available. But the data will be released in the normal way and in a timely way.

It is true that Victorian hospitals have been under significant pressure and stress in recent months as the federal government came forward with its savage $107 million cut this year. It is very clear that hospitals are under significant pressure from the cuts in December, January and February, and it is very clear that hospitals have been focused on meeting that significant challenge.

The data will be released in the normal way, and the data will be more transparent than that released by Daniel Andrews ever was. I remind the house that the July to December 2008 data was released by Daniel Andrews in July 2009.

Mr P. Davis — On a point of order, President, this is new ground for the house, I suspect, but earlier I had cause to make comment on a reflection on your dignified welcome of visitors to the gallery. Given that members are now permitted to use electronic devices in this house, what I observe is that the member on whom I was making a comment has reflected on me in relation to that matter. The point that I make is that Ms Mikakos has accused me on a Twitter feed of having 'flipped the bird' at her. As I recall, President — —

Honourable members interjecting.

Mr P. Davis — What I observe, President, is that at the time I made a remark about the inappropriate nature of her interjection after your welcome remarks, I was holding onto my question, which I subsequently put to the Minister for Manufacturing, Exports and Trade. It seems to me that if members are to be permitted to use electronic devices in this place, it then means that they are obliged to observe the precedents of procedure in this house and not abuse the privilege of having access to making remarks about what occurs during the proceedings of the house. It is inaccurate, it is misleading, I find it grossly offensive and I ask that the member, and those who have re-tweeted and tweeted similar remarks, withdraw and correct the public record.

Ms Mikakos — On the point of order, President, I say to Mr Davis that in fact it was somebody else who

tweeted that, someone who was outside the chamber who was watching the proceedings and who in fact observed a hand gesture, which I was very offended by but I was prepared to be dignified and to let it go. But in fact Mr Davis made offensive comments about me in his earlier remarks, which again I did not wish to dignify, when he called me a little person. To put the record straight, I did not in fact tweet this; it was an assertion made by a person outside the chamber. But it certainly looked that way to a number of us on this side of the house — that is, that Mr Davis did in fact make an offensive gesture. I was offended by that. I am quite amazed that Mr Davis wishes to bring that to light. I think Mr Davis should reflect on his behaviour. I know that this puts the President in a very difficult position, but the President may need to look at the video of Mr Davis's earlier point of order.

Mrs Peulich — On the point of order, President, and to assist you in responding to the points of order that have been taken, as Mr Davis was standing up to ask his question I had him firmly in my eyesight. I can categorically state that there was no such gesture which other people inside this chamber and outside the chamber have attributed to him.

Hon. D. M. Davis — On the point of order, President, the question also is, did Ms Mikakos re-tweet something?

The PRESIDENT — Order! Ms Mikakos makes the observation that the President is put in a difficult position in this sort of matter, and I think that is very accurate. In fact in recent days the President, Deputy President and acting chairs have been put in a difficult position in a number of matters.

Mr Somyurek interjected.

Questions interrupted.

SUSPENSION OF MEMBER

Mr Somyurek

The PRESIDENT — Order! Mr Somyurek will leave the chamber for 30 minutes. This is a very serious matter, and it does not require somebody to be gesturing as Mr Somyurek was.

Mr Somyurek withdrew from chamber.

QUESTIONS WITHOUT NOTICE

Questions resumed.

The PRESIDENT — Order! In the last few days I have been disappointed with the behaviour in the chamber. A lot of that has arisen from interjections, and the interjections have been most inappropriate in some cases. Certainly they have been ill considered. Some have been expressed in such a heated manner as to invite reactive comments from other members, which is not helpful to the proceedings of this chamber and reflects badly on some members.

There are two issues. One is what actually happened, but the other issue relates to Mr Davis's point of order, and I will go to his point of order first. Mr Davis raised a substantial and significant issue. We know that technology is available to convey information outside this place. However, that technology very often is not accompanied by a context in which the remarks are made. That is one of the real problems of social media — that is, a comment can be made and it stands alone as a comment that is able to be interpreted by people in all sorts of ways without any sort of context and without any defence available to the person who is offended.

I know this debate has occurred in the Legislative Assembly. The Speaker sought to establish some sort of policy on tweeting, particularly tweeting by members when they are in the house. I am not certain where he has got with that examination. I will ask him where he has got to and whether or not he has adopted a policy at this point. I know he was addressing this issue, and for the same reason — that is, because remarks were being made about members to which they did not necessarily have a chance to respond, and those remarks were not necessarily in context. Sometimes those remarks were flippant. Sometimes perhaps they were clever interjections, but they were going to an audience that did not understand what they really meant and to an audience that was not in a position to interpret them with any sort of fairness or objectivity.

The question of who sent out the original tweet is one that I might consider and explore. I would have thought that the attention of members while they are in this place should be on the questions and answers that are being discussed as part of the processes of this house, rather than on re-tweeting something that they thought might get them some brownie points over other members of this place.

Coming back to what Mr Davis found offensive — and I accept that if the accusation had been made about me,

I certainly would have found it offensive — my attention was focused on Mr Davis from the time I called him to ask his question, and I did not see any inappropriate gestures at all from Mr Davis. I therefore find it hard to understand how such a tweet could be justified.

Mr Davis made some remarks at the outset, and I think they were probably an indiscretion insofar as the opportunity afforded to Mr Davis was to put a question to a minister, not to make comment on previous proceedings in the Parliament. Notwithstanding that, I tend to agree with him that a throwaway line after an official delegation has been welcomed is not really edifying for this house. I can understand that Mr Davis's comments back to Ms Mikakos were inappropriate, and I can understand her concern about one remark in particular. However, she chose not to seek a withdrawal and, in trying to allow proceedings to continue and not to make a big thing of it, I chose to overlook it.

Now we have a situation where we are confronted with the issue of the use of technology, including Twitter accounts, to convey information outside this place and members using it during proceedings, particularly during question time, and, in particular, members tweeting or re-tweeting information that they cannot even substantiate as being accurate. In her response to the point of order Ms Mikakos said she did not originally tweet, but when she found out that someone had observed the gesture, she was offended. Of course if Mr Davis had made such a gesture, it would have been offensive; there is no doubt about that. But, as I said, from my perspective I was watching Mr Davis from the time I called him, and I saw no such gesture or anything that could in any way be interpreted as what I understand the expression conveys, and I will not dignify the suggestion by repeating the expression.

Mr Rudd has suggested that people take a long, cold shower. He has progressed to other forms of cooling down, and I think some of us have to think about following a similar course in terms of the way we approach the proceedings of this house. As I said, I will discuss with the Speaker where he has got to with his examination of the use of Twitter accounts, social media commentary et cetera within the proceedings of the house and if he has arrived at a policy position. That is something that I did not want to do. It is a matter I did not want to raise in this place, because I had always hoped members would act responsibly and would recognise when they did make comments through social media that those comments should be honest and fair.

I ask Ms Mikakos if she actually re-tweeted the phrase.

Ms Mikakos — I made a brief comment in relation to the tweet because I believed that the gesture had in fact been made — and some of my colleagues believed that the gesture had in fact been made. As I said, the original tweet was made by someone outside this chamber who was observing the proceedings. I take this opportunity to say that if Mr Davis gives me and the house an assurance that he did not make that gesture, then I am prepared to accept that. I agree with you, President, that the dignity of the house is the most important thing, and that is why I did not take a point of order at the time — I did not wish to engage in such a debate at the time. I am prepared to accept the explanation that has been given.

Hon. M. P. Pakula — On the point of order, President, I also commented on the tweet with the words, 'I saw it too'. I have heard Mr Davis's explanation, and on that basis I withdraw.

The PRESIDENT — Order! In the circumstances it is probably better that the matter rest at this point. I am not sure that Mr Davis will be totally satisfied with that response; maybe Ms Mikakos will not be either. But I think there has been a recognition by at least two members of the opposition that my view of Mr Davis's position prevails at this point. I thank Mr Pakula in particular for standing and indicating that he had made a remark on that tweet.

It is incumbent on members, as part of the lesson learnt from this, that they tell their staff, who are obviously listening to the proceedings of Parliament and are keenly interested in them, to be very careful in their use of social media and to familiarise themselves with the Parliament's guidelines on the use of social media and other forms of communication. In some cases they can get us into a lot of trouble by making an errant comment. Thank you, Mr Davis, for the point of order.

Local government: planning statements

Mr RAMSAY (Western Victoria) — My question without notice is to the Minister for Planning, the Honourable Matthew Guy. Can the minister advise the house what action the Baillieu government is taking to advance localised planning statements in areas with some of Victoria's most significant rural landscapes?

Hon. M. J. GUY (Minister for Planning) — I want to thank Mr Ramsay for his very dignified question on a very serious topic, and that is the announcement today of the beginning of the drafting of new regional planning statements for certain areas of Victoria.

Mr Ramsay, Mr O'Brien and Mr Koch have been prominently advocating — as have Ms Lovell, Mrs Petrovich and Mr Drum, who represent Northern Victoria Region — for areas such as the Macedon Ranges in the north; the Bellarine Peninsula; the Mornington Peninsula, which is represented by David Morris, the member for Mornington in the other chamber; and of course the Yarra Ranges, which is represented by the member for Evelyn in the other place, Christine Fyffe. She has been quite prominent in advocating for localised planning statements in those four areas — Bellarine Peninsula, Macedon Ranges, Yarra Ranges and Mornington Peninsula.

Fulfilling this election commitment of the Baillieu government is an important step forward for these four communities. Residents will know that state planning policy protection for these areas, so long denied them by previous governments, is going to come forward in, as I said, a state planning policy framework.

In beginning the drafting of these statements today the Baillieu government has allocated resources to councils to begin that work so that the government can formulate those statements to again have good relationships not only with Melbourne metropolitan planning policy but also regional growth plans. In that way we will protect the livability aspects, the land use aspects and the neighbourhood, urban and regional character of those four areas. That is very important, because the Baillieu government is doing all the work necessary to ensure that we are protecting those key areas of Victoria.

QUESTIONS ON NOTICE

Answers

Hon. W. A. LOVELL (Minister for Housing) — I have answers to the following questions on notice: 8179, 8554, 8574, 8689, 8702–4, 8711, 8730, 8753–66, 8971, 8975, 8976, 8982, 9239.

The PRESIDENT — Order! I want to mention two more quick things before lunch. The first one is a reminder to members who are tweeting that they are not covered by parliamentary privilege, so there are some legal issues attached to that. The other thing is that it has been mentioned to me that whilst withdrawals and comments have been made in the house that have satisfied this matter, tweets obviously go well out into the ether, so, as a matter of perhaps courtesy, members who have re-tweeted might consider making some remark that also addresses this issue on their Twitter accounts so that we have a wider domain informed as to the satisfaction of the matter.

Sitting suspended 1.22 p.m. until 2.28 p.m.

COURTS LEGISLATION AMENDMENT (RESERVE JUDICIAL OFFICERS) BILL 2012

Committed.

Committee

Clause 1 to 11 agreed to.

Clause 12

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

1. Clause 12, page 7, lines 11 and 12, omit "Attorney-General" and insert "Chief Justice".

Clause 12 of the bill refers primarily to the Supreme Court. A provision of clause 12 prohibits a reserve judge from continuing to practice law other than with the authorisation of the Attorney-General. This provision is similar to clauses 25 and 35 with respect to the County Court and Magistrates Court respectively.

As I indicated during the second-reading debate, the current drafting of clause 12 is very similar to a provision in the existing Courts Legislation (Judicial Appointments and Other Amendments) Act 2005. On a number of occasions during the second-reading debate and when making public comments government speakers have indicated that the purpose of this legislation is to effectively implement the government's long-held opposition to the 2005 act in regard to the appointment of reserve judges. As I demonstrated during the second-reading debate, in 2005 the then shadow Attorney-General, Mr McIntosh — who is now the Minister for Corrections — was scathing about the notion that the ability of reserve or acting judges to continue to practise law, thereby continuing to earn income outside of court, should be a matter for the Attorney-General. That was the then opposition's view at the time.

We are saying to the government that if that was its view then and if this bill is designed to effectively redress what the government sees as the flaws in the 2005 act — no doubt, by virtue of this legislation being before the Parliament, the government continues to view this bill as redressing the flaws of the 2005 act — then the government ought to be as good as its word. If government members genuinely believe what they said during opposition, they would accept the proposed amendment, which will mean that rather than leaving it to the Attorney-General to determine whether a reserve

judge of the Supreme Court can continue to practice law, that matter is left in the hands of the chief justice of the Supreme Court. Likewise, rather than the engagement of a reserve judge of the County Court being in the hands of the Attorney-General, that decision ought to be made by the chief judge.

As it relates to a reserve magistrate, the decision ought to be in the hands of the chief magistrate. The County Court and Magistrates Court matters are the subjects of the second and third amendments, but I thought rather than addressing this over and over I would simply address it on one occasion and then make very brief comments thereafter.

The DEPUTY PRESIDENT — Order! Mr Pakula does not have to do this, but I ask that he also consider, perhaps after the minister's response, whether he wishes to test these amendments separately or regard the first one as testing the general principle.

Hon. M. P. PAKULA — What I intended to do was to have three separate amendments but to divide only once. I assume that is acceptable.

The DEPUTY PRESIDENT — Order! Yes.

Hon. M. P. PAKULA — Apart from simply the matter of consistency in the government's position, in the opposition's view it is better in reality that the question of whether a reserve judge should be able to continue to practise law and earn outside income is a matter for the head of jurisdiction rather than the Attorney-General. That was effectively the view that the then opposition adopted in 2005, and looking back on Mr McIntosh's comments at the time I find myself agreeing with him.

Ms PENNICUIK (Southern Metropolitan) — The Greens will be supporting amendments 1, 2 and 3 as proposed by Mr Pakula. The first is an amendment to clause 12 on page 7 of the bill, whereby rather than requiring the approval of the Attorney-General it would be up to the Chief Justice to approve whether or not a reserve judge could engage in legal practice, undertake paid employment or conduct a business, trade or profession of any kind while engaged to undertake the duties of a judge of the court under section 81B of the Constitution Act 1975. Similarly in terms of clause 25 on page 19 of the bill, it would be up to the Chief Judge of the County Court to make the same assessment or give the same approval with regard to a reserve judge acting in the County Court. With regard to clause 35, for the same reasons it would be up to the Chief Magistrate to give the approval with regard to a reserve magistrate. I think these are very sensible amendments, for the reasons Mr Pakula outlined.

But one would also have to say that under this bill, once a reserve judge has been appointed by the Attorney-General — as I said in my contribution to the second-reading debate, I assume in practice appointed or reappointed in consultation with and with the approval of the head of the jurisdiction — that person then comes under the direction of that head of jurisdiction in terms of what they are doing on a daily basis and what cases they are attending to. It would not be up to the Attorney-General to interfere in the actual conduct of that reserve judge once they are under the direction of the head of the particular jurisdiction.

I think there is a flaw in the bill that the government should fix up, because you do not actually want a reserve judge or reserve magistrate to be under the direction of the Attorney-General; you want them to be under the direction of the head of jurisdiction. That would include this particular issue of whether they can continue to engage in legal practice, undertake paid employment or conduct a business, trade or profession.

As I mentioned in my contribution to the second-reading debate, one would think there would be very few cases where they would get that approval. But as I said, it might be something such as giving a lecture and being paid a fee while they were engaged to undertake duties as a reserve judge or reserve magistrate. You would not think that continuing to conduct a legal practice would come into play very often — we are talking about retired and interstate judges. I think this particular approval provision in the bill best resides with the head of jurisdiction and not with the Attorney-General. The government should support Mr Pakula's amendments, as we will. I predict that if it does not, the bill will probably be amended at some stage to do that.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank members for their comments, and I note the amendments as proposed by Mr Pakula. I understand proposed amendment 1, which is reflective of clause 12, may be a test of his amendments to clauses 25 and 35. Is my understanding correct?

The DEPUTY PRESIDENT — No. I invited Mr Pakula to indicate whether he wanted to deal with it as a test, and he indicated he did not; he wanted to put each of the three amendments separately. However, he also indicated that if, for example, I were to say on the voices that the vote was no, it is unlikely that he would

call a division on more than one occasion. I hope that clarifies it for the minister; I hope that is helpful.

Hon. R. A. DALLA-RIVA — Thank you, Deputy President. I was just trying to be quick for the sake of the process. In response, reserve judicial officers will be engaged to perform functions as needed by the Attorney-General by notice in writing. In practice the relevant head of jurisdiction will give advice to the Attorney-General on the reserve judge's or magistrate's requirement to meet the operational needs of the courts. The relevant head of jurisdiction will specify a period during which the reserve judicial officer will be required to be engaged. This arrangement will be in keeping with the 1986 reserve judge scheme.

The provisions referred to by Mr Pakula relate to the process by which the reserve judicial officer may be authorised to engage in outside employment whilst serving as a judicial officer. The bill simply reproduces what the current position is as set out in section 80D(13) of the Constitution Act 1975. This relates to where we are on clause 12. I will get to the other clauses later, but I will read out the relevant section from the principal act.

> (13) Except with the approval of the Attorney-General, an acting Judge of the Court must not engage in legal practice, undertake paid employment or conduct a business, trade or profession of any kind while undertaking the duties of a Judge.

This bill before the house does not seek to replace those arrangements. Rather, it implements modest changes, with the full support of the courts, to fix up the problems that were introduced by the former government. The amendment moved by Mr Pakula represents a significant departure from the status quo. While we understand it is well intended, it is inconsistent with well-established principles and possibly inconsistent with the constitutional role of the courts. Therefore, we will not be supporting it.

Hon. M. P. PAKULA (Western Metropolitan) — I thank the minister for his answer. I myself have indicated that the opposition acknowledges that the provision in the bill is consistent with the current provision. What I have also indicated, however, is that the position that is in the bill is inconsistent with the stance that the Liberal Party took in 2005 when it opposed the passage of the legislation that the government now says this bill is designed to redress. The government has made much of the fact that this bill is in some way about reversing what it says the 2005 legislation's errors were; and one of the errors pointed out in 2005 by the member for Kew in the Assembly, Mr McIntosh, was the notion of the Attorney-General of the day being the person who could authorise a reserve judge to continue to practise law outside the judicial office.

Whilst I thank the minister for his answer and acknowledge that the provision is consistent with the current act, the Constitution Act 1975, if the government really meant what it said about the way this legislation interacts with its longstanding position, it would accept the amendment.

Ms PENNICUIK (Southern Metropolitan) — I found the minister's answer very interesting. Of course the problem with having amendments slapped on the table just in the middle of debate on a bill means that you do not necessarily have the time to go through these things that the department might have the expertise and staff to do. Anyway, my argument still stands and I still support the opposition's amendments because I think this power is better invested in the heads of the jurisdictions than in the Attorney-General.

Committee divided on amendment:

Ayes, 19

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

Noes, 20

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

Amendment negatived.

Clause agreed to; clauses 13 to 24 agreed to.

Clause 25

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

> 2. Clause 25, page 19, lines 3 and 4, omit "Attorney-General" and insert "Chief Judge".

In support of that amendment, I refer to the comments I made in support of amendment 1.

Ms PENNICUIK (Southern Metropolitan) — The Greens will support Mr Pakula's amendment for the reasons given before.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The government does not accept the amendment for the same reasons I outlined earlier, although the amendment moved by Mr Pakula relates to the Magistrates Court. As I indicated earlier, the same arrangement is in place in the Magistrates' Court Act — —

The DEPUTY PRESIDENT — County Court.

Hon. R. A. DALLA-RIVA — County Court, sorry. My advisers have told me it is the Magistrates Court, but I will now correct it. Clause 25 relates to section 11(13) of the County Court Act 1958, which provides:

> Except with the approval of the Attorney-General, an acting judge of the court must not engage in legal practice …

et cetera, as I outlined earlier. The amendment moved by Mr Pakula represents a departure from the status quo, as I indicated. Whilst well intended, it is inconsistent with well-established principles and is possibly inconsistent with the constitutional role of the courts. Therefore we will not be supporting Mr Pakula's amendment.

The DEPUTY PRESIDENT — Order! I note that when I was given paperwork that was incorrect I did not blame the advisers or anyone else but accepted full responsibility — and the minister sits at the table. I thank the minister for the clarification.

Amendment negatived; clause agreed to; clauses 26 to 34 agreed to.

Clause 35

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

> 3. Clause 35, page 29, lines 11 and 12, omit "Attorney-General" and insert "Chief Magistrate".

Amendment 3 is similar to amendments 1 and 2, although my advisers tell me it relates to the Magistrates Court. In support of amendment 3, I refer the house to my comments on amendment 1.

Ms PENNICUIK (Southern Metropolitan) — The Greens will support Mr Pakula's amendment 3 for the same reasons I outlined earlier in regard to amendment 1.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The government does not accept the amendment for the same reasons I outlined in respect of the amendment to clause 25 moved by Mr Pakula: the same arrangement is in place in section 9(8) of the Magistrates' Court Act 1989, which in part provides:

> Except with the approval of the Attorney-General, an acting magistrate must not engage in legal practice … while undertaking the duties of a magistrate.

Accordingly, as I indicated earlier, we will not be supporting the amendment moved by Mr Pakula.

Amendment negatived; clause agreed to; clauses 36 to 80 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

The ACTING PRESIDENT (**Mr Ramsay**) — Order! I am of the opinion that the third reading of the bill requires to be passed by an absolute majority. As there is not an absolute majority of the members of the house present, I ask the Clerk to ring the bells.

Bells rung.

Members having assembled in chamber:

Motion agreed to by absolute majority.

Read third time.

CRIMES AMENDMENT (GROSS VIOLENCE OFFENCES) BILL 2012

Committed.

Committee

The DEPUTY PRESIDENT — Order! This is a bill for an act to amend the Crimes Act 1958 and the Sentencing Act 1991 to insert new offences of causing serious injury intentionally or recklessly in circumstances of gross violence, to provide for a minimum non-parole period in certain circumstances for those offences, to amend certain definitions of injury and serious injury and for other purposes.

My understanding is that we have questions or issues on clauses 1 and 4 and that the amendments are all in

relation to clause 9. I ask Ms Pennicuik, if she is able, to advise the committee whether she regards one amendment as a test of any of the subsequent ones. I do not expect an answer now, but maybe during the course of this discussion she could give some consideration to that so that when we come to clause 9 we can work through that expeditiously.

Clause 1

Ms PENNICUIK (Southern Metropolitan) — I gave advance notice to the minister of the questions I have regarding clauses 1 and 4, to which I am not moving amendments. Clause 1 is the purposes of the bill. The Sentencing Advisory Council's *Statutory Minimum Sentences for Gross Violence Offences — Report* of October 2011 says, at paragraph 8.95 at the very end of the report:

> Given these varied and uncertain influences, and given the significant concerns expressed by stakeholders about the introduction of statutory minimum sentences, the council considers that future monitoring and evaluation are warranted on the operation of the statutory minimum sentences and their effect on sentencing practices for severe injury offences.

I would add that monitoring and evaluation are warranted by their potential impacts on the courts, on offenders, on the public interest and on justice. My question to the minister is: will the government be monitoring and evaluating the regime? I presume the government will be monitoring it, but will it be evaluating it in any way? Can the minister provide me with any information as to the government's plans with regard to monitoring and evaluating this new regime?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank Ms Pennicuik for her question and for providing me with her questions before the committee stage. In terms of the specific question of whether the government will be evaluating the framework, as the Sentencing Advisory Council suggested in paragraph 8.95, which was the original request to me, the government will monitor and evaluate the progress of this reform, as with all reforms. The Department of Justice will be responsible. In addition, the Sentencing Advisory Council will publish statistical information about sentencing practices for the new and existing offences.

Ms PENNICUIK (Southern Metropolitan) — I thank the minister. Does the minister envisage that the Department of Justice will include some evaluation in its annual reports or perhaps, in two to three years, after the bill comes into force, which I understand is to be no later than January next year, issue an evaluation report on this new sentencing regime?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank the member for her question. It is difficult at this point to specify a particular time. As with all monitoring and evaluation, it is proposed that a close watch will be kept on that. Obviously with the Sentencing Advisory Council publishing statistical information, that information will be provided in due course. However, as I said, the Department of Justice will be responsible for the evaluation and monitoring.

Ms PENNICUIK (Southern Metropolitan) — I thank the minister. Another matter I would like to raise is with regard to subclause 1(b), which states that the purpose is:

> … to amend the Sentencing Act 1991 to provide for sentences with a minimum non-parole period for those offences.

Those offences are the ones outlined in subclause 1(a) — that is, the new offences under the bill — which I will not go into in detail now, because we know them from the second-reading debate. In the second-reading debate I went to some trouble to outline what the Sentencing Advisory Council, in its sentencing snapshots, has already advised the government and the community of with regard to the current offences of intentionally causing serious harm and recklessly causing serious harm. They are slightly different offences. The offence of intentionally causing serious harm has a maximum penalty of 20 years, and the offence of recklessly causing serious harm has a maximum sentence of 15 years.

The sentencing snapshots for the last five years looked at the range and average of the sentences handed out for those offences. For the offence of intentionally causing serious harm, the range was higher. If I recall rightly, the highest was perhaps 18 years and the average was around 4 years. For recklessly causing serious injury, the highest was less than 15 years — I think it was 11 years on appeal, ranging from 5 to 11 years, if my memory serves me correctly — and the average non-parole period was around 2 years. The sentences that have been handed down over the last five years for those current offences vary, given that they are slightly different offences. The culpability needed to be proved for intentionally causing serious harm is obviously more than for recklessly causing serious harm.

I have a question with regard to subclause 1(b). The minimum sentences for these two offences are the same, at four years for either offence, even though the maximums are quite different — they differ by five years — and the sentencing history indicates that people convicted of intentionally causing serious harm get a higher sentence on average and in the range. Why

has the government chosen not to reflect that differentiation in the minimum sentences? Leaving aside that I do not agree with the minimum sentences — which is pretty clear from what I have said and from our opposition to the bill — I ask: why has the government not reflected the higher culpability involved in intentionally causing serious harm through gross violence relative to recklessly causing serious harm through gross violence by differentiating the offences' minimum sentences, which would reflect the different consequences and circumstances involved in the cases, including the culpability in terms of intention?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank the member for her question. The government's response is that these are only statutory minimum sentences, and judges are free to impose greater sentences. The offence of causing serious injury intentionally retains the higher maximum penalty of 20 years, while the offence of causing serious injury recklessly carries a maximum penalty of 15 years, and judges will bear this in mind when sentencing. Given the very high threshold in terms of both culpability and injury that attaches to both gross violence offences, a four-year minimum is appropriate.

Ms PENNICUIK (Southern Metropolitan) — I would like to know a bit more about the thought processes behind that. If the minister is saying that the culpability is the same, why are there two offences? If they are the same or similar, two offences would not be needed. In fact the history of the existing offences of intentionally causing serious harm and recklessly causing serious harm shows they are different offences. In one case the offender forms and carries out an intention of causing harm, which is a different offence to that of recklessly causing harm. Recklessly causing harm is about an offender not having enough foresight to be aware that their action, taken spontaneously at a given time, is reckless, and it is completely different from forming an intent and going out intentionally to cause serious harm. That is why the maximum penalties are so different; there is a difference of 25 per cent between them. I therefore think this is a very important point in relation to the bill.

The minister's answer is, 'Well, that's the minimum; the sentencing judge can go above it'. The sentencing judge cannot go below it; that is the point. If you look at the average sentence handed out for recklessly causing serious injury at the moment, you see that it is less than four years — it is between two and three years — whilst the average for intentionally causing serious injury is higher; both the average and the range are higher.

This is therefore a major flaw with this bill — that is, there is no differentiation in the minimums given between these two offences. For all intents and purposes the government is saying they are the same offence, when they are not, as is reflected in the maximum sentences.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The only point I can add to what I outlined in my earlier response is that it is not possible to compare the existing offences with the new offences in the way that Ms Pennicuik is seeking to do.

Ms PENNICUIK (Southern Metropolitan) — I have to disagree with the minister there, because there is a difference in the wording. The wording for both offences refers to serious injury with gross violence, but the wording for one offence says 'intentionally' while the wording for the other says 'recklessly'. There is a big difference. Under this bill the courts will now be obliged to impose a four-year minimum sentence for recklessly causing serious injury, whereas in the past they may not have done so. Of course they can give higher sentences, as the sentencing history I outlined in my second-reading debate contribution shows they have done. In effect, the problem with this bill is that it prevents the court, after it has looked at all the circumstances in a case, from imposing a lesser sentence, and that is the problem with mandatory sentencing in any case.

I still cannot follow how the government can say these offences are not comparable. The two proposed offences may not be comparable to the existing offences, but they are not comparable to each other either, given there is a different description for each offence. Is that not true?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Again, I note it is not possible to compare the existing offences with the new offences in the way that Ms Pennicuik has sought to do. As I indicated earlier, given the very high threshold, in terms of both culpability and injury, that attaches to both gross violence offences, we see a four-year minimum as appropriate.

Ms PENNICUIK (Southern Metropolitan) — I will stick with my rule, which is that I only have three goes at the same question! This is my third go. I agree that the definition of serious injury has changed — serious injury has become more serious — under this bill; I

agree with the minister on that point. However, I ask: is the government saying there is no difference between the words 'recklessly' and 'intentionally'?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The difference between the two gross violence offences will be exposed in terms of how far above the four-year minimum sentence the length will be.

Ms PENNICUIK (Southern Metropolitan) — That is a totally unsatisfactory state of affairs. The minister is relying on the courts to differentiate between two words by imposing higher sentences than they would have imposed without this mandatory sentencing regime. If the government does not think there is a difference between these two offences, why has it not made the maximum penalty exactly the same?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I advise Ms Pennicuik that I have answered previously in terms of the statutory minimum sentence. Judges are free to impose greater sentences. The intentional offence maintains a maximum of 20 years and the reckless offence carries a maximum of 15 years. As I indicated previously, and as I think Ms Pennicuik has agreed, the existing offences cannot be compared, but the difference between the two will be exposed in how far above the four-year minimum sentence the length will be.

Ms PENNICUIK (Southern Metropolitan) — My question was not exactly the same; it was responding to what the minister said. The minister has raised another issue, that is, if a judge were to read the minister's response to me in committee, the judge should infer from it that in order to show that there is more culpability in intentionally causing harm than in recklessly causing harm, judges will have to impose a harsher sentence for the offence of intentionally causing harm than they perhaps would have otherwise imposed based on the evidence in front of them.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank Ms Pennicuik for her question. The judges will impose a sentence based on the facts before them of each case and in accordance with the new statutory minimum sentence.

Mr VINEY (Eastern Victoria) — I am perplexed by the minister's answer to a number of Ms Pennicuik's questions. It appears to me that the essence of what the minister has said is that the distinction between reckless and intentional will be made at sentencing, not at the question of guilt or innocence. I would have thought that is a very new development in the law in Victoria. It would seem to me that the process ought to be that the court determines whether someone is guilty or innocent of either reckless or intentional violence through the normal judicial processes, juries and so on, and having done so, it subsequently determines a sentence.

The minister has put to this house that the distinction between those things rests more with the sentence, which will determine which of the offences is relevant. I am completely perplexed by that answer, and I wonder if the minister could clarify his and the government's position in relation to this. Surely the court would determine, through its normal process, whether the accused is guilty or innocent of reckless or intentional violence. The minister is now saying that that will be determined by the length of sentence.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The advice I have is that the courts already adjust sentence length to reflect culpability, and the charge a person is convicted with will depend on the state of mind of the offender and the facts of the case. It is not specifically what I said earlier.

Mr VINEY (Eastern Victoria) — Sorry, I am trying to understand what that response means. We understand — I do not think anyone is in any doubt — that a sentence determined by the court is based on whether or not a person is found guilty or innocent of a charge, and the length of sentence is based on the facts and any mitigation. I think we all understand that, but I am not sure the minister does, because what he put to the committee not that long ago was that the way we could distinguish between the two charges of 'reckless' or 'intentional' was based on the sentence. I just want the minister to be very clear in this committee stage — which, as he well knows, is very important — that that is not in fact the case, and that in fact the determination of reckless or intentional is determined by guilt or innocence of each of those particular charges, or either of them.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank the member for his question. Just to make it very clear, the guilt of the offender will continue to be decided in the normal way, and when the court reaches sentence they will, as they do now, consider the culpability of the offender in the proven facts of that particular case. The sentence will be decided on the basis of all the facts before the court and the statutory minimum.

Ms PENNICUIK (Southern Metropolitan) — I was flipping back through the Sentencing Advisory Council's report and statistics on current sentencing practices, and I will not refer to it because it is quite lengthy. It basically reiterates what I was saying before about the current offences — that is, whether or not, as I have already conceded, the gross violence offence, in conjunction with the redefinition of 'serious injury', may make the offences more serious. The point is, for intentionally causing an injury the sentences are higher. For recklessly causing an injury they tend to be lower than they are for intentionally causing it. So is it not the case that we may find that the courts will be sentencing people probably more correctly, or more in line with current practice for intentionally causing serious injury, and that those who are convicted of recklessly causing injury may be sentenced to minimum sentences above which they normally would be by virtue of the bill? So people convicted of either offence, in terms of the sentence they receive, are going to be closer because of the constraints of the bill with the minimum sentence.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The sentences will continue to reflect the circumstances of each case, and the seriousness of the offence turns on — will be determined on — many things, including the severity of the injury. The courts already sentence to a range of sentences, and they will continue to do so while imposing a statutory minimum sentence. The statutory minimum does not apply to the existing offences and, as I said before, the new gross violence offences cannot be compared with the existing offences.

Ms PENNICUIK (Southern Metropolitan) — I apologise, Deputy President, I was about to let it rest because I think we disagree, but the minister said the sentence will turn on some things, including the seriousness of the injury. For argument's sake, there are two cases that involve the exact same serious injury — there is no difference. There are two different cases, and a person is subjected to the exact same serious injury, but one with intention and one recklessly. Will the offenders get the same minimum sentence? Will they receive the same sentence because there is no differentiation at the minimum level?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — As I indicated, the seriousness of the offence turns on many things, including the severity of the injury. The intentional case would, we expect, receive a longer sentence than the reckless case. However, in both cases the sentence will be at least four years.

Clause agreed to; clauses 2 and 3 agreed to.

Clause 4

Ms PENNICUIK (Southern Metropolitan) — This is one on which I have given notice to the minister, which is under clause 4 new sections 15A and 15B. I am looking in particular at the new sections 15A(2)(b) and (2)(c), and these are reflected in the new sections 15B(2)(b) and (2)(c), so I will just ask about them once. These particular provisions suggest that one of the factors to take into account for causing injury in circumstances of gross violence would be:

> (2)(b) the offender in company with 2 or more other persons caused the serious injury;

or —

> (2)(c) the offender participated in a joint criminal enterprise with 2 or more other persons in causing the serious injury.

The effect of those is that there have to be at least three people involved. That was given to the Sentencing Advisory Council to look at in terms of the terms of reference, but my question is: why is it not with one or more persons — that is, so there is the offender and another person — as in two or more people? In fact it is the offender and two or more people, so that is the offender plus two others. It can be the offender on their own, with the other criteria, or the offender in the company of two or more people but not one or more people. It seems to me to be an anomaly if you are going to put in this regime and I would just like some clarification on that.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The government's stated commitment is that gross violence would include where an offender engages in a violent attack as part of a gang of three or more. This means the offender and two additional people. However, all members of the gang will potentially be liable to be charged with the gross violence offences.

Ms PENNICUIK (Southern Metropolitan) — I thank the minister, and I note that the Sentencing Advisory Council advised against using the word 'gang' in legislation, because that would bring into play a whole lot of other issues that you might not want to bring into play, and it may characterise a group of people in a way in which they may not need to be characterised. I just wonder why two people who go out intentionally to cause injury are not caught up here under the new section 15A? They are not caught up because it has to be three. It just seems to be a bit of a gap.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The advice I have is that the government's policy position is in terms of a violent attack as part of a gang of three or more, notwithstanding, as I indicated, that all members of the gang potentially will be liable to be charged with gross violence offences in any event.

Ms PENNICUIK (Southern Metropolitan) — I think the minister would be better advised to call them a group of people rather than a gang, because that is a word that the Sentencing Advisory Council said should not be used, because obviously three friends are not necessarily a gang and are not necessarily part of a gang. Nevertheless and be that as it may, that is something the courts will have to grapple with in terms of what is being put forward in this bill along with a whole lot of other problems it is going to lead to in the courts.

My next question on clause 4 again is regarding the new sections 15A and 15B. It applies identically to the two sections, which relate to intentionally or recklessly causing injury. I make reference to new section 15A(2)(a), which, for the benefit of the minister, is on page 4. It says 'the offender planned in advance to engage in conduct and at the time of planning', and it goes on to say that the offender having intended that the conduct would cause serious injury, the offender was reckless, or that a reasonable person would have foreseen that the conduct would be likely to result in serious injury.

If we look on page 6 at new section 15B(2)(a), we see that exact same set of words is also applied to recklessly causing serious injury — that is, 'the offender planned in advance to engage in conduct and at the time', and 'the offender intended that the conduct would cause a serious injury', 'the offender was reckless as to whether the conduct would cause a serious injury', or 'a reasonable person would have foreseen' this. The Sentencing Advisory Council advised that the phraseology around 'planning in advance' and 'intending' not be applied to the offence of recklessly causing serious injury with gross violence because of the lack of intent. Intentional means you planned it in advance — you intended to do something — and the second-reading speech and explanatory memorandum talk about a person going out with the intention of causing serious injury, whereas I would have thought recklessly causing serious injury does not have that level of intent. Why has the government not taken up the recommendation of the Sentencing Advisory Council to take planning and the provision of planning in advance to engage in conduct and intending to cause serious injury out of the offence of recklessly causing serious injury?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thank the member for her question, which she put to me a number of days ago. I can advise the chamber and Ms Pennicuik that the bill refers to two different points in time: the time of planning and the time when serious injury is caused. A person's state of mind when they plan an assault can be different from their state of mind when they are committing the assault. At the time the assault is planned, perhaps some days in advance, a person could intend to cause serious injury, but the prosecution might only be able to prove that the person was reckless about the serious injury caused when the assault actually happened. A person recklessly causes serious injury when, at the time they perform the act that causes the serious injury, they foresee the probability that the act will result in serious injury and they do it anyway. The government has formulated these offences so that they capture all the potential combinations of psychological elements that might arise.

Ms PENNICUIK (Southern Metropolitan) — I would only comment that there is no differentiation between those offences of intentionally and recklessly causing serious injury. Causing serious injury intentionally in circumstances of gross violence is under new section 15A, and causing serious injury recklessly in circumstances of gross violence is under new section 15B. Both contain the provision that gross violence involves the offender planning in advance to engage in violent conduct and that at the time of planning the offender intended that the conduct would cause a serious injury. I can understand that in terms of intentionally causing serious injury, but I cannot understand it in terms of recklessly causing serious injury. I think the minister's answer actually supports what I am saying — that there is a difference between the two — but that is not reflected in the bill.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The intentional offence requires that, at the time of the assault, the serious injury is caused intentionally. The recklessness offence requires that at the time of the assault the serious injury is caused recklessly. As I outlined earlier, there are two different points in time — the time of planning and the time when the serious injury is caused. In terms of the initial question, I think I have outlined the government's view on why we have both those offences outlined in the bill.

Ms PENNICUIK (Southern Metropolitan) — I think the person in the street would agree with what the minister has just said — that intention implies some level of advance planning and intention, and recklessness involves a lesser degree of those — but that is not what is in the bill. The definition of gross violence under both those offences includes planning in advance and intending to cause serious injury. I think the courts are going to get caught up in this. It is just another flaw in the bill, so I will leave it at that on this particular issue.

Clause agreed to; clauses 5 to 8 agreed to.

Clause 9

The DEPUTY PRESIDENT — Order! Ms Pennicuik to move her amendment 1, which I believe is a — —

Ms Mikakos — Can we ask questions first?

The DEPUTY PRESIDENT — Order! Whatever members want to do. Sometimes it is better to have the amendments on the table, but if members wish to proceed in that order — —

Ms Mikakos — I do not mind.

Ms Pennicuik — I am happy for there to be questions first.

The DEPUTY PRESIDENT — Order! Okay. Ms Mikakos on clause 9.

Ms MIKAKOS (Northern Metropolitan) — Thank you, Deputy President. I just thought it would be useful to the house to have some explanation of the operation of this clause before we consider Ms Pennicuik's amendments. The issues I want to raise relate to the operation of the dual-track system, which concerns 18 to 20-year-olds. As I said the other day, the bill very clearly excludes offenders aged under 18. However, it does make some provisions in relation to the dual-track system, which in particular circumstances provides for 18 to 20-year-olds convicted of serious offences to receive custodial sentences in a youth justice centre instead of in an adult prison. I want to tease out how the existing dual-track system sits with the changes that are proposed under this bill.

As I understand it, section 32 of the Sentencing Act 1991 currently provides that a young person between 18 and 20 years of age can be considered for a youth justice centre custodial sentence if the court believes that there are reasonable prospects for the rehabilitation of the young offender or that the young offender is particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison. In making this determination the court must have regard to the nature of the offence and the age, character and past history of the young offender.

I now draw the minister's attention to the provisions of the bill. Under paragraph (b)(ii) of subsection (2) of proposed new section 10A to be inserted into the principal act by clause 9, the offender will be required to prove on the balance of probabilities that he or she has a particular psychosocial immaturity that has resulted in a substantially diminished ability to regulate his or her behaviour in comparison with the norm for persons of that age. I ask the minister, firstly, can he confirm whether the dual-track youth sentencing system will continue to operate under this bill? I ask that question because stakeholders who work with young offenders are concerned about this issue. Secondly, will the change in the test that will be created under this bill exclude some offenders who are currently eligible under the dual-track system under section 32 of the act?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The bill does not adopt the dual-track criteria in its special reasons provisions. This means that offenders aged 18 to 20 who would otherwise be eligible for dual-track sentencing may be subject to the statutory minimum sentence. However, it is anticipated that the special reasons exemption relating to psychosocial immaturity will apply to a number of young offenders who also meet the second limb of the test for dual-track sentencing. These offenders will then be eligible for any sentence, including a period of youth detention through the dual-track pathway.

The DEPUTY PRESIDENT — Order! I ask Ms Mikakos whether her next question is on the same matter.

Ms MIKAKOS (Northern Metropolitan) — Yes, it is related to the same issue.

The DEPUTY PRESIDENT — Order! This is why I wanted to give Ms Pennicuik the opportunity to put her amendment. Her proposed amendment 3 in fact proposes to remove all of the words relevant to this section, and I am concerned we are going to go backwards and forwards on the same issue. I understand Ms Mikakos has already raised the issue and normally I would allow that to continue to its conclusion, but if we are not careful, we will end up going backwards and forwards on the same issue as a set of questions and then on the question of the

amendment. I am going to invite Ms Pennicuik to move her amendments and deal with these issues from her perspective. I believe her proposed amendment 1 is a test for remaining amendments 2 to 7, including the one relevant to this current discussion, so I am inviting a general discussion on all of these issues in relation to clause 9 in allowing Ms Pennicuik to move her amendment 1.

Ms PENNICUIK (Southern Metropolitan) — Thank you, Deputy President. I was quite happy for Ms Mikakos to continue, given she has sat here all this time. The question she has asked goes to the heart of the amendment, and the answer that the minister has given is that the dual-track system does not apply. The effect of my amendment, which I will move in a moment, is to reinstate the sentencing provisions under section 32(1) of the Sentencing Act such that for 18 to 20-year-olds the dual-track system would apply.

Deputy President, if I move the amendment, does it mean that we have to proceed with it without further questioning?

The DEPUTY PRESIDENT — Order! No.

Ms PENNICUIK — I move:

1. Clause 9, page 11, line 3, omit "offence." and insert "offence; or".

I agree that this amendment is a test for the further amendments. Amendment 1 is in fact a technical amendment. The major amendment is in fact amendment 2, which would insert a new paragraph into subsection (2) of proposed new section 10 to be inserted into the principal act by clause 9. Amendment 2 would insert paragraph (c) on page 11, after the third line, with the effect that subsection (1), which provides for custodial sentences for these offences, would not apply to either a person who is under the age of 18 years at the time of the offence, as provided for by paragraph (b), or a young offender — being a person between the ages of 18 and 20 — as provided for in new paragraph (c).

The third amendment would delete the provision that Ms Mikakos just referred to in her questions, at paragraph (2)(b) of proposed new section 10A, which is one of the special reasons the court may look at in terms of not applying the minimum sentence. That exemption is very limited. A young offender must be aged 18 but under 21 and has to prove on the balance of probabilities that he or she has a particular psychosocial immaturity that has resulted in a substantially diminished ability to regulate his or her behaviour in comparison with the norm for persons of that age. That is currently a provision in the Sentencing Act 1991. However, there are other provisions in that act that would allow for a young person to go into the dual-track system. It is a very small window. Liberty Victoria in its submission pointed out that the balance of probabilities test means that offenders have to fulfil the criteria by more than 50 per cent. If a person is only able to prove they fulfil the criteria by 45 per cent or 49 per cent, they miss out.

The current provisions in section 32(1), which I will not repeat because Ms Mikakos has read them into *Hansard*, are broader, and take into account more things about young offenders. The dual-track system is important. I will refer to the Sentencing Advisory Council's report where it states:

> 4.74 The importance of dual track and the need to retain the system for immature and vulnerable 18 to 20-year-olds convicted of gross violence offences were emphasised by a number of stakeholders … Whitelion commented in its submission that inappropriate incarceration can lead to an escalation of offending behaviour, and that the dual-track system provides a means of avoiding the potentially contaminating effect of moving a young, vulnerable person to adult prison … Whitelion also submitted that dual track allows young offenders to serve detention in an environment appropriate for their age, while adult imprisonment would deny the opportunity for 18 to 20-year-old offenders to access support and rehabilitative programs that are available through the youth justice system.
>
> 4.75 The need to retain the system of dual track is also supported by strong evidence that 18 to 20-year-old offenders are uniquely capable of being rehabilitated. The youth parole board statistics suggest that 18 to 20-year-olds sentenced to youth justice facilities have better outcomes than other age groups. The youth parole board's annual report for 2009–10 noted that:
>
> > Three-quarters of clients 18 years or more and four-fifths of those 20 years or more successfully completed parole …
>
> 4.76 This evidence suggests that, as young adults gain maturity, there is a greater rehabilitative potential, reflected by the better outcomes for that cohort than for younger offenders … This rehabilitative potential may be compromised if young offenders are denied access to dual-track sentencing …
>
> 4.77 In order for those offenders to retain access to juvenile detention facilities, a number of stakeholders suggested that youthful offenders aged 18 to 20 who satisfy the eligibility requirements for dual track should be considered cases with special reasons, and so should be exempt from the statutory minimum sentence.

That is why I am moving this amendment. For all the huff and puff about punishing people, the evidence strongly suggests that those in the cohort of 18 to 20 years of age are very capable of reoffending. Giving

them minimum sentences in adult prisons is completely the wrong way to go. My amendments will ensure that 18 to 20-year-olds who fulfil the criteria under current provisions in the Sentencing Act would automatically go into the dual-track system. I commend my amendment.

The DEPUTY PRESIDENT — Order! I appreciate that Ms Pennicuik may well have been prepared for Ms Mikakos to proceed before she moved her amendment, but frankly I was not. One of the privileges of being Deputy President is that you can make those decisions.

Ms MIKAKOS (Northern Metropolitan) — I return to Ms Pennicuik's starting point. She took a particular interpretation of what the minister said in his response to a question I asked earlier. These issues are quite important. I am seeking some clarification as to whether the dual-track system will continue under this bill. I ask the minister to clarify that.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — In response to Ms Mikakos's request for some clarification, I can inform her that the dual-track criteria in section 32 of the Sentencing Act 1991 are broader than the special reasons provisions for 18 to 20-year-olds in the bill. Under section 32 a court may sentence a person aged 18 to 20 at the time of an offence to a period of detention in a youth justice centre rather than an adult jail, and it outlines the criteria. The criteria under section 32 include when the court believes that there are reasonable prospects for the rehabilitation of the young offender or believes that the young offender is particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison.

These criteria are not suitable for the purposes of this bill, which is to target highly culpable, serious and violent offending. Special reasons provisions in the bill recognise that in some situations a young person's culpability may be reduced by their particular immaturity. The dual-track criteria is too broad and would capture more young people than the special reasons provisions. However, as I indicated earlier, it is anticipated that the special reasons exemptions relating to psychosocial immaturity will apply to a number of young offenders who also meet the second limb of the test for dual-track sentencing. These offenders will then be eligible for any sentence, including a period in youth detention, through the dual-track pathway.

I will go to Ms Pennicuik's position secondly. If the member wants further clarification, I will get the advisers to give further clarification on that.

On the second point Ms Pennicuik raised, gross violence offences, by definition, capture only the most culpable attacks occasioning the most serious of injuries. The statutory minimum sentence of four years will apply to adults who commit acts of gross violence, other than where special reasons exist. The government has given careful consideration to the construction of these special reasons to ensure that in genuinely exceptional cases, courts are able to move away from the statutory minimum sentence. This includes when an adult aged under 21 at the time of the offence can demonstrate a level of psychosocial immaturity that has resulted in a substantially diminished ability to regulate their own behaviour in comparison with the norm for their age. In other words, just being an adult under 21 is not in itself reason to avoid the statutory minimum if the offender is of a maturity we would expect to see in someone of that age.

It is worth taking a moment to reflect upon some of the other things that adults aged 18, 19 and 20 are considered mature enough to do, no questions asked — and certainly we do not see any objection from the Greens. At age 18 you can get a licence, fly a plane, buy alcohol and tobacco, own firearms and go shooting, join the armed forces or the police force, get married, adopt a child, drive a train, work as a security guard at licensed premises and of course you can get to vote for the Greens. Yet, despite being mature enough to do all these things, it appears the position put forward by Ms Pennicuik is that the very same mature adults should not be held accountable when they inflict the most horrendous violence on innocent victims.

The government does not share this view and is determined to hold to account those adults who engage in the most sickeningly violent attacks in the most culpable of circumstances. Like so many Victorians, government members are sick and tired of seeing innocent victims inflicted with life-threatening injuries and permanent disabilities at the hands of violent thugs.

Whilst we understand this is a tough measure, as a government we make no excuses for that. Other than where truly special reasons exist, adults convicted of acts of gross violence absolutely should be put behind bars for a minimum of four years. The special reasons provisions contained in the bill properly and intelligently address circumstances warranting special consideration, including those of adult offenders aged under 21. For those reasons we will be opposing the amendments put forward by the Greens.

Ms PENNICUIK (Southern Metropolitan) — I have to say that during the committee stage of a bill I do not engage in political arguments; I try to stick to the

technicalities of the bill. I certainly do not have goes at the Liberal Party or carry on with political rhetoric — ever — in a committee stage of a bill. I am very aware of what people who are aged 18 to 21 are able to do under the law. The minister is incorrect when he asserts that we are saying a person aged 18 to 21 should not receive a sentence of confinement. In fact section 32(1) of the Sentencing Act 1991 is about when an offender receives a sentence of confinement. It is about those young offenders being then put through the dual-track system and confined in a youth justice detention centre, not that they will not be confined or that they will not get a custodial sentence. That is not what we are saying. That is not what the Sentencing Act that exists now in our statutes is saying.

I pointed out before in support of my amendment that in terms of outcomes for the community, that particular cohort of 18, 19 and 20-year-olds is particularly ripe for rehabilitation, and the best thing for the community in terms of there being no more gross violence is to rehabilitate people. The Sentencing Act, as it stands, looks particularly at the nature of the offence and also the age, character and past history of the young offender, and that would come into play particularly if there were no history of violence by that offender ever before, so if it were their first offence.

It is not the case, as the minister was trying to imply with the political speech he just gave, that we are saying young offenders who are convicted of a gross violence offence should not be confined. We are saying that should be done under the dual-track system, through the juvenile justice centre regime, which would give every prospect that a young offender will be rehabilitated and not offend again, and surely that is the outcome everybody wants to see.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I thought I would go back to the query by Ms Mikakos before I go back to Ms Pennicuik's, because I do not think I was clear enough on the issue that Ms Mikakos asked about. Where the offender meets the special reasons criteria they may then be eligible for the dual track. The statutory minimum sentence does not apply if there is a special reason as outlined. The judge can then impose any sentence available under the Sentencing Act as it currently stands.

The DEPUTY PRESIDENT — Order! The minister had not responded to Ms Pennicuik's query either, so I think we should go through the process properly and allow him to respond to that. Then I will allow Ms Mikakos to ask another question.

Hon. R. A. DALLA-RIVA — I will make sure we conclude with Ms Mikakos before I move on to Ms Pennicuik.

In terms of Ms Pennicuik's query, the government has given special consideration to the construction of these special reasons, as I indicated, to ensure that in genuinely exceptional cases the courts are able to move away from the statutory minimum sentence. As I said, an adult aged 21 at the time of the offence who can demonstrate a level of psychosocial immaturity that has resulted in a substantially diminished ability to regulate their own behaviour in comparison with the norm for their age will then fall within the dual track. However, the government does not shy away from the position it takes in the Parliament today on the statutory minimum sentence. I might also add that 18 to 20-year-olds will still be rehabilitated but over a period of four years in an adult prison, should they fall within the criteria as outlined in the bill.

Ms MIKAKOS (Northern Metropolitan) — I thank the minister for that clarification, because I think we have now got to the heart of the matter I was concerned about and the confirmation that in some cases 18 to 20-year-olds will be eligible for the dual track provided they meet the special reasons test set out in the bill.

I agree with Ms Pennicuik that having a political debate at this point is not particularly helpful. I point out that the dual-track system continues to operate under the minister's government and that there are currently 18 to 20-year-olds, despite the fact that they are adults, who are serving their custodial sentence in a youth justice facility. That position has had bipartisan support over a number of years in Victoria, and in fact Victoria is regarded as an innovator in responding to youth crime because of initiatives like the dual-track system.

The Labor opposition agrees that when we are talking about serious, violent offences and we are talking about adults in the judicial system as it stands currently, judges and magistrates have the ability to sentence those adults to serve their sentence in a prison environment, but they have the ability to apply all the tests in the Sentencing Act 1991 that I mentioned earlier and make a judgement that a young person, who is an adult, would be best placed in a youth justice facility.

With that explanation, and on the understanding that I made it very clear in my contribution during the second-reading debate, the bill retains judicial discretion ultimately. Judges will decide what the appropriate sentence is. I also point out that in her amendments Ms Pennicuik has not sought to introduce

into new section 10A a test similar to that in section 32 of the Sentencing Act but has rather sought to entirely delete those provisions. For all those reasons the Labor opposition will not be supporting Ms Pennicuik's amendments.

Ms PENNICUIK (Southern Metropolitan) — I hear what Ms Mikakos is saying. I stand by my amendments. I had long conversations with parliamentary counsel about how best to achieve what I am trying to achieve. I commend my amendments to the house.

The DEPUTY PRESIDENT — Order! The question is that Ms Pennicuik's amendment 1 to clause 9 be agreed to. In putting the question I advise the house that this is a test for Ms Pennicuik's subsequent amendments 2 to 7.

Committee divided on amendment:

Ayes, 3

Barber, Mr (*Teller*)	Pennicuik, Ms (*Teller*)
Hartland, Ms	

Noes, 36

Atkinson, Mr	Lenders, Mr
Broad, Ms	Lovell, Ms
Crozier, Ms	Mikakos, Ms
Dalla-Riva, Mr	O'Brien, Mr
Darveniza, Ms	O'Donohue, Mr
Davis, Mr D.	Ondarchie, Mr (*Teller*)
Davis, Mr P.	Pakula, Mr
Drum, Mr	Petrovich, Mrs
Eideh, Mr	Peulich, Mrs
Elasmar, Mr	Pulford, Ms (*Teller*)
Elsbury, Mr	Ramsay, Mr
Finn, Mr	Rich-Phillips, Mr
Guy, Mr	Scheffer, Mr
Hall, Mr	Somyurek, Mr
Jennings, Mr	Tarlamis, Mr
Koch, Mr	Tee, Mr
Kronberg, Mrs	Tierney, Ms
Leane, Mr	Viney, Mr

Amendment negatived.

Committee interrupted.

PERSONAL EXPLANATION

Ms Mikakos

Ms MIKAKOS (Northern Metropolitan) — I desire to make a personal explanation. I take this opportunity, given that everyone is in the house, to refer to some matters from earlier in the day and to the comments I made before lunch. I wish to withdraw any suggestion that Mr Philip Davis made any rude gestures to me earlier today. If I was not clear about that earlier, perhaps he misunderstood, but I want to make it abundantly clear to him and to the house that I have withdrawn any such suggestion that any such gesture was made.

CRIMES AMENDMENT (GROSS VIOLENCE OFFENCES) BILL 2012

Committee

Resumed; further discussion of clause 9.

Hon. M. P. PAKULA (Western Metropolitan) — I am mindful of the hour, but it is important in the circumstances to place on the record some matters the opposition raised with the government during the briefings. Clause 9, which talks about custodial sentences that have to be imposed for gross violence offences, fixes a non-parole period of not less than four years and creates some exceptions through new section 10A — that is, special reasons relevant to sentencing for gross violence offences. There are a range of specific exceptions, and at paragraph 10A(2)(e), on the bottom of page 12 of the bill, there is a more general exception for substantial and compelling circumstances.

At the beginning of page 13, substantial and compelling circumstances are further defined as being circumstances where the court has regard to the Parliament's general intention that there be a non-parole period of not less than four years and to whether the cumulative impact of the circumstances of the case would justify departure from the minimum non-parole period. Is the opposition correct in its understanding that the cumulative effect of the provisions I have referred to is that, if the judge thinks that in all the circumstances of the case imposing a non-parole period of four years or more would lead to a miscarriage of justice, the judge is not compelled to impose that non-parole period?

Committee interrupted.

DISTINGUISHED VISITORS

The DEPUTY PRESIDENT — Order! Unfortunately the Honourable Bill Forwood has just left the gallery, so I missed the opportunity to welcome my former sparring partner in general business debates. I hope he gets to read *Hansard*.

CRIMES AMENDMENT (GROSS VIOLENCE OFFENCES) BILL 2012

Committee

Resumed; further discussion of clause 9.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — This is an acknowledgement — Mr Pakula is correct — that despite our best endeavours it is not possible to legislate for every eventuality. The clause retains the court's discretion to respond appropriately in these cases.

Hon. M. P. PAKULA (Western Metropolitan) — I thank the minister for the acknowledgement that the understanding I put to him is fundamentally correct. I have only one other question. Is it not the case right now, prior to the passage of this legislation, that if the court believes that in all the circumstances a sentence of more than four years is appropriate then the court will deliver a sentence of more than four years, and that if in all the circumstances the court believes that a sentence of less than four years is appropriate then the court will deliver a sentence of less than four years? Is that not the case today?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The answer is no. The bill requires the court to impose a statutory minimum penalty of four years. The special reason will only apply when the court has balanced the compelling circumstances against Parliament's intention that the offender receive a minimum sentence of four years jail. The bill puts offenders on notice by delivering certainty in sentencing, and we have seen the dramatic positive effect such provisions have had in deterring violent crime in other jurisdictions.

Hon. M. P. PAKULA (Western Metropolitan) — I am a bit confused, because the minister answered, 'No', and then made reference to what the situation will be after the bill is passed. My question was about the situation today — that is, the situation prior to the bill being passed. My question was quite simple: is it not the case today that if a judge thinks an offence is worthy of more than four years jail, they can sentence the offender to more than four years jail, and if a judge thinks an offence is worthy of less than four years, they can sentence the offender to less than four years? The minister's answer was no. Is the minister telling the chamber that that is not the circumstance today?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I am talking in the context of the bill before the committee. This bill will require the court to impose a statutory minimum penalty of four years and, as I have indicated, the special reasons will only apply when the court has balanced the compelling circumstances against Parliament's intention that offenders receive a minimum sentence of four years jail.

Hon. M. P. PAKULA (Western Metropolitan) — I understand that. In order to understand the effect of the bill it is important to understand the current situation, and I am asking the minister about the situation prior to the bill passing. If it is the minister's position that he is not prepared to answer any questions about the circumstances as they are today — prior to the passage of this bill — we could save some time by him simply saying that. My question, however, is: is it not the case that today if the court believes the offence is worthy of a sentence greater than four years jail, that will be the sentence, and if the court believes the offence is worthy of a sentence less than four years jail, that will be the sentence? I am not asking about the circumstance after the bill is passed; I am asking about the situation as it stands now.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The current sentencing framework allows the level of variability to which Mr Pakula refers. However, the bill will now put offenders on notice by delivering certainty in sentencing. I might also add there is no statutory minimum sentence on the statute books today, and this bill will bring a change. Judges now have a largely unfettered discretion. After the bill becomes law, the courts will be bound by the statutory minimum sentence unless a special reason is found.

Hon. M. P. PAKULA (Western Metropolitan) — I thank the minister, but it is the case, is it not, that whether or not a special reason exists is at the discretion of the judge?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — The bill specifies that when considering evidence as to whether substantial and compelling circumstances exist the court must have regard to Parliament's intention that the sentence that should ordinarily be imposed for gross violence offences is a jail sentence with a minimum non-parole period of four years, and it must be satisfied that the cumulative impact of the relevant circumstances of the case justifies a departure from that intention.

Hon. M. P. PAKULA (Western Metropolitan) — Just like now.

The DEPUTY PRESIDENT — Order! I call the minister.

Hon. M. P. Pakula — It wasn't a question.

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I know it was not a question, but I have to respond: there is no statutory minimum sentence on the statute book today.

Clause agreed to; clauses 10 and 11 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Motion agreed to.

Read third time.

CO-OPERATIVES NATIONAL LAW APPLICATION BILL 2013

Introduction and first reading

Received from Assembly.

Read first time for Hon. M. J. GUY (Minister for Planning) on motion of Hon. R. A. Dalla-Riva; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Hon. M. J. GUY (Minister for Planning), Hon. R. A. Dalla-Riva 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 Co-operatives National Law Application Bill 2013.

In my opinion, the Co-operatives National Law Application 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 purposes of this bill are to:

provide for the application of a national law relating to the formation, registration and operation of cooperatives; and

repeal the Co-operatives Act 1996 and to make related amendments to other acts.

Application of non-Victorian law

Clause 4 of the bill declares that the Co-operatives National Law (CNL), being the appendix to the Co-operatives (Adoption of National Law) Act 2012 (NSW) (subject to clause 6 of the bill which provides that the CNL does not apply to or in respect of a cooperative housing society within the meaning of the Co-operatives Housing Society Act 1958, except as provided by the local regulations), applies as a law of this jurisdiction, and has effect as if it were an act. Accordingly, section 32 of the charter act will apply to the CNL in Victoria, and the human rights impacts of the CNL are addressed in this statement of compatibility.

The introduction and operation of the CNL is managed via the Australian uniform cooperatives legislative agreement. The intergovernmental agreement provides that the Ministerial Council on Consumer Affairs will be responsible for the consideration and review of the law. The Consumer Affairs Legislative and Government Forum will be responsible for carrying out the functions of the Ministerial Council on Consumer Affairs under the agreement. Victoria will participate both on the ministerial council and in the forum and, through its representatives, will ensure that any future amendments to the CNL are developed in a manner consistent with the charter act.

Additionally, a number of sections of the CNL declare certain matters to be applied corporations legislation matters for the purposes of the Corporations (Ancillary Provisions) Act 2001. The effect of this is that certain provisions of the Corporations Act 2001 also apply to cooperatives as Victorian law. The human rights impacts of these provisions are consequently also addressed in this statement of compatibility.

Human rights issues

Privacy and freedom of movement

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. An interference with privacy will not be unlawful if it is permitted by law that is accessible and precise. An interference with privacy will not be arbitrary if the restrictions it imposes are reasonable, just and proportionate to the end sought.

Requirements to provide information and keep registers

Various sections of the CNL engage the right to privacy by requiring persons to provide specified information of relevance to the affairs and activities of cooperatives. For example, section 92 requires persons, when directed by a cooperative, to disclose certain information about relevant interests and instructions in relation to shares, section 208 provides for the declaration of interests by directors of a cooperative and section 427 provides that an explanatory statement must include information as to the material interests of directors.

Other sections in the CNL engage the right to privacy by requiring cooperatives to keep certain registers and make those registers available for inspection. Specifically, sections 212 to 214 of the CNL provide that a cooperative must keep certain registers (including, for example, registers of directors, members, cancelled memberships, loans and deposits, and notifiable interests), and make such registers available for inspection by members at all reasonable hours.

These sections of the CNL may operate to require or enable the disclosure of personal information, such as names and addresses and financial information. However, these sections are directed at the important purpose of maintaining the integrity and internal transparency of cooperatives, and ensuring that the interests of members are protected and consequently do not arbitrarily limit the right to privacy. Appropriate limits on these requirements include, for example, that the registrar may exempt a person from complying with a direction to disclose details of share interests if the direction is unjustified, and that a person does not have to comply with the direction if the direction is vexatious (sections 92(6) and 92(7)). In relation to registers, section 215 prohibits the use or disclosure of any register information for the purpose of contacting persons whose details are on a register, except in specified circumstances. These limits ensure that any disclosure of personal information will not be unlawful. Additionally, persons participating in this regulatory context would have a low expectation of privacy in relation to such information.

In my view, these sections are therefore neither unlawful nor arbitrary and do not limit the right to privacy.

There are also various applied provisions of the Corporations Act 2001 which require disclosure of personal relationships (e.g. family relationships) and matters that could give rise to conflicts of interest, which may involve private information (see, for example, sections 283AA–283HB). However, for the reasons provided above in relation to the provisions of the CNL, these requirements for personal information to be provided are lawful and not arbitrary.

Inspection and investigation powers

Parts 6.4 and 6.5 of the CNL provide various inspection and investigation powers in relation to the affairs and activities of cooperatives. Section 493 provides that an investigator has and may exercise all the functions of an inspector.

Section 498 provides that inspectors may enter a place with the consent of the occupier or where authorised by warrant, but also if it is simply a place at which the affairs or activities of a cooperative are managed or conducted. Sections 499 and 504–506 set out detailed requirements and safeguards in relation to obtaining consent and warrants respectively. Sections 501 and 502 provide that, upon entry, inspectors have various powers, including requiring persons to answer questions and produce documents. Section 511 enables an inspector to require a person to state their name and address in certain circumstances. Section 521 provides investigators with powers to require a person to produce documents and appear before the investigator for examination.

While the exercise of these inspection and investigation powers may interfere with the privacy of individuals in some cases, either by requiring individuals to disclose personal information or interfering with the private sphere of individuals through the exercise of entry powers, any such interference will not be arbitrary. These inspection and investigation powers are directed to obtaining information relevant to the affairs of cooperatives, for the overall purpose of monitoring or enforcing compliance with the CNL (and enabling proceedings to be initiated in circumstances where there have been breaches of the CNL). As well as the powers being appropriately circumscribed and linked to their purpose, the CNL contains appropriate safeguards in relation to these powers and the information that may be obtained during the course of inspections and investigations. For example, section 495 provides that inspectors may exercise powers in relation to a person only if the inspector first (or at the first reasonable opportunity) produces their identity card or has it clearly displayed. Sections 502 and 521 provide that while an inspector or investigator retains possession of a relevant document, the inspector or investigator must make the document available to any person who would otherwise be entitled to inspect it, in order to inspect or copy it. Sections 517 and 523 provide that an Australian legal practitioner may refuse to produce a document on the basis that the document contains privileged information.

Further, section 537 provides that persons engaged in the administration of the CNL must not record, use or divulge any information obtained in the course of the administration, other than as provided by the exceptions set out in that section. The bill relevantly provides that for the purpose of section 537 of the CNL, information may be divulged to various specified persons and bodies (for example, the minister, a Victorian court or a royal commission). Such limitations on permitted disclosures protect the confidentiality of information and ensure that any personal information may only be used in connection with the purposes for which it was obtained. These safeguards ensure that the exercise of these powers will be lawful.

There are also applied provisions of the Corporations Act 2001 which engage the right to privacy in this context. Section 310 of that act provides auditors with access rights to a cooperative's books and other information. Sections 312 and 323A contain similar requirements. Section 530C of the Corporations Act 2001 enables the court to issue a warrant to search for and seize property or books of a cooperative being wound up if satisfied that a person has concealed or removed property of the cooperative, or concealed, destroyed or removed books of the cooperative, or is about to do so while sections 596A and 596B enable the court to summon certain individuals to give information about the examinable affairs of the cooperative.

In my view, restrictions on privacy that may be involved in the exercise of these inspection and investigation powers are neither unlawful nor arbitrary. They are reasonable restrictions that enable the regulatory regime to be properly overseen and enforced. These provisions therefore do not limit the right to privacy.

Freedom of movement

It should be noted that some of these inspection and investigation powers may also engage freedom of movement as protected by section 12 of the charter act. In particular, sections 500 and 521 of the CNL enable inspectors and investigators to require persons to attend personally in order to answer questions, and sections 596A and 596B of the Corporations Act 2001 (discussed above) grant similar powers to courts. To the extent that freedom of movement may be limited by these provisions, any such limits are reasonable and justified under section 7(2) of the charter act. As set out above, these powers are for the stated purposes of monitoring and enforcing compliance with the CNL, are restricted in their application (in terms of both the persons who may be required to appear, and the subject matter that they may be asked about), and have appropriate safeguards attached to them.

For these reasons, I am satisfied that these sections of the CNL that engage the right to privacy and freedom of movement are compatible with the charter act.

Certain other applied provisions of the Corporations Act 2001 engage the right to freedom of movement. Section 486B enables the court to issue warrants in certain circumstances, including a warrant for the arrest of a person where the court is satisfied that the person is about to leave this jurisdiction, or Australia, and warrants that prevent the concealment, removal or destruction of evidence and property. Section 487 also provides the court with power to order the arrest or detainment of a person in similar circumstances.

These sections impose a reasonable limitation on freedom of movement that is necessary to ensure persons cannot avoid the provisions of the Corporations Act 2001 by fleeing the jurisdiction, or concealing or destroying property or evidence. There are no less restrictive means that are reasonably available to achieve this purpose. I therefore consider that these provisions are compatible with the right to freedom of movement.

Freedom of expression

Section 15 of the charter act protects a person's right to freedom of expression, which includes the right not to impart information. The right to freedom of expression is not absolute; lawful restrictions reasonably necessary to protect the rights of other persons, or for the protection of public order and public health, are permissible under the charter act.

Restrictions on advertising or publishing certain material

A number of applied provisions within the CNL and the Corporations Act 2001 place restrictions on advertising and publicity for certain matters. For example, sections 69 and 466 of the CNL restrict advertising, or publishing a statement that directly or indirectly refers to, an offer, or intended offer, of shares in a distributing cooperative unless a current disclosure statement relating to the shares is lodged or registered with the registrar. The provisions do not apply to persons who publish an advertisement or statement in the ordinary course of a business of publishing a newspaper or magazine, or broadcasting by radio or television (unless that person knew or had reason to suspect that the advertisement or statement breached the CNL). Sections 339 and 467 place similar restrictions on advertisements or statements regarding an offer or intended offer of debentures or cooperative capital units. Section 734 of the Corporations Act 2001 also restricts advertising personal share offers where no disclosure documents are required, and imposes requirements on the advertising of other share offers aimed at ensuring that people are aware of and directed to the relevant disclosure documents.

In my view, these restrictions on freedom of expression fall within the internal limitations on the right, in that they are reasonably necessary to protect the rights of other persons and public economic order. The restrictions on advertising ensure that financial products cannot be advertised without potential investors having access to sufficient information to be able to make informed decisions. This ensures that financial products are sold in accordance with the provisions of the CNL and the Corporations Act 2001 that protect the rights of potential purchasers. This, in turn, supports the broader public interest in a transparent and reliable market in shares and debentures. I therefore consider that these provisions are compatible with the right to freedom of expression under section 15 of the charter act.

Prohibitions on misleading, deceptive, fraudulent or dishonest conduct

A range of provisions throughout both the CNL and the applied provisions of the Corporations Act 2001 impose prohibitions on conduct or statements that are misleading, deceptive, fraudulent or dishonest. Some examples of these provisions include:

> section 377 of the CNL, which provides that a person must not make a public announcement relating to a proposed takeover of a cooperative if the person knows the announcement is false or is recklessly indifferent as to whether it is true or false;
>
> section 538(1) of the CNL, which provides that a person must not make, or authorise the making of, a statement knowing it to be false or misleading in a material particular;
>
> section 590 of the Corporations Act 2001, which makes it an offence to make fraudulent representations, or engage in fraudulent conduct, relating to the affairs of certain bodies;
>
> section 1041D of the Corporations Act 2001 prohibits the dissemination of statements or information to the effect that the price for trading in financial products will be affected because of a transaction, or other act or thing done, if the transaction, act or thing done contravenes provisions of the act, and the person who is disseminating the statement or information stands to benefit from the dissemination;
>
> section 1041E of the Corporations Act 2001, which prohibits intentionally or recklessly making of false or misleading statements if it is likely that the statement will affect trading prices or will induce a person to dispose of, acquire, or apply for financial products; and
>
> section 1043A(2) of the Corporations Act 2001, which prohibits the communication of 'insider information' where the person to whom it is communicated is likely to apply for, acquire or dispose of financial products to which that information is relevant.

These clauses may engage the right to freedom of expression by curtailing a person's right to express or impart information that is false, misleading, fraudulent or dishonest. However, it is unlikely that the right to freedom of expression extends to a right to false or misleading expression. Even if the right does extend to such forms of expression, I consider that the relevant clauses in the bill fall within the internal limitations on the right to freedom of expression (noted above). These prohibitions on false and misleading conduct, information and representations are reasonably necessary to protect public order and the rights of others.

Prohibitions on other kinds of expression

A number of sections of the CNL and the applied provisions of the Corporations Act 2001 impose miscellaneous restrictions on certain kinds of expression in specified circumstances. For the reasons set out below, I consider that each of these sections fall within the internal limitations on

the right and are therefore compatible with the right to freedom of expression.

Section 537 of the CNL is a secrecy provision which provides that persons involved in the administration of the CNL must not, other than for specified purposes, make use of or divulge information obtained in the course of the administration. This limit on freedom of expression is necessary to protect the rights of those who have provided information under the regulatory scheme against inappropriate use of that information.

Section 542 of the CNL enables the Supreme Court to issue injunctions in certain circumstances restraining a person from engaging in conduct that involves or relates to a contravention of the CNL. This power is reasonably necessary to protect public order by enabling the enforcement of the regulatory regime, and to protect the rights of other persons which might be compromised by a contravention of the CNL.

Section 736 of the Corporations Act 2001 prohibits 'hawking' of securities, by providing that, with some limited exceptions, a person must not offer securities for issue or sale in the course of an unsolicited meeting or telephone call. This restriction on the right of freedom of expression is reasonably necessary to protect the rights of persons not to be harassed or financially exploited by persons involved in the sale of securities.

For the reasons given above, I consider all these provisions to be compatible with the right to freedom of expression in section 15 of the charter act.

Presumption of innocence

Evidential onuses

A number of provisions in the bill impose an evidential onus upon a defendant in criminal proceedings.

Many of the offences in the CNL are offences of strict liability. Section 550 provides that the defence of mistake of fact is available in relation to these offences. These offences thus place an evidential burden on an accused to point to evidence to show that the defence of mistake of fact is available to him or her. There are a number of applied sections of the Corporations Act 2001 (sections 307B(5), 324BB(4), 324BC(4), 324CC(6), 324G, 324DD, 438C, 446C, 471A, 475, 530A and 530B) which provide a defence for strict liability offences and, similarly to section 550 of the CNL, impose an evidential onus on the accused to make out that defence.

Sections 69, 339, 466 and 467 of the CNL provide that it is an offence to advertise or publish a statement that directly or indirectly refers to the matters specified in the provisions. Each provision also provides that a person does not contravene these sections by publishing an advertisement or statement if they publish it in the ordinary course of a business of publishing a newspaper or magazine or broadcasting by radio or television, and the person did not know and had no reason to suspect that its publication would amount to a contravention of the relevant section. This exemption places an evidential burden on an accused to point to evidence that he or she published the statement or advertisement in the ordinary course of business and had no reason to suspect that its publication would contravene the relevant section.

Section 92(1) provides that a person given a direction under section 91 must disclose (amongst other things) the name of other persons who also have a relevant interest in their shares, and the names of people who have provided instructions to them about the shares or interests. However, section 92(2) provides that these names only need to be disclosed to the extent to which it is known to the person required to make the disclosure. Section 92(3) provides that a defendant bears an evidential burden in relation to the matter in section 92(2).

Section 142(1) provides that a person who inspects books on behalf of an applicant under section 140 must not disclose information obtained during the inspection. Section 142(2) provides that (1) does not apply to the extent that the disclosure is to the registrar or the applicant. Section 142(4) provides that a defendant bears the evidential burden in relation to the matter in section 142(2).

Section 181(2) provides that a person must not act as a director or directly or indirectly take part in, or be concerned with the management of, a cooperative if the person is a disqualified person in relation to the cooperative. Section 181(3) provides that it is a defence if the person had permission or leave to manage corporations or cooperatives and their conduct was within the terms of that leave. This places an evidential onus on a defendant to raise evidence that shows that the person had permission or leave.

Sections 494(3), 507(3), 511, 513(2) and 515 all provide that certain conduct constitutes an offence unless the relevant person has a reasonable excuse. These provisions place an evidential onus on an accused to adduce evidence that he or she had a reasonable excuse.

Section 1043M of the Corporations Act 2001, which is applied, also provides that the defendant in a prosecution for insider trading bears an evidential burden in proving that certain circumstances exist that establish a defence.

Courts in other jurisdictions have generally taken the approach that an evidential onus on an accused does not limit the presumption of innocence. The provisions do not transfer the burden of proof, because once the defendant has adduced or pointed to some evidence, the burden is on the prosecution to prove beyond reasonable doubt the elements of the relevant offences. Consequently, these provisions do not limit the right to the presumption of innocence.

Legal onuses — criminal

The following sections of the CNL place a legal onus upon defendants by requiring them to prove certain matters on the balance of probabilities in order to avoid criminal penalties.

Section 484(3) provides that it is a defence to a charge under section 484(1) (falsification of books) or section 484(2) (records or stores false or misleading material, engages in conduct that results in the destruction, removal or falsification of matter recorded or stored or fails to record or store matter) if the defendant proves that he, she or it acted honestly and that in all the circumstances the act or omission constituting the offence should be excused.

Section 524(1) provides that it is an offence to fail to comply with a lawful requirement of an investigator without showing reasonable cause for the failure. This places a legal burden on an accused to show on the balance of probabilities that he or she had reasonable cause for the failure.

Section 525 provides that, if an inquiry is being held into a cooperative, a person who conceals, destroys, mutilates or alters a document relating to the cooperative, or who sends, or causes to be sent, out of the jurisdiction a document or other property belonging to, or under the control of, the cooperative commits an offence unless it is established the person charged did not intend to defeat, delay or obstruct the inquiry. This provision places a legal burden on an accused to prove on the balance of probabilities that he or she did not intend to defeat, delay or obstruct the relevant inquiry.

Section 429(1) provides that if a provision of division 2 of part 4.4 is contravened, the cooperative concerned and any other person involved in the contravention commits an offence. Section 429(2) provides that it is a defence to a prosecution for an offence under (1) if it is proved the contravention was because of the failure of another person, who is a director of the cooperative or a trustee for debenture holders of the cooperative, to supply for the explanatory statement particulars of the person's interests. Where an individual is involved in the contravention by a cooperative, the defence in section 429(2) allows a person to escape liability if he or she proves that another person failed to supply for the explanatory statement particulars of the person's interests, thus placing a legal burden on a defendant.

A number of applied Corporations Act 2001 provisions also impose legal burdens on defendants seeking to establish defences in prosecutions under the act.

Sections 436DA and 449CA of the Corporations Act 2001 provide that in a prosecution for a failure by an administrator appointed under the act to include a relevant matter in the mandatory declaration of relationships and indemnities, it is a defence if the defendant proves that he or she made reasonable enquiries and had no reasonable grounds to believe that the matter should have been included in the declaration. Section 506A(7) makes similar provision in relation to a failure to include a relevant matter in the mandatory declaration of relationships and indemnities that is required of liquidators appointed under the act.

Section 592 provides defences that must be proved by a defendant in a proceeding for an offence relating to the incurring of a debt where there were reasonable grounds to expect that the cooperative would not be able to pay all its debts as and when they became due. It is a defence if the defendant proves that the debt was incurred without his or her authority or consent, or that, at the time the debt was incurred, the defendant did not have reasonable cause to expect that the cooperative would not be able to pay its debts.

Section 731 provides that a person is not guilty of certain offences relating to misleading or deceptive statements in a prospectus, or omissions from a prospectus, if he or she can prove that he or she made all reasonable enquiries and believed on reasonable grounds that there was no omission from the prospectus nor any misleading or deceptive statements.

Section 732 provides that a person does not commit offence against subsection 728(3) and is not liable under section 729 for a contravention of subsection 728(1), because of a misleading or deceptive statement or an omission in an offer information statement or profile statement, if the person proves that they did not know that the statement was misleading or deceptive or contained an omission.

Section 733 also provides defences to offences relating to misstatements or omissions from disclosure documents if the defendant can prove he or she reasonably relied on information provided by another, or, if he or she is named in a disclosure document, he or she proves that he or she withdrew consent to being named in the disclosure document, or if he or she proves that a new circumstance has arisen since the disclosure document was lodged and he or she was not aware of that circumstance.

By placing a burden of proof on a defendant in relation to criminal offences, these provisions limit the right to be presumed innocent in section 25(1) of the charter act. However, I consider the limits upon the right to be reasonable and justifiable for the following reasons.

The right to be presumed innocent may be subject to limits, particularly where, as here, the offences are of a regulatory nature, and the legal burdens are imposed in the context of creating defences or exceptions which are enacted to enable a defendant to escape liability.

The purpose of imposing a legal burden for these provisions is to ensure the effectiveness of enforcement and compliance with the CNL and the applied provisions of the Corporations Act 2001 by enabling offences to be effectively prosecuted and to thus operate as effective deterrents. The defences and exceptions outlined in these provisions reflect a policy of imposing obligations upon persons who engage in activities in relation to cooperatives to ensure compliance with the CNL.

The provisions ensure persons are held responsible for all breaches that occur, with the exception of those breaches that are proven to have occurred in circumstances beyond a person's control, such as where they did not and could not know of the facts or where they took all reasonable steps to prevent a breach.

The defendants seeking to rely on these defences and exceptions will be persons who are involved with cooperatives, and who are in the business of providing consumer goods or services or not-for-profit services. Thus, they should be well aware of the regulatory requirements relating to cooperatives and, as such, should have processes and systems in place that enable them to effectively meet these requirements. Conversely, it would be difficult and onerous for the Crown to investigate and prove beyond reasonable doubt that the relevant defence or exception did not apply.

Additionally, the limit is imposed only in respect of the defences or exceptions. The prosecution would first have to establish the elements of the relevant offence.

The imposition of a burden of proof on defendants is directly related to the purpose of enabling the relevant offence to operate as an effective deterrent whilst allowing persons to escape liability for breaches which occur due to circumstances beyond a person's control.

Although an evidential onus would be less restrictive than a legal onus, it would not be as effective because it could be too easily discharged. The inclusion of a defence or an exception with a burden on the accused to prove the matters on the balance of probabilities achieves an appropriate balance of all interests involved.

Accordingly, in my view, these sections of the CNL and applied provisions of the Corporations Act 2001 are compatible with the charter act.

Property

Section 20 of the charter act provides that a person must not be deprived of their property other than in accordance with law. This right requires that powers which authorise the deprivation of property are conferred by legislation or common law, are confined and structured rather than unclear, are accessible to the public and are formulated precisely.

Certain provisions of the CNL provide that inspectors and investigators may take and retain possession of relevant documents (sections 502 and 521). These provisions only relate to documents of relevance to the affairs of cooperatives, those documents having been produced or found in the course of inspectors or investigators performing duties in connection with monitoring and enforcing compliance with the CNL. These powers are important to enable inspectors and investigators to properly perform this overall function. The extent to which these powers result in a deprivation of property is limited. For example, sections 502(2) and 521(4) provide that while an inspector or investigator retains possession of a document, the inspector or investigator must make the document available to any person who would otherwise be entitled to inspect it, in order to inspect or copy it.

Section 508 of the CNL also provides that, upon entry to a place, an inspector may seize a thing if the inspector reasonably believes it to be evidence of an offence against the CNL, and seizure of the thing is consistent with the purpose of entry, or if the seizure is necessary to prevent the thing being hidden, lost or destroyed, or used to continue or repeat the offence. These powers are crucial to the ability of inspectors to properly enforce and prevent further breaches of the CNL. The extent to which these powers result in a deprivation of property is limited. In addition to seizure only being authorised in the specific circumstances set out in section 508, section 510 also provides that seized goods must be returned at the end of six months or the end of any subsequent offence proceedings, and otherwise immediately upon the inspector ceasing to be satisfied that its retention as evidence is necessary.

There are also various sections of the Corporations Act 2001 that engage the right to property. For example, section 420B provides that a court may authorise a controller to sell or otherwise dispose of specified property of a corporation, even though it is subject to a security interest that has priority over a security interest in the property that the controller is enforcing. The court may only do so if it is in the best interests of the corporation's creditors and of the corporation, and where the sale or disposal will not unreasonably prejudice the rights or interests of the secured part in relation to the prior security interest. Section 437D provides that only an administrator can deal with the property of a cooperative under administration, and that a transaction by another person purporting to be on behalf of such a cooperative is void unless the administrator entered into the transaction or consented to it (or unless it was entered into by order of a court). Section 440B places a range of restrictions on the exercise of third-party property rights during the period in which a cooperative is in administration.

There are a range of other clauses in divisions 6 and 7 of part 5.3A of the Corporations Act 2001 that affect property rights. However, none do so in a manner that could be considered unlawful. Many of the applied provisions of the Corporations Act 2001 concerning administration and liquidation affect property rights to some extent, by, for example, determining who has priority rights over property or debts, by prohibiting the bringing of proceedings in certain circumstances, and by limiting who may deal with particular property. Any limitations are, however, reasonable and lawful.

In light of the purposes of these provisions and the limits and safeguards that apply to them, I consider them to be compatible with the right to property.

Right to equality

Section 114(2) of the CNL provides that a minor is not competent to hold any office in a cooperative. Section 114(3) provides that a member of a cooperative who is a minor is not entitled to vote, but this does not apply to joint membership of a cooperative except where all the joint members are minors. 'Minor' is defined to mean 'an individual who is under the age of 18 years'.

The imposition of restrictions on minors in section 114 is relevant to the right protected by section 8(2) of the charter act as it constitutes direct discrimination on the basis of age. However, I consider that restricting the ability of minors to hold office and vote in relation to cooperatives is a reasonable and justifiable limitation on the right protected by section 8(2).

The purpose of the limitation is to ensure that persons who hold office in cooperatives and who vote on cooperatives have the necessary maturity to engage in the activity. It is important for the proper functioning of cooperatives that voting and holding offices be limited to persons of legal adult age.

The right is limited only to the extent a person aged under 18 years of age is prohibited from holding office and voting (apart from where there is joint membership of the cooperative). A minor is not prohibited from being a member of a cooperative.

I therefore consider that the limitation on the right to equality imposed by section 114 is reasonable and justifiable.

Right not to be compelled to testify against oneself and the right to a fair trial

Section 25(2)(k) of the charter act provides that a person who has been charged with a criminal offence has the right not to be compelled to testify against himself or herself or to confess guilt. It is also an aspect of the right to a fair trial protected by section 24 of the charter act. This right under the charter act is at least as broad as the privilege against self-incrimination protected by the common law. It applies to protect a charged person from 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.

Powers of inspectors

Section 500(1) provides that an inspector may, by notice in the approved form, require a person involved in the activities

of a cooperative to produce relevant documents related to the cooperative, or to attend before the inspector at a time and place stated in the notice and to answer questions put to the person relating to the promotion, formation, membership, control, transactions, dealings, business or property of the cooperative.

Section 501(b) provides that an inspector has the power at a place the inspector is authorised to enter to require a person at the place to produce any relevant document in the person's custody or under the person's control. An inspector may also require a person at the place who is apparently involved in the management or conduct of the affairs or activities of a cooperative to answer questions or provide information. While there is no offence attached to failing to comply with such requirements, it is possible that persons subject to these requirements under sections 500 and 501 would regard themselves as compelled to comply.

Section 503(1) abrogates the common-law privilege against self-incrimination in relation to statements made under requirements in part 6.4 of the CNL as it provides that a person is not excused from making a statement under a requirement under this part on the ground that the statement might tend to incriminate him or her. However, section 503(2) provides a direct use immunity by providing that if the person claims before making the statement that the statement might tend to incriminate him or her, the statement is not admissible in evidence against him or her in criminal proceedings, other than proceedings under this part. Section 503(3) provides that, except as provided for by section 503(2), a statement made by a person in compliance with a requirement under this part may be used in evidence in any criminal or civil proceedings against the person.

Section 507(3) provides that an inspector who enters a place may require a person in the place to give the inspector reasonable help unless the person has a reasonable excuse. Section 507(4) provides that, if the help required to be given relates to answering a question or producing a document other than a document required to be kept under the CNL, it is a reasonable excuse for the person to fail to answer the question, or produce the document, if complying with the requirement might tend to incriminate the person. The common-law privilege against self-incrimination is thus abrogated in relation to documents required to be kept under the CNL, as a person will be guilty of an offence if he or she fails to provide such documents when required, even if the production of the document would incriminate the person.

Powers of investigators

Section 520 provides for the appointment of a person to hold an inquiry into the affairs of a cooperative if the designated authority considers it is desirable to do so for the protection or otherwise in the interests of the public or of members or creditors of the cooperative.

Section 521 provides that an investigator inquiring into the affairs of a cooperative may, by giving an involved person a notice in the approved form, require the person to produce any document of which the person has custody or control and that relates to those affairs, or to give the investigator all reasonable help in the inquiry, or to appear before the investigator for examination on oath or affirmation.

Section 522(2) abrogates the common-law privilege against self-incrimination in relation to answering questions by providing that a person is not excused from answering a question asked by the investigator even if seeking to be excused on the ground of possible self-incrimination. Section 522(3) provides a direct use immunity in relation to the relevant question and answer, so that if a person answers a question after having claimed possible self-incrimination, neither the question or the answer is admissible in evidence in criminal proceedings other than proceedings against section 534 for giving a false or misleading answer to questions or proceedings on a charge of perjury in relation to the answer.

Proceedings not covered by direct use immunity

Sections 503 and 522 abrogate the privilege against self-incrimination. However, both provide a direct use immunity by prohibiting the use of answers from being admissible in evidence against the person in any other criminal proceedings, other than proceedings under this part in relation to section 503, and other than proceedings against section 534 for giving a false or misleading answer to questions or proceedings on a charge of perjury in relation to the answer.

However, no immunity is available in relation to two circumstances. Firstly, in relation to the power of inspectors to require a person to attend before the inspector at a time and place stated in the notice and to answer questions put to the person, no immunity is available in relation to proceedings under part 6.4 of the CNL. Relevant proceedings under part 6.4 are: proceedings in relation to the making of false and misleading statements (section 512); failing to comply with a requirement to produce a document (section 513); and providing false or misleading documents (section 514).

Second, no immunity is available in relation to proceedings against section 534 for giving a false or misleading answer to questions or proceedings on a charge of perjury in relation to the answer (section 522(3)).

In general, false information will generally not be capable of incriminating a person, as a person will generally provide false or misleading information to exculpate himself or herself rather than to incriminate himself or herself. If sections 500 and 521 of the CNL do not require a person to provide incriminating information, answers or documents, then they do not limit the right against self-incrimination in the charter act.

However, it is possible that, by providing a false or misleading answer, a person may incriminate himself or herself, such as if the denial of relevant knowledge itself is capable of forming evidence of the commission of an offence. An example of this can be found in section 512 of the bill which provides a person must not state anything to an inspector the person knows is false or misleading in a material particular.

In such circumstances, sections 500 and 521 could potentially function as limits on the right against self-incrimination which require justification under subsection 7(2) of the charter act.

The purpose of the provision of a direct use immunity in sections 503 and 522 is to enable persons to assist an inspector or an investigator with their functions by answering questions freely and truthfully, without fear of the answers being used against them in criminal proceedings or becoming

subject to a penalty. This then ensures that the inspector or investigator has access to the information necessary in order to properly monitor compliance with the CNL and thus properly regulate the activities of cooperatives. However, the provision of false or misleading information or documents to an inspector or investigator clearly falls outside of the purpose of the immunity. False or misleading information will not assist an inspector or investigator. A person providing such information or documents is accordingly not entitled to the protection under sections 503 and 522.

Derivative use immunity

As outlined above, sections 500, 501 and 521 empower an inspector or investigator to require a person to answer questions or provide documents. In the case of section 521, an investigator may also require the person to appear and give evidence on oath or affirmation. It is an offence to fail to comply with a lawful requirement of an investigator without showing reasonable cause for the failure.

Sections 503 and 522 abrogate the privilege against self-incrimination. However, both provide a direct use immunity by prohibiting the use of answers from being admissible in evidence against the person in any other criminal proceedings (other than the two circumstances discussed above). Neither section 503 nor 522 apply to 'derivative' use, which is when, as a result of the compelled statement, further evidence is uncovered that incriminates the maker of the statement. The lack of a derivative use immunity means that this further evidence is permitted to be used in a criminal prosecution against the person, which arguably limits the right against self-incrimination.

Additionally, sections 324CB, 324CC, 324CE, 324CF and 324CG of the Corporations Act 2001 each abrogate the privilege against self-incrimination for the purposes of those provisions, and provide a direct (but not a derivative) use immunity. These sections all relate to requirements placed on persons involved in an audit of a cooperative to inform the registrar of certain matters, such as where a conflict of interest has arisen. As with the relevant provisions of the CNL, the lack of a derivative use immunity provided under these provisions of the Corporations Act 2001 could arguably involve a limit on the right against self-incrimination.

However, I am of the view that any limitations imposed by the CNL or the implied provisions of the Corporations Act 2001 are reasonable under section 7(2) of the charter act for the following reasons.

The privilege against self-incrimination prohibits the state from compelling an individual to assist in proving that they have committed an offence, prevents oppressive government conduct, ensures the reliability of evidence, and protects privacy. However, a denial of derivative use immunity can be justifiable in a regulatory context.

The statutory purpose underlying the limits to the right against self-incrimination in sections 503 and 522 is to enable inspectors and investigators respectively to monitor compliance with the CNL and to investigate potential contraventions. The effective monitoring of compliance and the investigation of potential contraventions are necessary to adequately protect consumers and clients of cooperatives from detriment resulting from non-compliance with the regulatory scheme. The purpose underlying the limitations in the Corporations Act 2001 provisions is to enable the registrar to have available to it all the information it requires to perform its regulatory functions.

The availability of a derivative use immunity would limit the ability of inspectors and investigators to monitor compliance with, and investigate contraventions of, the CNL. It would also limit the ability of the registrar to undertake its regulatory functions. It would enable a person to extract a considerable forensic benefit by providing an inspector, investigator or the registrar with information or answers, thereby ensuring that anything derived directly or indirectly from such information or answers would be rendered inadmissible in any criminal proceedings against them. In relation to the CNL provisions, the inspector or investigator would potentially be reluctant to question people who may be suspected of breaching the regulatory scheme, in light of the possibility that they may attempt to purposely immunise themselves from prosecution by volunteering incriminating material. Derivative use immunity would also place an excessive and unreasonable burden on the prosecution to prove that evidence it sought to tender in criminal proceedings against a person claiming the immunity was not obtained either directly or indirectly from the questioning of a person under these provisions. This would unduly complicate trials and generate separate hearings to determine when, and from what sources, particular evidence was obtained.

Although the use of derivative evidence engages one aspect of the rationale for the privilege against self-incrimination — that a person should not be required to assist the state in building a case against him or her — it does so to a lesser extent than the direct use of evidence because derivative evidence exists independently of the will of the accused. Moreover, it does not engage the most important principles underlying the right, namely the risk of improper interrogation techniques or the unreliability of evidence obtained through such methods.

For the reasons outlined above, the availability of derivative use immunity would not be appropriate in this regulatory context. Accordingly, there are no less restrictive means reasonably available to achieve the purpose of this limitation.

Documents exception to the privilege against self-incrimination

Under sections 500 and 501, an inspector may require a person to produce documents and, under section 521, an investigator may require a person to produce documents.

Section 507(3) provides a partial exception to the requirement to produce documents under sections 501 and 521. It provides that it is a reasonable excuse for a person not to produce a document where that document is not required to be kept under the CNL and the document might tend to incriminate the person.

There is no such exception that applies to section 521.

The privilege against self-incrimination covers the compulsion of documents or things which might incriminate a person. However, at common law the compelled production of pre-existing documents is considerably weaker than the protection accorded to oral testimony or to documents that are brought into existence to comply with a request for information. The provision of existing documents to inspectors or investigators on request in most circumstances is analogous to the seizing of documents or evidence through

the execution of a lawful warrant, which is not considered as engaging the right to protection against self-incrimination. This is quite different from compelling a person to write an incriminating document. Some jurisdictions have therefore regarded an order to hand over existing documents as not constituting self-incrimination. Accordingly, any protection afforded to documentary material by the privilege is limited in scope and not as fundamental to the nature of the right as the protection against the requirement that verbal answers be provided.

The power to require documents enables inspectors and investigators to monitor compliance with the CNL, investigate potential contraventions, and protect consumers and clients of cooperatives from detriment resulting from non-compliance with the regulatory scheme.

There may be particular circumstances where an order to produce a document may involve an inadvertent infringement of the right to silence; for example, if a person is incriminated through revealing knowledge of a document's existence, location or contents. However, such a scenario can be considered rare and is a reasonable limitation given the limited nature of the right and the importance of ensuring the scheme can be effectively regulated.

The documents required to be produced are those that are connected with an alleged contravention of the CNL. The duty to provide these documents is consistent with the reasonable expectations of these individuals as persons who operate a business within a regulated scheme. Moreover, it is necessary for regulators to have access to documents to ensure the effective administration of the regulatory scheme.

There are no less restrictive means available to achieve the purpose of enabling regulators to have access to relevant documents. To excuse the production of such documents where a contravention is suspected will allow persons to circumvent the record-keeping obligations of the CNL and significantly impede the ability of inspectors and investigators to investigate and enforce compliance of the scheme.

Therefore, I consider that sections 500, 501, 507 and 521 are compatible with the right not to be compelled to testify against oneself and the right to a fair trial in sections 25(2)(k) and 24(1) of the charter act.

The right to a fair hearing

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.

Section 588Q of the Corporations Act 2001 provides that if the registrar of a court certifies that a court has declared that a person has contravened section 588G(3), or that a person has been convicted by that court for an offence constituted by a contravention of section 588G, or that a person charged before that court was found to have committed the offence but that the court did not proceed to convict the person, then unless it is proved that the declaration, conviction or finding was set aside, quashed or reversed, the certificate is conclusive evidence that the declaration was made and that the person committed the contravention.

Section 554 of the CNL provides that if the Supreme Court is satisfied that one of the listed provisions was contravened, it must make a declaration. A declaration must specify the court that made the declaration; the civil penalty provision that was contravened; the person who contravened the provision; and the conduct that constituted the contravention. Section 555 of the CNL provides that a declaration of contravention is conclusive evidence of these matters.

These sections are relevant to the right to a fair hearing because persons who are affected by the matters contained in the certificate or declaration are unable to challenge the contents of the certificate or declaration (but, in relation to section 588Q of the Corporations Act 2001 a person can prove that the relevant declaration, conviction or finding which is the subject of the certificate was set aside, quashed or reversed). However, these provisions do 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 or declaration when the person was originally convicted of the offence or when the person was found to have contravened a relevant civil penalty provision in the CNL. These provisions simply prevent the re-litigation of matters which have already been decided by a court.

Right not to be tried or punished more than once for the same offence

Section 26 of the charter act provides that a person must not be tried or punished more than once for an offence in respect of which he or she has already been finally convicted or acquitted in accordance with law.

Part 7.2 of the CNL is relevant to this right as it sets out the parallel operation of the civil and criminal penalty regimes for breaches of the legislation. Section 562 provides that civil proceedings for contravention of a civil penalty provision must be stayed if criminal proceedings are brought for an offence constituted by substantially the same conduct that is alleged to constitute the civil contravention. This protects against concurrent civil and criminal proceedings for conduct that is substantially the same. However, if a person is not convicted of the criminal offence, section 562(2) provides that civil proceedings may be resumed. Section 563 further enables criminal proceedings to be brought against a person regardless of whether they have been subject to civil consequences for conduct that is substantially the same as the conduct constituting the offence.

Although the CNL therefore contemplates that in some circumstances a person may be subject to both civil and criminal proceedings and penalties for substantially the same conduct, in my view, the right against double punishment is not limited. This is because the right does not extend to civil proceedings or penalties. Although a penalty that is purportedly civil may engage the right against double punishment if it is truly penal in nature, which may be the case if it involves imprisonment or an extremely significant pecuniary penalty, this is not the case under the CNL. The civil consequences for breaching the regulatory regime may include a declaration that a person has contravened a civil penalty provision; a pecuniary penalty order of up to $200 000; a compensation order; or disqualification from managing a cooperative under division 2 of part 3.1. There is no conviction involved, and no possibility of imprisonment,

even where a person fails to pay a pecuniary penalty. While the maximum pecuniary penalty of $200 000 is not insignificant, it is not so heavy as to constitute a truly penal consequence. The purpose of the pecuniary penalty is to encourage regulatory compliance, and it is necessary for the penalty to be sufficient to offset any financial benefit that may accrue to a person from the contravention of the regulatory regime.

I therefore consider that the provisions of the CNL enabling both civil and criminal proceedings to be brought in relation to substantially the same conduct do not limit the right against double punishment in section 26 of the charter act.

Conclusion

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

Hon. Matthew Guy, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations).

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

This bill repeals the Co-operatives Act 1996 and applies the Co-operatives National Law as a law of Victoria.

It also makes a series of consequential amendments to other legislation to reflect the repeal of the Co-operatives Act, and puts in place a series of arrangements to assist in a smooth transition to the Co-operatives National Law in Victoria.

Cooperatives are incorporated entities, which operate to promote the common economic, social and cultural aspirations of their members. They are democratically controlled, user-owned entities, which are regulated by each Australian state and territory.

As at 1 January 2013, there were 685 cooperatives registered in Victoria. These cooperatives make an important contribution to the Victorian community. They operate most prominently in the primary production sector, where they provide services to the dairy, egg and fishing industries and water to irrigators. They are also active in sectors such as housing, health, employment and Indigenous affairs, where they provide a people-focused alternative to the traditional company structure.

The current Victorian Co-operatives Act is part of a long-term national endeavour to harmonise cooperatives legislation in Australia. It is based on a set of core consistent provisions developed by the Standing Committee of Attorneys-General (now the Standing Council on Law and Justice) and later served as the foundation document for the cooperatives acts of each other Australian state and territory.

The Co-operatives National Law is the next step in this process. It is template legislation which will regulate the formation, registration and operation of cooperatives in each Australian state and territory.

By applying the Co-operatives National Law, the bill will enhance the competitiveness of the cooperative business model. Over the last 12 years, the number of cooperatives in Australia has been in decline. The 2011 Decision Making Regulatory Impact Statement prepared for the Co-operatives National Law estimated a 26 per cent reduction in the number of cooperatives registered in Australia from 2000 to 2009, and this trend does not appear to have changed over the last three years.

This decline is partly attributable to the fact that many cooperatives are currently required to pay more in compliance costs than companies under the Corporations Act 2001. Under the current system, cooperatives that operate across borders are required to pay additional registration or notification costs, and small cooperatives, unlike small companies, are subject to the same reporting requirements as large cooperatives. The Co-operatives National Law removes the additional registration and notification requirements for cooperatives operating across borders and reduces annual reporting requirements for small cooperatives.

These reforms are consistent with the Victorian coalition government's commitment to reduce red tape on business and improve the efficiency of regulation operating in this state.

The introduction and operation of the Co-operatives National Law is being managed through the Australian uniform cooperatives law agreement made between all states and territories. This agreement provides that New South Wales, as the lead jurisdiction in the Co-operatives National Law project will enact the Co-operatives National Law in its jurisdiction and that, subsequently, each Australian state and territory is obliged to enact it in their respective jurisdictions through application legislation or alternative legislation that is consistent with it.

The agreement also provides that the Co-operatives National Law is to be supported by a set of national regulations. These national regulations are to be made in New South Wales, at which point they will either be automatically applied in each state and territory or, where a jurisdiction has an alternative established process for the implementation of national regulations, they will be enacted according to that process.

To preserve the national character of the Co-operatives National Law and the Co-operatives National Regulations, the agreement provides that these instruments can only be amended in certain insubstantial respects or, if substantial change is proposed, with the approval of the Legislative and Governance Forum on Consumer Affairs.

To ensure that this does not impinge on the autonomy of state and territory legislatures, the agreement also provides that a party may withdraw by providing one year's notice to the other states and territories of its intention to do so.

I will now broadly outline the contents of the Co-operatives National Law to be applied by this bill as a law of Victoria.

The Co-operatives National Law is divided into eight chapters and four schedules.

Chapter 1 sets out preliminary matters. These include the citation, commencement and interpretation of the Co-operatives National Law, the cooperative principles and the relationship between the Co-operatives National Law and corporations legislation.

The cooperative principles are the internationally accepted standard for the cooperative form and are the same as those that appear in the current Victorian Co-operatives Act. They include such things as:

> voluntary and open membership, which provides that cooperatives are to be voluntary organisations that are open to all persons who are able to use their services and willing to accept the responsibilities of membership; and
>
> democratic member control, which requires that each member of a cooperative is to have equal voting rights.

Chapter 2 provides for the formation, powers and constitution of cooperatives. It provides a mechanism for incorporating a cooperative, outlines the legal capacity and powers of a cooperative, provides for the rules and share capital of a cooperative, and establishes the rights and responsibilities of cooperative members.

The current distinction between trading and non-trading cooperatives is retained, although they are renamed as distributing and non-distributing cooperatives under the Co-operatives National Law.

Chapter 3 sets out the principles relating to the management and operation of cooperatives. It deals with matters such as corporate governance, duties of directors, officers and employees, meetings, financial reporting and fundraising.

This chapter includes two important reforms. The first is made in relation to the responsibilities and duties of directors, which have been updated to be consistent with the Corporations Act 2001. Director liability for corporate fault has also been revised to accord with a recent reform by the Council of Australian Governments.

The second is establishing a distinction between small and large cooperatives. Currently, all cooperatives, regardless of size, are required to comply with the same reporting requirements and pay the same fees for such things as applications to the registrar. This chapter distinguishes between small and large cooperatives, and provides for simpler reporting requirements and lower fees for small cooperatives.

Chapter 4 contains provisions concerning external administration, mergers, schemes of arrangement, transfers of incorporation and the administrative powers of the registrar of co-operatives in the winding-up process. Relevant provisions of the Corporations Act 2001 are applied and modified to achieve consistency of treatment in most external administration processes.

Chapter 5 deals with participating cooperatives, which are cooperatives that carry on business across state and territory borders. Currently, cooperatives are required to register or provide notice in each state or territory in which they intend to conduct business, or register with the Australian Securities and Investments Commission. Under chapter 5, a cooperative will be deemed to be automatically registered in each state and territory that has implemented the Co-operatives National Law once it is registered in its home jurisdiction. This will allow cooperatives to operate with the same kind of cross-border freedom that Australian companies currently enjoy.

Chapter 6 provides for the supervision and protection of cooperatives. It sets out the powers of the registrar of cooperatives, inspectors and special investigators and the procedures that must be used when conducting an investigation.

Chapter 7 concerns legal proceedings and other matters. This chapter sets out nationally consistent provisions for offences, civil penalty provisions, appeals against administrative decisions and the use of evidence in proceedings.

Chapter 8 deals with miscellaneous administrative matters, such as the establishment of an office of registrar of cooperatives, and service and filing of documents.

Chapter 8 also provides for the making of regulations to support the Co-operatives National Law. There are two sets:

> the first is the Co-operatives National Regulations, which will regulate matters such as annual reporting requirements that are common throughout each Australian state and territory; and
>
> the second is a set of local regulations, which will prescribe matters which are unique to Victoria.

Schedule 1 sets out the matters which must be addressed in the rules of a cooperative.

Schedule 2 sets out matters that regulate interests in and control of shares of a cooperative. These matters are largely the same as the current requirements in the Co-operatives Act.

Schedule 3 contains savings and transitional provisions. These savings and transitional provisions will ensure that the cooperatives sector is not unfairly affected or disrupted by the commencement of the Co-operatives National Law system.

Schedule 4 sets out provisions that are to be used when interpreting the Co-operatives National Law. These provisions are to be used in the place of the interpretation of legislation acts of each jurisdiction in order to maintain the uniform nature of the Co-operatives National Law system.

Having outlined the contents of the Co-operatives National Law, I will now broadly outline the contents of the bill.

The bill applies the Co-operatives National Law and the Co-operatives National Regulations as laws of Victoria.

The bill provides that the Subordinate Legislation Act 1994 and the Interpretation of Legislation Act 1984 do not apply to either the Co-operatives National Law or the Co-operatives National Regulations.

These provisions will promote the uniform nature of the Co-operatives National Law project. Parliament's ability to disallow the national regulations has been preserved. Otherwise, under the Australian uniform cooperatives law agreement, the Co-operatives National Regulations can be amended or repealed where two-thirds of the members present and voting at a meeting of the Legislative and

Governance Forum on Consumer Affairs vote in favour of the amendment or repeal.

Part 3 of the bill amends a variety of matters in the Co-operatives National Law to ensure that the national law is tailored to Victoria's unique needs.

The bill designates the authorities that will exercise administrative powers, the instruments required to carry out certain activities and the state court and tribunal that will be responsible for hearing various matters under the Co-operatives National Law. It also covers the responsibility for funding the costs of an inquiry into the affairs of a cooperative and the application of duty to the transfer of beneficial interests in a cooperative in certain cases. The Co-operatives National Law expressly provides that these matters can be varied by individual jurisdictions.

Part 4 of the bill deals with the Victorian registrar of cooperatives. It establishes the registrar as a body corporate, provides for the registrar's official seal and empowers the registrar to appoint agents.

The registrar is established as a body corporate under this part as there may be situations where title to real property will need to be held by the registrar and, in these situations, it will be more appropriate for it to be held by a body corporate with perpetual succession than by an individual.

Part 5 of the bill covers a range of general matters, such as the limitation period for commencing proceedings for offences, infringement notices and the making of local regulations.

The bill introduces a five-year limitation period for commencing proceedings for offences under the Co-operatives National Law. Under the Co-operatives Act, the limitation period is three years. The bill extends this period because many of the offences contained in the Co-operatives National Law relate to dishonest or fraudulent conduct in the affairs of a cooperative, which may take longer to detect and investigate.

Part 6 of the bill sets out the transitional and savings provisions required to enable a smooth transition to the Co-operatives National Law. These savings and transitional provisions will ensure that upon commencement:

existing cooperatives will be deemed to be incorporated under the new act;

the right of certain cooperatives formed in New South Wales to restrict members' voting rights is not affected; and

the entitlements that current and former members had immediately before the commencement of the new act are not affected; and the current system for providing government guarantees to cooperatives is preserved.

Part 7 repeals the Co-operatives Act 1996 and, along with schedule 2 to the bill, makes a range of consequential amendments.

Finally, schedule 1 to the bill designates the instruments that are to be used to give effect to various decisions under the Co-operatives National Law.

This bill represents an important milestone in the history of Australian cooperatives. It will assist Victorian cooperatives, large and small, to manage their operations in Victoria and throughout the rest of Australia. By doing so, it will provide a significant boost to the Australian cooperatives sector and I am confident that the bill has the broad support of Victorian cooperatives and their representative organisations.

I commend the bill to the house.

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

Debate adjourned until Thursday, 28 February.

JUSTICE LEGISLATION AMENDMENT (CANCELLATION OF PAROLE AND OTHER MATTERS) BILL 2013

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

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

In my opinion, the Justice Legislation Amendment (Cancellation of Parole and Other Matters) 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 main purpose of the bill is to:

amend the Corrections Act 1986 (the Corrections Act) to provide for the cancellation or variation of parole in circumstances where a prisoner is charged with or convicted of certain offences while on parole; and

amend the Children, Youth and Families Act 2005 (CYFA) to require the Children's Court to adjourn family division proceedings to enable an unrepresented child aged 10 or over to obtain separate legal representation. Separate representation is not required for children under 10 but, like all children, their views and wishes (which can be ascertained by evidence) must be given appropriate weight under section 10 of the act. In exceptional cases the court may adjourn to enable children under 10 to obtain separate legal representation

on a best interests basis. The amendments avoid protection proceedings being stayed or delayed indefinitely because separate representation cannot be arranged, by providing that the court may resume an adjourned hearing whether or not the child has obtained separate legal representation.

The bill also amends the Corrections Act to enable the adult parole board to impose a parole condition requiring the electronic monitoring of parolees.

The bill also re-enacts and amends other related existing provisions of the Corrections Act enabling the adult parole board: to authorise a member of the police force to break, enter and search any place where a prisoner whose parole has been cancelled is reasonably believed to be and to arrest and return the prisoner to prison (new section 77B); and to arrange for the medical examination of a prisoner for the purpose of determining whether to make, vary, cancel or revoke the cancellation of a parole order in relation to that prisoner (new section 77D).

Human rights issues — Corrections Act 1986

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

Right to liberty — cancellation of parole where a person is charged or convicted of further offences

Section 21(2) of the charter act provides that a person must not be subjected to arbitrary arrest or detention. Section 21(3) provides that a person must not be deprived of his or her liberty except on grounds, and in accordance with procedures, established by law. Section 25(1) provides that a person who is charged with a criminal offence is presumed innocent until proven guilty. Section 26 provides that a person must not be punished more than once for an offence for which he or she has been finally convicted.

Clause 3 of the bill inserts various new provisions (sections 77 to 77D) of the Corrections Act, by providing for the cancellation of parole or variation of parole conditions in circumstances where a prisoner is charged with or convicted of certain offences while on parole.

New section 77(6) provides for automatic cancellation of parole if a person who is on parole in respect of a serious violent offence or a sexual offence is convicted of a violent or sexual offence during the parole period.

New section 77(3) requires the adult parole board (the board) to cancel parole if a person who is on parole in respect of a serious violent or sexual offence is charged with a sexual or violent offence during the parole period. The board must cancel parole unless the board is satisfied that circumstances exist that justify the continuation of parole. New section 77(4), combined with new section 77(5), similarly requires the board to cancel parole if a person is convicted of certain offences while on parole, unless circumstances exist that justify the continuation of parole.

New section 77(2) of the Corrections Act requires the board to consider whether to cancel or vary a prisoner's parole in circumstances where the prisoner has been charged with certain offences during the parole period.

Finally, new section 77(7) re-enacts existing provisions together with an amendment currently proposed to section 77 in the Corrections Amendment Bill 2012 and provides that if, after a parole period has elapsed, a prisoner is sentenced to a term of imprisonment in respect of an offence that was committed during the parole period, the board still has the power to cancel that parole period. The consequence of cancellation is that the prisoner may have to (at the discretion of the board) serve all or part of the portion of the original sentence that was spent on parole.

Decisions concerning the cancellation of parole may be regarded as decisions resulting in detention or deprivation of liberty. However, the sentence of imprisonment that the person is ultimately required to serve as a result of the cancellation is one that is imposed by a court for the punishment of the offence and protection of the community. In Victoria, parole is a privilege not a right. It provides an offender with an opportunity to be re-integrated into the community under strict supervision whilst still serving the sentence of imprisonment, with the aim of reducing reoffending.

In circumstances where a person commits a further offence while on parole, it is entirely appropriate that parole be cancelled and the person be required to serve the full term of imprisonment in order to protect the community from further offending. Further, where there is sufficient evidence to charge a person with a serious offence, significant concerns arise with respect to the safety of the community that would ordinarily justify a person serving their sentence in prison in order to protect the community.

In my view these provisions are compatible with the right to liberty. The grounds for cancelling parole are clearly set out in the legislation. They are for the purpose of protecting the community and cannot be regarded as arbitrary.

I also consider that the provisions are compatible with the right to be presumed innocent and with the right not to be punished more than once. The cancellation of parole is not a punishment for the further offence, but a requirement to serve the full sentence imposed by the sentencing court for the original offence in order to protect the community.

The right to privacy

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.

New section 77B(1) (introduced by clause 3 of the bill) re-enacts existing provisions, and provides that if a prisoner's parole is cancelled, the board may issue a warrant, or authorise an application to a magistrate for a warrant, authorising a member of the police force to break, enter and search any place where the prisoner is reasonably believed to be and to arrest and return the prisoner to prison. These powers will necessarily result in intrusions into the privacy of the relevant prisoner, and possibly others who reside or otherwise have an interest in the place where the prisoner is reasonably believed to be. However, these powers are clearly set out, and are only available for the important purpose of ensuring that a person whose parole has been cancelled is arrested and returned to prison as soon as possible. This is vital to community safety and trust in the justice system. As such, any interference that may result will be lawful and not arbitrary.

New section 77D (also introduced by clause 3 of the bill) re-enacts existing provisions, and provides that the board may arrange for the medical, psychiatric or psychological examination of a prisoner for the purpose of determining whether to make, vary, cancel or revoke the cancellation of a parole order in relation to that prisoner. Privacy covers the physical integrity of a person, and includes freedom from compulsory testing. However, this provision goes no further than providing that the board may arrange for examinations to take place; it does not require individuals to submit to any tests. Further, any examinations arranged by the board must be for the purpose of determining whether to make orders (for example, evidence of a relevant medical condition may prompt the board to apply treatment conditions to a parole order). Therefore, the arranged examinations will be neither unlawful nor arbitrary. Similarly, the ability of the board to require the practitioner who conducts such examinations to give the board a report in writing, is neither unlawful nor arbitrary as the power is clearly prescribed and linked to a legitimate purpose.

New section 74(5) (introduced by clause 7 of the bill) re-enacts existing provisions but in addition provides that the board may impose a condition on a parole order requiring electronic monitoring of the prisoner. The general terms and conditions of parole are set out in the regulations. The power to attach electronic monitoring to a parole condition, to monitor compliance with such condition, may be regarded as interfering with a person's privacy. However, these powers are necessary to monitor compliance with parole conditions, and to ensure the safety of the community. In my view, the provision does not involve an arbitrary or unlawful interference and is therefore compatible with the right to privacy.

Human rights issues — Children, Youth and Families Act 2005

Two charter act rights are relevant to the bill: the section 17(2) right requiring best interests protection of children and the section 24(1) right to a fair hearing.

Section 17(2) of the charter act provides that 'every child has the right, without discrimination, to such protection as in his or her best interests and is needed by reason of being a child'. The right is based on article 24(1) of the International Covenant on Civil and Political Rights.

The best interests principle is woven into every discretion and decision made under the Children, Youth and Families Act 2005. That act requires the Children's Court to have regard to the best interest of the child, the need to protect the child from harm and to protect his or her rights and promote his or her development when taking any decision and to give appropriate weight to the child's views and wishes (section 10 of that act).

Article 12 of the Convention on the Rights of the Child (to which Australia is a party but which is not implemented in the charter) provides that a child who is capable of forming his or her own views shall be provided the opportunity to be heard in any judicial and administrative proceedings, either directly, or through a representative or an appropriate body in a manner consistent with the procedural rules of national law.

It is not clear that article 12 of the CROC informs the interpretation of charter act section 17(2) — the Supreme Court in *A and B v. Children's Court* [2012] VSC 589 did not have to decide the point. Even if it does, nothing in the charter act or article 12 of the convention prescribes any particular formula for providing the child with an 'opportunity to be heard' in the context of family division proceedings. The right does not require that a child is separately represented or represented by a lawyer at all, but rather, that the child has an opportunity to participate by having their views ascertained and taken into account — see *ZN v. YH* (2002) 167 FLR 366 at [112]–[113].

Section 24(1) of the charter act provides that a person who is a party to a civil proceeding has the right to have the proceeding decided after a fair hearing. Even assuming a child in a protection hearing is a 'party to a civil proceeding', the right in section 24(1) does not require a child to be represented directly, or at all in every case.

In my view, the best interests protection of children required by charter act section 17 is afforded by the bill and CYF act providing that:

> the views and wishes of all children in the proceedings are ascertained and appropriately taken into account (section 10);
>
> as far as practicable the court must take steps to ensure that the proceeding is comprehensible to the child, allow the child to participate fully in the proceeding and consider any wishes expressed by the child (section 522);
>
> the Children's Court is not a traditional adversarial environment and must conduct proceedings in an informal manner and without regard to legal forms (section 215 of the act);
>
> for children aged 10 and over the court must adjourn and provide an opportunity for the child to obtain separate legal representation unless the court determines that the child is not mature enough to give instructions to a legal practitioner;
>
> in exceptional circumstances and where a child is under the age of 10 (or aged 10 or over but not mature enough to give instructions) the court may provide an opportunity for the child to obtain representation on a 'best interests' basis;
>
> the court has a discretion whether or not to proceed if such representation cannot be obtained so that the full and final resolution of concerns for their safety is not delayed due to a lack of legal representation.

The bill mandates adjournment when there are unrepresented children aged 10 or over (unless the court determines that the children are not mature enough to give instructions). That age-based distinction replaces the existing distinction of whether the child is mature enough to give instructions. The distinction based solely on maturity (which was undefined) led to contested evaluations of maturity and Supreme Court litigation as to the meaning of maturity which prolonged resolution of protection proceedings (see *A and B v. Children's Court* [2012] VSC 589). Litigation on the matter of a child's maturity to give legal instructions had the potential to proliferate and delay proceedings.

It is generally accepted that at around 11 years of age, a child is better able to use logic and reason in abstract decision making, such as is required in the giving of legal instructions

on sometimes complex issues. Prior to this age, abstract decision making is limited. Accordingly, children who are younger than 10 years of age are less likely to be able to provide direct legal instructions than those aged 10 or over. A distinction for separate representation based on an age of 10 or more is more consistent with the timely and effective protection of children in their best interests than a rule based on contested evaluations of maturity.

The provisions in the bill therefore do not limit the rights in section 17(2) and section 24(1) of the charter act.

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

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations).

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The purpose of this bill is to amend the Corrections Act 1986 to provide for the variation or cancellation of parole in circumstances where a prisoner is charged with, or convicted of, certain offences while on parole.

The bill will also clarify that the adult parole board may impose a condition on a parole order requiring electronic monitoring of the prisoner whilst on parole.

In addition, the bill will also amend the Children, Youth and Families Act to clarify the circumstances in which a child should be separately legally represented in matters before the family division of the Children's Court.

Parole reforms

Victorians expect convicted criminals to treat parole as a privilege — not a right. They expect the very best behaviour from criminals on parole while they continue to serve their sentence.

For too long, Victoria's parole system has not properly reflected this community expectation both in practice and in law.

That is just not good enough. The coalition government is taking action to tighten the system significantly.

The coalition government has already introduced stage 1 of a range of legislative and administrative reforms to strengthen Victoria's parole system and the management of prisoners on parole.

These reforms include:

a. giving the adult parole board greater powers to cancel parole if an offender has committed further offences while on parole;

b. improving information sharing between the adult parole board, Corrections Victoria and Victoria Police;

c. reinforcing that community safety is the paramount consideration in all parole decisions and that parole should be cancelled if the offender poses an unacceptable risk;

d. requiring the adult parole board to specify the general principles they use when making parole decisions, ensuring there are clear guidelines on when and why parole is justified.

The coalition government has also introduced reforms to ensure sentencing better reflects the expectations of the community and the seriousness of the crime.

As part of these reforms, the coalition government is committed to introducing a system of baseline non-parole periods that will act as a starting point for courts when they sentence offenders for certain serious offences.

These are welcome and long overdue reforms but we recognise that there is more to do.

The adult parole board is an independent statutory body, established under division 5 of part 8 of the Corrections Act and is chaired by a judge of the Supreme Court of Victoria.

In December 2012, the government introduced the first stage of reforms to the Corrections Act designed to improve the effectiveness of the parole system and to ensure that the parole system best serves the Victorian community. These first stage reforms were in response to the recommendations of the Sentencing Advisory Council report on the legislative and administrative framework governing the release and management of sentenced prisoners on parole. These legislative amendments are currently being considered by the Parliament.

The bill I am introducing today will further reform provisions dealing with the cancellation or variation of parole.

These reforms send a strong message that parole is a privilege and not a right and put community safety at the heart of the adult parole board's deliberations.

A parole order is subject to core conditions as well as any other terms and conditions set by the board.

The bill provides for automatic cancellation of parole if a serious violent offender or sex offender is convicted of a further violent or sex offence whilst on parole. To avoid injustice or other harsh or unjustifiable results, the board will have the power, in exceptional circumstances, to revoke the automatic cancellation.

A fundamental condition of every parole order is that the prisoner released on parole not breach any law. This bill further strengthens the Victorian parole system by addressing situations where a prisoner on parole has, or may have, breached their parole order by committing a further offence punishable by imprisonment.

The bill includes definitions of serious violent offender and sex offender for the purposes of the new provisions. The bill defines a serious violent offender as a prisoner on parole for offences set out in the definition, and these include murder, manslaughter, intentionally or recklessly causing serious injury, threatening to kill or cause serious injury and kidnapping.

A sex offender is defined as a prisoner on parole for an offence set out in the Serious Sex Offenders (Detention and Supervision) Act 2009. This is an extensive list of offences, but includes rape, incest, child sex offences and abuse, child pornography and indecent assault.

Exceptional circumstances is not defined in the bill, but is a concept well known to the common law. What constitutes exceptional circumstances will be a matter for the board to determine, based on a variety of circumstances surrounding each case.

The bill further provides that where a serious violent offender or sex offender is charged with a further violent or sex offence during the parole period, the board will cancel parole unless satisfied that the circumstances justify the continuation of the parole.

Where a prisoner on parole is convicted of other offences punishable by a term of imprisonment, the bill clarifies that the board will cancel parole unless satisfied that the circumstances justify the continuation of the parole.

The board will also be required to reconsider parole if a prisoner on parole is charged with an offence punishable by imprisonment during the parole period. In these circumstances, the board will be required to reconsider the parole order, and decide whether to vary or cancel the order.

The new provisions importantly maintain the independence of the board and continue to allow the board to exercise its discretion to consider the full circumstances of the prisoner and the offending in deciding whether to cancel or vary parole, or revoke the automatic cancellation of parole.

As with any other parole decision made by the board, community safety will be the paramount consideration.

Importantly, the transitional provisions of the bill provide that the parole order of any serious violent offender or sex offender currently on parole is to be reviewed if the prisoner has been convicted of a further violent or sex offence during their parole period but prior to commencement of the bill. The bill provides that the board will cancel parole unless satisfied that the circumstances justify the continuation of the parole.

The transitional provisions also require the board to consider whether to vary or cancel a parole order for a prisoner on parole (at the time of commencement of the legislative changes) who has been charged with an offence punishable by imprisonment that is yet to be dealt with by a court.

The bill does not affect the board's discretion to reconsider parole if the prisoner is charged with or convicted of a less serious offence, or otherwise fails to comply with a parole condition, during the parole period.

The bill also makes it clear that the board can impose a condition on a parole order that the prisoner be subject to electronic monitoring. A consequential amendment is made to the Surveillance Devices Act 1999.

Children, Youth and Families Act 2005

The bill also amends the Children, Youth and Families Act 2005 in relation to the legal representation of children in Children's Court family division matters.

Under the act all decision-makers, including magistrates of the family division, must consider children's views as appropriate to the child's maturity. To date, the matter of maturity has been a creature of practice rather than law, resulting in some uncertainty in the Children's Court, including as to whether and how children should be legally represented. Uncertainty in child protection proceedings creates delay in the final, fair resolution of proceedings; this is not acceptable where there are concerns for a child's safety or welfare.

The bill therefore clarifies the act's provisions regarding maturity and legal representation and makes clear that the court may resume adjourned child protection hearings despite a child not having legal representation.

The proposed amendments provide that proceedings involving a child aged 10 or more are to be adjourned to enable the child to obtain legal representation unless a court determines that the child is not sufficiently mature to give instructions to a legal practitioner. The bill provides that the court may so determine based on consideration of the child's ability to form and communicate the child's own views and to give instructions in relation to the primary issues in dispute. This approach is consistent with observations made in the Protecting Victoria's Vulnerable Children Inquiry report.

Where a child is aged under 10 or the court is of the view that a child aged 10 or more is not sufficiently mature, the child will generally not be legally represented. However, the court will continue to be empowered to make an order for the legal representation of children on a 'best interests' basis in exceptional circumstances. Where a child is not directly legally represented, child protection officers will convey the wishes of the child to the court as well as their assessment of what is in the 'best interests' of the child. Consistent with the current interpretation of 'exceptional circumstances' in the family division, it is expected that orders for best interests representation will only be made in a small number of cases.

I commend the bill to the house.

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

Debate adjourned until Thursday, 28 February.

ENERGY LEGISLATION AMENDMENT (FLEXIBLE PRICING AND OTHER MATTERS) BILL 2012

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. R. A. Dalla-Riva; by leave, ordered to be read second time forthwith.

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (charter act), I make this statement of compatibility with respect to the Energy Legislation Amendment (Flexible Pricing and Other Matters) Bill 2012.

In my opinion, the Energy Legislation Amendment (Flexible Pricing and Other Matters) Bill 2012, as introduced to the Legislative Council, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The purposes of the bill are to:

amend the Electricity Industry Act 2000 and Gas Industry Act 2001 to repeal electricity and gas industry cross-ownership restrictions; and

amend the Electricity Industry Act 2000 to make amendments in relation to the scope of advanced metering infrastructure orders in council; and

amend the National Electricity (Victoria) Act 2005 and the National Gas (Victoria) Act 2008 to address regulatory inconsistencies; enable the Essential Services Commission to enforce contraventions or likely contraventions of relevant laws, instruments and codes; and make other miscellaneous amendments.

Information sharing

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. An interference with privacy will not be unlawful if it is permitted by law that is accessible and precise.

Clause 7 of the bill inserts a new section 46D in the Electricity Industry Act 2000 and provides that the Governor in Council may, by notice published in the *Government Gazette*, make orders with respect to various matters. These matters may include requiring a relevant entity to keep confidential specified customer information and provide such specified information to another entity for the purpose of the second entity complying with other requirements made by an order (sections 46D(2)(x) and (y)). The other requirements contemplated principally include the provision (by the second entity) of relevant metering and tariff information to the individual customer in question.

The provision of customer information from one entity to another is for the important purpose of ensuring that customers are able to be given all relevant information in relation to metering and tariffs. This will enable customers to make informed choices between service options. The collection and sharing of information as provided by new section 46D therefore does not involve any unlawful or arbitrary limit on the right to privacy.

Clauses 19 and 25 insert new sections 28A and 34A in the National Electricity (Victoria) Act 2005 and National Gas (Victoria) Act 2008 respectively. These provisions permit the Australian Energy Regulator to provide certain information, including information given in confidence, to the Essential Services Commission in relation to certain contraventions or likely contraventions by electricity and gas distributors of their distribution licences.

It is not anticipated that the information shared by the Australian Energy Regulator with the Essential Services Commission will include the personal information of customers, who would have an expectation of privacy. In any event, the provision of information to the Essential Services Commission pursuant to sections 28A and 34A is only where reasonably required by the Essential Services Commission for the purposes of performing its functions, duties or exercising its powers under the Essential Services Commission Act 2001. New sections 28A and 34A complement the functions of the Essential Services Commission to make and serve orders for compliance pursuant to section 53 of the Essential Services Commission Act 2001 on electricity and gas distributors in respect of certain regulatory laws or instruments. Accordingly, sections 28A and 34A do not limit the right to privacy.

Powers, functions and duties of the Essential Services Commission

Clauses 17 and 23 insert new subsections 24(2)–(4) and 29(2)–(4) in the National Electricity (Victoria) Act 2005 and National Gas (Victoria) Act 2008 respectively. Those provisions provide that the Essential Services Commission has every function or power under a specified law or instrument necessary for it to perform a function or duty or exercise a power under the Essential Services Commission Act 2001. The effect of these provisions is to re-confer on the Essential Services Commission certain functions and powers in relation to regulation of the energy distribution sector. The commission initially had these functions and powers; however, they had since been conferred on the Australian Energy Regulator instead. Although the commission ceased to have the functions and powers in relation to the regulation of the energy distribution sector, it retained them in relation to regulation of the energy retail sector and other regulated industries.

The nature and content of the functions, duties and powers of the commission therefore remain unchanged. However, their scope for application is extended by new subsections 24(2) and 29(4) of the National Electricity (Victoria) Act 2005 and National Gas (Victoria) Act 2008 respectively. It is therefore necessary to consider the functions, duties and powers of the commission under the Essential Services Commission Act.

Section 37 of the Essential Services Commission Act provides the commission with a general power to obtain information and documents from a person, and to require that a person appear before the commission to provide the information or document. A person who fails to comply is guilty of an offence. Part 5 of the Essential Services Commission Act provides for the powers of the commission to conduct an inquiry and to provide a report to the minister on the inquiry. The general power of the commission to obtain information and documents or appear before the commission applies to inquiries conducted by the commission.

A number of rights can be engaged where a power is conferred to compel a person to appear, and to provide information and documents. These rights are as follows: privacy (in the sense that information provided may be personal), freedom of movement (in the sense that a person is required to attend personally before the commission), and freedom of expression (in the sense that the right may include the freedom not to impart information).

To the extent that the commission's power to obtain information and documents raises privacy or freedom of movement issues, any disclosure of personal information or requirement to attend before the commission will be necessary for the purpose of fulfilling its regulatory functions. In addition, appropriate safeguards exist, such as restrictions on the circumstances in which the commission can disclose information, and appeal rights in relation to a decision by the commission to require a person to provide information or documents, and to appear before the commission. Section 37 will not limit the right to freedom of expression in section 15 of the charter act by requiring a person to divulge information, as it is essential to the effective administration of the commission's regulatory functions, and therefore reasonably necessary for the protection of public order in accordance with section 15(3) of the charter act.

Conclusion

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

Hon. Peter Hall, MLC
Minister for Higher Education and Skills

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations).

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Energy Legislation Amendment (Flexible Pricing and Other Matters) Bill 2012 will amend various acts within the energy and resources portfolio to further the implementation of energy market reform in this state.

Victoria has consistently been a leader in energy market development. Our energy sector was disaggregated and privatised in the 1990s. Full retail contestability was established in electricity and gas in 2002, allowing all households to choose their energy supplier. Retail price controls were removed in 2009. We now have one of the most competitive energy markets in the world and Victorians are willing to take advantage of this by exercising their right to switch energy retailers in pursuit of a better deal.

Victoria is also upgrading to advanced metering infrastructure, of which electricity smart meters are an integral part. Having inherited major problems in the program, including significant cost blow-outs and a lack of community support born of a failure to engage households, the Victorian coalition government undertook an extensive, independent review of the smart meter program upon coming to office.

Following the review the government announced major changes to the electricity smart meter program.

The smart meter review found, given the significant sunk costs already incurred by Victorian households and businesses, that the option to deliver the greatest benefit to consumers is to pursue a significantly improved rollout with a greater focus on the needs of consumers, reining in program costs and bringing forward benefits to consumers. These benefits will include helping consumers better understand and control their energy consumption through devices such as in-home displays and providing households and businesses with more flexible pricing options.

In short, it is time that smart meters started to pay their way.

In supporting the flexible pricing reforms that the coalition government is introducing, this bill will help to achieve this end.

Clauses 5 to 9 of the bill amend the Electricity Industry Act 2000 to enable, by order in council, the implementation of appropriate consumer protections where energy retailers choose to make available flexible pricing plans to their electricity customers.

More Victorians will have the option of moving to flexible pricing plans for electricity from the middle of 2013. Wider availability of flexible pricing plans is designed to provide energy customers with more options to reduce their own power bill, while also taking the pressure off everyone's power bill by reducing the need for expensive network upgrades and new generating plants.

Victorians currently utilise around 25 per cent of the value of our electricity infrastructure on the equivalent of only six days a year. This problem of peak demand means that a significant component of the network and other charges on electricity bills is devoted to rarely used infrastructure.

This is expensive, inefficient and adds unnecessarily to electricity bills. A more efficient use of the electricity infrastructure that Victorians have already paid for would reduce the pressure for expensive network and generation augmentation in the future, leading to downward pressure on bills.

The independent cost-benefit analysis on the smart meter rollout, commissioned by the coalition government in 2011, found that a key benefit of smart meters was the ability to introduce widespread flexible pricing options, which could deliver economic benefits of up to $229 million.

Flexible pricing will offer pricing incentives to better utilise our electricity networks by offering customers the choice of plans based on off-peak, 'shoulder' and peak times of the day. At present most customers pay a flat rate for the electricity they use and do not have access to off-peak rates. With flexible pricing, households and small businesses will be able to consider pricing plans that better match their usage patterns and which can save them money. Alternatively, they might choose to shift the times at which they use some appliances or

equipment in order to reduce their energy bill by moving consumption to discounted periods.

Customers who want to try the new flexible pricing plans will be able to do so with confidence. Importantly, households who prefer to stay on their flat rate will not be forced to change; the default position will be that households remain on their current tariff and will not move to a flexible pricing plan unless they have specifically provided informed consent to do so. The decision and the power will remain with the customer.

There will be a 'safe try' period up until 31 March 2015 during which households will be able to move to a new flexible price offer with their current retailer with the confidence that they can switch back to their previous tariff without penalty if they are uncomfortable with the change. The coalition government will also support consumers during the introduction of flexible pricing plans with independent price comparison tools, information and advice.

Flexible pricing will offer Victorian households and businesses the opportunity to access off-peak electricity rates across the year and across the variety of household appliances.

Flexible pricing will start to tackle the problem of peak demand and make the structural reforms we need to start to rein in the spiralling costs of electricity.

Flexible pricing will begin to put smart meters to work, finally, for Victorian consumers.

Implementation of these measures will be facilitated through the amendments to the Electricity Industry Act 2000, to be made by this bill.

I turn now to the other provisions of the bill.

Clause 13 of the bill will also support Victoria's advanced metering infrastructure program by allowing national rules related to electricity metering and pricing proposals to be modified where these provisions are inconsistent with Victorian specific rules put in place for the purposes of the advanced metering infrastructure program.

Responsibility for monitoring and enforcing compliance with Victorian energy sector rules (which include the national energy laws) is currently divided between the national economic regulator, the Australian Energy Regulator, and the Essential Services Commission of Victoria. Clauses 14 to 25 of the bill will improve the ability of the commission to enforce distributor compliance with Victorian energy sector rules including rules in relation to the advanced metering infrastructure program by enabling a ministerial order to specify those provisions which are properly the enforcement responsibility of the commission and not the responsibility of the national Australian Energy Regulator. The bill will also facilitate the exchange of information between these two regulators in relation to the enforcement of regulatory obligations.

Clauses 3, 4 and 10 of the bill repeal the cross-ownership provisions of the Electricity Industry Act 2000 and Gas Industry Act 2001. These restrictions were first enacted in the early 1990s, at the time of privatisation of the energy sector, to prevent vertical integration of production and distribution infrastructure and to ensure open access and competition. Discussion papers published by government in 2005 and 2011 recommended removal of these restrictions in favour of reliance on the merger provisions of the Competition and Consumer Act 2012 (formerly the Trade Practices Act 1974).

Finally, clause 26 of the bill will make a technical amendment to the National Gas (Victoria) Act 2008 to allow a declaration of a distribution system or transmission system to relate to a specified provision of the National Gas (Victoria) Law. As currently worded, the relevant section does not allow declarations to be made for different purposes depending on whether a distribution system or transmission system is or is not part of the wholesale gas market.

I commend the bill to the house.

Debate adjourned on motion of Mr SCHEFFER (Eastern Victoria).

Debate adjourned until Thursday, 28 February.

JURY DIRECTIONS BILL 2012

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

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

In my opinion, the Jury Directions Bill 2012, as introduced to the Legislative Council, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill creates a new Jury Directions Act 2012 to simplify the law in relation to jury directions. In particular, the bill:

includes guiding principles to support a new approach to jury directions;

requires parties to request jury directions;

provides a clear framework for summing up the trial, including clarifying that trial judges may use integrated jury directions and jury guides, and the requirement to identify evidence;

allows trial judges to answer questions about the meaning of 'proof beyond reasonable doubt'; and

clarifies the law on post-offence conduct.

Charter act rights that are relevant to the bill

The right to a fair trial is relevant to any reform of jury directions because the general purpose of the directions is to ensure that the accused is tried in accordance with the relevant law, which is an important aspect of ensuring a fair trial. Therefore, sections 24 and 25 of the charter act are broadly relevant to this bill.

In my opinion, the bill does not limit the fair trial rights under the charter act. The general aim of the bill is to assist judges in providing simple and clear directions on the law and the evidence in the case that jurors are likely to listen to, understand and apply. This should assist in ensuring a fair trial.

The jury direction request provisions, in clauses 8–16 of the bill, are particularly relevant to the right to a fair trial. These clauses abolish the common-law rules which require the trial judge to direct the jury on defences, alternative verdicts, and any alternative basis of complicity that have not been raised by the accused during the trial but that are reasonably open on the evidence. This rule is attributed to *Pemble v. The Queen* (1971) 124 CLR 107 (the Pemble obligation). Although this rule was designed to protect the accused's right to a fair trial, problems with its application undermine this effect. In particular:

it encourages judges to 'appeal-proof' the charge by including unnecessary directions, making directions longer and more complex for the jury to understand, which impacts on the integrity of the trial;

it can operate contrary to the adversarial system because it can require directions that are contrary to the wishes of counsel; and

it can operate unfairly to the accused if the judge is required to give directions even where they operate to the detriment of the accused.

The proposed provisions address these concerns and ensure that the trial is about the issues in the case as determined by the parties. Counsel for the accused is best placed to determine what directions are in the interest of the accused. For example, research shows that directions that are designed to warn against certain reasoning may sometimes have a 'backfire' effect and cause the jury to reason in the opposite way. This can harm the interests of the accused. In this situation, it is in the accused's interest for counsel to determine whether they want such directions to be given. Requiring counsel to request the directions that should be given is also consistent with the existing duty of counsel for the accused and the prosecution to object to matters which are prejudicial to the fair trial of the accused (*R. v. Wright* [1999] 3 VR 355, 356). Further, because the parties are required to request directions after the close of all evidence, it does not limit the rights of the accused in relation to any requirement to disclose how they will run the defence case.

The bill includes protections for unrepresented accused, accused who are poorly represented, or when failure to give a direction would result in a substantial miscarriage of justice. Where an accused is unrepresented, the trial judge must act as if the unrepresented accused has requested any relevant directions and give the directions unless there are good reasons for not giving the direction or it is otherwise not in the interests of justice to give the direction. This avoids placing a burden on the unrepresented accused by requiring them to request relevant directions, and helps to ensure that unrepresented accused receive a fair trial.

The bill also retains a residual obligation for the trial judge to direct the jury to avoid a substantial miscarriage of justice. It is anticipated that this obligation will only be used in limited circumstances, for example, where counsel is incompetent or employing a high-risk strategy. Nevertheless, the residual obligation is an important way to protect the accused's right to a fair trial.

The bill clarifies a trial judge's obligations in summing up (clauses 17–19). These provisions will assist judges to give directions in a manner that is easier for jurors to understand, and will require judges to identify only so much of the evidence as is necessary to assist the jury in determining the issues in the trial.

The beyond reasonable doubt provisions (clauses 20–21) will allow judges to explain the meaning of 'proof beyond reasonable doubt' if asked by the jury. The concept of proof beyond reasonable doubt is essential to a criminal trial. Improving juror comprehension of the concept will increase the likelihood of a fair trial.

The post-offence conduct provisions (clauses 22–28) are designed to simplify the existing law and make directions in this area easier for the jury to understand. Again, this will increase the likelihood of a fair trial.

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

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations).

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

Introduction

Trial by jury is one of the hallmarks of the Victorian criminal justice system. Juries form an essential link between the community and the legal system. Jury directions — the directions a trial judge gives to a jury to help them to decide whether the accused is guilty or not guilty — are a vital element of a trial by jury.

In recent years there has been a substantial increase in the number and complexity of the directions given to juries. Directions have been described as inordinately long, in a sorry state, over-intellectualised, complex, voluminous, uncertain and excessive. The government made an election commitment to reduce the complexity of jury directions, and this bill is a major part of delivering on that commitment.

The bill focuses primarily upon issues considered by the VLRC in its final report on *Jury Directions*. Following that report, the Department of Justice established a jury directions advisory group, which has considered the recommendations made by the VLRC in its final report on *Jury Directions* together with other reforms proposed by the department. The advice of the advisory group has been invaluable and I would like to thank the members of the advisory group for their contributions.

Drawing on the advisory group's discussions and advice, the department prepared a detailed report *Jury Directions — A New Approach* making recommendations for changes to the law and setting out the reasons for those changes. I thank the department for this report, which is being published on the department's website. The bill is closely based on the recommendations and reasoning of that report.

Other proposals for reform, in particular those contained in Justice Weinberg's report, *Simplification of Jury Directions*, are currently being considered by the government as part of a further stage of reforms of jury directions.

Problems with the law on jury directions

At present, Victoria has no coherent body of law on jury directions. The directions that trial judges are expected to give are strewn across the common law and legislation. Frequent amendments to criminal offences have also resulted in increasingly complex directions. The result is that trial judges give juries an array of highly detailed and often complicated directions, which take longer in Victoria than any other state in Australia.

Jurors are less likely to listen to, understand or apply directions that are long, complex or of questionable usefulness. Research shows that jurors do not always understand the directions given to them, whether because the law or the direction itself is too difficult or complex, the manner of presentation is confusing, or the sheer length of the directions has led to their disengagement.

The same complexity in the law that renders directions difficult for jurors makes directions difficult for trial judges as well. In some cases it is difficult for the trial judge to know whether to give a particular direction, and if so, precisely what form it should take. It is not surprising that this can lead to judicial error. In 2010 alone, jury direction-related retrials made up 14 of the 18 retrials in Victoria.

Successful appeals and subsequent retrials add to court delays and cause significant stress to victims of crime, witnesses and their families. Retrials also cause cost to the community, and understandable community concern, particularly if seemingly due to technical rather than substantive issues.

A critical assumption underlying any trial by jury is that jurors understand and follow the directions given to them in reaching their verdict. In recent years this assumption has been called into question as the law on jury directions has become out of touch with what jurors need.

Overview of the bill

The bill makes reforms in six main areas. The bill:

provides guiding principles to aid in the interpretation of the bill;

provides new processes for identifying the directions a trial judge must give to a jury;

clarifies the obligation of the trial judge to identify evidence and encourages a targeted and succinct summing up;

improves the way directions are given to the jury, by supporting the use of integrated jury directions;

allows trial judges to answer questions from juries about the meaning of 'proof beyond reasonable doubt' and provides guidance to the trial judge on the content of such a direction; and

provides for simple and clear directions on post-offence conduct evidence.

Guiding principles

The legislative reforms in the bill signify a fundamental change of approach to jury directions. The bill aims to bring about a significant and lasting cultural change for both judges and counsel. The guiding principles in the bill will assist in its interpretation and support this new approach.

Requests for directions

In *Pemble v. R.* (1971) 124 CLR 107, the High Court held that when summing up, trial judges must direct the jury about defences and alternative verdicts that have not been raised by the accused during the trial but that are reasonably open on the evidence. This is referred to as the 'Pemble obligation'. The obligation requires the trial judge to advance alternative hypotheses consistent with the innocence of the accused, or the guilt of a lesser offence.

Over the years, as the application of the Pemble obligation has been extended to new situations, the task of the trial judge in complying with the obligation has become extremely onerous. The obligation causes a number of problems, including overly complex and detailed directions that do not help juries determine the issues in the trial, and may form the basis of technical appeals.

The jury direction request provisions are the centrepiece of this bill. The provisions substitute a common-law obligation to give directions with a statutory obligation. They abolish the Pemble obligation, and they address all jury directions a trial judge should give to a jury, with the exception of certain general directions and directions which legislation provides must, or must not, be given in certain circumstances.

These reforms have four main components.

First, the bill facilitates a process that will require counsel and trial judge to discuss the issues in dispute in the case, the directions that need to be given and the content of those directions. The starting point in determining what directions should be given to the jury is understanding that the jury's role is to determine the issues that are in dispute between the parties. The trial judge's role is to direct the jury to help it fulfil this function. As the Victorian Court of Appeal said in *R. v. AJS* [2005] VSCA 288, it is the responsibility of the trial judge to 'direct the jury on only so much of the law as is necessary to resolve those issues [being the issues in the case]'.

The best way to identify the issues that are in dispute is for the trial judge to discuss them with the parties. The parties know their own case better than anyone else. The reforms emphasise the duty of counsel to assist the trial judge. This process will be facilitated, checked and improved by the questions asked by the trial judge about what directions are or are not required. This will assist the trial judge in determining which directions to give or not to give. This discussion will also be of considerable benefit to appellate courts in knowing the accused's views about whether a direction should or should not have been given.

Secondly, the reforms will provide that if a direction is requested by a party, the trial judge must give the direction unless there are good reasons for not doing so. This is the same test as the test used under the Evidence Act 2008 and in other Australian jurisdictions that have adopted the Uniform Evidence Act in relation to certain specific jury directions. Cases considering this phrase under section 165 of the Evidence Act will be helpful in the interpretation of this phrase.

The bill sets out matters that are relevant to, but not determinative of, whether there are good reasons for not giving a requested direction. These factors provide further guidance to the trial judge. These reforms limit 'defences' which are open on the evidence that would require a direction based on the Pemble criteria. The two factors listed in clause 14(2) of the bill emphasise that directions should be given where they are consistent with the case the prosecution and defence counsel have put before the jury and the forensic decisions of counsel.

Thirdly, if a direction is not requested, the trial judge will not normally need to give a direction. In very limited circumstances, in order to avoid a substantial miscarriage of justice, the trial judge has a residual obligation under clause 15 to give a direction regardless of what counsel indicated under clauses 13 and 14. This provision is intended to apply rarely and in very limited circumstances, for example, where the trial judge is concerned that counsel's decision raises issues about counsel's competency or that counsel is taking a major and inappropriate risk.

If the trial judge is proposing to give a direction under clause 15, the trial judge must inform counsel of the trial judge's intentions. This will ensure transparency and provide counsel with a further opportunity to explain their position, if appropriate. This process will also resolve issues and allay any concerns that either the trial judge or counsel might have in relation to the direction. It is not intended that this residual obligation be interpreted in a way that will impede the cultural change that is aimed for, or usurp or complicate the jury direction request process. The 'substantial miscarriage of justice' test is deliberately different from the existing 'fair trial' test. In almost all cases, whether a direction is requested or not will be the key factor in determining whether a direction is given or not given.

The general request provisions assume that the accused is legally represented. However, the fourth component of the reforms provides that, where the accused is not legally represented, the trial judge must proceed on the basis that the accused has requested any direction which would be open to the accused to request if the accused were represented. The trial judge will give that direction unless there are good reasons not to do so, or it is otherwise not in the interests of justice to give the direction.

I should point out that the proposed reforms differ from some of the recommendations made by the VLRC. The main points of difference include:

the procedure to identify which directions should or should not be given to the jury;

the test to be applied in determining whether a direction should be given;

the scope of the obligation to give a direction and the factors to be taken into account when determining whether a direction should be given; and

the application of the proposed reforms to the unrepresented accused.

Trial judge's summing up and integrated directions

The common law requires trial judges to sum up a case before the jury deliberates. This involves relating the evidence in the trial to the legal and factual issues that the jury must decide. Most jury directions are given as part of this summing up. However, summings up appear to be failing to achieve their aim of assisting the jury in its task by being succinct statements of the law and the facts in issue.

The provisions in the bill encourage brief and well-focused summings up by clarifying the obligations of trial judges to sum up, and removing unnecessary or unhelpful common-law requirements. The bill focuses attention on the essential elements of a summing up. The bill requires the trial judge to refer the jury to the way in which the prosecution and the accused have put their respective cases in relation to the issues in the trial, which is more targeted than what is required under the common law. Once this is done, there will be no need for the trial judge to summarise the closing addresses or the evidence separately.

A summary of evidence will not be necessary under the reforms. Where juries have heard the evidence, the addresses from counsel themselves, and how the prosecution and the accused have put their cases, there is no need or benefit in additionally providing a detailed summary of the evidence. The bill requires that the trial judge identify only so much of the evidence as is necessary to assist the jury in determining the issues in the trial. Further, the reforms reflect that the clearer the issues in the trial, the less need there is to identify the evidence. The bill sets out the matters the trial judge should have regard to in determining whether, and if so, to what extent evidence should be identified.

Sometimes it is not just that the law is too complex, but the manner in which it is presented is inaccessible. Current practices require jurors to perform difficult intellectual exercises, for example, in applying abstract legal concepts to the facts of the case. Accordingly, the bill will encourage and support judges to present information to juries in various ways, including using written materials.

For example, the bill will encourage the use of 'integrated directions'. Under the traditional approach to giving jury directions, the trial judge will identify and explain the relevant law. Following this 'mini lecture' on the law, jurors are expected to understand and apply the law to the facts of the case, and then assess whether they are satisfied that the facts and offences have been proved.

With an integrated direction, the judge works through the first two steps, and presents the jury with a series of questions which encapsulates the relevant issues for determination in the third step. Judges may do this by embedding the law in factual questions for the jury to consider, and combining these questions with references to the way in which the prosecution and the accused have put their cases in relation to this issue. This can be further enhanced by adding relevant evidentiary directions at this point. Integrating these different components to address the issues, rather than leaving it to the jury to synthesise separate blocks of information, can be significantly more useful to jurors.

Such directions are often given in New Zealand, and are an effective way of presenting information to jurors. There is nothing preventing their use and there is some recent appellate authority which suggests they can be used in Victoria. However, specifically providing for integrated directions in the bill will remove any doubt over their appropriateness and give trial judges confidence to give such directions.

The bill also accommodates the use of transcripts and documents as components of the summing up in place of a purely oral summing up. This provision reflects the increasing use of written documents in trials, and aims to further encourage that use. The giving of directions may also be supported or facilitated by a 'jury guide'.

Clarifying what needs to be included in a summing up, and improving how that content is communicated, will assist jurors by making summings up more relevant, helpful and understandable.

Proof beyond reasonable doubt

One of the fundamental protections for an accused in a criminal case is the requirement for the prosecution to prove its case 'beyond reasonable doubt'. While 'proof beyond reasonable doubt' is a commonly used term, its meaning is not always clear or well understood. Research from New Zealand, Queensland and New South Wales indicates that a significant number of jurors either have difficulty with the concept or apply either too low or too high a test. It is also not uncommon for Victorian juries to ask questions about the meaning of the term.

However, if jurors ask what 'proof beyond reasonable doubt' means, judges in Victoria are confined by case law to advising that it is a common English expression that means what it conveys, save for limited and exceptional circumstances. This circular definition is unlikely to provide much guidance to jurors.

Given its importance, judges should be able to assist jurors to understand the concept of 'proof beyond reasonable doubt'. Accordingly, the bill will provide that if a jury asks the trial judge a question about the meaning of the concept, the judge may answer the question. This will apply whether the question is asked directly or indirectly. Queries about the meaning of beyond reasonable doubt may arise in any number of ways, including in the context of questions on other legal issues. The intention is to allow judges to explain the concept of proof beyond reasonable doubt if the issue arises, and to minimise any threshold arguments about whether a question has been asked.

The bill will also provide guidance on how the concept may be explained, drawing from the Canadian approach in *R. v. Lifchus* [1997] 3 SCR 320 and the New Zealand approach in *R. v. Wanhalla* [2007] 2 NZLR 573. For example, the trial judge may:

> refer to the presumption of innocence and the prosecution's obligation to prove that the accused is guilty;
>
> indicate that it is not enough for the prosecution to persuade the jury that the accused is probably guilty or very likely to be guilty; and
>
> indicate that a reasonable doubt is not an unrealistic possibility.

Judges will not be required to use any particular form of words when explaining the concept of 'proof beyond reasonable doubt'. Trial judges may tailor or adapt the explanations provided for in the bill as appropriate.

Post-offence conduct

'Post-offence conduct', also known as 'consciousness of guilt', refers to conduct by an accused after an alleged offence, such as lying or fleeing the scene of the crime, that may be relied on by the prosecution to show that the accused committed the crime in question. Currently, the jury directions on post-offence conduct are complex, lengthy, difficult to understand and lead to many retrials.

The VLRC reported that from the mid-1990s to 2009, the Court of Appeal heard at least 84 appeals that raised post-offence conduct directions as an issue. The appellant succeeded in 28 of those cases, resulting in the court ordering a retrial. Since the VLRC report, this problem has continued. In 2009 the Court of Appeal ordered retrials in relation to convictions for murder in two highly publicised cases. Both offenders were convicted at their retrial.

The existing warnings in relation to post-offence conduct involve a complex set of jury directions that must be given whenever this kind of evidence is led. This is designed to stop juries from jumping to the conclusion that because a person engaged in this conduct, they must be guilty of the offence charged.

There are various difficulties with these directions. For example, it can be difficult for the court to correctly identify whether evidence amounts to post-offence conduct. Appellate judges often disagree on the proper characterisation of whether a lie told by the accused constitutes an implicit admission of guilt or simply goes to the accused's credit — that is, that the accused is someone who tends to tell lies. Even if directions are given correctly, research indicates that such long and complex directions do not assist juries in reaching a verdict and may even be counterproductive by highlighting the conduct of the accused. Further, to avoid the risks of a retrial, sometimes the prosecution does not call this kind of evidence where it is able to.

The VLRC made a number of recommendations to reform directions on post-offence conduct. The reforms in the bill refine and enhance the VLRC's recommendations and further simplify the law. Key parts of the proposed reforms are based on the approach taken in New Zealand, where appeals on this ground are rare. However, additional components have been added to the proposal so that it works effectively in

conjunction with the reforms on the jury direction request provisions.

The reforms remove complex common-law requirements brought about by cases like *Edwards v. R.* (1993) 178 CLR 193 and *Zoneff v. R.* (2000) 200 CLR 234 and focus on the key issues of identifying this evidence, informing the jury as to how the evidence may or may not be used and providing appropriate warnings to the jury.

To avoid current problems with the identification or characterisation of this kind of evidence, the bill requires the prosecution to give notice to the trial judge if it intends to use the evidence to demonstrate an implied admission of guilt by the accused. Clause 23 will avoid the current problem of the prosecution relying on the evidence generally at the trial stage and the evidence only being identified as post-offence conduct evidence at the appellate stage. If the prosecution does not comply with the process in the bill, it will be clear that the evidence is not, and cannot, be relied on as post-offence conduct evidence. In such a case, the issue becomes whether the accused requests a cautionary direction under clause 27.

If the trial judge permits the prosecution to use the evidence in this way, the judge must direct the jury about how to use the evidence in determining the accused's guilt. The proposed direction will abrogate the common-law requirements in relation to post-offence conduct and simplify some of the complexities that currently apply to directions on post-offence conduct.

If the trial judge gives the prescribed direction, the accused may request an additional direction which provides cautionary information about this type of evidence. For example, that the accused may have engaged in the conduct for reasons other than that the accused is guilty. This second direction is only given if the accused requests it.

The accused may not want this second direction to be given, particularly if it would serve to disproportionately highlight the evidence. If the purpose of a cautionary direction is to ensure the accused has a fair trial, it should not be given where the accused considers that the direction will make it harder to receive a fair trial. By following the jury direction request process, the parties will have more control over the directions given and the trial judge can tailor directions to be more helpful to the jury in determining the issues in dispute in the case.

Another problem currently arises where evidence may mistakenly be considered by a jury to amount to an implied admission of guilt. Some lies told by the accused may only be relevant to the accused's credibility. The trial judge must decide which directions to give in such circumstances and the content of those directions. This can be difficult to do and too often results in appeals. The bill therefore provides that in circumstances where the accused is concerned about such potential misuse of evidence by the jury, the accused may request a direction. The trial judge must give the direction unless there are good reasons for not doing so. Again, this follows the approach taken in the jury direction request provisions.

Courts have observed that there is an inevitable difficulty for jurors in understanding and applying subtle distinctions allowing the use of evidence for one purpose and not another. Further, research shows a risk that a warning not to use evidence for a particular purpose may be counterproductive by exciting the very reasoning which is forbidden, but which might otherwise not have occurred to them. The reforms avoid these artificial distinctions and mental gymnastics, and also prevent the danger of highlighting the evidence.

Conclusion

The law on jury directions, as it stands, burdens the trial judge with onerous obligations that are difficult to execute and the jury with lengthy and complex legal and factual content. Significant legal and cultural change is required to address these problems. The reforms in this bill introduce a new way of approaching jury directions and fundamentally change how directions will be identified, how their content will be determined and how directions are presented. It is a most significant and far-reaching reform of jury directions in Victoria, and indeed Australia, and represents a milestone in the reform of our criminal justice system.

I commend the bill to the house.

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

Debate adjourned until Thursday, 28 February.

STATUTE LAW AMENDMENT (DIRECTORS' LIABILITY) BILL 2012

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (charter act), I make this statement of compatibility with respect to the Statute Law Amendment (Directors' Liability) Bill 2012.

In my opinion, the Statute Law Amendment (Directors' Liability) Bill 2012, as introduced to the Legislative Council, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill will implement one of Victoria's commitments under the Council of Australian Governments (COAG) National Partnership Agreement to Deliver a Seamless National Economy 2008. The aim of this reform is to ensure that provisions imposing individual criminal liability on officers of companies when a company commits an offence are

appropriate having regard to the regulatory objectives of the act and to the nature of the offences. The bill amends certain acts which at present provide a 'blanket' approach to applying liability to directors, regardless of the nature and type of offence.

The bill does not amend the underlying offences committed by a body corporate or the penalties for offences in any act. Instead, it sets out in what circumstances an officer may be held liable for the commission of an offence by a body corporate and enacts model provisions to ensure consistency in directors' liability provisions in these acts. It is intended that the model provisions will be adopted for future use in acts where it is considered appropriate to impose criminal liability on officers of bodies corporate.

The model provisions provide for the following types of liability:

> Accessorial liability — where an officer of a body corporate authorised, or permitted, or was knowingly involved in, the offending conduct.
>
> Type 1 directors' liability — where an officer failed to exercise due diligence to prevent the offending conduct by the body corporate (type 1 DLP).
>
> Type 2 directors' liability — where an officer is deemed liable for the commission of the offence by the body corporate unless the officer can point to evidence that suggests a reasonable possibility that he or she exercised due diligence to prevent the offending conduct by the body corporate (type 2 DLP).
>
> Type 3 directors' liability — where an officer of the body corporate is deemed liable for the commission of the offence by the body corporate unless the individual can prove that he or she exercised due diligence to prevent the offending conduct by the body corporate (type 3 DLP).

A type 2 DLP imposes an evidential onus or burden on the officer. A type 3 DLP imposes a legal onus or burden (to prove a defence on the balance of probabilities) on the officer.

There are also provisions in the bill that ensure an officer can avail themselves of the same defences that are available to the body corporate. The relevant offence provisions already apply both to bodies corporate and to individuals. Some of those existing defences to underlying offences may contain reverse onuses. But this bill does not affect the underlying offences or their specific defence, so I have not included in this statement an analysis of the compatibility of each and every specific defence which is available to an officer who may be prosecuted under the directors' liability provisions of the bill.

Human rights issues

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

Presumption of innocence (section 25(1))

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 where a statutory provision shifts a burden of proof on to an accused in a criminal proceeding.

Many of the amendments proposed by this bill strengthen the right to the presumption of innocence to the extent that the bill repeals many reverse onus provisions in the acts being amended by the bill. The bill removes absolute liability offences and significantly reduces the number of type 2 and type 3 DLPs in a range of acts.

Type 2 and type 3 DLPs have been retained in some acts — principally those which essentially relate to the health or welfare of the community, or are necessary to protect public revenue.

Type 2 DLPs — imposing an evidential burden of proof

The bill applies a type 2 DLP (which imposes an evidentiary burden of proof on an accused) to offences in the Agricultural and Veterinary Chemicals (Control of Use) Act 1992 which relate to the illegal sale of certain chemicals and high-risk activities related to aerial spraying (see clause 4, proposed section 72C) and to offences in the Liquor Control Reform Act 1998 which are associated with alcohol-related harm (see clause 27, proposed section 53C).

Whether an officer exercised due diligence to prevent the commission of the offence by the body corporate is a matter peculiarly within the knowledge of the officer. Officers of bodies corporate are best placed to provide evidence as to whether and how they exercised due diligence.

In my view, these provisions are compatible with the right to be presumed innocent. The provisions impose only an evidentiary burden on an accused — that is, a person is not required to prove on the balance of probabilities that the defence applies. Once the accused has pointed to some evidence to suggest a reasonable possibility that he or she exercised due diligence to prevent the body corporate committing the offence, the burden is on the prosecution to prove the contrary, and a person cannot be convicted if there is a reasonable doubt.

Type 3 DLPs — imposing a legal burden of proof

The bill retains or reapplies a type 3 DLP (which imposes a reverse legal onus of proof on the accused) to offences in the Food Act 1984, Dairy Act 2000, Taxation Administration Act 1997 and Duties Act 2000. The type 3 DLP requires that the prosecution must first prove beyond reasonable doubt that the body corporate committed the offence. The officer has a defence if they can prove on the balance of probabilities that they exercised due diligence to prevent the commission of the offence by the body corporate. This places a legal burden on the accused to prove their defence. I consider that in relation to the offences in each of these acts, the imposition of a legal burden is compatible with section 25(1).

(a) Food Act 1984

Currently all offences in the Food Act attract a type 3 DLP. Following a detailed review of the Food Act, this bill will reduce the number of offences which attract type 3 liability.

Clause 23 of the bill (proposed section 51B) applies the type 3 DLP to those offences that are central to the regulatory regime established by the Food Act, and which relate to food handling and safety measures.

For almost all of the proposed offences, the maximum penalty is a fine. In the case of the most serious offences against the act (sections 8, 9 and 10), the maximum penalty is two years

imprisonment. These offences essentially involve a food business knowingly selling, or handling for sale, food that is unsafe.

The other offences to which the type 3 DLP will be applied (and for which the maximum penalty is a fine), relate to unsafe food handling, handling food in a way that could cause harm, preventing food-borne disease and acting so as to avoid scrutiny by local government of these matters (sections 11–15, 39C, 16, 19, 19AA, 19A, 19B, 39B, 44E, 19CB, 19F, 19GB, 38F).

The purpose of all these provisions is to protect public health and safety. There are significant health consequences of breaches of food safety standards. It is in the public interest that officers of a corporation exercise due diligence to prevent the commission of these offences.

(b) Dairy Act

Currently all offences in the Dairy Act attract a type 3 DLP. Clause 14 (proposed section 55C) of the bill will apply the type 3 DLP only to offences which protect public health and safety and are central to the regulatory regime designed for the handling and safety of dairy food. The remainder of the offences will be subject to accessorial liability or to a type 1 DLP.

A type 3 DLP will be applied to offences, for which a maximum penalty is a fine, contained in the following sections of the Dairy Act:

> conducting a business as a dairy farmer, manufacturer, food carrier or distributor or operating a vehicle that carries dairy products without a licence, where licensing requirements are to ensure that dairy products are handled safely (section 22);
>
> sale and delivery of dairy food that has not been pasteurised, packed or sealed as required (section 36); and
>
> failure to comply with orders to handle dairy products safely (sections 50, 53).

Dairy foods are regarded as high-risk products and the considerations set out above in relation to the Food Act generally equally apply to the use of type 3 DLPs in the Dairy Act. These offences serve the important purpose of ensuring public welfare and safety.

(c) Taxation Administration Act 1997 and Duties Act 2000

Currently all offences in the Taxation Administration Act and the Duties Act attract a type 3 DLP.

Clause 45 (proposed section 130C) of the bill will apply a type 3 DLP to only the most serious offences in these two acts:

> tax evasion and intentionally or negligently giving false or misleading information to tax officers against the Taxation Administration Act (sections 57 and 61);
>
> the unauthorised endorsement of instruments against the Duties Act (section 268).

These offences impose penalties and the most serious of these offences, tax evasion, also imposes a maximum penalty of two years imprisonment.

Applying a type 3 DLP to these offences serves to protect state revenue from tax avoidance and deception and to assure the fundamental integrity of Victoria's taxation system.

In relation to sections 57 and 61 of the Taxation Administration Act, truthful and full disclosure is essential to tax administration, because the proper imposition and collection of tax relies on the quality of the records kept and information provided by the taxpayer. The commission of these offences undermines state revenue and public confidence in the tax system. Similarly, the offence in section 268 of the Duties Act targets the fraudulent endorsement of instruments on which duties may be payable.

Type 2 and type 3 DLPs — overall summary

There are sound policy justifications for imposing type 2 and type 3 DLPs on officers for these offences.

The proposed provisions provide defences where officers have exercised due diligence. This limits the exposure of officers to cases where they have not taken reasonable care to prevent the commission of the offence by the body corporate.

Whether and, if so, how an officer exercised due diligence to prevent the commission of the offence by the body corporate is a matter peculiarly within the knowledge of the officer. Officers of bodies corporate are best placed to prove whether they exercised due diligence. It would be very difficult for the prosecution to have to negative every possible due diligence action the officer might have taken without requiring the officer to point to evidence of the due diligence they undertook (type 2 DLP) or affirmatively prove the due diligence they undertook (type 3 DLP).

For those offences which concern serious risks to public health and safety, and the integrity of the state taxation system, type 3 DLPs are justified to ensure that officers must affirmatively prove that they undertook due diligence.

Conclusion

For the above reasons, I consider that the imposition of type 2 and type 3 DLPs is demonstrably justifiable and compatible with the charter act.

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

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations).

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

This bill will implement reforms to legislation that imposes personal criminal responsibility on directors and officers of corporate entities for offences committed by those entities. This bill substantively implements one of the national regulatory reform items agreed to by the Council of Australian Governments (COAG) under the National Partnership Agreement to Deliver a Seamless National Economy 2008.

Following a four-year review, the Commonwealth Corporations and Markets Advisory Committee released a report in 2006 commenting on the unsatisfactory manner in which Australian jurisdictions imposed, through legislation, personal criminal liability on directors and other officers of corporate entities. The report found that there was a need for a more consistent and more principled approach to imposing personal liability on directors and officers for corporate offences across commonwealth, state and territory laws. The review noted that such an approach would reduce complexity, aid understanding, increase certainty and predictability, and assist efforts to promote effective corporate compliance and risk management.

The concern, based on a survey of directors' liability provisions in various acts across and within jurisdictions, was that such provisions had blanket application to all offences without regard to the fact that corporations and directors are distinct legal persons, and without regard to the nature of the offence for which a director was being held liable and the relationship or proximity between the director and the activity resulting in the commission of the offence by the corporate entity.

In 2009, COAG agreed on six common principles that jurisdictions should take into account before imposing personal criminal liability on directors and officers. In summary, the six principles are as follows:

1. where a corporation contravenes a statutory requirement, the corporation should be held liable in the first instance;

2. directors should not be liable for corporate fault as a matter of course or by blanket imposition of liability across an entire act;

3. a 'designated officer' approach to liability is not suitable for general application;

4. the imposition of personal criminal liability on a director for the misconduct of a corporation should be confined to situations where there are compelling public policy reasons for doing so, the liability of the corporation is not likely on its own to sufficiently promote compliance and it is reasonable in all the circumstances for the director to be liable. In doing so, consideration should be given to whether the director has the capacity to influence the conduct of the corporation in relation to the offending and there are steps that a reasonable director might take to ensure a corporation's compliance with its legislative obligations;

5. where it is appropriate to impose liability on directors, they could be held liable where they have encouraged or assisted in the commission of the offence or have been negligent or reckless in relation to the corporation's offending;

6. in addition, in some instances, it may be appropriate to put directors to proof that they have taken reasonable steps to prevent the corporation's offending if they are not to be personally liable.

In 2011, COAG established a dedicated reform committee under the COAG Business Regulation and Competition Working Group. The working group developed detailed guidelines around the six COAG principles setting out the circumstances in which it was appropriate to impose liability on directors and managers and when more stringent directors' liability provisions should apply. These guidelines were approved by COAG on 25 July 2012.

In order to better reflect the COAG principles for directors' liability, the government has developed template provisions to ensure that as far as possible, the wording used in Victorian acts follows a uniform approach. These template provisions provide for four types of liability that can be used in acts where it is appropriate to impose criminal liability on directors or officers. These will form the standard tests for criminal liability for directors or officers in cases of corporate offending under Victorian legislation.

The first proposed type of liability — officers' liability arising from a failure to exercise due diligence — will require the prosecution to prove that the officer failed to exercise due diligence to prevent the commission of the offence. In determining whether or not an officer failed to exercise due diligence a court may have regard to a number of factors. These factors are what the officer knew or ought reasonably to have known about the commission of the offence by the body corporate, whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence, what steps the officer took or could reasonably have taken to prevent the commission of the offence and any other relevant factor. The officer could be prosecuted regardless of whether or not the body corporate is prosecuted or found guilty of an offence. However, the officer can rely on any defence that the body corporate could have relied on, had it been prosecuted. The COAG guidelines refer to this liability as a 'type 1' directors' liability provision.

The second proposed type of liability is officers' liability arising from a failure to exercise due diligence with an evidential burden of proof on the accused. This will presume that if the body corporate commits an offence the officer also commits the offence unless the officer presents or points to evidence suggesting a reasonable possibility that he or she exercised due diligence to prevent the commission of the offence by the body corporate. This provision requires the accused to show evidence that would suggest to a court that there was a reasonable possibility that he or she exercised due diligence with the applicable standard of proof for the accused being on the balance of probabilities. Once that evidence is raised by the accused, the burden will shift to the prosecution to prove, beyond reasonable doubt, that the officer did not exercise due diligence. In determining whether or not the officer exercised due diligence a court may have regard to the same factors that are listed for a type 1 directors' liability provision. The officer could be prosecuted regardless of whether or not the body corporate is prosecuted or found guilty of an offence. However, the officer can rely on any defence that the body corporate could have relied on, had it been prosecuted. The COAG guidelines refer to this liability as a 'type 2' directors' liability provision.

The third proposed type of liability is officers' liability arising from a failure to exercise due diligence with a legal burden of proof on the accused. This will presume that if the body corporate commits an offence the officer also commits the offence unless the officer proves he or she exercised due diligence to prevent the commission of the offence by the body corporate. This is a reverse onus provision. In determining whether or not the officer exercised due diligence a court may have regard to the same factors that are listed for a type 1 directors' liability provision. The officer could be prosecuted regardless of whether or not the body corporate is prosecuted or found guilty of an offence. However, the officer can rely on any defence that the body corporate could have relied on, had it been prosecuted. The COAG guidelines refer to this liability as a 'type 3' directors' liability provision.

The final type of liability — officers' accessorial liability — will require the prosecution to prove that the officer either authorised or permitted, or was knowingly concerned in, the commission of the offence by the body corporate. The officer could be prosecuted regardless of whether or not the body corporate is prosecuted or found guilty of an offence. However, the officer can rely on any defence that the body corporate could have relied on had it been prosecuted.

The COAG guidelines provide that as a general rule, where personal criminal liability is to be imposed on directors or officers, a directors' accessorial liability provision or a type 1 directors' liability provision is preferred as the prosecution should bear the burden of establishing the case against the accused. The use of a type 2 provision or a type 3 provision should be confined to circumstances where there are sound public policy reasons for using these provisions and where the relevant offences are central to the regulatory objectives of the particular act. The COAG principles are clear that directors' liability provisions should not apply as 'blanket' provisions in any act.

This bill will amend 18 acts to either repeal directors' liability provisions or to replace these provisions with directors' accessorial liability. Where there is a policy justification for retaining directors' liability provisions, the bill will amend acts to ensure that the most stringent forms of directors' liability, such as type 2 and type 3 provisions, are restricted in application to those offences that are central to the regulatory objectives of the particular act and are sufficiently grave to warrant holding directors and officers to account for corporate offending. The scope of this bill is limited to amending the directors' liability provisions in these acts. It does not amend existing offences and existing penalties, and it does not amend the type of person or entity who is primarily capable of committing an offence. As the COAG reform does not extend to the civil liability of directors and officers, this bill does not amend any civil liability arrangements for directors and officers.

Two acts that are not being amended by this bill, being the Occupational Health and Safety Act 2004 and the Environment Protection Act 1970, were originally excluded from the directors' liability project by COAG on public policy grounds. In addition, the government is not amending the directors' liability provisions in the Judicial Proceedings Reports Act 1958 on public policy grounds. The government has already reformed the directors' liability provision in the Port Management Act 1995 through the recently enacted Transport Legislation Amendment (Marine Drug and Alcohol Standards Modernisation and Other Matters) Act 2012.

Overall, the reforms contained in this bill and the future use by the Victorian government of the COAG guidelines will help ensure that the imposition of personal criminal liability on directors and officers in Victorian legislation will be targeted appropriately to the circumstances of the legislation and the offence concerned.

I commend the bill to the house.

Debate adjourned on motion of Ms TIERNEY (Western Victoria).

Debate adjourned until Thursday, 28 February.

RULINGS BY THE CHAIR

Questions on notice: reinstatement

The PRESIDENT — Order! I received a letter from Ms Hartland in December 2012 with regard to question on notice 8510. Ms Hartland sought a ruling on whether or not the question had been answered. That question was addressed to the Minister for Public Transport via the Minister for Planning in this place and was in relation to boom gate times on certain roads in the western suburbs. The minister provided an answer which I think addressed a substantial part of Ms Hartland's question but did not consider projections on additional down time for those boom gates, which I think was probably the key thing that Ms Hartland sought. To the extent that the minister might be able to provide some advice on that, I suggest that the question be reinstated.

Members: unparliamentary remarks

The PRESIDENT — Order! I have also had an opportunity to review some proceedings in the house yesterday which I thought were unfortunate, and which I alluded to earlier today. A number of members and the clerks brought to my attention the proceedings and the *Hansard* record of part of those proceedings. I say part of those proceedings, because of course Hansard does not pick up all interjections.

We have a situation where one member has been quoted for the use of a word that I regard as unparliamentary, but I accept that there is a very strong possibility that the member used that word in reaction to an interjection from another member who used the same word. I am unable to determine, even with the assistance of Hansard — partly because of the limited fields of recording in the chamber — exactly who the other member might have been, and whether or not that was in fact the word that was used or that perhaps Ms Tierney just thought it was or that it was something similar. I could not possibly speculate on what might have been similar.

I am concerned about interjections. I might add that this was in a speech by Mr Ondarchie, so what I am talking about is an interchange of interjections, which is not helpful to the chamber and has resulted in the unfortunate publication in *Hansard* of an attribution to one member of a word that, as I said, I regard as unparliamentary. I have discussed this with Ms Tierney, and she has graciously agreed to submit an apology to the Parliament on this occasion. I invite her to comment.

Ms TIERNEY (Western Victoria) — Thank you, President. I happily rise to apologise on this occasion. I did hear the interjection, I did respond to that interjection, and in the sense of fairness and the right thing to do, I would call on Mr Drum to see his way clear to apologise too.

The PRESIDENT — Order! I have spoken with Mr Drum and he does not believe he was the person who was the source of that interjection. I am not in a position to push that further. I thank Ms Tierney for that apology.

ADJOURNMENT

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I move:

That the house do now adjourn.

State Revenue Office: first home owner grant

Hon. M. P. PAKULA (Western Metropolitan) — The matter I wish to raise is for the Treasurer. At the outset I indicate to the minister at the table, the Minister for Higher Education and Skills, Mr Hall, that unlike my normal practice I will not be here for the minister's response as I have a meeting to get to, and I seek his indulgence. I am sure he will respond appropriately, even in my absence.

I have been contacted by a constituent who has raised an issue on behalf of his daughter. His daughter has indicated to me that she is happy for this matter to be raised in Parliament but not for her name to be used. It concerns the first home owner grant and the State Revenue Office (SRO) practice in some circumstances of seeking the return of first home owner grant money when it believes the recipient has not appropriately been granted that money.

The situation here involves a person who was raised in Warrnambool and whose family then moved to Seddon. This individual indicated that she wanted to move back to Warrnambool. She received a first home owner grant to build a property in Dennington, and the grant was for $27 500. My constituent's daughter understood that there was a requirement for there to be at least six months residency. She believed that she fulfilled those requirements. For work reasons, particularly given the paucity of work in her field in Warrnambool, she found herself commuting to Melbourne and spending some nights in Melbourne at her parents place and returning to Dennington on the weekends et cetera. She believes very strongly that she fulfilled the residency requirement, but due to things such as a low utilities bill the State Revenue Office has now sought, in fact demanded, the return of $27 500.

This is obviously extremely distressing for this individual. She has written to both the SRO and to her local member, Dr Napthine, who is the member for South-West Coast in the Assembly. As I have said, her father has written to me. I ask that the Treasurer pay particular attention to this individual case and review it. I also ask that he indicate to me how widespread and common this practice is of the State Revenue Office pursuing recipients of the first home owner grants for the return of funds in circumstances where it believes the conditions have not been complied with. If I could have that information, I would appreciate it.

Mr P. Davis — On a point of order, President, before I proceed to my adjournment issue, earlier today I took a point of order objecting to certain matters, which are now on the record. I want to appropriately acknowledge that Mr Pakula and Ms Mikakos have both acknowledged that there needed to be a withdrawal, and I thank them sincerely for that. I will not be pursuing that matter any further. I regret that it occurred at all. But it did serve to highlight a problem for the Parliament and for the chamber, and probably it is a matter that is overdue in terms of getting some process to address it.

Therefore I indicate that I intend to write to you more formally and seek your indulgence to consider what action would be appropriate to take to mitigate the risk of such future incidents occurring, in particular the overenthusiastic misrepresentation by summary tweeting and through other processes of incidents which occur within the chamber. I will leave it to your discretion, President, to determine how you deal with that, but I will be writing to you. I thank you for your indulgence.

The PRESIDENT — Order! It is not really a point of order. I accept Mr Davis's acknowledgement and forewarning that he will be writing to me.

Bushfires: road closures

Mr P. DAVIS (Eastern Victoria) — I wish to raise a matter for the Minister for Roads in relation to bushfires in general but in particular those that are affecting eastern Victoria, particularly in the Seaton and Licola area. I refer to what is known as the Aberfeldy complex and of course the Harrietville and Feathertop fire in north-eastern Victoria, which is now becoming a significant fire on the Gippsland side at Dargo. It has been causing great difficulty in terms of community interaction and travel, because of the closure of the Great Alpine Road on the one hand, and also the now closure other than to local traffic of the Jamieson-Licola Road.

In practical terms the issue is about getting those roads reopened as soon as is reasonable and obviously safe, and I am not urging fire management agencies to take any action which is unsafe. However, there is a pragmatic problem which is a safety hazard matter that I need to bring to the attention of the house — that is, local people in rural communities will know the highways, byways and in particular the back ways. The risk of having roadblocks — that is, with police on duty at those roadblocks — is often a problem of inducing the local people to bypass the roadblock by using a minor road, a back road which they are aware of that perhaps the authorities do not know about. At least it may be unmanned, where there is no police check or a roadblock. The dangers of using a minor road puts the road user at significant risk if that road has not been subject to any attention or management immediately post fire.

What I really am seeking from the Minister for Roads is that he review this both in the immediate aftermath of this summer's fires and also as inevitably fires occur so that we have a better process next year that will deal with allowing local access more appropriately and more quickly after a fire event. Local communities should not feel they have to find alternative ways of accessing their property and attending to their livestock in particular. It will also ensure that the agencies respond quickly to mitigating the safety risks of falling trees on those roads.

City of Port Phillip: budget submission

Mr LENDERS (Southern Metropolitan) — The matter I raise on the adjournment tonight is for the attention of the Treasurer, Mr Wells, and it relates to a very respectful letter I received from the mayor of the City of Port Phillip. It is a letter to Mr Wells, but copies have also been circulated to Martin Foley, the member for Albert Park in the other place, and to all five members of Southern Metropolitan Region in this house.

I say it is a very respectful letter, because the City of Port Phillip actually outlines four particular areas that it would like funded in the budget. It is done very respectfully, and the first one is the state government proceeding with the building of a primary school in South Melbourne, which a number of government MPs have already proudly spoken of. It talks about funding for replacement of St Kilda Pier and funding for a Park Street tram link, and it also talks about funding of a longer term project, which is really for the Palais Theatre.

The letter is respectfully written. It acknowledges promises and commitments made by the government, but why I commend it strongly to the Treasurer is it actually seeks to have a dialogue with him. It is a local council that says, 'These are our priorities for this budget, and this is a longer term, larger project, which is the Palais Theatre'. I urge the Treasurer to meet with them. I know the Treasurer is busy in the lead-up to the budget, but having been in that role for three budgets and involved in several budgets earlier in other roles as finance minister and parliamentary secretary I know it is very helpful to meet with councils.

I commend the City of Port Phillip in particular because this is not just some wish list of everything under the sun. Councillors have argued it. They have talked about how things can be partnerships. They are being respectful. They are seeking to get a dialogue with the government for this budget and for future ones, and I am assured by the mayor that in all these cases they have approached the individual ministers. The action I seek from the Treasurer is that he actually meet with the City of Port Phillip, and if it is not possible to meet with councillors before this budget, then certainly to meet with them after the budget, because it is a longer term plan to discuss with them the municipality's important priorities, and hopefully to make it part of his priority in terms of some of the things he would do. My significant request is that he meet with City of Port Phillip representatives. This is what we would hope that all municipalities would do — to prioritise and to do it in a respectful manner.

Employment: Gippsland

Mr VINEY (Eastern Victoria) — The matter I raise tonight is for the attention of the Minister for Manufacturing, Exports and Trade, Richard Dalla-Riva, who is also Minister for Employment and Industrial Relations. I refer the minister to labour force data released last week which shows significant job losses in

regional Victoria, and I draw the minister's attention in particular to a company called Drypac in Warragul, which manufactures trays, coolant and absorbent products that are principally used for packaging food. On Friday Drypac's parent company, Sealed Air, announced that the Warragul plant would close by the end of the year.

This announcement means that more than 120 people will lose their jobs and, as a result, over $4 million will be lost to the local economy. The loss of these 120-odd jobs comes on top of 24 600 lost Gippsland jobs in the latest figures released by the Australian Bureau of Statistics, which show those people have already joined the unemployment queues since the Baillieu government was elected.

I remind the minister that in this place on 24 March 2011 he responded to questions I raised about job losses in the Latrobe Valley, and he said:

> I am here as the minister to generate jobs and investment across Victoria.

Given this record of thousands of jobs disappearing under his watch and under the watch of his local members in that area — Mr Northe, the member for Morwell in the Assembly, and Mr Blackwood, the member for Narracan in the Assembly, who both of course were on a jobs task force that clearly has not had any effective result in the Latrobe Valley and West Gippsland area — I call on the minister and the government to release a jobs plan that will create jobs in Gippsland. I ask the minister to take some action, any action in fact, that will give some hope to the 120 people who are now losing their jobs in west Gippsland.

Local government: Sunbury

Mrs PETROVICH (Northern Victoria) — My adjournment matter is for the Minister for Local Government, Jeanette Powell, and it relates to Sunbury residents having their say on whether they remain part of the city of Hume. Firstly, I congratulate the minister on delivering on the coalition government's commitment to give the Sunbury community a say on this issue, which the former Labor government failed to do, instead delivering a string of broken promises.

This week the minister publicly released the independent stage 1 report on *Hume City Council's Service Provision in Sunbury 2012*, which was conducted by KPMG. The study reveals positive results regarding service delivery to the Sunbury community, finding that Sunbury residents receive a similar or higher share of council services and infrastructure than other Hume municipality residents. The study used 27 indicators to determine relative service levels across four areas: infrastructure, including roads, footpaths and waste services; family and community services; recreation, including sports centres and facilities; and parks and open spaces. The study looked at services provided over a three-year period from 2008–09 to 2010–11. The minister also announced that KPMG has been commissioned to undertake a feasibility study into the impact and costs of establishing a separate Sunbury shire as stage 2 of the evaluation.

Sunbury's position within the Hume municipality has been a significant issue for many years, and it is important to this community that the coalition will allow an informed public debate and the opportunity for them to have their say. I congratulate the minister on the work done to date on this issue, and I ask her to continue working through this important process that will allow the Sunbury community to accurately evaluate the services provided to them by the City of Hume in order to make an informed decision on whether to remain part of that municipality.

National Centre for Farmer Health: partnerships

Ms TIERNEY (Western Victoria) — My adjournment matter is for the Minister for Health, and relates to the National Centre for Farmer Health and diabetes prevention. The Baillieu government's decision to cut $1 million annually from the state government contribution is now being felt and is taking its toll as a number of staff have been terminated in recent weeks. A recent article in the *Weekly Times* states that without core funding the centre would struggle to stay open. The article also quotes the director of La Trobe University's centre for sustainable communities, John Martin, who said that the decision to slash the centre's funding was short-sighted and that the programs delivered by the centre had produced profound results and made the farming population a healthier group of people.

Recently the centre was also stripped of $94 069 from the Department of Primary Industries' Health and Wellbeing for Farmers in a Climate Change program. The program concluded under budget due to efficiencies in running the program, and in the past the leftover money would have then been used by the centre to further the program. However, on this occasion the centre received acknowledgement for the great work it had done in delivering the program, but was denied its bid to keep the $94 000 for further work.

In response to an adjournment matter I raised last year on diabetes funding, the minister wrote back to me stating:

> The Life! program has established links with the National Centre for Farmer Health to improve the reach of the program into Victorian farming communities.

In 2011 the Baillieu government's response to the report of the Victorian Parliament's inquiry into the extent and nature of disadvantage and inequity in rural and regional Victoria states:

> The 2011 budget provided funding of $22.2 million over four years to continue the Life! program, which provides a statewide diabetes prevention program in partnership with the National Centre for Farmer Health/Sustainable Farm Families.

My request is for the minister to provide me with examples and instances of current and future links and partnerships that the Baillieu government has alluded to on a number of occasions, between the Life! program and the National Centre for Farmer Health.

Planning: Magpie Street, Ballarat

Ms PULFORD (Western Victoria) — The matter I wish to raise in the adjournment debate this evening relates to a planning matter and is therefore directed to the Minister for Planning, Mr Guy. It relates to a parcel of land at Golden Point where the old school oval was on Magpie Street many years ago. This issue first arose in 1997 with a proposal to zone the area urban residential. It was subsequently determined that the land would be zoned public park and recreation in recognition of its current and longstanding use. The land has an interesting history — as indeed that part of Ballarat has an interesting history — having been used for mining purposes at one time, as was much of the surrounding area.

In recent times members of the community have contacted me and Geoff Howard, the member for Ballarat East in the other place, with whom I share an office. Quite a number of residents are concerned about the possible change of use for this land, which has a long history as public open space. From the time it was a school oval until it became a community space, it has been enjoyed by many people. Some of the correspondence we have received suggests that this land, which was sold to Sovereign Hill in 1997, is now for sale and advertised as a residential site, a proposal that would change its use quite a lot. The park has been maintained by the local community since 1972. For a very long time the community has enjoyed it as an open space and has largely maintained it with community resources.

The Magpie Street land, formerly part of the Golden Point Primary School site, was used for recreational purposes and was part of school land developed and maintained with local community support. It was sold in December 1997 after the local council determined not purchase it. It was not put out to public tender but was sold to Sovereign Hill. That is when it was zoned, as I indicated earlier, public park and recreation. In October 1997 former Minister for Planning and Local Government Robert Maclellan called for a panel report on the Ballarat planning scheme, which was completed for release in March 1998. It recommended not changing the zoning, but before the minister received the report he appears to have agreed to the rezoning of this land to residential.

The action I seek from Minister Guy is that he investigate the zoning of the land and advise when the zoning change actually took place and under what circumstances the panel's advice was not accepted. These are the questions the community seeks clarification on, as it has been proposed to change the land's historical use.

Roads: city of Whittlesea

Ms MIKAKOS (Northern Metropolitan) — My matter this evening is for the Minister for Roads. I wish to draw to the attention of the minister some significant issues to do with inadequate road infrastructure in Melbourne's north, in particular in the city of Whittlesea, which is the second fastest growing municipality in Australia. Its current population of over 170 000 is expected to grow to 240 000 people within the next 10 years. It is important to note that that population growth is not only happening in the newer suburbs of South Morang, Mernda and Doreen but also in established suburbs such as Epping, Thomastown and Lalor. The City of Whittlesea has reported that Epping's arterial roads are already at capacity, and it estimates that they will be overflowing by 2016.

The council has listed in its budget submission the Hume interchange at O'Herns Road and the Edgars Road extension and the duplication of Epping Road as 2 of its top-10 priorities for consideration in this year's state budget. It has pointed out that the Northpoint Business Park and MAB Corporation developments are experiencing negative feedback from potential buyers due to a lack of access to infrastructure for freight movements and workforce availability.

The design and construction of northern and southern ramps connecting O'Herns Road with the Hume Freeway would relieve the congested Hume Freeway–Cooper Street interchange and

accommodate the immense traffic growth resulting from the anticipated opening of the Melbourne wholesale fruit, vegetable and flower markets in 2014. This project would be a significant boost to employment, investment and economic development in this area.

Extending Edgars Road would also provide access to the employment area for the 45 000 people living in Epping North and Epping Central. It would relieve congestion on High Street and Epping Road and further dissipate traffic funnelled into the Hume Freeway–Cooper Street interchange.

The council also reported that Epping Road, along with High Street between Memorial Avenue and O'Herns Road, carries up to 17 000 vehicles each day. Epping Road is plagued with open drains and inadequate shoulders. In the five years up to 30 June 2011 it had seen 37 traffic accidents, and there have been 55 injuries and 1 fatality.

The grassfire on Monday was a reality check. We saw a huge amount of traffic congestion as local residents tried to evacuate during the fire, with two lanes and a third road being closed due to the fire. I am very concerned about future fires and that the minister has written to Danielle Green, the member for Yan Yean in the Assembly, indicating that these projects are not on the agenda until 2046. I call on the minister to work with the City of Whittlesea to achieve better transport solutions for residents to the north of Melbourne but in particular to fund the O'Herns Road interchange and the Epping Road duplication, which are both very much needed.

Rail: Flinders Street station toilets

Mr SCHEFFER (Eastern Victoria) — I raise a matter for the Minister for Public Transport, the Honourable Terry Mulder, regarding the state of the toilets at Flinders Street railway station. The minister will appreciate that toilet facilities at Flinders Street are important for all rail users, but especially for those travelling longer distances from parts of regional Victoria and the Mornington Peninsula. Late last year I received correspondence from a constituent of Eastern Victoria Region, Mr Graham Schafer of Mount Martha, regarding the 'disgusting condition' of the toilets at Flinders Street railway station, which he said rendered them 'unusable'. Mr Schafer provided me with correspondence between himself and the City of Melbourne, as well as the minister's office. He wants to know what the minister is going to do to make sure the toilets are clean and usable, and he is not satisfied with the answers he has been getting.

I am impressed that Minister Mulder sent Mr Schafer a personal reply; however, the advice provided was not all that useful. The minister wrote that the toilets are attended to day and night, cleaned every 30 minutes during operating hours and that there are no plans for any upgrades. Mr Schafer was ultimately directed to the customer feedback service provided by Metro Trains Melbourne. The response from the customer relations team leader basically described the status quo: the toilets are supposed to be cleaned every 30 minutes, and the cleaning contract has been awarded to Transclean Facilities.

In response to Mr Schafer's question about what prevents adequate cleaning of the toilets, the customer relations team leader wrote that Metro Trains aims to have the toilets clean, the station processes around 140 000 commuters a day, staff have to clean without closing down the facilities, some customers do not keep the facilities clean, there are toilets at both ends of the station and staff shuttle back and forth between each location. In short, Mr Schafer's issues have not been dealt with. The plain fact is that Mr Schafer has said that, when he personally inspected them, the toilet facilities they were filthy, and he wants to know what the cleaning arrangements are between Public Transport Victoria, Metro Trains and Transclean Facilities.

I ask the minister to advise me of the details of how maintenance by Transclean Facilities of the Flinders Street railway station toilets is evaluated, what recent evaluations have shown and how the evaluations have been conducted. If the evaluations show the cleanliness of the toilets at Flinders Street is below what has been contracted for, how will the government ensure that standards are improved? I also note that the *Age* reported in June last year that Transclean and Metro are engaged in a dispute over Transclean's compliance with the terms of the cleaning contract with Metro.

WorkSafe Victoria: Country Fire Authority Fiskville facility

Mr LEANE (Eastern Metropolitan) — My adjournment matter is directed to Mr Rich-Phillips, the Assistant Treasurer, in his capacity as the minister responsible for WorkSafe Victoria. The action I seek is his immediate involvement in the urgent request for WorkSafe to conclude a formal, proper investigation into health and safety issues at the Country Fire Authority training facility at Fiskville.

Lawyers representing the United Firefighters Union (UFU) wrote to WorkSafe Victoria in November 2012 outlining significant concerns at the Fiskville training

facility, including but not limited to alleged breaches of the Occupational Health and Safety Act 2004 (OHS act), the Environment Protection Act 1970 and the Pollution of Waters by Oil and Noxious Substances Act 1986. The concerns under these acts included failure to test to the appropriate independent recognised standard; failure to communicate the results of testing to employees; use of class A water, which is not a suitable standard for firefighting training; and the use of foam that has been banned internationally.

In outlining the claims it was noted that WorkSafe had to date failed to undertake a prosecution regarding these matters and that pursuant to section 131 of the OHS act WorkSafe should commence a full and proper investigation into whether a prosecution should be brought. Under the provisions of the OHS act WorkSafe is required to respond to such a request within three months, which it did not do. It was only after questioning from the UFU and the media and pressure from the opposition, which said it would raise the issue in the Parliament, that WorkSafe responded to the request and said that it could not meet the time frames of its statutory obligations due to the potential breadth and complexity of the matter.

This provides no clarity as to the conclusion of any investigation and is clearly an unsatisfactory situation given the seriousness of the concerns that have been raised, particularly given that WorkSafe has been aware of issues concerning Fiskville since late 2011. The situation at Fiskville, as we know, has been well documented, and we also know that significant legal action is taking place, with compensation being sought for a range of very serious and, sadly, in some cases terminal illnesses.

I also note that as a result of significant concerns being raised by the UFU the Metropolitan Fire Brigade has agreed not to recommence using the Fiskville site for training purposes. Given these major concerns, the action I seek from the minister, which I reiterate, is for him to ensure that WorkSafe undertakes a full and proper investigation, and that that be concluded urgently.

Responses

Hon. P. R. HALL (Minister for Higher Education and Skills) — I have written responses to adjournment items raised by Mr Eideh on 23 October, Mrs Petrovich on 12 December and Mr Pakula on 7 February.

Tonight there were 10 items raised on the adjournment debate. The first of those was raised by Mr Pakula for the attention of the Treasurer. That matter constituted some queries and requests for the reconsideration of a decision in relation to the awarding of the first home owner grant, and I will pass that on to the Treasurer.

Mr Philip Davis raised a matter for the Minister for Roads regarding the need to reopen roads in bushfire-affected areas as soon as it is safe to do so, and I will pass that request on.

Mr Lenders also raised a matter for the Treasurer. He requested that the Treasurer make himself available to meet with the City of Port Phillip regarding its budget requests, and I will pass that on.

Mr Viney raised a matter for the Minister for Manufacturing, Exports and Trade regarding employment issues in the Gippsland region, and I will pass that request on.

Mrs Petrovich raised a matter for the Minister for Local Government regarding the process involved in giving the Sunbury community a say on whether they remain part of the city of Hume or not, a process which is in place, and I will inform the Minister for Local Government of that matter.

Ms Tierney raised a matter for the Minister for Health regarding farmer health, in particular diabetes support for farmers and questions relating to that. I will pass those questions on to the Minister for Health.

Ms Pulford raised a matter for the Minister for Planning regarding the zoning of land at Golden Point, Ballarat. She raised a number of serious issues regarding that planning process, and I will pass those on.

Ms Mikakos raised a matter for the Minister for Public Transport in his capacity as Minister for Roads regarding some road projects in the city of Whittlesea. Again, I will pass the request by Ms Mikakos on to the minister.

Mr Scheffer also raised a matter for the Minister for Public Transport. That matter is in regard to the state of public toilets at Flinders Street railway station, and Mr Scheffer sought some information on that particular matter. I will pass that request on to the minister.

Finally, Mr Leane raised a matter for the Assistant Treasurer regarding WorkSafe Victoria, particularly WorkSafe issues at the Country Fire Authority training centre in Fiskville. I will pass those matters on to the Assistant Treasurer.

The PRESIDENT — Order! The house stands adjourned.

House adjourned 5.26 p.m. until Tuesday, 5 March.