PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SEVENTH PARLIAMENT

FIRST SESSION

Thursday, 21 March 2013

(Extract from book 4)

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By authority of the Victorian Government Printer

The Governor

The Honourable ALEX CHERNOV, AC, QC

The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

The ministry

(from 13 March 2013)

Premier, Minister for Regional Cities and Minister for Racing	The Hon. D. V. Napthine, MP
Deputy Premier, Minister for State Development, and Minister for Regional and Rural Development	The Hon. P. J. Ryan, MP
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Minister for Multicultural Affairs and Citizenship, and Minister for Energy and Resources	The Hon. N. Kotsiras, MP
Minister for Housing, and Minister for Children and Early Childhood Development	The Hon. W. A. Lovell, MLC
Minister for Corrections, Minister for Gaming Regulation, Minister for Crime Prevention and Minister responsible for IBAC	The Hon. A. J. McIntosh, MP
Minister for Public Transport and Minister for Roads	The Hon. T. W. Mulder, MP
Minister for Local Government and Minister for Aboriginal Affairs	The Hon. E. J. Powell, MP
Assistant Treasurer, Minister for Technology and Minister responsible for the Aviation Industry	The Hon. G. K. Rich-Phillips, MLC
Minister for Environment and Climate Change, and Minister for Youth Affairs	The Hon. R. Smith, MP
Minister for the Arts, Minister for Women's Affairs and Minister for Consumer Affairs	The Hon. H. Victoria, MP
Minister for Agriculture and Food Security, and Minister for Water	The Hon. P. L. Walsh, MP
Minister for Police and Emergency Services, and Minister for Bushfire Response	The Hon. K. A. Wells, MP
Minister for Mental Health, Minister for Community Services, and Minister for Disability Services and Reform	The Hon. M. L. N. Wooldridge, MP
Cabinet Secretary	Mr N. Wakeling, MP

Legislative Council committees

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

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

Legislative Council standing committees

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

Economy and Infrastructure References Committee — Mr Barber, 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 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, Mrs Peulich, Mr Somyurek and Mr Tarlamis. (*Assembly*): Ms Ryall.

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.

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

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

Public Accounts and Estimates Committee — (*Council*): Mr 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 Dalla-Riva. (*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

MEMBERS OF THE LEGISLATIVE COUNCIL

FIFTY-SEVENTH PARLIAMENT — FIRST SESSION

President: The Hon. B. N. ATKINSON

Deputy President: Mr M. VINEY

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

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

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

Leader of the Opposition:
Mr J. LENDERS

Deputy Leader of the Opposition:
Mr G. JENNINGS

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

Deputy Leader of The Nationals:
Mr D. DRUM

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

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THURSDAY, 21 MARCH 2013

Thursday, 21 March 2013

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

ACTING PRESIDENTS

The PRESIDENT — Order! I have received a letter from Ms Mikakos and also had some discussions with both the Deputy President and the Opposition Whip with respect to acting chairs and comments that are occasionally made in the course of debate. Ms Mikakos referred to a specific matter, and I have had a discussion with the acting chair in that instance, but I think it is important to make the point that the Chair must be impartial at all times. Members obviously sometimes feel that contributions do not accord with their views and are keen to have their views on the record, but the appropriate way of doing that is for the member to return to their place and contribute to the debate, not to make a commentary from the chair when they are an acting chair.

The impartiality of the Chair is something I have pursued as vigorously as I can, and I would hope that is recognised by members. I am quite happy to be reminded of my responsibilities at any time if members feel that I have not dealt with matters objectively and impartially. I certainly expect the same sort of standard will be upheld by acting chairs.

PETITIONS

Following petition presented to house:

Nadrasca community farm: future

To the Legislative Council of Victoria:

The petition of concerned residents of Victoria draws to the attention of the house the decision by VicRoads that the reservation between Springvale Road, Vermont South, and Boronia Road, Vermont, which will not be required for future road purposes and the consequent development of a structure plan for the future use of the land within the reservation, with the possibility of the land being sold by VicRoads for housing and other purposes.

This could result in Nadrasca community farm having to leave its current location at Morack Road, Vermont, and ceasing its operations in providing day services for adults with intellectual and physical disabilities, adversely affecting organisations like Yooralla, Scope, Melba Support Services, Heatherwood School and Alkira.

The petitioners therefore request that the Legislative Council of Victoria urge the government to:

facilitate an affordable arrangement that will guarantee Nadrasca community farm will remain in its current location so it can continue to provide great service to the community and grow.

By Mr LEANE (Eastern Metropolitan) (52 signatures).

Laid on table.

CHILDREN'S COURT OF VICTORIA

Report 2011–12

Hon. M. J. GUY (Minister for Planning) presented report by command of the Governor.

Laid on table.

ABORIGINAL AFFAIRS

Victorian government report 2012

Hon. W. A. LOVELL (Minister for Housing), by leave, presented 2012 report.

Laid on table.

RURAL AND REGIONAL COMMITTEE

Impact of food safety regulation on farms and other businesses

Mr DRUM (Northern Victoria) presented report, including appendices, together with transcripts of evidence.

Laid on table.

Ordered that report be printed

Mr DRUM (Northern Victoria) — I move:

That the Council take note of the report.

I will make a brief contribution on the inquiry. The food production and processing sector in Victoria is incredibly important for our state. Figures show that the sector makes up around 15 per cent of our economy. The key message from the inquiry is that Victoria's food safety regulatory system is working quite well, and we know that because our levels of foodborne illnesses are extremely low.

The committee conducted many site tours around the state. We were able to go from small specialist cheese makers to some of our large cheese producers.

Mrs Petrovich — Big cheeses?

Mr DRUM — And we did not see baby cheeses. We went to poultry producers and also to some of the state's leading abattoirs to look at their food handling systems. They are certainly very impressive. A lot of these great businesses contribute to Victoria's well-earned reputation, and it is not just a well-earned reputation here but one that is enjoyed overseas, and our overseas reputation is growing at a very high rate. However, the committee believes we can ease the burden on some of these businesses that produce low-risk food. That is what the industry has told us, and it is reflected in some of our key recommendations, where we are asking for some changes to lessen the burden while still maintaining a safe food production and processing system here in Victoria.

The handling of live seafood is an example where Victorian fishermen are currently at a disadvantage compared to other states, and the committee has recommended that the state government remove the regulatory requirements around the handling of live seafood in Victoria in a way that is consistent with the approach taken in other states around Australia.

The committee has also recommended that the Minister for Agriculture and Food Security consider transferring responsibility for registering and auditing all food retail businesses to local government, including butchers as well as fresh seafood and poultry retailers.

Mr Barber — Did you have a look at kangaroo meat?

Mr DRUM — I will take up Mr Barber's interjection. We may as well be producing kangaroo meat here in Victoria rather than letting some other state produce it.

Mr Barber interjected.

Mr DRUM — You always take up a Greens interjection at your own risk. Businesses in rural and regional Victoria especially want a local approach. Local councils already audit butchers in supermarkets and other local businesses, and they originally monitored all retail butchers. We believe this is an area where we can return to what has been done previously, as it still offers a safe option.

We also believe the minister needs to lobby Food Standards Australia New Zealand to ensure that the national primary production and processing standards are not introduced into the horticulture sector. There is no need for horticulture to come into that system. It offers absolutely no risk and therefore needs to be left how it is currently.

Finally, we found that Victoria's food safety regulators handle their responsibilities in a highly professional manner, but we have suggested that particularly PrimeSafe move with the times and ensure that it is a responsive organisation that acts not just as a policeman but also as an educator to ensure that as the culture of food production in the sector changes so too does PrimeSafe. This will ensure that Victoria remains the best place to do business and produce safe food.

The committee would like to thank all the businesses that welcomed us into their facilities and onto their premises and gave us the practical knowledge we needed to put the report together. I recommend the report to the house.

Motion agreed to.

SCRUTINY OF ACTS AND REGULATIONS COMMITTEE

Annual review 2012

Hon. R. A. DALLA-RIVA (Eastern Metropolitan) presented report, including appendices.

Laid on table.

Ordered to be printed.

PAPERS

Laid on table by Clerk:

Safe Drinking Water Act 2003 — Report on Drinking Water Quality in Victoria, 2011–12.

Statutory Rules under the following Acts of Parliament:

Architects Act 1991 — No. 33.

Business Licensing Authority Act 1998 — No. 31.

Fisheries Act 1995 — No. 18 *(in lieu of that tabled on 20 February 2013)*.

Infringements Act 2006 — No. 30.

Subdivision Act 1988 — Transfer of Land Act 1958 — No. 32.

Subordinate Legislation Act 1994 — Documents under section 15 in respect of Statutory Rule No. 31.

DISTINGUISHED VISITORS

The PRESIDENT — Order! I draw the attention of the Council to some visitors in the gallery, who are most welcome in our Victorian Parliament today. It is a delegation from Afghanistan, and you will have to excuse my pronunciations because I am to be coached

on those pronunciations when we meet later this morning.

It is led by Mr Ghulam Nabi Farahi. Mr Farahi is the Deputy Minister for Tourism and Administration in Afghanistan, and he has had a long and distinguished career in politics, particularly in the government in Afghanistan since 2001. Also, as one of the leaders of the delegation, we have Sayeda Mojgan Mostafavi. Again forgive my pronunciation. This lady is the Deputy Minister of Women's Affairs (Technical) in Afghanistan, and she too has had a distinguished career in public affairs. I note that she has been a lecturer in journalism studies, so she might be able to write on our proceedings and get some coverage. But we do welcome our visitors to this Parliament and hope that their visit to Victoria is a successful and happy one.

BUSINESS OF THE HOUSE

Adjournment

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

> That the Council, at its rising, adjourn until Tuesday, 16 April 2013.

Motion agreed to.

MEMBERS STATEMENTS

Mildura Base Hospital: future

Ms BROAD (Northern Victoria) — Last Friday I was very pleased to participate in a visit to Mildura with Labor leader Daniel Andrews. At a meeting with the Reclaim Mildura Base Hospital (RMBH) group to discuss the Napthine government's refusal to inform the community about the state of negotiations between the government, private health operator Ramsay Health Care and MTAA Super, we were informed that another consequence of the privatisation of Mildura Base Hospital was the loss of the community's capacity to fundraise through a charitable foundation.

We were advised that when Mildura had a public hospital the Good Friday Appeal was an iconic community event that brought hospital staff and the community together to raise much-needed funds. As part of their advocacy for the return of the privately operated hospital to public hands, the members of the RMBH group will hold a Good Friday appeal with a difference. Rather than raising money, they will operate a stand of hospital beds in Langtree Mall on Good Friday to encourage the community to support the appeal to the Napthine government to return the hospital to public ownership and management.

Mr Crisp, the member for Mildura in the Assembly, Mr Davis, the Minister for Health, and Premier Napthine should inform the Mildura community what they are going to do about the Mildura Base Hospital, and they should also advise Ramsay Health Care what their intentions are.

Hon. D. M. Davis interjected.

Ms BROAD — I support the community's call for Mr Davis, who is very vocal in here, to inform the community.

The PRESIDENT — Order! Members will know that I do not have a great tolerance for interjections in 90-second statements because there is limited time for members to get their messages across.

Dairy industry: legislation review

Mr BARBER (Northern Metropolitan) — In relation to the dairy crisis last week Queensland Premier Campbell Newman said:

> I'm calling on supermarkets to negotiate proper supply agreements that keep the industry alive.
>
> It's time the Australian Competition and Consumer Commission and the federal government had a proper look at this issue.

Yesterday the Victorian Farmers Federation (VFF), purporting to speak for the nation's farmers, said:

> Ultimately, we need to set the agenda on reforming the Competition and Consumer Act, to rebalance the power of supermarkets and give Australia's competition watchdog some real power to resolve disputes and impose decent penalties when anyone abuses their market power.
>
> The VFF welcomes the federal coalition's commitment to a root-and-branch review of the Competition and Consumer Act and calls on the Labor government to do the same.

Wow! The sleeping giant has woken. It is good to see them backing the calls that Greens leader Christine Milne has been making for years now. It is a pity that the best the coalition can offer is a review, because the Greens will go to the election with a policy to reform the act. What is the Premier, Dr Napthine — Dr Decisive — saying? In yesterday's *Weekly Times* it was:

> We've got to get a proper analysis of the situation.
>
> We will have to look at where the opportunities are.

For all the tens of thousands of dollars of campaign donations that Woolworths makes to the big parties — Liberal, Labor and The Nationals — I am guessing it feels it was money well spent.

Barry Neve

Mrs PEULICH (South Eastern Metropolitan) — Recently a former councillor and mayor of the City of Moorabbin, the predecessor council of the City of Kingston, Barry Neve, passed away, leaving behind him his devoted family: his wife, Jane; his four children; and his grandchildren, of whom he was immensely proud. Barry was an affable fellow and well liked by the community, and on behalf of the local area I extend my condolences to his family and friends on his premature passing.

Australia Day: South Eastern Metropolitan Region

Mrs PEULICH — I would also like to belatedly commend and congratulate Australia Day honours recipients from South Eastern Metropolitan Region. Our nation was built on the initiative of volunteers, and that continues to this very day.

I would like to place on record the thanks of the community to Mr John Admans from Mount Waverley, who received an OAM for services to business and commerce and to the community; Mrs Krishna Arora of Glen Waverley, who received an OAM for services to the community through multicultural and aged welfare organisations, in particular the Indian community; Laurence Harkin of Berwick, who received an AM for significant service to the community, particularly through the care and protection of people with a disability; Peter Jabbour of Dandenong North, who received an OAM for services to the community through multicultural and charitable organisations; Ian McKeown of Cranbourne East, who received an OAM for services to the community, particularly veterans and their families; Peter Mill of Frankston, who received an OAM for services to the community, particularly in the field of radio communications; and lastly, Norma Plummer of Berwick, who received an AM for significant service to sport and netball; as well as Marilyn Renfree of Glen Waverley, who received an AO. On behalf of the community I thank them all.

Backpackers: illegal camping

Mrs COOTE (Southern Metropolitan) — We in this state welcome tourists of all sorts to Victoria. It is really a mecca for tourists, and it is terrific. The state has some fabulous places for international and interstate tourists to come and visit. However, we do have a problem not far from my Port Melbourne electorate office in the Assembly electorate of Albert Park. An increasing number of backpackers have been camping in our parks for days on end while waiting to get onto the *Spirit of Tasmania* to go to Tasmania. Some of them come with their campervans and stay there for many days.

I was very perturbed to read in today's *Herald Sun* about some of these backpackers actually urinating on people's front nature strips, setting up cooking facilities, cooking their bacon and eggs on campfires and settling in for days. In fact, as the Liberal candidate for the federal seat of Melbourne, Kevin Ekendahl — an excellent candidate — points out, many of them:

> … are there for days on end, and many of them don't actually end up travelling on the ship.

This is actually a point. It is important that we encourage backpackers to come here, but we must also make certain that they do the right thing. One of the people quoted in this article said:

> I'm happy for them to travel and see Australia, but please respect the rules that we have here.

I totally concur.

Telstra: Clayton data centre

Mr SOMYUREK (South Eastern Metropolitan) — I rise to condemn the Minister for Technology, Mr Gordon Rich-Phillips, for washing his hands of a very important technology project for Victoria which is currently in need of state government leadership. The project in question is the $100 million investment by Telstra in a new computer data centre in Clayton. Even though the state government did nothing to facilitate or fund the project, the minister officially launched the site in December last year, accompanied by the obligatory photo and press release spruiking his achievements.

Mrs Peulich — Were you invited?

Mr SOMYUREK — No, Mrs Peulich, I was not invited. The minister likes to get around town and to stand up in this place and take credit for private investment in the state which his government has done nothing to initiate and facilitate. Unfortunately the project in question has now run into some serious difficulties, resulting in 100 builders being left without work, and the future of the project is under a cloud. Minister Rich-Phillips needs to understand that if he is willing to be the public face of major IT projects in Victoria during good times, he has to show leadership

when the going gets tough and Victorian jobs are on the line.

Eltham College Sports Centre: opening

Mrs KRONBERG (Eastern Metropolitan) — On Monday, 18 March, I had the delightful experience of attending the opening of the Eltham College Sports Centre in Research. What was formerly known as the ECCA Centre, a swim centre where my own sons did their swimming training, is now catering for a wide variety of sports in a gleaming new facility. We were welcomed by college captain Angus Watson, sports captains Madison Warner and Elliot Bennie, and also by the highly respected principal and chief executive, Dr David Warner. We also heard from another college captain, Joshua Rayson.

The official opening was conducted by a former pupil of Eltham College, Jamie Whincup. Jamie Whincup, a four-time V8 Supercar champion and four-time Bathurst 1000 winner, was supported by three other former students and sports stars: Elyse Villani, a member of the Australian women's cricket team, World Cup victors for the sixth time; Warwick Draper, a K1 kayak champion and Olympian; and AFL player Josh Caddy, Geelong's new recruit. My congratulations go to the Eltham College community, its staff and its board of trustees on this fine addition to the beautiful campus at Research which remains at the cutting edge of accommodation for learning and personal growth in the 21st century.

Maroondah Citizens Advice Bureau

Mrs KRONBERG — On another matter, I was pleased to attend the annual general meeting of the Maroondah Citizens Advice Bureau. The Maroondah bureau is a not-for-profit entity that sets out to meet community needs through the provision of free, confidential, independent and impartial information. On behalf of all Victorians, I salute this special cohort of volunteers and congratulate president Carole Childs and her executive committee on their work. I wish them well in the future.

TAFE sector: reform

Ms DARVENIZA (Northern Victoria) — I was very concerned to learn that regional TAFE mergers are clearly still on the agenda for the Napthine government. It is disappointing that the Napthine government fails to grasp the essential role that TAFEs play in rural and regional communities. The Premier and the Minister for Higher Education and Skills have both been asked about the intention behind the government's recent TAFE announcement, and both failed to rule out mergers of the Wodonga and Goulburn Ovens TAFEs and other regional TAFEs.

People living in communities in my electorate — in Wodonga, Seymour, Benalla, Euroa, Wangaratta and Shepparton — deserve the opportunity to acquire the skills needed to secure employment so that they can provide a future for themselves and their families. TAFEs deserve to be adequately supported to ensure that workers, families, communities, industry and the economy in this state do not suffer.

Labor values the contribution TAFEs make to rural communities. That is why it is the central plank of Victorian Labor's Plan for Jobs and Growth. In regional and rural areas of Victoria Labor will invest in the TAFE system to ensure that all Victorians have affordable access to education and training. Ministers might not have the courage to say it, but it is clear that under the Napthine government regional TAFEs will merge and their communities will lose their local expertise and specialist services.

Newbridge Recreation Reserve: facilities

Mr DRUM (Northern Victoria) — Members of Parliament would know that in early 2011 Victoria was hit by some of the worst floods on record. The communities of Bridgewater and Newbridge in my electorate were affected. Bridgewater had its caravan park totally wrecked, and the community of Newbridge was very badly hit by the rising Loddon River. Newbridge is a small community, and its recreation reserve was totally ruined. The clubrooms were washed away, and many parts of the clubrooms were found kilometres down the river.

The Newbridge community, which is very much a can-do community, got together under the leadership of Ron Trimble and Dean Gordon and worked with the Shire of Loddon, and the government was able to assist. We worked hard over the ensuing months to ensure that the new facility was built. Deputy Premier Peter Ryan, Minister for Water Peter Walsh, Minister for Local Government Jeanette Powell and Minister for Sport and Recreation Hugh Delahunty have all visited Newbridge to see the damage that was done and the new facility being built.

The new facility is now complete. I heard that last night a set of keys was handed over so that the Newbridge Football Club can use this amazing facility. We are going to have an official opening early in May, but it is great for this little community to know that it is going to be able to use this amazing facility into the future. I

congratulate everybody who has worked on the rebuilding of the Newbridge Recreation Reserve hall.

Caulfield Racecourse: training facility

Hon. M. P. PAKULA (Western Metropolitan) — Tomorrow night Black Caviar runs at Moonee Valley in what might be the last race she will ever run in Victoria. Earlier this week she would have had a very early morning hit-out at Caulfield, where she is trained. This morning it was revealed that the Liberal-controlled Glen Eira City Council has released a position paper expressing support for the closure of the training facility at Caulfield.

That is an act of extraordinary bad faith by the council, given that in April 2011 the club and council entered into an agreement. The agreement involved the club spending some $2 million; it involved the club making the infield of the course available for public use 352 days out of 365. It involved the club installing toilets, barbecues, a children's play area, parking, change rooms and a boardwalk. It included an acknowledgement that training would continue at Caulfield in the medium term and would only move under certain preconditions, including another facility being located and the agreement of the racing industry.

That agreement was promoted in a joint media release in April 2011. The media release included comments by the member for Caulfield in the Assembly, Mr Southwick. Now his allies on the council, including councillors Esakoff, Hyams and Lipshutz, who are the council nominees as trustees, are seeking to tear up that agreement. The council is acting in bad faith. The Premier, who is also the Minister for Racing, should tell the member for Caulfield to have a chat to his local numbers men and women and tell them to pull their heads in.

Former Premier: service

Mr RAMSAY (Western Victoria) — In my last member's statement I referred to the fire brigade championships in Warrnambool and the wonderful work the Country Fire Authority volunteers were doing this season protecting Victorians. I also congratulated the member for South-West Coast, Denis Napthine, on his elevation to Premier of this state.

I would like to take this opportunity to acknowledge the important contribution the former Premier, the member for Hawthorn, Ted Baillieu, has made to Victoria. He was a very effective leader in opposition, won the coalition the unwinnable election in 2010, secured Victoria's financial base with a AAA credit rating and budget surplus, was challenged with hostile Rudd and Gillard federal governments at Council of Australian Governments meetings and dealt with a bloated public service that was sucking out 50 per cent of Victoria's total budget revenue every year. Ted Baillieu started fixing Labor's mismanagement of major projects such as the desalination plant, myki, the regional rail, the Ararat jail, the Epping market and the losses of the gambling licence auction, to name a few.

In his first budget as Premier, capital infrastructure investment in Victoria was the largest investment ever seen by a government in Victoria. All the while he was also having to contend with the Gillard government wanting to cripple Victoria with the withdrawal of $6 billion of GST payments. Labor then cut health payments by $107 million and tried to blackmail Victoria with a potential education funds cut because we would not accept the Gonski template. Ted Baillieu was fighting a rearguard action with the unions for improvements in productivity and performance in enterprise bargaining agreement negotiations as well as facing up to members of the Construction, Forestry, Mining and Energy Union and their bullyboy tactics. Everything Ted Baillieu did was for Victoria and Victorians, and I congratulate him and thank him for his legacy, leadership and commitment to Victoria.

Premier: ministerial appointments

Ms MIKAKOS (Northern Metropolitan) — Last sitting week the Liberal Party dumped Premier Baillieu and replaced him with a recycled former leader, someone who was complicit in every cut the Baillieu government made over the past two years. It is no surprise then that Premier Napthine continues to defend his government's cuts to health and education.

In last week's cabinet reshuffle Premier Napthine missed an extraordinary opportunity to right the wrongs of the Victorian coalition under Ted Baillieu. He overlooked six coalition MLCs who are parliamentary secretaries and allowed other ministers to keep their jobs — for example, the Minister for Education, Mr Dixon, a minister who has overseen a $550 million cut from the education budget. He allowed Mr Hall, the Minister for Higher Education and Skills, to keep his job, even though he has ripped the heart out of Victoria's TAFE system, despite belatedly giving back a paltry $50 million.

The Minister for Housing, Ms Lovell, has kept her job, even though she has failed to convince her colleagues to invest a single dollar in the budget for kindergarten infrastructure for our youngest Victorians. Mr Davis, the Minister for Health, has kept his job, even though

Victoria's health system is in crisis and hospital waiting lists are bursting at the seams. By June 55 000 patients will be waiting for elective surgery, yet the minister cannot tell us where his extra hospital beds are. Deputy Premier Peter Ryan, who is the Minister for State Development, remains in cabinet despite ongoing questions about his role in the downfall of the former Chief Commissioner of Police, Simon Overland.

We have seen the departure of former Premier Baillieu's freedom of information officer, Don Coulson. We have had revelations of meetings in car parks and bugged phones. Premier Napthine has refused to say if Mr Coulson has been referred to IBAC or Victoria Police. Dr Napthine might be the new Premier in town, but it is the same circus running the show, with the same failed policies.

Tourism: Northern Victoria Region

Mrs PETROVICH (Northern Victoria) — My statement today relates to a recent commitment by the Minister for Tourism and Major Events, the Honourable Louise Asher, of $15 000 to the Daylesford Macedon Ranges Open Studios festival. Art is a vital part of the Macedon Ranges and Daylesford communities. Events such as the open studios festival are an essential part of these communities and are vital to the continuation of artistic subcultures in these areas. Providing locally based artists with a platform to share their art with the community and strangers abroad, events such as the open studios festival are a big part of communities such as the Macedon Ranges and Daylesford.

I am proud to say that within my local community the Macedon Ranges are home to artists from a wide variety of different fields. For communities such as Daylesford and the Macedon Ranges, art is part of everyday life and artistic diversity is something that is openly celebrated. The open studios festival has been identified as a key event by the Daylesford and Macedon Ranges Regional Tourism Board in promoting the region's significance to the wider community. These events promote and support regional areas such as Daylesford and the Macedon Ranges by supporting small businesses and promoting tourism. Last year's inaugural open studios festival was a great success, hosting 3500 visitors from across the state.

We are always encouraging people to visit the areas of Hepburn and the Macedon Ranges. They fall in love with those regions and all that they have to offer. I encourage anyone who has never been to the Macedon Ranges or the Hepburn shire to take a drive there, because they will not be disappointed.

MAJOR SPORTING EVENTS AMENDMENT BILL 2013

Second reading

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

Mr TEE (Eastern Metropolitan) — I welcome the opportunity to talk about these amendments to the Major Sporting Events Act 2009, and I indicate that the opposition will not be opposing this bill. Major events are a big part of our economy and of the lifestyle of Victorians. They provide some $1.4 billion annually and draw 23 000 international visitors, so they are vital to Victoria economically. Major events are a vital source of jobs, yet unfortunately the major events calendar is under attack. It is under attack not just from the former Baillieu government and now the Napthine government but also from a high Australian dollar. We are seeing the impact of the neglect of this industry by the state government. In 2006, 2008 and 2010 Melbourne was named the world's no. 1 sporting capital. That was a great result, and congratulations are owed to all those involved in the industry for their hard work, including the state government of the day.

Mrs Peulich interjected.

Mr TEE — I advise Mrs Peulich that 2006 was the first time Melbourne received that coveted title. Unfortunately, within two short years, the title we had in 2006, 2008 and 2010 was gone. It took the Liberal-Nationals government two short years to demote Victoria from its no. 1 ranking to no. 2.

Mrs Peulich — When was it lost?

Mr TEE — It was lost in 2012. SportBusiness International hands out the Ultimate Sports Cities award and has given this government the thumbs down. We have had a turnaround since 2010. In 2012, for the first time, we lost this coveted position. That will have an impact on investment and jobs. I am very concerned about the gloomy outlook for the industry under this government because of the government's neglect of the industry. Members do have to look too far through this bill to see examples of what is very much a shoddy, half-baked, ad hoc approach to major events.

But there is one thing that I am pleased about, and that is the expansion of the areas covered by the bill to include the Docklands Stadium concourse. The bill does not just cover the venue itself; it also covers the outside space. I am pleased about that because just this month we have had media reports of unseemly and unruly conduct outside of stadiums. In fact the *Herald*

Sun of 16 March reported that it is not just unruly members of the public but also political advisers who gather outside of major sporting events. In this case advisers from the Premier's office gathered outside the MCG discussing matters they should have — —

An honourable member interjected.

Mr TEE — It might be a long bow, but I advise those on the other side of the house that family members wanting to come to the footy do not expect this unseemly sight.

Mr Finn — On a point of order, Acting President, I have been known to draw a long bow myself from time to time — not often, but from time to time — but what Mr Tee is attempting at the moment is just outrageous. To suggest the football is on at the MCG on 16 March is nonsense to start with, but the area he has moseyed into has absolutely no relation to this bill at all. He is after a cheap shot that has no relevance to this bill, and I ask you to bring him back to the matter under discussion.

Mr TEE — On the point of order, Acting President, the bill extends the operations and the powers of the police to move people on from the inside of venues and the outside of venues. I am limiting my contribution to behaviour that has occurred outside of venues. It is squarely within the realm of this bill.

The ACTING PRESIDENT (**Mr Tarlamis**) — Order! There is no point of order. The lead speaker is awarded some latitude, but I would ask the member to remain within the confines of the bill.

Mr TEE — Thank you, Acting President, for that excellent ruling. Families deserve better. They should not have to walk past the MCG car park and overhear or be part of conversations that people have sneaked off to have because they do not want to have them over the phone. Families deserve better. I welcome that part of the bill. I welcome the fact that in those circumstances the bill gives the police powers to move people on. I welcome the fact that now, under clause 13 of the bill, the police can demand — —

Honourable members interjecting.

The ACTING PRESIDENT (**Mr Tarlamis**) — Order! There is a lot of consistent interjection. There are opportunities for members to speak on this bill if they would like to, so I ask them to refrain from interjecting across the chamber.

Mr TEE — I am pleased that clause 13 of the bill will allow police to request, and I think require, people to provide their names and addresses — —

Mrs Peulich — You've got to stop loitering around.

Mr TEE — Exactly, taking up Mrs Peulich's interjection — to stop Premier's office advisers loitering around outside the MCG car park so that people going about their lawful business do not become the victims of those unsightly scenes.

I am pleased about those parts of the bill, but I am concerned about a number of other areas in terms of the operation of the bill. I am concerned once again about the lack of consultation we have seen from this government. The opposition has consulted with representatives of a number of sporting organisations who have said that they have had no consultation. They said they would have liked to have been consulted, but once again they were not.

In particular there was a complete failure to consult outside Melbourne. For example, while the bill picks up Docklands Stadium and the MCG, it does not pick up Simonds Stadium in Geelong. Management there, to whom the opposition has spoken, has said it would have liked to have been consulted, and it is the same with the racing industry. We know the bill extends the provisions of the act to the Spring Racing Carnival and the Melbourne and Caulfield cups, but regional racing clubs were not even consulted. The government thinks it is important to put in place measures that reduce unruly behaviour in the city, but for some reason it does not even consult with regional clubs to see what should occur there.

Mr Ondarchie interjected.

Mr TEE — I can tell Mr Ondarchie that the shadow Minister for Sport and Recreation has seen and spoken to them, and what he has been told is that there has been no engagement from the government.

Honourable members interjecting.

Mr TEE — Once again, there has been no engagement from the government. I think he has spoken to the — —

Mr Ondarchie interjected.

Mr TEE — Mr Ondarchie is asking which clubs. Geelong, Ballarat, Bendigo and Cranbourne clubs have all been spoken to, and they have all said they were not consulted and that the minister did not even pick up the phone to talk to them. We are concerned about the lack

of any criteria for who is in and who is out. Once again, I note these decisions are made in an ad hoc manner. You do not know whether you are in or out. You do not even get consulted — or some do, and some do not. There is an in-club and then there is the rest of us. Some people are consulted, as I said, and some are not. No criteria are specified for who is in and who is out. There is no transparency.

Then there is the issue around funding. The bill proposes to improve crowd behaviour and safety, yet no funding has been announced. New penalties are being introduced and there are additional powers for police — their scope, in terms of their coverage, will be increased. The powers of the police to initiate proceedings have changed, yet there is no additional funding. Critically, there is no education; there is no information funding. There is nothing other than the big stick carried in this legislation. There is no attempt to change behaviour through information or an education campaign. Is it any wonder, when you have a government that takes this half-baked approach, that we lose our status as the no. 1 sporting capital in the world?

Mrs Peulich interjected.

Mr TEE — Is it any wonder that we are on the slide, Mrs Peulich? Is it any wonder that we are going backwards? Victorians are shaking their heads and wondering, 'What has happened?'. This bill and the approach that has been taken — the failure of the government to consult, the lack of any transparency and any criteria, all of that — speaks volumes about how this government is letting the industry down and letting down those families who rely on it for their jobs and economic opportunities.

As I said, the opposition does not oppose this bill, but it would ask that government members pick up the phone and consult, and not just with clubs in Melbourne. They should think about clubs outside Melbourne; they should think about regional Victoria. Victoria does not stop at the central business district. Government members should consult. They should provide some clear criteria for the decisions they make so that people can understand why they have made decisions. Finally, if those opposite are serious about improving behaviour, they should put in place some education or information campaign so that people can be informed about the expectations that the bill seeks to address.

Ms PENNICUIK (Southern Metropolitan) — The Major Sporting Events Amendment Bill 2013 makes amendments to the Major Sporting Events Act 2009. In commencing my contribution I would like to say that I am a sports fan. I have said that before when the house has discussed major sporting events. My favourites are the test cricket and the tennis and my least favourite, which is well known, is the grand prix, and I will go to that — —

An honourable member — Duck shooting?

Ms PENNICUIK — That is not a major sporting event. I will go to the grand prix later in my contribution.

The Assistant Treasurer claimed in his second-reading speech:

> The Major Sporting Events Act 2009 makes a significant contribution to Victoria's success in hosting major sporting events. The act supports and protects events in a range of areas including crowd management, operational arrangements, aerial advertising and ticket scalping.
>
> However, the act is not delivering optimal outcomes in several key areas, particularly in relation to enforcement of offences, and needs to be updated and improved.

My response to that — and I will be asking the minister about this in the committee stage — is that the second-reading speech provides very little evidence to show the need for the amendments proposed in this bill. No evidence, for example, is put forward to justify the proposed provisions dealing with defacing or damaging a venue space or structure. The creation of an offence of entering a venue without a ticket is supposed to stop people from trying to enter venues in dangerous and disruptive ways, which the minister simply says is 'sometimes a problem at event venues'. I would say that probably has always been a problem at event venues, and I am not quite sure the amendments in this bill will resolve that.

The main amendments proposed in the bill are to extend the crowd management provisions to additional sporting venues — mainly to those hosting Melbourne Spring Racing Carnival events such as the Melbourne Cup and the Cox Plate — and to extend provisions that apply inside the Docklands Stadium concourse to the outside of the concourse, a situation that already applies at some other venues. That particular amendment is not world shattering and is sensible. If you agree with the provisions of the legislation, you would think it was sensible that they would apply outside on the concourse, where people gather before and after an event.

The bill further provides for the powers of authorised officers in relation to crowd management, including increasing powers to ask for a person's name and address in certain circumstances. In particular, clauses 10, 12, 13 and 14 consolidate the provisions of

the act that relate to the powers of authorised officers to request a person's name and address, including the introduction of an infringement offence for failing to comply with the request. Clause 13 provides for a new section 88A, which enables an authorised officer to request evidence of a person's name and address if the authorised officer believes on reasonable grounds that the name or address provided may be false, although it does provide that a person may provide a reasonable excuse for not providing the evidence. I would have thought a reasonable excuse would be that there is no requirement for anyone in Australia to carry identity papers with them. A reasonable excuse would be that they do not have them at the time because there is no requirement to carry them. Mr Drum is not required to walk around the streets with evidence — —

Mrs Peulich — A lot of young people do, to get into clubs and licensed venues.

Ms PENNICUIK — Yes, people do, but they are not required to; it is not a requirement in Australia. You wonder why this particular provision is being added at all.

The bill provides for new offences and infringement notices, including making it an offence to damage or deface a sporting competition space or structure, enter a venue without a ticket or authorisation or fail to comply with a request. Again, it is unclear why there needs to be a new offence for damaging or defacing a sporting competition space or structure, given that under the Crimes Act 1958 it is already an offence to destroy or damage property and under the Summary Offences Act 1966 section 9 covers wilful destruction or damage of property, and any person who does so is guilty of an offence. Why we need mirrored offences under this particular bill is unclear, and there is no evidence, except assertions, in the second-reading speech.

The bill also adds to the list of offences where a banning order can be made by adding the offence of entering a sporting competition space, disrupting an event, damaging or defacing et cetera, but fortunately those particular powers are still to be exercised by a court so nobody can have a banning order imposed upon them without the court doing so. The court would always take into account the circumstances surrounding the event, the incident and the offence, and make its mind up as to whether a person should or should not be banned from attending future events.

The bill also extends the aerial advertising provisions to cover additional major sporting events — namely, the international one-day and the Twenty20 cricket matches played at the MCG and the AFL match played on Anzac Day, which we all know is the Essendon-Collingwood game. That is a minor amendment to that provision. Certainly the Greens have raised concerns about the aerial advertising provisions in the past. We attempted to move amendments with regard to those provisions during the debate on the 2009 bill — namely, that it should not be an offence for a not-for-profit organisation or an organisation that carries out a public purpose to carry out aerial advertising over a major sporting event.

An example would be the Transport Accident Commission with some aerial advertising saying, 'Do not drink and drive', or it could be a protest group saying, 'Do not log our water catchments — please desist from that' to a captive audience, and we do not believe that should be an offence. We have certainly thrashed that out with the previous minister. It is a question I would like to ask. I am not sure if I gave the minister notice of that particular clause, but I would like to ask a few questions on the aerial advertising provisions as well.

About half of the bill relates to creating new offences for the better control of ticket scalping at major sporting events, and that seems quite reasonable because obviously that is a problem. As I read those provisions on scalping, it is not an offence for a person to purchase a ticket from a scalper; the offence is the scalping per se, so it is the person offering the tickets for sale. On my reading of those provisions if a person has purchased a ticket from a scalper outside an event, the police are empowered to look at the ticket and take the details of the ticket, but they must return the ticket to the person who purchased it so that they can actually use it. That needs to be clarified. I think that is how it reads. If the person has paid above the advertised price for the ticket, they have still purchased the ticket, they have the ticket and they should be able to use the ticket and not have it confiscated so that they are left without the ability to enter the event with a ticket that has been issued for that event.

As mentioned, the offences for damaging property already exist under the Crimes Act and the Summary Offences Act. I am not quite sure why we need to mirror those offences in this particular bill. In terms of clause 7, which inserts provisions for the offence of entering a venue without a ticket or authority, I make the point that there is also the situation where an event such as the Australian Formula One Grand Prix has no requirement to give accurate attendance figures and in fact gives out free tickets for the first day of the event — free Friday. I will be returning to that at some stage later to update the house on the attendance at the

event this year on free Friday. There was hardly anyone there.

Mrs Peulich — Did you go?

Ms PENNICUIK — No, I did not go, Mrs Peulich.

Clause 9 adds to section 83, which provides for a direction to leave an event venue or event area. The authorised officer may direct a person to leave and not re-enter or not to enter an event venue or event area. The clause adds references to the new offences of damaging property and entering without a ticket or authority, which I have already mentioned.

Clause 10 amends section 84 of the act such that an authorised officer who is a member of the police force can require a person who has been directed to leave to give his or her name and address. It covers persons who, under section 84, are deemed to be disrupting the event or acting in a way that is disruptive to other patrons. I will move an amendment to this clause, similar to the amendment I moved to the 2009 bill, such that if a person at an event is behaving in a disruptive manner, or an authorised officer believes they are behaving in a disruptive manner, the authorised officer may warn the person that they believe they are behaving in a disruptive manner and that, if they continue to behave in that way, they can be asked to leave the event.

As I said in 2009, that is fair and reasonable. Some people at an event may not understand that they are behaving in a disruptive way — they may just feel they are behaving in an enthusiastic way — so it is fair and reasonable that a warning be given before they are asked to leave the event, rather than being asked to leave without being warned that their behaviour could result in being asked to leave. Section 84 does not refer to people behaving in a dangerous way or defacing property; it is about the subjective belief of an authorised officer as to what is disruptive. The person may not realise that the authorised officer believes it to be disruptive to a point where they should be made to leave the event, so they should be warned. That is fair and reasonable.

Mr Drum interjected.

Ms PENNICUIK — That is not what the provision says, Mr Drum. I want to legislate to make the provision clear that a warning may be given. The bill also extends to some degree the inspection powers. People may have their bags inspected, whether they are coming into the event or are already in the event, as part of a check that they are not taking prohibited items or alcohol into the event. Those powers already exist under the act.

There are some good provisions in the bill, such as the repeal under clause 4 of the ban on flags or banners that are larger than 1 metre by 1 metre or have a handle longer than 1 metre. I am glad to see that the government is taking up the Greens amendments of 2009. We said at the time that this was a silly provision to put in the bill, and it is now being repealed, so people are able to take into events flags and banners, which are part of the colour, light and movement of major sporting events. It is up to the discretion of the event organiser as to whether a banner or flag is inappropriate or disruptive. That is sensible.

Clause 20 is also sensible. It repeals the self-incrimination section, which should also never have been in the act. The Greens opposed the inclusion of that provision in the first bill. It is good that the government is agreeing with the Greens on those two issues.

Mrs Peulich interjected.

Ms PENNICUIK — It is true. Mrs Peulich may laugh, but it is the fact of the matter. Clause 20 repeals section 146(2) of the act, which states:

> … it is not a reasonable excuse for a natural person to refuse or fail to produce a document that the person is required to produce … if the production of the document would tend to incriminate the person.

The remainder of the bill covers anti-scalping provisions. I require clarification on whether a person who has purchased a scalped ticket will still be able to enter the event.

Some problems that remain with the regime include that there are still no criteria to be considered prior to recommending a major sporting event order that include a cost-benefit analysis or a social and environmental impact analysis. During the debate on the bill to bring in the 2009 act I made the point that there needed to be cost-benefit analyses and social and environmental impact analyses. In his 2007 report on major events the Auditor-General supported the call that these things should happen.

I am a bit bemused by the opposition saying that one of the major problems with the Major Sporting Events Amendment Bill 2013, which amends the Major Sporting Events Act 2009, is that it does not go far and wide enough. I could probably agree that some events at Simonds Stadium in Geelong could be considered major events — for example, if you had Geelong playing Collingwood, it would be a major event. But if

it were to apply to all regional sporting events, regional racing carnivals, regional football matches or Little Athletics regional meetings, where would it end? What is a major sporting event? That has been our point all along.

The bill extends the number of events that are declared major sporting events, and perhaps the ones that are listed here — the Cox Plate, the Caulfield Cup and the extra events that are being added by the bill — could be major events. However, it is not clear what the criteria are, except that the events are declared.

Hon. W. A. Lovell — They are in the act.

Ms PENNICUIK — They are declared under the act, but what reasoning is there behind it? The opposition is suggesting that it be widened to include events in regional areas — to events that could not be described as major sporting events. If you were going to include events that could not be called major sporting events, you would have to change the name of the act to the Sporting Events Act. This is meant to be an act for major sporting events.

Hon. W. A. Lovell — Get yourself an act and have a look at section 9.

Ms PENNICUIK — I have read the act. It would be ludicrous to suggest that the somewhat draconian provisions of the act that are being extended by this bill should apply to every sporting event across Victoria. They should not apply to those events. The whole rationale of the former Labor government and the coalition government is that they are major sporting events, so I am really bemused by that argument being put forward by the opposition.

There is still no provision for accurate recording or for requiring those events to provide accurate recording of attendances. I have given notice that I wish to make an amendment regarding the insertion of that provision into the act. There is still no provision for just compensation for damages arising from acts or omissions done in good faith in relation to the management of a sporting event, or the administration of this act or of its regulations, except where claims for compensation relate to personal or bodily injury or death. That has been an issue of major controversy amongst the community — that is, that people have no rights for compensation if they suffer a loss as a result of a major sporting event. I will also propose an amendment regarding compensation that I hope the committee will agree with. I ask that my amendments be now circulated.

Greens amendments circulated by Ms PENNICUIK (Southern Metropolitan) pursuant to standing orders.

Ms PENNICUIK — They are the main concerns of the Greens with the bill. I remind the chamber that the Greens did not support the original act for the reasons I have outlined in my contribution today — that is, no compensation under the act, no accurate recording of problems with aerial advertising and the problems with infringement notices that this bill extends. That particularly applies to the entering without a ticket offence, for which one would assume the major offenders will be young offenders and perhaps even minors. Under this bill they can be given an infringement of 20 penalty units, which is quite high and they probably will not be able to pay it. Again, we are extending the infringements regime for young offenders, which all the evidence suggests should not be done. It is already possible to ask such a person to leave the area. The Greens are supportive of the scalping provisions, which are covered by the second half of the bill, with just that one query that I will ask the minister about in committee.

Mr DRUM (Northern Victoria) — This is a great opportunity to talk about the Major Sporting Events Amendment Bill 2013, which will amend the Major Sporting Events Act 2009. I will leave the matters that have been raised by Ms Pennicuik to the committee stage. The Minister for Housing, Wendy Lovell, will have the opportunity of discussing whether an authorised officer should give a warning prior to asking somebody to leave a venue. Sheer practicality tells us that is what happens at the moment. You have to give authorised officers an opportunity to show some discretion. If somebody is using absolutely obscene and disgraceful language, perhaps they would not be given a warning. If somebody is involved in fighting, you would imagine that they would not be given a warning.

However, in relation to most people who are simply being a little bit disruptive or overexcited or allowing the occasional bit of poor language to emanate from their lips, perhaps they would be given a warning. The putting of such a provision into legislation would just open up a can of worms. Ms Pennicuik wants to go to the absolute nth degree to put this provision into legislation, but I am not sure that is going to work. As I said, I will let Minister Lovell comment on that during the committee stage.

It is unfortunate that we have to have these provisions in legislation in the first place, because I think the vast majority of Victorians and Australians love going along to their major sporting events. They love the concept

that they are going to be able to support their champion tennis player or favourite team on the weekend, or, if you happen to be a bit of petrol head, support your favourite racing team, or go along and watch Black Caviar or your favourite horse run — whatever it is. These great events really are such an ingrained part of our culture and our lives that it is a shame that we have to legislate to deal with people who might want to cause damage to these important events.

There is one thing I would like to answer for Ms Pennicuik. She referred to people who damage seats, which happened at a soccer game a couple of months ago, and said it is already an offence. That is true. However, it is currently not an offence for people to go on and damage a ground or a playing arena, or to damage a racetrack. For instance, it is currently not an offence for a protester to start cutting down a soccer net, as happened at a World Cup soccer qualifying game. Without the soccer net they could not restart the game. There they were, in the middle of a World Cup soccer qualifier, and people were trying to stitch up the soccer net so the game could get under way again. These types of offences need to be catered for.

In the 1970s a protester got onto the Headingley cricket ground and dug up the cricket pitch overnight on the fourth day of a test, which effectively meant that that test had to be abandoned. If that was to happen here, currently it would not be an offence. That offence is caught up in this bill, as it is currently not in the Summary Offences Act 1966. I am happy for this to be fleshed out further in the committee stage if Ms Pennicuik needs even further convincing.

It is unfortunate that there has been a growing trend in some of these antisocial activities, with the release of flares and some unruly behaviour at some of our soccer games. We are finding there is an increasing trend of people smuggling alcohol into major sporting events. Young people specifically are getting very ingenious. They are coming up with ingenious ways to smuggle alcohol into an event.

Mrs Peulich — Hasn't that always been the case?

Mr DRUM — Possibly it has always been the case, but I hear that they now put it into their sauce bottles.

Mr Finn — They could have a fair suck of the sauce bottle.

Mrs Peulich — The Kevin Rudd receptacle.

Mr DRUM — Yes. Kevin Rudd's 'fair suck of the sauce bottle' takes on a new meaning when you think about that. Security camera monitors are quite bemused at some of our major sporting events when they see people putting some sauce into their bottles of Coca-Cola, and then all of a sudden the penny drops and those people are then asked to leave — and rightly so. We need to keep a handle on this. We understand that we need to stop people from being intoxicated at major sporting events, and letting them smuggle in straight spirits is certainly dangerous. I know that some young girls like to load up under the beautiful long dresses they wear to the Melbourne and Caulfield cups. I have seen some girls really — —

Mr Finn — How have you seen those girls?

Mr DRUM — Some girls like to show off when they are on the train, Mr Finn, and let you know how much they are going to enjoy the day. They let you know how they are going to try to beat the system.

Mr Finn — I have an inquiring mind.

Mr DRUM — Yes, I am sure you have. That is something that this bill will catch. It is right that we have to protect our major events, because they are such amazing economic drivers and such important parts of our culture and our lives. But I cannot let go the suggestion by Mr Tee in his contribution that we are somehow or other neglecting our major sporting events. We have just hosted the grand prix, and universally it is acknowledged as possibly the best grand prix on the international circuit.

Ms Pennicuik — No, not universally.

Mr DRUM — If you talk to the drivers, the owners and the racing teams, they will tell you that they love coming to Albert Park. If you listen to the tennis players being interviewed after the Australian Open Tennis Championships, they say the very best in major opens around the world is here in Melbourne — the very best. And you can talk to the golfers when the Presidents Cup comes out here. The very best tournaments are run in Australia.

It is quite stunning that Mr Tee stands up and tries to put some negativity on the way that we go about our major sports events, and then he tries to pick up the aspect that we are somehow or other ignoring the regions. I mean, where has this baboon been?

Honourable members interjecting.

Mr Tee — On a point of order, Acting President, I take offence at that description.

The ACTING PRESIDENT (**Mr Tarlamis**) — Order! I uphold the point of order, and I ask that Mr Drum withdraw.

Mr DRUM — I withdraw that remark. Where has Mr Tee been if he thinks that somehow or other this government is ignoring the regions? Let us look at some of the work that was being done on the weekend. Maybe Mr Tee could tell us where the races were. Melbourne did not have any races on the weekend. The major racing event was held in Bendigo, because the Premier thought that we needed to put even more emphasis on our racing in the regions. The Golden Mile Race Day event was held on the weekend, and all of the state's best trainers, best jockeys and best horses descended on Bendigo for a race event that is worth over $1 million in prize money. This is another investment in the regions.

Next month the World Snooker Championship will be coming to Bendigo. We have also just had the Bendigo International Madison cycling event, which the previous government would never support but which this government does support. Bendigo has also just hosted the Women's National Basketball League grand final. Australia's best women's basketball grand final was held in Bendigo. It needed assistance, and it is this government that assisted Bendigo to hold that grand final.

Mr Tee talked about Geelong. I refer to the world bike race that was held in Geelong. That was in fact a major event. If there is an opportunity for Geelong to host a major event, people simply ring the minister and an order is put in. It is stunning that Mr Tee does not quite understand how these things work.

An honourable member — He hasn't a clue.

Mr DRUM — If he wants to talk about the partnership that this government has with the Geelong community, I can tell him about the money that we are investing in Simonds Stadium. The partnership between this government and the city of Geelong is just stunning.

The partnership that this government has with the Geelong Football Club is strong and close. Talk about 'Pick up the phone'; if we were any closer there would be some questions asked! We are giving our regions the most support that we can possibly give them. Again, the Minister for Sport and Recreation, Mr Delahunty, is at the forefront of those reforms and is doing an amazing job as our sports minister because he is absolutely everywhere and he talks to all of those people.

As Ms Pennicuik said, this bill is about major events. It is about the top echelon of events, and by sheer definition, unless by special order, it does not involve many of the regions. However, two years ago we took the Davis Cup to Geelong where Australia played China in a qualifying event. That was an amazing event, and again it was supported by the coalition government.

The bill will effectively make it easier to run events. It will give the major events industry more security and more comfort to run these major events with the provisions that they need, and it will offer the participants and the spectators the safety and security they need. We believe the provisions in the bill will offer the balance which currently does not exist. They include bringing into the legislation some of the concourse areas around Etihad Stadium, adding some of the key race days from the Spring Racing Carnival to ensure that these areas are covered, introducing additional offences for damage to arenas and playing equipment to ensure that the contests can keep going uninterrupted, creating new offences for bringing alcohol into events — something that needs to be done — and repealing the prohibition on flags and banners over a certain size because we believe that is unnecessary. That ban reflected typical policy and legislation by the Labor Party, which wants to ban anything that may cause any potential — —

Mr Barber — So authoritarian!

Mr DRUM — Exactly. The bill offers the right balance. It gives us the comfort that we need to go forward with our major events. It enables coalition members to stand up and be proud of being able to continue the major culture and reputation we have built. Both sides of politics would normally be totally united on a bill like this that enables us to take major events forward, because we understand that not only are they an economic driver but they are truly part of our culture and heritage. It is what makes it so special to live in a place like Victoria and in particular Melbourne, which is the host of so many of these amazing major events. As Ms Pennicuik said, if the Cats are playing at Simonds Stadium, it probably is very close to a major event.

Ms TIERNEY (Western Victoria) — I rise also to make a contribution to the debate on this bill, and I state at the outset that the opposition will not oppose it. It is unfortunate that we have had a timely reminder of bad behaviour at sporting events. Members would be aware of the sickening incident that occurred last weekend at AAMI Park during the A-League soccer game between Melbourne Heart and Western Sydney Wanderers. An

unsuspecting Wanderers fan was king-hit by a man in the crowd, and of course investigations into the incident are under way. Footage of the incident has been shown on the newsreels and there have also been photos in the major media outlets, and those visions have been met with surprise and a sickening feeling in the community.

One common theme that is embedded in the bill before us today is that regardless of what party is the government of the day, it is absolutely critical that that government has the power to ensure that every sporting event that is held in Victoria is safe for men, women and children who attend those events. The opposition believes the bill makes a contribution towards improving crowd behaviour at major sporting events. The bill increases penalties for offences covered by the legislation, such as the carrying of flares, both lit and unlit. It is important that penalties for those behaviours be increased.

The bill also creates new provisions that go to defacing and damaging sporting competition space and any of the structures around the sporting space, as well as dealing with issues around the act of entering a sporting event, whether you have a ticket and authority to do so or not. Along with crowd control provisions, the bill also deals with advertising at major sporting events, as well as ticketing amendments.

It was the former Labor government that introduced the original act. That legislation was a breakthrough, a world first. It was seen as important, because if we were to establish Melbourne and Victoria as major sporting event locations, we had to do everything possible to ensure that safety was an absolute priority and that everyone — international competitors, international sporting organisations and other governments — understood that Victoria took sport very seriously and that hand in glove with successful sporting events is the need to take measures to ensure safety.

We were proud of introducing that original act, as we were, in terms of hosting major events, of being named the ultimate sports city in 2006, 2008 and 2010. As other speakers from the opposition have stated, we have been grossly disappointed by the fact that Victoria lost that title — and lost it to the United Kingdom.

Honourable members interjecting.

Ms TIERNEY — It is not a laughing matter. It is important that we try to hold on to that title and that Melbourne sits at the no. 1 spot on the world stage as the preferred location for sport in this state and in this country.

We also developed a sporting code of conduct, but I understand that unfortunately this government has chosen to get rid of that, as it has also decided to slash $46 million from the Community Support Fund and to axe the sustainable sport program. It is clear that this government does not have the same sense of the value of sport and therefore has no real understanding of the interrelationship of safety and sporting events.

I now refer to some of my concerns. The first is in relation to how these amendments apply to one geographic location and not another. We heard from Damian Drum about how there have been significant major events in regional Victoria — —

An honourable member interjected.

Ms TIERNEY — No, he is not here at the moment.

Mr Drum listed quite a few, and they were not restricted to Geelong, Ballarat and Bendigo. A number of events have occurred way beyond those important regional cities, and yet he argued that whilst there have been regional events, the coverage of this legislation does not need to extend to venues outside Melbourne. The argument itself is contradictory and cannot be fathomed, to be quite frank.

I am concerned that the provisions of this bill will not cover Simonds Stadium. I cannot understand why the same two teams which play in Melbourne might then go down to Geelong to play and not be covered there. I cannot understand why government backbenchers in the other place say the reason for this is that they believe Simonds Stadium is safe. Do we have to have an act of hooliganism at Simonds Stadium before these measures are applied? Is there some sort of special provision that needs to be added? Is there a special benchmark for regional Victoria that needs to be reached before safety can be applied at its venues? I do not think so.

If we are serious about this, we need to apply the measures to a whole range of venues beyond Melbourne, indeed across regional Victoria. Do we have to now advertise the fact that you can behave badly at certain venues but you cannot behave badly at others? It is crazy for people to think that they can get on the train in Melbourne and go up to Ballarat or Geelong and act in a way that is absolutely inappropriate.

Mr Ondarchie interjected.

Ms TIERNEY — I can tell you that the Geelong community does not want that to happen, and I can most assuredly tell you that the Ballarat community

does not want people coming into its city and behaving badly.

I want to know how government backbenchers in the other place can stand up and say that safety is not the no. 1 issue for their communities. I want to know at what point in time, over what issue, they will actually get up in their party room and say, 'No, my community believes this issue is extremely important and there shouldn't be discrimination between Melbourne and the community I represent'. That clearly did not happen when these amendments were put through.

Mr Ondarchie interjected.

Ms TIERNEY — No, I am not denigrating Geelong supporters at all; I am very supportive of them. But one needs to understand that the member for South Barwon in the Assembly is saying that safety at sporting events in Geelong is not important.

Another concern I have is that there is no money and there are no resources attached to this bill. We are giving extra work to police; there is an extra burden of duties for them to perform, but there are no resources and there is no money for them to execute what is required under these amendments. What I am primarily concerned about is that there is a set of rules for people who live in certain parts of Victoria but there is not for people who live in other parts. If this bill was a serious bill in terms of crowd control, the appropriate resources would have been attached to it so it would actually have some force.

Having said that, I reiterate that the opposition will not oppose the bill. However, I will say in closing that the coalition's approach to sport and safety is almost like its performance in government, which we have seen of late — that of a sporting team that has had no confidence in its coach and has sacked him whilst at the same time trying to juggle a rogue player on its list who has taken his bat and ball and gone to the crossbenches. That performance has been shambolic and piecemeal, just like the government's approach to sport — and all Victorians are poorer for it.

Ms CROZIER (Southern Metropolitan) — I am very pleased to rise to speak in the debate on the Major Sporting Events Amendment Bill 2013. I commend the Minister for Sport and Recreation for bringing this bill forward, and I also commend Mr Drum for outlining the government's position. I am pleased Ms Tierney reiterated the opposition's support for the bill. Right at the start of her contribution she acknowledged that the bill will contribute to improving safety, but she then spent the next 10 minutes saying that it will not improve safety. I was little confused by her contribution, but nevertheless I agree with her that we in Melbourne are very proud that Melbourne is considered to be the sporting capital of Australia. We hold that title very proudly, and it is the envy of many other cities around Australia that Melbourne does have that title.

Throughout the year we have a number of world-class sporting events. We have just seen the Formula One Australian Grand Prix held at Albert Park, showcasing Melbourne to an international audience and providing enormous economic benefits to the hospitality, tourism and sports industries. As has been mentioned, in January the Australian Open Tennis Championships attracted many regional, interstate and international visitors to our spectacular tennis precinct. Throughout the year the MCG hosts magnificent major sporting events, whether they be the AFL Grand Final, the Anzac Day clash, the Bledisloe Cup or the Ashes. Other stadiums around the city provide spectacular sporting events and other major events throughout the calendar year. As I said earlier, we hold very dearly our position, which is the envy of other cities and states.

A number of major events are held in my electorate of Southern Metropolitan Region. In part the bill extends crowd management provisions in the principal act so they will apply to Caulfield Guineas Day, which obviously is held at the Caulfield Racecourse, and also events at Lakeside Stadium, which was formerly known as Bob Jane Stadium. Throughout the year there are significant events at Lakeside Stadium. Alongside it we have the very good facility of the Melbourne Sports and Aquatic Centre, where there are also significant sporting events.

In recent weeks and months we have seen some very unruly behaviour at Etihad Stadium. As Ms Tierney highlighted, the bill will improve safety by preventing unruly behaviour that tarnishes events and help to protect the reputation that we hold so dearly. There was a disgraceful display by some fans — I have to say it was a minority — at a particular event. Let us hope that we do not see the trashing of infrastructure or the lighting of flares that ruined that sporting event for so many. It really was a tarnished event.

The bill has many components, including the introduction of new offences for the possession of alcohol not purchased at the venue. Mr Drum went through that aspect very clearly. I know that other members of the government will highlight their concerns. Mr Ondarchie, who has a very strong affiliation with a major sporting code in the state, will

make a contribution that I am looking forward to hearing.

The bill shows that the government does value sport. Despite what Ms Tierney said, the government supports many codes. I know that the Minister for Sport and Recreation, who comes from far western Victoria, travels through his electorate to get to many sporting events and is very passionate about sport. I commend him on taking this action, and I commend the bill to the house.

Mr EIDEH (Western Metropolitan) — I rise to speak briefly in the debate on the Major Sporting Events Amendment Bill 2013. I and many of my colleagues love sport for a variety of reasons. They include the fun and enjoyment that sports provide and the entertainment, the thrills and even those tense moments. But sport is also so very important to the people of our state in other ways. One is through the solidarity that it creates between people, even more so within country sporting associations and within what some might call minor sports. It is important also for the business that is generated for local communities and clubs across our state. It is important for the healthy exercise that is promoted amongst not only the great athletes but also the younger children who are inspired by their role models. This is why this bill has an important place and why the opposition is supporting it.

While we love our sport, there are negative issues that must be faced, concerns that must be addressed and challenges which need to be taken on so that our sports events, whatever they may be, are friendly and safe for all concerned. It seriously concerns me when I see crowd violence at any sporting event, whether it is Aussie Rules or soccer or any other major sporting event. It upsets me very deeply that there are still those who buy tickets to major sporting events and then seek to reap large profits by scalping those tickets. These and other reasons are why we support this bill.

I am proud also to acknowledge that it was the Brumby and Bracks governments that did so much in this area previously and that it was another Labor Premier in John Cain who had the vision to create the greatest tennis facility and competition ground in the Southern Hemisphere. Those on the other side do not wish to hear these facts, but they are all a matter of public record and they need to be noted, because we on this side of the house have a strong record of standing up for all sporting codes and for caring about those who attend events, large or small. While the bill is about major events specifically, I hope that down the track it can be extended. That would be absolutely common sense. That is not to criticise those opposite but to acknowledge the leadership of our party in government.

Again, the bill is very important. We cannot tolerate people who bring flares to soccer matches or indeed any other sport. I should not need to remind members of the tragedy that was Bradford. Whilst that deadly fire was started, they believe, by a wayward match, a flare could lead to the same devastation, and none of us in this Parliament would want that. It certainly nearly happened at a Victorian Premier League grand final, where a careless person threw a lit flare which struck two young girls.

But of course crowd violence covers many other activities, and the sad fact is that we must legislate to make it absolutely clear that violence or drunken behaviour of any type is unacceptable at any sporting event, indeed unacceptable in any civilised society. Everyone has the right to enjoy and not fear attending any major sporting event. At the same time but on an obviously different level we cannot tolerate ticket scalpers. Some scalpers do it as a business and in effect rob real fans of the ability to attend events that they love.

The events covered by the amended act — when the bill is passed, given royal assent and proclaimed — will also include our major horse racing events, although it should be extended to include all country carnivals and sporting fixtures. Our horse racing carnivals attract interest and participation from around the globe, so their inclusion is logical. Why are the Minister for Racing and the Deputy Premier excluding the country from this legislation?

In Victoria we can rightly lay claim to being the sporting capital of the nation, whether it be soccer, Aussie Rules, netball, weightlifting, horse racing, cricket or athletics. We have held the Commonwealth Games here and the Olympics, as well as the Commonwealth Youth Games, the Pacific School Games, the Deaflympics, the FINA World Aquatic Championships and world championships in a long list of sports. That is to name but a few of our state's sporting attainments.

I am proud that under the former Labor governments of John Brumby and Steve Bracks we set the standards for Australia to follow. Today I commend the current government — or, I respectfully note, the former Premier, Mr Baillieu — for the initiative of bringing this bill before us. While the bill has a few limitations, which I have raised, it is otherwise something to be proud of.

Mr ONDARCHIE (Northern Metropolitan) — I rise to speak on the Major Sporting Events Amendment Bill 2013. Unlike those opposite, I like to celebrate all that is good about Victoria. I do not want to talk it down like we have heard from those across the chamber today. The Napthine government legislation before the house today will improve crowd behaviour and safety at major sporting events. It will help maintain Victoria's unrivalled international reputation as an ultimate sports city and the best place to host major sporting events. There is no place for violent or destructive behaviour at sporting events. This legislation will help police and venue managers deal with cases of unacceptable behaviour by the very small minority of individuals who can spoil the sporting experience for everyone. Hooligans who light flares, invade the pitch, damage the venue or destroy chairs will now face tough penalties.

I am a proud member of the Melbourne Heart Football Club. I was at the Melbourne Heart versus Melbourne Victory game, and quite frankly I was embarrassed by the crowd behaviour. I was embarrassed by the behaviour of both the Melbourne Victory supporters and the Melbourne Heart supporters, a number of whom did things that were unacceptable. Melbourne Heart has dealt with that. We have found the perpetrators at Melbourne Heart and kicked them out of the club. That is the way we deal with that. We encourage Melbourne Victory to do exactly the same thing.

Mrs Peulich — Have they revoked your membership?

Mr ONDARCHIE — To pick up Mrs Peulich's interjection, I observed what was happening, I was not involved in it, and quite frankly I was embarrassed by the crowd behaviour that we saw that night. But we are going to get better at it, and that is what this legislation is designed to do.

Our major sporting events are vital to this state's economy, and it is important that we are strongly identified by Victorians, people interstate and people overseas as being the sporting capital of the world. People have mentioned the Boxing Day test, the AFL Grand Final, the Australian Open Tennis Championships, the Presidents Cup, the Australian Formula One Grand Prix and the Asian Cup, which will be played here very shortly.

We also see great title fights in Victoria. As Mr Finn would be aware, we see great title fights, but not like the big title fight we are going to see in Canberra today. 'Roll up, roll up! We're going to see a big title fight in Canberra today between, in the red corner, Kevin Rudd, and in the other red corner, Julia Gillard'. Tragically, that title fight is not being held in Melbourne, the sporting capital of the world. We will know the result of that title fight, which will no doubt be a knock-out, by the end of the day.

Mr Finn — The winner is Simon Crean!

Mr ONDARCHIE — Simon Crean could be on the interchange bench. Mr Finn could be right.

The Major Sporting Events Amendment Bill 2013 will underpin Victoria's competitiveness as a host of major events. It will make major events safer, more accessible and fairer for patrons and will support the efforts of event organisers, venue managers and police to deliver outstanding events. The Napthine government will continue to work with sporting codes, clubs and venues to assist their work to make sure that there is no antisocial behaviour and that everyone can have a good time. This is about fun for Victorians. It is about fun for mums and dads, kids and families. I commend the bill to the house and encourage everybody to get right behind it.

Mrs PEULICH (South Eastern Metropolitan) — I also wish to make some brief remarks on the Major Sporting Events Amendment Bill 2013. I would like to make just three points because time is limited. First and foremost, we have these major attractions to this state and Melbourne because of the legacy and vision of former Premier Jeff Kennett and the Kennett government. The major sporting capital vision arose from that government, which built this tradition. We have much to be thankful for. Not only do we have the enriched calendar of sporting events and enormous economic benefits, but also the opportunity to participate in those events is a huge boon for a sport-loving nation and for Melburnians and Victorians.

I want to say how underwhelming the opposition contributions to debate on this bill were. Mr Tee, a wannabe future minister, disgraced himself. He used the opportunity to get into the gutter and roll around, and he continued to do that, despite efforts by members of the government to save him from himself.

Ms Tierney got on her soapbox to make a virtue of criticisms of budget restraint or financial restraint when every other government in the world and every other nation in the world is having to do the same thing. Ms Tierney and her side were responsible for 11 years of financial mismanagement. I cite two examples of that gross mismanagement: wasting $3 billion on the mismanaged pokie auction, and the desalination plant

that will cost Victorians $590 million each and every year for the next 28 years. They are examples of gross waste. Ms Tierney tries to make a virtue of her criticism of the budget restraint that this government has had to exercise.

This bill is necessary to protect the brand of Melbourne — Melbourne being the sporting capital of the world. Yes, we were pipped by London in 2012 because London hosted the Olympics — and it did a magnificent job — but we still came in at second spot owing to a legacy that the Liberals built. Mr Tee's and Ms Tierney's comments in that regard were disgraceful.

Lastly, participants, whether they come from interstate, abroad or local regions, expect to be safe and to be able to enjoy the events that they pay good money to attend. This bill introduces a range of measures that will enhance that experience. I commend the bill to the house, and I look forward to this particular legacy going from strength to strength into the future.

Mr FINN (Western Metropolitan) — I have always been of the view that it is a bipartisan agreement between members in this house and those in the other place that Victoria is regarded as the sporting capital of Australia; in many circles it is regarded as the sporting capital of the world. Then Mr Tee got up today and tried to trash Melbourne's reputation as the sporting capital of this nation. I have heard some appalling things in this Parliament over the past 20 years, but I cannot believe that a member of the opposition would try to hammer Melbourne's reputation — and it is an international reputation — as the sporting capital of this nation.

If Mr Tee has any doubts about whether Melbourne is the sporting capital of Australia or about what its position is in terms of sport, he should go to Moonee Valley tomorrow night. He should go to see Black Caviar, along with the tens of thousands of other Victorians who will be there to see her. He should come with me to the MCG next Thursday night when 80 000 or 90 000 people will cram in under lights to see Richmond beat Carlton in what will be a magnificent first game for the start of the AFL season in Melbourne. There is, I understand, some minor game on in Adelaide or somewhere tomorrow night, but the big game is next week. The big game is next week because, apart from the fact that Richmond is playing, it is being played at the MCG under lights in front of what will be close to a capacity crowd. As anybody who has ever been in that situation knows, there is nothing better. It is just brilliant. It is Melbourne at its best. It is quintessential Melbourne and something that we on this side of the house are very proud of. It is a pity that those in the Labor Party have attempted to trash the legacy that we as Victorians are all so proud of.

Motion agreed to.

Read second time.

Instruction to committee

Ms PENNICUIK (Southern Metropolitan) — I move:

> That contingent upon the Major Sporting Events Amendment Bill 2013 being committed, it be an instruction to the committee that they have power to consider new clauses to amend the Major Sporting Events Act 2009 to repeal the power to make no compensation orders, to make consequential amendments and to provide for new reporting requirements for event organisers.

The amendments referred to in the motion are my proposed amendments 3 and 4, which have been circulated previously in the chamber. Amendment 3 will repeal the provision in section 3(1) of the definitions section of the principal act which sets out the definition of the term 'no compensation order'. That provision precludes any person or organisation from having a right to compensation, other than for bodily injury, as a result of a major sporting event under the current act.

That has been an issue of major controversy in the community, the most well-known instance of which was the damage that was done to property when the grand prix first arrived in Melbourne. Significant damage was done to properties abutting Albert Park due to compacting activities, but the provision that currently exists in the act precludes people from claiming compensation for any property damage or damage to their business operations caused by the conduct of a major event. We feel that those decisions should be left up to the courts and that people should not be excluded from claiming compensation under the act. This is an amendment that we moved to the bill in 2009, and I am seeking to have that amendment put again.

Under this motion the Council is being asked to give permission to me to put the amendments. Members do not need to support the amendments; I am asking for the amendments to be considered in committee.

The second amendment that is covered by this motion is amendment 4, and that has also previously been circulated in the chamber and to the parties. It will insert a new division 6 in the act dealing with major sporting events and the recording of attendance tickets. It inserts new section 26A which is headed 'Event

organiser to keep records'. Under the provision I am seeking to insert under new section 26A:

> (1) An event organiser of a major sporting event must ensure that, as far as practicable, for each day of a major sporting event an accurate record is kept of —
>
> (a) the total number of attendees at the event; and
>
> (b) each type of ticket issued and the total number of attendees in respect of each type of ticket; and
>
> (c) the total number of free tickets or passes issued and used.
>
> (2) The event organiser must ensure that a record required under subsection (1) is publically released as soon as practicable on each day on which the major sporting event is held.
>
> (3) Without limiting the manner in which a record is publicly released, for the purposes of subsection (2), a record may be —
>
> (a) published on the website of the major sporting event or the event organiser;
>
> (b) released by any other method the event organiser considers appropriate to advise the public;
>
> **Example**
>
> Publication on a big screen at the event.
>
> (c) if the event organiser is required to prepare an annual report, published in that annual report.'.".

I am seeking to have the committee consider these amendments. The first amendment regarding the repeal of the definition of 'no compensation order' I have already explained. I think the second one, requiring that attendance records be kept and published, is extremely important. Only a couple of weeks ago I moved a motion that the government require the Australian Grand Prix Corporation to keep accurate records of attendance at its events, and particularly at the grand prix event that is held every March — it was held just last week — to install turnstiles or scanners to accurately count the number of people who attend the event each day. I thank the ALP for its support of that motion at the time. The government, however, saw fit to not support the motion and in fact to say that it is acceptable that an event which receives a lot of public money — and if you look at the Australian Grand Prix Corporation's own annual report, you will see that it states that over the last three years the government has invested $236 million into the corporation for the staging of that event — is not required to provide accurate figures to the taxpayers of Victoria, who stump up this exorbitant amount of money, regarding how many people actually attend the event. For 17 years it has been allowed to get away with estimating this.

I draw attention to why I am moving that the committee be asked to consider these amendments. Again, we have had inaccurate figures and overestimations by the Australian Grand Prix Corporation in the public arena — unverifiable figures, I would say. On Monday, 18 March, there was an article on page 5 of the *Herald Sun* entitled 'Flying Finn reclaims his former glory in epic race'. It starts out talking about Kimi Raikkonen, but it goes on in columns two and three to say:

> The impressive turnout took the overall attendance across the four days to 323 000, the highest since 2005. The estimated attendance last year was 313 700.
>
> Yesterday's crowd was down slightly on last year's 114 900 race-day crowd, according to the Australian Grand Prix Corporation.

Those are the figures according to the Australian Grand Prix Corporation. They cannot be verified because no accurate count is done. There are no turnstiles and no scans; figures are just put forward by the Australian Grand Prix Corporation, which is claiming an attendance of 323 000 people. The maximum number of people that could fit into the event space is approximately 70 000. If all the grandstands are full and all the side viewing areas are packed three or four deep, the maximum number of attendees is 70 000. Four times 70 000 comes to 280 000, as far as I can work out, so the maximum number of people who could possibly have been there over four days is 280 000. Yet the grand prix corporation trots out a figure of 323 000 people. No one can verify that figure, because the corporation is not required to count the number of people who go into the event.

The amendment I am asking the committee to seriously consider is that the Australian Grand Prix Corporation collect that information accurately, using turnstiles or scanners, as they do at my favourite events, the cricket and the tennis. At both of those events you can be sitting there on the day and be told during the event exactly how many people are there, to the person. The information comes up on a screen, which says that there are so many people — to the person — sitting in this venue at that time watching this event. But even though the Australian grand prix is held in a space that is fenced off and people have to go in through gates, there are no turnstiles counting them and there is no scanner for their tickets to say — —

Mr Drum — Why are you doing this?

Ms PENNICUIK — Mr Drum asks why I am doing this. I am doing it because hundreds of millions of dollars are spent on this event and the responsible body is not even required to produce basic facts about how

many people were there. It is allowed to get away with this fairy story that there were 320 000 attendees.

As people know, over the last 17 years members of the Save Albert Park group have been monitoring the event in the absence of government monitoring. On the first day of the event this year, on the Friday, they went to the trouble of taking photographs of who was there from vantage points around the event. Anyone can go to the group's website and see the photos that were taken on Friday. For example, one taken when the first event was under way shows the biggest grandstand less than 15 per cent full — that is, with only a few hundred spectators. The other grandstand was less full, and there are maybe less than 130 spectators watching the race from the bar.

There is a photo of the main straight; basically it shows people dotted around the place. In one of the main stadiums I can see maybe a dozen people. There were 162 spectators on top of the V8 pit garages, only 19 on top of the F1 pits and 29 on the lower floor. The grandstand and corporate seats were partially occupied on the Friday and mostly empty the previous day, which is why schoolchildren and others were invited to come free and 70 000 free tickets were offered to locals. There are photos of people on the grassy areas — just people dotted around. There is hardly anyone there.

Hon. W. A. Lovell — On a point of order, Acting President, the member's contribution has now been going for 33 minutes, much of which has been dedicated to speaking about the Australian grand prix, which is not actually covered by the legislation we are debating; it has its own act of Parliament. The only section of this legislation that governs the grand prix is that pertaining to aerial advertising. I draw your attention to the question of relevance of the member's debate.

Mr Barber — On the point of order, Acting President, first of all, the member has not been going for 33 minutes; she has 33 minutes left, having started with 45 minutes. Secondly, the motion in this form is in order. That is why we are debating it. The minister can debate the motion, and then she can vote against the motion, if she wants to.

Mr Ondarchie — On the point of order, Acting President, I remind you about relevance. There is a separate act that controls the Australian Formula One Grand Prix. Ms Pennicuik was talking about 19 people on the grass; I thought she was talking about her own branch membership!

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

The ACTING PRESIDENT (**Mr Finn**) — Order! I inform Mr Viney that there is already a point of order under consideration. I am happy to hear Mr Viney's point of order after I have ruled on the current point of order. As Mr Viney knows, we cannot take multiple points of order.

At this point I will not uphold Ms Lovell's point of order, but I ask Ms Pennicuik to be mindful of the importance of relevance in this debate.

Mr Viney — On a point of order, Acting President, I wish to draw your attention to the fact that on two occasions while you were considering the point of order raised by the Deputy Leader of the Government, she approached the Chair and attempted to continue to prosecute her point of order while out of her place and while you, Acting President, were consulting with both the clerks. That was highly inappropriate and is the reason I have taken a subsequent point of order about the way the point of order was being dealt with. In my view it was highly inappropriate. If a member wishes to add to their point of order, they can rise in their place and get the call.

The ACTING PRESIDENT (**Mr Finn**) — Order! I do not uphold the point of order. It is my understanding that Ms Lovell — and I was pretty close to her at the time — was in fact speaking to the clerks, which is not unusual in such circumstances.

I will add something to my ruling on the earlier point of order. I advise the house that standing order 15.06(1), 'Instruction to committee', says:

> An instruction empowers a committee of the whole to consider matters not otherwise referred to them.

That, I believe, in effect covers the matter Ms Pennicuik is currently prosecuting. This standing order enables the house to extend the scope of the matter that is under discussion. However, I ask Ms Pennicuik, as I would ask every member, to be mindful of relevance.

Ms PENNICUIK — The Deputy Leader of the Government will be pleased to know that I have made my point about the Australian Grand Prix Corporation. However, I point out that the amendment I am asking to have the committee consider is that an event organiser be required to keep records, including accurate attendance figures. Under this bill, and who knows under what other bills, the range of major events covered by the Major Sporting Events Act 2009 will

expand. Part of the criteria under section 9 of the principal act concerns the number of attendees and the size of the event. If that is the case, let us have accurate figures on the size of every event so that members of the public have before them the full and true information as to the size of an event, not estimated numbers. That goes to the heart of what is or is not a major event — and certainly is part of the criteria under section 9 — about which I will be asking the minister in the committee stage.

There has been an occasion in the previous Parliament where I put a similar case to the chamber for the committee to consider clauses that the clerks had ruled were outside the scope of the bill, and the previous government allowed me on that occasion the opportunity of putting the amendments. That is all this motion is about: that the chamber allows me to put amendments to the bill. It does not mean members have to support the amendments, but it relates to the democratic process and my views about how the bill could be improved, particularly in terms of the accuracy of attendance numbers or of persons who are affected by or suffer an injury as a result of the conduct of a major event not having their rights to compensation removed, as is the case under the act. Both those issues, particularly compensation, are consistent views we have held regarding the shortcomings of the act as it stands in terms of the interests of the public.

The bill looks after the interests of the event organisers and the corporations behind them. The amendments I am proposing look after the public interest, and that is why I ask the chamber for the opportunity to be able to do so.

Hon. W. A. LOVELL (Minister for Housing) — Acting President, I advise the house that I have just had a conversation with the clerks about my earlier point of order. What I was trying to clarify with the clerks was that I felt they had misunderstood the point of order I was raising, which was not that the amendments could be put forward, but the fact that the debate was not relevant to this act because the act does not cover the grand prix. The clerks have just confirmed to me that they did misunderstand the point of order and that there probably was a point of relevance because the member's contribution had been all about provisions around the grand prix.

The government will not be supporting the Greens motion to insert additional sections into the bill. We are happy with the bill as it is, and we will be moving forward with the bill as it stands, not including additional provisions. The two provisions the Greens propose to insert into the act relate to the no compensation orders and the information available about ticketing. The main purpose of the principal act is to encourage major events to be held in Victoria and to promote major events in Victoria. To require the amount of reporting that the Greens are seeking in relation to ticketing would be inconsistent with the purposes of the act which, as I have already said, is to make Victoria an attractive place for event organisers to conduct events. The inclusion of that additional provision would have the opposite effect, making it harder to conduct an event.

The amendments would require event organisers of major sporting events to keep detailed records of a number of matters related to attendance and to publicly release that data. There is a section in the principal act that already specifies what data the event organisers are required to keep, and I suggest Ms Pennicuik reads that section of the act so that she is familiar with those provisions. We do not feel the Greens amendment would be appropriate across the board for event organisers and in fact would make it more difficult and make Victoria a less attractive place to run events. That is not what this bill is designed to do.

The Greens have also asked to insert a provision that would remove all references in the principal act to the no compensation orders. Again, the government will not be supporting the Greens amendment. The no compensation orders provision under the act has never been used. The provision is contained in the act because the previous government considered it was necessary, and this government also considers that it may be necessary at some time. However, I point out to Ms Pennicuik that even if the no compensation orders were used they would be subject to a disallowance by Parliament in each case, so there is a safety provision around that provision. As it is intended to reduce the need for specific acts in relation to major sporting events, it is important to retain the no compensation provision to ensure that a full range of tools is available to the government of the day to facilitate a major event in this state. The government will not be supporting the motion seeking the insertion of additional provisions into the act.

Mr TEE (Eastern Metropolitan) — The opposition has grave reservations about the merits of the amendments suggested by Ms Pennicuik. However, we think the technique she is using — the motion she has moved — is available and that the Parliament should have access to it in circumstances such as these. We are of the view that, where possible, important issues like these ought to be debated, and this is an opportune way in which they can be discussed. We support the motion, although as I said we have grave reservations about the

amendments and we hope to have the opportunity to address those reservations in a substantive debate on the amendments if we get there.

Ms PENNICUIK (Southern Metropolitan) — I thank the opposition for its support of my democratic right, and the democratic right of all members, to put forward amendments. Whether or not other members agree with them is another matter. It has been ruled that I need to do it in this way, so I thank them for that.

I am perplexed by the reasons given by the government. One is that the provision for a no compensation order has never been used. If it has never been used, let us take it out. I do not believe it is necessary or fair for organisations and for individuals who may be injured to have no recourse for compensation. I do not understand, when the criteria in section 9 of the act refer to the size of the event and the number of people attending, why any major event covered by some of these draconian provisions would not be required to actually count the number of people who attend. I do not accept the reasons the government has given for being strong in not supporting my motion.

House divided on motion:

Ayes, 19

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

Noes, 21

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

Motion negatived.

Ordered to be committed later this day.

Business interrupted pursuant to standing orders.

QUESTIONS WITHOUT NOTICE

Royal Children's Hospital: psycho-oncology program

Mr JENNINGS (South Eastern Metropolitan) — My question is to the Minister for Health. We are one week away from the Royal Children's Hospital Good Friday Appeal. Members of the opposition and I am sure that many families across Victoria have received some pretty terrible news that the hospital may be intending to make redundant in the next few weeks the 13-member team of the psycho-oncology department. Up until now this wonderful and professional support team has provided psychological support and pain management support to children with cancer, and it would be devastating for them and their families if this service were lost. Will the minister advise the families of these children that this very important and essential service will not be lost and that he will fight to maintain the service and make sure that those families receive the support they need into the future?

Hon. D. M. DAVIS (Minister for Health) — I thank the member for his question. I too, like everyone in the chamber, support the strong work of the Royal Children's Hospital and strongly support, as the member has outlined, the Good Friday Appeal, which is forthcoming. I indicate that hospitals make their own decisions about their specific priorities for staff, but I will make inquiries of the Royal Children's Hospital as to its steps in the particular areas that have been outlined by the member. What I can say, though, is that the Royal Children's Hospital has had a very significant increase in its budget both this year and last year. However, along with every other Victorian hospital, it did of course face cuts by the federal government, and the $107 million that has been promised is not yet back.

Honourable members interjecting.

Hon. D. M. DAVIS — Despite the protestations of the shadow Minister for Health, Mr Jennings, and the Leader of the Opposition, the money has not yet been put back in place. It is time for the Prime Minister, Julia Gillard, and the federal Minister for Health, Tanya Plibersek, to live up to their promise. The promise that the cheque is in the mail is not good enough; the cheque has to land. The cheque needs to get into the account for the Royal Children's Hospital, and as yet we have not seen the money returned.

I can also indicate to the member that, like every hospital, the Royal Children's Hospital faced significant difficulties as the funding was pulled out by the federal government. What we will see with the

statements of priority — and there have been three this year, which is unusual, because the federal government pulled out money halfway through the year and new deals had to be struck with every hospital, and then there was a third deal — is that there has been some ongoing damage caused by the federal government's removal of money. What is clear is that there will be 144 fewer operations performed at the Royal Children's Hospital entirely because of the federal government's cuts. What I can say is that the waiting list at the Royal Children's Hospital will have increased by 183 entirely and totally because of the federal government's cuts to the Royal Children's Hospital. What is clear is that the federal government ought not to have cut funding in this way, with the disruption and the consequent concerns that have occurred.

What I will say is that I will take on notice the details the member has raised, but I know that he voted for cuts at the Royal Children's Hospital and every other hospital around the state, because he supported the federal cuts. That is a shameful act. He needs to explain to the people of Victoria why he supported more people being put on the waiting list at the Royal Children's Hospital because of the federal government's cuts to our hospitals.

Supplementary question

Mr JENNINGS (South Eastern Metropolitan) — President, I am sure if you were to comment, you would share my view that the minister started with some degree of respect and regard for those children and the families who would be affected by the loss of this service. Unfortunately the minister resisted the opportunity to defend that service and to give any indication that he will protect those children. My question is: apart from running away from the responsibility to protect this service, what actions will the minister take and what directions will he give the Royal Children's Hospital to protect the psycho-oncology department?

Hon. D. M. DAVIS (Minister for Health) — I have indicated to the member that I will speak to the hospital, and I will investigate the matters he has raised. But equally, it is important to understand that the budget for the Royal Children's Hospital has been increased significantly in the last two years, and we will seek to increase it again in the forthcoming budget. What was not helpful was the federal government, with the support of the opposition in Victoria, cutting at the Royal Children's Hospital and every other hospital in the state. The end result of that is there has been a longer waiting list at the Royal Children's Hospital as part of a waiting list that is 2370 people longer entirely due to the commonwealth cuts.

What I say to Mr Jennings, to the chamber and to the people of Victoria is the Royal Children's Hospital is an esteemed institution. We will be supporting it in every way. But what I will say very clearly to Mr Jennings is that we need the money from the commonwealth to be put back, and the Royal Children's Hospital, like every other hospital in Victoria, is yet to get the cheque from Julia Gillard.

Health: refugee services

Mrs PETROVICH (Northern Victoria) — My question is for the Minister for Health, and I ask: can the minister explain to the house recent initiatives to support the record number of refugees settling in Victoria?

Hon. D. M. DAVIS (Minister for Health) — I thank the member for her question. I note that Mrs Petrovich represents Northern Victoria Region, and services like the Northern Hospital, which many of her constituents visit, face significant pressure due to increased numbers of refugees. The commonwealth has indicated that it will increase the number of refugees in Victoria. We in no way quibble with that decision. Indeed, we are very supportive of refugees coming to Victoria, but what we say is that there has to be sufficient support for those refugees. It is clear that there needs to be sufficient support for those refugees, and I have put on the health ministers' conference agenda the need for additional support that will be required to meet the refugee flow. In recent weeks I have also made an allocation of $670 000 to deal with the increased refugee numbers that have been indicated by the commonwealth.

Some key hospitals — Northern Hospital is one of them, Southern Health is another one and Western Health — face significant challenges. As an increased number of refugees come to Victoria, they are going to require specific and detailed health services. We have made allocations for those health services to make sure that there are sufficient resources in place to deal with the increased numbers of refugees coming to Victoria.

It is interesting to note that the front page of today's *Herald Sun* says the Victorian and Australian populations are growing massively. It says there is 1.4 per cent growth in Victoria, although you would not know that if you talked to the federal Treasurer. He thinks Victoria's population is falling by 11 000. It is not falling; it is growing massively.

Mr Leane — On a point of order, President, the minister is debating his own question.

The PRESIDENT — Order! I advise the minister that there perhaps is a little bit of debate in his answer today, and he might take that into account as he proceeds with answering the question posed by Mrs Petrovich.

Hon. D. M. DAVIS — President, as you will understand from the question from Mrs Petrovich, she is interested in the increased number of refugees who are coming to Victoria and who are welcomed in Victoria. I am indicating to the chamber that I have made an additional allocation of resources to help hospitals like the Northern Hospital, Southern Health and Western Health, and it is clear that this is part of the population growth that is occurring in Victoria. It is very significant population growth, part of which is increased refugee flow. This requires additional resources. The state is putting in place additional resources. I can indicate to the chamber that I have sought discussion at a national level with state and federal health ministers on how we resource the additional refugees who are coming to our state and how we provide the proper services that are required.

Part of the population growth we are seeing today, reported in a number of our newspapers, is a move towards 23 million Australians — a significant growth in population that will require additional resources. In particular, I know that many of the people from Mrs Petrovich's electorate, Mr Ondarchie's electorate and Mr Guy's electorate visit the Northern Hospital, in an area where there needs to be increased support — an area that has faced additional challenges as the commonwealth has pulled money out of that hospital.

The Northern Hospital still does not have its additional funding from the commonwealth. We are still awaiting the cheque. The commonwealth said, 'We're going to take the money because the population of Victoria is falling'. President, I can tell you that the population of Victoria is not falling, it is growing, and part of that growth is the increased refugee flows. Those increased refugee flows require additional support. I know that many of those additional refugees have very complex needs — young people who come from countries where they have not had adequate health care, adequate dental care and adequate immunisation and other support. They are all incredibly important supports, and we are making additional provision for increased numbers of refugees.

Supplementary question

Mrs PETROVICH (Northern Victoria) — I thank the minister for his fulsome answer. As a supplementary question, will the number of refugees settling in the growth areas around the Northern Hospital be impacted by recent commonwealth cuts?

Hon. D. M. DAVIS (Minister for Health) — I can indicate that indeed the commonwealth cuts that were delivered will impact on all residents in Northern Victoria Region and indeed on all residents of Northern Metropolitan Region. Those who attend hospitals like the Northern Hospital will face challenges — whether they are established population groups or whether they are new arrivals, refugees or asylum seekers who deserve our support when they come to this fair state of ours. What I can indicate is that at the Northern Hospital the waiting list will have increased significantly because of the commonwealth cuts. There will be 44 less procedures undertaken at the Northern Hospital because of the commonwealth cuts this year, and we are still waiting for the additional resources from the commonwealth to come to a key hospital like the Northern Hospital.

Royal Children's Hospital: funding

Mr JENNINGS (South Eastern Metropolitan) — My question is for the Minister for Health. Given that this is the last question time prior to the Royal Children's Hospital Good Friday Appeal, can the minister give any encouragement to Victorians to open their hearts and to reach into their pockets to support the Royal Children's Hospital in demonstrating his bona fides by indicating what financial support he may give the hospital to make sure that it does not cancel surgeries at the rate of 1 in 12 — which it is currently doing — and it does not cut further staff due to budget restrictions that he has introduced, and by indicating that he will provide the hospital with some financial support before the Royal Children's Hospital appeal?

Hon. D. M. DAVIS (Minister for Health) — If the member had listened to my last answer, he would have understood that I have just announced additional support for one specific group of people who deserve our additional support, and that includes refugees. Many of the people who come as refugees to Victoria are children; the Royal Children's Hospital is one of the key sites for refugee health support in Victoria, and those children will share in some of that additional funding that I have announced today. That is very significant support.

A whole range of services are provided at the Royal Children's Hospital for children across the state. It is one of our major statewide providers, as the member will understand. What I can indicate, as I have indicated to the member already, is that the state government has provided additional funding in each of the last two years and will continue to provide additional funding. It is the commonwealth government that needs to put its money back in.

I would certainly urge all Victorians to open their hearts to the Royal Children's Hospital and provide as much additional support as they can for the Good Friday Appeal. I will be giving the Good Friday Appeal every bit of support that I can, and I know that that is a bipartisan position across the chamber and across the community.

I know that the commonwealth government needs to put its money back into the Royal Children's Hospital — several millions of dollars need to be put back in — and it needs to do this now, before the Good Friday Appeal day arrives.

Supplementary question

Mr JENNINGS (South Eastern Metropolitan) — I want to provide the minister with an opportunity to indicate to the chamber and to the people of Victoria whether he believes it is in fact acceptable for the Royal Children's Hospital to cancel 1 in 12 surgeries. Is it acceptable for 3750 people to be on the waiting list — children — come 30 June, under his watch, without any additional financial support by the state government?

Hon. D. M. DAVIS (Minister for Health) — When the member talks about hospital-initiated postponements he is on very shaky ground. The last government refused to declare that information or provide that information. And who was the health minister? It was Daniel Andrews, the Leader of the Opposition and member for Mulgrave in the Assembly. It is our government that has reinstituted the reporting on hospital-initiated postponements because we want to get the best outcome.

Mr Jennings interjected.

Hon. D. M. DAVIS — What I can tell Mr Jennings is that there will be 183 more people on the waiting list at the Royal Children's Hospital entirely because of the Gillard federal government cuts. What it did was it pulled the money out, and it is yet to put the money back in. Millions of dollars were ripped out of the Royal Children's Hospital by the Gillard government, and it is money it has not put back in. When the money comes the hospital will work as hard as it can, and that is what it is doing. I have struck new arrangements with the hospital, with the new standard operating procedures. But what is clear is that there will be 144 less operations at the Royal Children's Hospital — because of the Gillard government cuts.

Vocational education and training: awards

Ms CROZIER (Southern Metropolitan) — My question is to the Minister for Higher Education and Skills, Mr Hall. I ask: can the minister advise the house on any forthcoming events that will highlight the breadth and depth of Victoria's vocational training sector?

Hon. P. R. HALL (Minister for Higher Education and Skills) — I thank Ms Crozier for her question and her great interest in vocational training in Victoria. I am sure that we all acknowledge the extraordinary talent and dedication of the sector — both students and staff and also providers in the sector — whose achievements are celebrated continuously throughout the year with a variety of ceremonies and award functions. There was one I attended just last week for the automotive industry, run by the Victorian Automobile Chamber of Commerce, and I know that over the next couple of weeks I will also be attending such awards for the construction industry as well as the furnishing industry. The talents to be seen at those award events are something to be admired.

The highlight of the year in terms of celebrating the great achievements of the sector are the annual Victorian Training Awards. This year we will see the 59th annual training awards being celebrated on 6 September. While that date seems a long way off, we are now seeking nominations for the various categories of awards. Nominations are now open and will close on 10 May, with finalists being announced on 21 June.

These awards are in different categories: six of them are individual awards, and there are a further eight group awards. Some of the individual awards are selected from the 670 000 students who are currently enrolled in government-subsidised training across Victoria. In the TAFE sector there is a further quarter of a million — about 125 000 — fee-for-service students, and of course there are many other fee-for-service students in courses delivered by other private providers across the state of Victoria. The awards will also provide an opportunity for some of the 600-odd providers of training to win an award. The individual awards attract a fellowship of the order of $10 000, and I know that some outstanding young people have participated and have been awarded such a fellowship.

Some of the industry awards cover categories like provider of the year, both large and small, and one in particular I want to highlight today is the industry collaboration award. Last year the organisation that won the industry collaboration award was a partnership between the Kangan Institute of TAFE and the Council of Textile and Fashion Industries of Australia called the Textile and Fashion Hub project. As members will know, a tradition started by the previous government was the design of the attire for the presenting minister at these occasions, and I have had the privilege in the past to be dressed by the students of both the Gordon Institute of TAFE and more recently the Academy of Design Australia.

This year, because of last year's winner involving the Kangan Institute of TAFE, I am looking forward to the students and staff at Kangan outfitting me with an example of the wonderful talents of the students. I know that members who have had the privilege of joining me at those awards — members from both sides of the house — have certainly seen those talents on full display. I am sure the 2013 awards will be no different.

Western Health: Children's Allied Health Service

Mr JENNINGS (South Eastern Metropolitan) — My question is for the Minister for Health. Yesterday my colleague Ms Mikakos asked the minister's colleague Ms Lovell a question about the withdrawal of the Children's Allied Health Service from the Sunshine Hospital which is causing disruption to the lives of families in the western region because their children's needs have not been assessed at the hospital, and that is preventing them from accessing kindergarten support services. Given that the minister was in the chamber and heard the question yesterday, what action and advice has he taken in the last 24 hours to try to ensure that the Sunshine Hospital provides this important service to these families?

Hon. D. M. DAVIS (Minister for Health) — What I can indicate is that I have obtained the letter that Ms Mikakos tendered. I have asked my department for formal advice on that letter, and I am awaiting that advice.

Supplementary question

Mr JENNINGS (South Eastern Metropolitan) — I thank the minister for actually receiving that letter and seeking some advice. That is a positive step — let us hope it is. On the basis of that advice and on the basis of the minister's relationship with Western Health, will he see this as a priority to try to restore those allied health services and give the house a guarantee that he will take whatever action he can to restore that service so that those children get the care they need?

Hon. D. M. DAVIS (Minister for Health) — As I have said, I will seek advice formally from my department to understand precisely the decisions that Western Health has made. When I have got that advice I will suggest whatever is appropriate. Obviously health services make their own decisions on various matters, but I would be very happy to provide Mr Jennings with a detailed response once I receive that formal advice.

Baw Baw planning scheme: amendment

Mr O'DONOHUE (Eastern Victoria) — My question is for the Minister for Planning, Mr Guy. Can the minister inform the house what action the government has taken to facilitate jobs and investment in West Gippsland?

Hon. M. J. GUY (Minister for Planning) — I thank Mr O'Donohue for — —

Mr Lenders — How about a wind farm or two?

Hon. M. J. GUY — Mr Lenders never ceases to be a sour old individual, does he? At least he is consistent about one thing; I will give him that credit. He is just a sour old individual.

Here we are about to talk about the C96 amendment to the Baw Baw planning scheme that will bring 400 jobs and a $45 million retail centre to West Gippsland — more than Mr Lenders's government ever did in West Gippsland. It will facilitate growth in jobs in West Gippsland and in land supply for Nilma, Warragul and Trafalgar. For the information of those who should be proud to see Warragul grow — like Mr Viney who is sitting behind Mr Lenders; like Mr Lenders himself as a Warragul boy; like Mr O'Donohue whose seat is Eastern Victoria Region which covers Gippsland; like Mr Hall who as a proud Gippslander for so long knows how important this is to West Gippsland; and of course Mr Philip Davis who has been there his whole life — Warragul will change from a small town to a thriving centre, the capital of West Gippsland.

We on this side of the house have great pride in seeing the Baw Baw C96 amendment come through to provide that certainty for West Gippsland, to provide certainty for 400 jobs in Warragul. This is no mean feat. This rezoning is going to provide the greatest single level of job injection in Warragul's history, and it is happening under this government, because the coalition government appreciates the fact that you cannot grow a city state; you need to grow a state of cities.

That is the difference between this side of the house and the Labor Party, the negative, boring, whining Daniel Andrews Labor Party, the Labor Party run by a bunch of former Soviet-loving apparatchiks. On this side of the house we believe in growing regional Victoria, and we are putting actions in place to make it happen. We are not living in humpies, like the Greens, who pretend the world goes on without them. We are living in reality. This is going to be — —

The PRESIDENT — Order! I am surprised the minister has not drawn a point of order. It is my view that he is vigorously debating and also reflecting on other members of the house and other parties. The substance of the minister's answer is of great interest to the house, and I encourage him to return to explaining a little more about the substantial announcement he is making.

Hon. M. J. GUY — President, allow me to be forgiven for being enthusiastic about the coalition's support for West Gippsland. As I said, 400 jobs will be created from this C96 rezoning in Baw Baw, facilitated with the council. The $45 million retail centre out towards Nilma will see the people of West Gippsland given more choices for whitegoods, furniture, camping, outdoor equipment, building material and of course homemaker products. It is important that this rezoning is put in place to ensure that West Gippsland is not just — like the previous government wanted it to be — a dormitory town for jobs in the eastern part of Melbourne. Jobs will be kept in West Gippsland, and West Gippsland, the Latrobe Valley and Gippsland itself will be able to grow organically and sustainably. Those towns have a magnificent future ahead of them.

In order for that to happen the C96 amendment, which, as I said, has been worked through with my department — and congratulations should go to the Shire of Baw Baw — will be very important for the sustainable future of West Gippsland, for the shire of Baw Baw, for the towns of Warragul and Drouin, and for the conurbation there becoming sustainable, one that has jobs located within it, jobs for its people, and that ensures that the coalition government is putting in place policy that grows Victoria into a state of cities and not just a city state, which is what the Melbourne-centric Labor Party focused on.

Ordered that answer be considered next day on motion of Mr VINEY (Eastern Victoria).

Whooping cough: vaccine

Mr JENNINGS (South Eastern Metropolitan) — My question is for the Minister for Health. At last year's Public Accounts and Estimates Committee hearings the minister was asked by Ms Hennessy, the member for Altona in the Assembly, about his reduction of the whooping cough vaccine program, a decision that he made despite the fact that this is a life-threatening condition and that there had been 1655 notifications the year before. In light of significant findings of a major Australian study which has been published this week and which shows that the risk of babies contracting whooping cough is reduced by 50 per cent if their mothers have been vaccinated, has he urgently reviewed that decision, and will he reinstate the program?

Hon. D. M. DAVIS (Minister for Health) — I thank the member for the question and for the opportunity to talk about the important task of vaccinating children. This is a priority that the government puts at the very top of its list. I have to say the whooping cough vaccine is absolutely critical for children, and our primary effort must always be to make sure that children are vaccinated against whooping cough, and a great deal of effort has been put into that.

As the chamber will understand from my answers last year and from media commentary and other discussion at the time, it was clear that, acting on formal advice from the chief health officer, there was insufficient evidence for cocooning effects.

I indicate that there are two clear and distinct matters here. One is the early vaccination of expectant mothers prior to the birth of their babies, and there has been some evidence in the last two days from a study that has been undertaken and which this government actually has some involvement with. I can indicate that I have formally asked the chief health officer to provide formal advice to me and, in doing so, to convene an expert panel that is used for precisely this purpose.

I draw the clear distinction between claims about the cocooning effect, which the Pharmaceutical Benefits Advisory Committee, a national body, has twice now rejected as being either efficacious or cost effective. But I can indicate that the new evidence that is available about the vaccination of mothers prior to the birth of their babies will be assessed formally by the chief health officer and her independent panel, and they will provide formal advice. I had a discussion with the chief health officer about this at some length yesterday and can indicate that she has agreed to convene that expert panel and provide formal advice to me.

Supplementary question

Mr JENNINGS (South Eastern Metropolitan) — Is the minister confirming that he no longer stands by the evidence he gave to the Public Accounts and Estimates Committee last year — which was backed up by his departmental adviser, who indicated that the cocooning effect did not work and in fact described parents as a 'herd' — and that he is seeking alternative advice from his department?

Hon. D. M. DAVIS (Minister for Health) — I was provided with advice by the chief health officer last year and by an expert panel. These are not decisions that I would make alone without expert advice. I am not a clinician. I have got to say that we take the very best advice that is available. It is clear that the Pharmaceutical Benefits Advisory Committee twice rejected the claim that the cocooning impact was efficacious or cost effective, but what I can indicate very clearly is that the recent study that was reported at a conference this week is a study that particularly provides new information about the vaccination of mothers before the birth of their babies. I have sought advice on that matter from the chief health officer and asked her to convene an expert panel. The advice will be significant in driving my decisions.

Homelessness: Warrnambool youth foyer

Mr KOCH (Western Victoria) — My question without notice is to the Minister for Housing, Wendy Lovell. Can the minister advise the house of recently opened youth support facilities in south-western Victoria?

Hon. W. A. LOVELL (Minister for Housing) — I thank the member for his question and his ongoing interest in disadvantaged youth and the provisions we can make to assist them to build better lives for themselves. On Friday of last week the Premier of this state, Denis Napthine, opened in his own electorate a new youth foyer located in Warrnambool. This is a $4.9 million facility that has been developed in Warrnambool. It is a 16-unit facility with 2 additional units for staff to stay overnight. The youth foyer will be serviced 24 hours a day with supervision for the young people who live there. The Premier was joined by Kevin O Toole, the chair of Brophy Family and Youth Services, and Francis Broekman, the CEO of Brophy Services, who will be part of the consortium that runs this new youth foyer.

This foyer is not part of the coalition's election commitment, which was to build three 40-bed youth foyers; it is in addition to that. This will service young people in Warrnambool who are homeless or at risk of homelessness but who want to continue their education. In 2011 a consortium led by Brophy Family and Youth Services was selected through a submission process to manage this youth foyer. The other consortium partners include Barwon Youth as tenancy managers, South West TAFE and South West Local Learning and Employment Network.

A vital component of the foyer program is connection to education and training, because this is what will break the cycle of disadvantage for these young people. This is what will enable them to build a better life for themselves. This government is committed to helping those young people to do just that rather than to perpetuating the cycles of disadvantage we have seen under the former government.

Places Victoria: *Herald Sun* advertisement

Hon. M. P. PAKULA (Western Metropolitan) — My question to the Minister for Planning relates to a paid advertising feature in the *Herald Sun* of 9 March about Aurora's $14 million infrastructure plan. The advertisement speaks glowingly about Places Victoria as the funder of the project, about Places Victoria contributing $7 million and about Places Victoria finishing off the community activity centre next year. It also contains extensive quotes from a member for Northern Metropolitan Region, Mr Ondarchie, in support of both the development and Places Victoria. As I say, it is described as a paid advertising feature, and my question to the minister is: can he advise the house whether it was paid for by Places Victoria or by Mr Ondarchie?

Hon. M. J. GUY (Minister for Planning) — Given Mr Pakula's interest in the question, I will take it on notice and get back to him as soon as I can.

Supplementary question

Hon. M. P. PAKULA (Western Metropolitan) — I thank the minister for taking my question on notice. I ask him, in taking it on notice, on the assumption that it may have been paid for by Places Victoria — —

Honourable members interjecting.

Hon. M. P. PAKULA — The minister is taking it on notice, so if he discovers that it has been paid for by Places Victoria, could he advise the house whether it is his policy that government agencies within his portfolio should include extensive commentary from government MPs in paid advertising, and if that is not his policy, will he ensure that it does not happen again?

Mr O'Brien — On a point of order, President, this is completely hypothetical and should not be allowed.

Hon. M. P. Pakula — On the point of order, President, the minister has taken the question on notice. He will obviously ascertain whether it has been paid for by Places Victoria or by the member. In those circumstances, the supplementary question cannot be put in any way other than the way it has been expressed.

Mr O'Brien — Further on the point of order, President, the supplementary question should then be asked when the minister has advised the house which of those two it falls upon. At this point in time, when the minister has taken the question on notice, there is no basis for asking what is a hypothetical question. It should be ruled out of order.

The PRESIDENT — Order! I do not uphold the point of order. The supplementary question was in order, in terms of asking the minister to provide what would be a relevant answer depending on the outcome of his answer to the original question. It might be based on an assumption of what the minister's answer to the substantive question might be, but I certainly do not think that it falls in the realms of being hypothetical.

Hon. M. J. GUY (Minister for Planning) — In answering the supplementary question, let me say just a few things about what Mr Pakula has asked. The first point is that the Aurora development is one that was launched by the previous government — and it has become plagued with problems. Indeed it was this government that pointed out that the previous government signed up fibre to the home in Aurora for more than $15 000 a block, with not a single cent of return added to the blocks. It was a multimillion-dollar disaster caused by Labor, signed off by the then Minister for Planning, now member for Essendon in the Assembly, Justin Madden, and the Australian Labor Party. It was the last government that signed up to a water reticulation facility in Aurora that is a complete disaster. It was raised in question time by the Liberal Party and The Nationals in the last term, dismissed by the Labor Party and found to be a financial disaster. When Labor Party members come in here and talk about Aurora, they need to be aware of one point: it is a dog of their creation.

Mr Lenders — On a point of order, President, the question that Mr Pakula asked of the minister was one regarding his government's administration, and particularly the administrative policy on whether it is appropriate for government advertising to pay for commentary of government MPs. The minister is debating the question because he is not addressing the issue of government administration or policy on advertising. He is now debating his view on the history of a project that has nothing to do with the question raised.

Hon. D. M. Davis — On the point of order, President, it is entirely appropriate for the minister to review the history of a project to put it in context. The fact is that the project is a dog of a project and has been mismanaged. Those on the other side are very sensitive about that project, but I have to say that it is entirely appropriate for the minister to make those points.

Mrs Petrovich — On a point of order, President, I seek your guidance on the use of props. There have been significant rulings on this previously. The member has been waving a piece of paper around pretty vigorously in the chamber.

The PRESIDENT — Order! I will take Mrs Petrovich's point of order first. On this occasion I do not regard the newspaper as a prop. I think that the member has brought that in because it was very relevant to the question that he asked. Mrs Petrovich's position on props is quite right — we do not allow props — but on this occasion I think it was in order.

I uphold Mr Lenders's point of order, because the question was quite specific and it had nothing to do with the history of this particular project. Whilst I might be interested in hearing some of the history of this project and hope it has turned the corner in terms of being a successful project for all of us, I do not think that the content of the answer to the supplementary question in fact did address appropriately Mr Pakula's quite specific question or indeed his supplementary question. I ask the minister to address Mr Pakula's question.

Hon. M. J. GUY — On government advertising, in the previous government the Auditor-General identified one minister as using taxpayer funds for political purposes — the Doncaster rapid transit. It was Martin Pakula.

Information and communications technology: government initiatives

Mr P. DAVIS (Eastern Victoria) — I direct a question without notice to the Minister for Technology, the Honourable Gordon Rich-Phillips. Can the minister inform the house on how the government's ICT strategy is benefiting Victorians?

Honourable members interjecting.

Hon. G. K. RICH-PHILLIPS (Minister for Technology) — I thank Mr Davis for his question. I must say that I am surprised at the interjections from Mr Tee and Mr Somyurek, given their government's appalling record in the use of ICT in the public sector.

Last month I was delighted to launch the Victorian whole-of-government ICT strategy. The ICT strategy was focused on three key areas: the first was focusing on the way in which the government engages with its citizens, using ICT and social media; the second was focusing on the way in which the government invests in ICT, in both project investment and service delivery investment; and the third was focusing on the way in which the government develops its capability to deliver ICT and ICT-related projects.

In the first area of engagement the government committed to improving the delivery of government services through mobile services and online services, committed to increasing information sharing within government, committed to increasing the release of government data to the private sector to drive innovation in the private sector and committed to increasing co-design and co-production of government projects and platforms.

I am delighted to inform the house that on the first issue, of engagement and improving mobile access and online access, the government has delivered on the first key action under that strategy — that is, the redevelopment of the key Victorian government portal, the vic.gov.au website. This is a very important portal which receives around 450 000 contacts every month. This is a major way in which Victorian citizens engage with government. This is a platform which had not been updated for more than a decade.

Consistent with the Victorian government's commitment to embracing new platforms and new technologies to engage with citizens, the new vic.gov.au portal has a new emphasis on social media, engaging with citizens through the use of social media and engaging with citizens through the use of mobile devices. These are new technologies which have very much changed the way in which the government can interact with its citizens, and that is a key focus of the new portal. We also have a new upgraded interactive search facility to allow better access, more interactive and intuitive access, to government platforms through that portal and of course direct access to government mobile applications, which are a growing area of government engagement with citizens.

The new vic.gov.au portal reflects the change in the way in which citizens want to engage with government; it reflects this government's commitment to engage with citizens in a new up-to-date way; and it reflects a new way for Victorians to do business with their government.

Sitting suspended from 12.52 p.m. until 2.02 p.m.

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

Second reading

Debate resumed from 7 March; motion of Hon. R. A. DALLA-RIVA (then Minister for Employment and Industrial Relations).

Ms PENNICUIK (Southern Metropolitan) — The bill before us is the Justice Legislation Amendment (Cancellation of Parole and Other Matters) Bill 2013. The bill deals with two entirely separate and important issues. It is difficult to think of issues which are more important than the management and administration of parole, particularly with regard to serious offenders, and what this bill refers to as 'other matters', which is the representation of children in the Children's Court. I do not entirely understand why these two matters are grouped together in this bill and why the important matter of the representation of children in the family division of the Children's Court is referred to under the title of this bill as 'other matters'. The two matters should have been dealt with in two separate bills because they refer to completely separate issues.

However, the bill as it is before us deals with the two entirely separate but very important issues. The first part of the bill deals with the circumstances for cancelling parole. Whilst the Adult Parole Board of Victoria already has the power to cancel parole for serious and persistent breaches, this bill stipulates that parole is to be cancelled under certain circumstances, and there will be a presumption for parole to be cancelled in other circumstances.

These amendments provide that sex offenders and serious violence offenders convicted of a sex or violent offence whilst on parole will automatically have parole cancelled. Sex offenders and serious violence offenders charged with a sex or violent offence while on parole must have their cases considered by the adult parole board with a presumption that parole will be cancelled. Sex offenders and serious violence offenders convicted of lesser offences carrying a term of imprisonment while on parole must be reassessed by the adult parole board with a presumption that parole will be cancelled. All other offenders convicted of fresh offences carrying

a term of imprisonment while on parole must be reassessed by the adult parole board with a presumption that parole will be cancelled. All other offenders charged with fresh offences carrying a term of imprisonment while on parole must be reassessed by the parole board.

The bill amends the Corrections Act 1986 to provide for the cancellation of parole in those circumstances where a person is charged with, convicted of or found guilty of certain offences committed while on parole. New section 77A deals with the revocation of cancellation of parole for a number of circumstances, including where exceptional circumstances exist for cancellation under the new section 77(6). The adult parole board will retain the power under new section 77A to revoke the cancellation of parole under new section 77 because subsequent outcomes in the criminal proceeding may bear on the original cancellation — for example, the charge may be downgraded or the criminal proceeding may be withdrawn or struck out. The board could reconsider parole under section 74.

Under the bill the parole board may also impose additional terms and conditions on the parole order; attach to a condition to which the parole order is subject a requirement for the electronic monitoring of the prisoner to monitor compliance with the condition; and vary the terms and conditions to which the parole order is subject. The Surveillance Devices Act 1999 is also amended in relation to electronic monitoring.

The bill also re-enacts and amends other related and existing provisions of the Corrections Act, enabling the adult parole board to authorise a member of the police force to break into, 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. The bill re-enacts the adult parole board being able to arrange for the medical examination of a prisoner for the purpose of determining whether to make, vary, cancel or revoke the cancellation of the parole order in relation to that prisoner — for example, a medical examination may be required to determine if parole conditions need to be varied. Those are the main changes to the Corrections Act with regard to parole.

The other part of the bill deals with legal representation for children in the family division of the Children's Court, providing a higher minimum age for legal representation in child protection proceedings. At the moment it is 7 years and over in practice, but this bill will legislate specifically for it to be 10 years and over. These are provisions of the bill over which we have some concerns. That is the reason I wish to take the bill into the committee stage. I have looked at this provision quite carefully and consulted on it, in particular with the office of the Minister for Community Services. I read her contribution to the debate on the bill in the lower house, and I am not persuaded by what she said. I have also been advised by other stakeholders of their concerns about this provision.

The provisions under clauses 9 and 10 in particular amend the Children, Youth and Families Act 2005 in relation to proceedings in the family division of the Children's Court to clarify the circumstances in which a child may be legally represented and is sufficiently mature to give instructions to a legal practitioner. The government claims that the bill will:

> … establish a new scheme of legal representation for children in the family division of the Children's Court of Victoria and allow for timely decisions in the best interests of children's safety and stability.

That is stated in the explanatory memorandum. However, in reality this bill removes the current practice of children of seven to nine years of age being able to receive separate legal representation in child protection proceedings where they have the maturity to do so. It is only in exceptional circumstances that they will receive representation and it will only be on the basis of best interests — that is, where the lawyer acts in accordance with what he or she considers to be in the best interests of the child, regardless of the maturity of the child and their capacity to directly instruct a lawyer. Clause 10 amends section 524 of the act, which concerns legal representation, by inserting 'aged 10 years or more' after the word 'child'. It currently says:

> (1) If at any stage —
>
> (a) in a proceeding in the Family Division, a child is not separately legally represented …
>
> …
>
> the Court may adjourn the hearing of the proceeding to enable the child or the child's parents … to obtain legal representation.

Clause 11 amends section 525(1) by adding that a child must be aged 10 years or more to partake in legal proceedings in which a child is required to be legally represented. In effect, for all intents and purposes the bill precludes a child under the age of 10 from obtaining legal representation. I will turn to that particular provision of the bill later in my contribution.

I refer to the cancellation of parole provisions of the bill. As I said at the start, there is nothing more serious than dealing with the release of prisoners on parole,

particularly prisoners who have been convicted of serious offences such as sex offences or offences involving violence. I have taken this issue very seriously and consulted widely on it. I have also been reading the coverage of this issue in the *Herald Sun* over the last year or so.

Earlier this year, on 23 January, the *Herald Sun* ran a story regarding the number of offenders who have reoffended seriously, including by carrying out sexual offences and murdering people, whilst on parole. It is very difficult to ascertain from the coverage in the *Herald Sun* whether the offenders mentioned were only those who had been released on parole, but it seems as if they were mostly offenders who had been released on parole and had reoffended — seriously reoffended. As I read it, under this bill those people would have their parole automatically cancelled. The question is whether that provision is any different from the status quo.

If a person reoffends while on parole and is arrested and taken into police custody, the question then becomes, 'What happens to that person?'. A person in police custody charged with a serious offence has to be brought before a magistrate or a bail justice within 24 hours. One would assume that a person who has been charged with a serious offence and is in police custody would not be granted bail by a magistrate if they were already on parole for a serious offence. I would assume that that person would be held in custody, not granted bail by a magistrate. It is difficult for me to see how a magistrate would grant bail to a serious offender who is charged with another serious offence.

I put these questions to the minister's office, because I think they are worthy of investigation. I wanted to know exactly what the situation is. I asked the question:

> What issue will be dealt with first where a prisoner on parole is charged with a violent offence or sex offence — bail or cancellation of parole?

The answer I received is that:

> The issue of bail will in most cases be considered before cancellation or variation of parole because the Bail Act requires the accused to be taken before a magistrate or bail justice within 24 hours after being taken into custody. The board —

the adult parole board —

> can and does convene quickly when necessary, depending on the circumstances.

I asked:

> Isn't it unlikely a parolee would be granted bail for a further charge for a sex crime or violent crime in which case they are placed in remand, and what would the parole board do in that case about parole cancellation?

The answer is that:

> The parole board's decision to cancel parole is separate to bail. Cancellation is not dependent on the outcome of the bail decision which is a matter for the bail justice.
>
> The new legislation will enact a presumption that parole will be cancelled at the point of charge and put the person back in prison to continue to serve their original sentence, regardless of the bail outcome of the subsequent charges.

I suppose the issue turns on that particular answer. Whether or not bail is granted — and I would assume bail would not be granted in the circumstances I have described — the parole board would have to act on the presumption of cancelling parole at the point of charge.

It gets more interesting. Even though we are dealing, of course, with issues that are not technical, in a technical way I asked the question:

> Have there been occasions where the parole board has not cancelled parole for a parolee who has been charged with a further sex crime or violent crime and bail was also granted and then the person committed a further violent crime?

I asked that because that is what this bill is all about. The answer given was:

> This data is not readily available as it is not currently collected by either Corrections Victoria or the adult parole board.

We therefore actually do not know the answer to the question this bill is trying to address. My response to that answer is: why is that data not collected, and why is it not held by Corrections Victoria and by the adult parole board? If it is not collected, it should be collected forthwith and held by those two bodies.

I also asked:

> … how many parolees in the last five years have committed a serious crime while on parole after committing a previous serious crime and not having their parole revoked or bail denied — that is, how many parolees have committed a serious crime, remained on parole and then committed another serious crime?

This is a serious issue. The answer given was:

> This data is not readily available as it is not currently collected by either Corrections Victoria or the adult parole board.

I have therefore been advised by the minister's office that we do not know how many times this has occurred. I think it is serious that we do not know that; we should know that. Those figures and data should be collected, and I am astonished they are not collected by, in

particular, Corrections Victoria, which has the overall responsibility for prisoners in the system.

I asked also the question:

> What was the case with David Patrick Clifford?

We know that he murdered Elsa Corp whilst on parole and, as I understand it — but I am not sure — he was arrested and charged with other offences while on parole and on bail. I do not know what those offences were or what he was on bail for. We do know, however, that he went on to commit a terrible crime, and my heart goes out, of course, to the family of Elsa Corp. It must be the worst thing that could ever happen to a family.

I have asked the minister's office some relevant questions. The issue of releasing people on parole is very serious, and I have read through the papers that are available, the review of the adult parole board and the question and answer discussion papers the board has put out to try to explain how it deals with these issues. In his second-reading speech the minister said:

> …Victoria's parole system has not properly reflected this community expectation both in practice and in law.

I am not entirely sure that that is fair on the parole board. If you read the 'Questions for discussion with adult parole board members' document issued by the adult parole board, you see that it says:

> The members of the board have a complex and difficult role. In all decisions taken, the board's paramount consideration is community safety.
>
> The board considers that it is in the interests of the community to release suitable offenders on some period of parole, but whether that is immediately after the expiry of the non-parole period or for some other period will depend on each particular case. Releasing offenders on parole allows the board to impose a supervision regime and other conditions appropriate to support the reintegration of the offender into the community and to minimise the risk of recidivism.
>
> …
>
> Offenders who do not obtain parole and who are released at the expiration of their sentence are not subject to the board's jurisdiction and are, therefore, released without any supervision, support, restriction and ongoing rehabilitation. The only exceptions are the comparatively small number of offenders who are subject to post-sentence supervision orders.

An important issue is: what happens to offenders while they are in custody and after they are released? I asked about treatment programs available in state prisons for sex offenders and other violent offenders. I received responses early this morning — in fact at 11.01 a.m. — to questions I had asked prior to the previous sitting week so that I could be prepared for this bill when it was meant to come on for debate in the previous sitting week. I say that because I have only had time to skim through these responses, because in addition to speaking on this bill now I was speaking on the previous bill debated in the chamber today.

The responses constitute quite a comprehensive coverage of the types of treatment programs that are available to violent offenders, sex offenders, low-functioning and intellectually disabled sex offenders. They talk about offending behaviour programs, individual treatment, sex offender programs and individual treatments, case management intervention, maintaining change and transitional assistance programs. Many, if not most, of the programs, however, are delivered towards the end of the prisoner's sentence, which is a concern. I know that studies have been done and recommendations have been made that such offenders should be attending programs and receiving rehabilitation assistance from the time they enter prison.

The intensive transitional support programs seem to be, on quickly reading through the information that was sent to me, the only ones that work with participants for up to six months prior to release and up to 12 months post release. The issue of what happens to prisoners once they leave the prison, particularly if they are not on parole having served their full sentence and are not then under the jurisdiction of the Adult Parole Board of Victoria, is an ongoing concern.

The adult parole board's discussion paper also says:

> The board must consider not only what is the risk of releasing a particular offender on parole, but also will the risk to the community be higher if the offender is released at the end of the full sentence with no monitoring, supervision, program participation, drug testing or other supports or controls. In other words, the board's task is not simply to assess whether or not there is any risk. There is always at least some risk. The board must consider whether the risk will be reduced by a properly implemented parole with ongoing supervision and rehabilitation.
>
> …
>
> What a parole system can do is reduce the risk that prisoners will commit further offences when released into the community, by providing a supervised transition into the community and by seeking to address some of the factors that may lead to reoffending.

The parole board also goes on to say that it takes very seriously — and it is required to do so — the victims' submissions regarding release of prisoners who are up for release on parole. It regularly imposes special conditions on parole orders which are requested by victims. As to what the parole board does when a parolee breaches conditions, the paper states:

> If an offender fails to comply with any of the conditions … in the first instance the issue is addressed by the community corrections officer in accordance with the standing instructions of the deputy commissioner of corrections … If a breach … are serious or persistent they are reported to the board who determines what is to be done in each individual case. The most drastic response is cancellation. If parole is cancelled, the offender is liable to serve the full unexpired term of the sentence without reduction for the time spent on parole.

It goes on to say it:

> … can facilitate a special meeting within … hours …

In any case, it meets every Monday, Wednesday and Friday. It finishes by saying:

> Community safety is paramount in all board decision making. The process is the same in that a breach report is prepared and filed by the community corrections officer, which is then carefully considered at the next board meeting or sooner if the matter is urgent.

To be fair to the parole board, even though obviously people have reoffended on parole, and some seriously and tragically so, it takes its role very seriously. I also noticed in the *Herald Sun* of 23 January an article by Elissa Hunt entitled 'Plea to end secrets on parole board decisions to ensure system works', which states:

> Publishing the reasons for parole decisions is in the public interest, the head of New Zealand's adult parole board says.
>
> And families pushing for an overhaul of parole laws, following a string of murders by parolees, agree, saying that transparency is the only way to ensure the system works.

I had a look at that particular issue and at the website of the New Zealand Parole Board. Anyone who has looked at the website of the Adult Parole Board of Victoria would notice a vast difference in terms of the amount of information available to the public about the New Zealand Parole Board. I also consulted one of the 14 Greens MPs in New Zealand, David Clendon, who is responsible for corrections, to get his view on how that is working, and he made positive comments as to how the New Zealand adult parole board conducts itself.

I will not use the name of the offender, even though it is on the website and people can see it if they look at the site, but this is just one of the published progress hearings on the New Zealand Parole Board's website. It states the name of the offender, the date of the hearing, the reasons for the decision, the members of the board who made the decision and the observers who were there. It starts with the reasons for the decision, an introduction, a background, applications to vary and discharge release conditions, progress on parole, a page and a half of discussions, the way forward and the conditions imposed on the particular offender. All this is available for the public to read, and it is available on all serious offenders for whom there is public interest, such as the ones who have been covered in the *Herald Sun* with regard to serious offending while on parole.

I think, on balance, that would be something that the Adult Parole Board of Victoria could look to implement to assist the public in understanding how it comes to its decisions on whether or not to grant parole, what conditions have been attached to that parole, whether the parole is revoked and why. That sort of information is on the website of the New Zealand Parole Board. That is an issue the families of people who have been injured or killed by parolees have been asking for, and it would be a good development by the adult parole board to do that.

The issue of the Coroners Court was raised. We wrote to the Coroners Court in terms of its examination of this particular issue, involving deaths caused by parolees. The coroner's office wrote back to us and suggested that a particular inquest, which will examine, amongst other things, parole orders, is listed for the end of July or August. Perhaps there may be even more recommendations coming out of that inquest from the coroner's office.

We have also seen input on this part of the bill from the Law Institute of Victoria, which has raised concerns about the presumption of innocence in that the bill triggers the revocation of that presumption when someone is charged with an offence as well as convicted. The institute is saying that someone could be charged with an offence when they have not committed the offence at all, but the idea of this bill is to put public safety first. In my opinion, if a person who is already on parole is charged with a serious offence, they would not be released on bail. In essence they would be in custody, whether it is because bail has been refused or their parole has been cancelled, so to all intents and purposes they would remain in custody and their freedom would be curtailed while their charge was looked at by the courts.

There are issues that face us with monitoring and supervising people who are released on parole. We have to make sure that they do not reoffend, that they are at a low risk of reoffending and that their reoffending is not at a serious level. They are issues that face us — the collective us — and particularly the Adult Parole Board of Victoria all the time. Regarding membership of the adult parole board, some members of the public seem to think that it is just the judiciary, but there are eight community members on the adult parole board, and each division of the parole board

contains one or two community members. They put forward the views of the community in terms of how parole operates.

As I said at the beginning, these are some of the most difficult issues that face us as legislators. However, I have thought about this and about the effect on people and on offenders. I have consulted widely on the bill. The Greens think the provisions regarding the cancellation of parole are reasonable and supportable, given the circumstances and the effects that can be the result of mistakes being made. As the bill says, people who are charged or convicted of these offences while on parole should have their parole revoked. Of course it still allows the parole board in exceptional circumstances, or when the evidence suggests there has been no offence committed, to cancel the revocation.

Another part of the bill I would like to turn to is the section that deals with children who come before the family division of the Children's Court. It is an issue I would like to ask the minister questions about during the committee stage. The provisions in clauses 10 and 11 of part 3 of the bill create an absolute presumption that children under the age of 10 are not mature enough to provide legal instructions in child protection matters. Until now all children aged seven and older have been assessed as to their level of maturity to give instructions in child protection proceedings. The age of seven is an arbitrary age, but the determination of maturity has been made on a case-by-case basis.

My advice, having spoken to people about this, is that there does not seem to be any problem with the application of this provision under the act at the moment — that is, it seems to be working well that children over the age of seven are able to be legally represented in the Children's Court family division if they have the necessary maturity and capacity. I am sure that Youthlaw has written to the government about this issue; it has written to the Scrutiny of Acts and Regulations Committee (SARC), which raised the issue for the attention of the Parliament. It certainly has my attention. Youthlaw says:

> Although children are viewed equally persons before the law, and should receive the protection of the law without discrimination, under this bill even if children have the capacity and maturity to instruct a lawyer they are barred from this model of representation accessed by adults, simply because they are aged under 10 years.

The Victorian Equal Opportunity and Human Rights Commission has also raised concerns with this particular provision, and in paragraphs 26 and 27 of its submission to SARC it states:

> … the commission disagrees with the statement of compatibility in its assertion that article 12 does not inform the determination of what is in the best interests of the child and is not relevant to ensuring the right of children in section 17(2) to such protection as is in his or her best interests.
>
> … Article 12 requires that a child be able to participate in proceedings to the extent of their wishes and capacity. In its general comment on article 12 … the UN Committee on the Rights of the Child explained that:
>
> > the phrase 'capable of forming his or her own views' creates an obligation to assess the capacity of the child to form an autonomous opinion to the greatest extent possible …

It goes on to talk more about that issue, and then it says:

> The amendments make age the sole determinant of what weight should be given to a child's views. They remove the ability of the court to assess the capacity of children under 10 to form their own views, and remove the opportunity of children under 10 to be heard directly in most instances.

As I mentioned earlier, I raised this with the office of the Minister for Community Services, which directed me to read the minister's contribution in the lower house, which I did. She referred to the Supreme Court decision in *A and B v. Children's Court of Victoria*, and I have read through notes about that decision that seem to contradict what the minister has said. In that case two sisters, aged 9 and 11, had lawyers in Children's Court proceedings who considered them capable of giving legal instructions. There was no evidence to show that they could not make informed decisions, give instructions or understand the legal issues involved in their case. In fact the Department of Human Services described them as being mature for their years in terms of the language they used and their insight into their childhoods.

However, despite this, the magistrate ruled that they were not of an age to be able to give instructions — that they were not mature enough to give instructions — especially in relation to the serious allegations that were being made in the case, and I will not go into the details.

On appeal to the Supreme Court, Justice Garde considered the phrase 'mature enough to give instructions' — that is, when is a child mature enough to give legal instructions? Justice Garde held that the phrase requires a court to have regard to factors other than the child's age and that it is sufficient that the child be mature enough to give instructions on one or more issues that may arise. Such a construction would be consistent with international law. On this basis the magistrate erred by interpreting 'maturity to give instructions' solely by reference to chronological age.

In misconstruing the phrase, the finding that the children were not mature enough to give instructions was made in the absence of relevant evidence.

The plaintiffs also succeeded in arguing denial of procedural fairness, because in previous Children's Court proceedings they had had legal representation and it was never suggested then that their legal representation was an issue. What arose at the hearing was that the plaintiffs were not given an opportunity to give evidence about their maturity.

I also had a look at this type of legislation in the other states and territories, and the minister's office referred me to New South Wales, where the age is 11 or 12. However, it is not an absolute — it is a rebuttable presumption — and a child under that age can still, if they have the maturity, apply to have legal representation. In no other state or territory is it as absolute as has been proposed in this bill. That is as I understand it, and I will check this with the minister.

Given that my advice is that there does not seem to be a problem with the way it is being implemented in the court at the moment, there does not seem to be any persuasive rationale for taking this particular right away from children. I certainly know children of the ages of eight and nine who would be able to instruct a lawyer as to particular issues that may arise in the Children's Court family division. I personally know children who would be able to do that, and I suppose what we are saying is an argument for retaining the status quo and not raising that bar to 10 years of age as an absolute. Having covered the two areas of the bill, in committee I will be asking questions only on the sections regarding the Children's Court.

Mr O'BRIEN (Western Victoria) — It is with great pleasure and indeed a sense of honour and privilege that I rise as the lead speaker for the government to make my contribution on the Justice Legislation Amendment (Cancellation of Parole and Other Matters) Bill 2013. This bill has been brought to the Parliament by the Minister for Corrections, who is also the Minister for Crime Prevention amongst his other ministerial roles. The minister said at the outset that these reforms are the toughest reforms to parole laws in Australia. In doing so the minister has recognised the expectations of the people of Victoria, who expect a justice system which demands the very best behaviour of criminals on parole whilst they continue to serve out the sentence they received as a result of their conviction. It reinforces the principle that parole is a privilege and not a right, and the government's presumption is that community safety and protection of the community are the overriding and paramount considerations.

In making my contribution I will refer to the main aspect of the initial part of the bill, which is to amend the laws about cancellation and variation of parole under the Corrections Act 1986, where the prisoner has, whilst on parole, been charged with or convicted of further offending. The bill will also make it clear that the Adult Parole Board of Victoria can impose a condition on a parole order that the prisoner can be subject to electronic monitoring. The bill will also amend the Children, Youth and Families Act 2005, but I will allow my colleague the Parliamentary Secretary for Families and Community Services, Mrs Andrea Coote, who has had considerable experience in this area and a long dedication to these issues, to respond to the contribution of Ms Mikakos, who will also be addressing that aspect of the bill.

In rising as the government lead speaker I wish to acknowledge and particularly pay tribute to the family of Elsa Corp. I was with the family this morning. Members will recall the circumstances of Elsa Corp's murder in early 2010. I will not detail this now, other than to say that this tragedy highlighted a number of flaws in the system which this government is now working to reform and remove. The Corp family — Gillian, Andrew and Daniel — have undertaken a brave and courageous fight to have significant changes made to the way the parole system and other aspects of the justice system interact to help to ensure that the circumstances that led to Elsa's tragic death do not occur again. This is notwithstanding their continuing and tremendous grief and sorrow.

The Corp family was instrumental in organising a remembrance evening last month which drew almost 1000 people. Several families of victims of similar crimes also attended and spoke on the night of their grief and pain and of the need to undertake the types of reforms that I am proud to say are being delivered in this bill. I have also received this morning a box containing many signatures on a petition organised by the Corp family supporting the amendments and other reforms to the parole system, which will be tabled and lodged in the usual course with the Clerk's office.

I also wish to place on record and share with the house the family's wish and my wish as government lead speaker that this legislation be referred to as 'Elsa's law'. I place on record my support for the recognition of the tragedy of Elsa's murder and the courage and the strength of her family members, notwithstanding that murder, to deal with their grief in the only practical way they can, which is to try to ensure that the tragedy that happened to them does not occur to any other family. As lead speaker for the government I am honoured to refer to this law as Elsa's law; it is also in dedication to

the many other victims who have suffered similar tragedies involving released parolees. I believe it is a fitting tribute to Elsa Corp's memory and to the memories of other victims' families who are in frequent contact with the Corp family.

In relation to that I also acknowledge the contributions that have been made by members in the other place, who have mentioned many of these other victims' stories and included the campaigns of those individual members to achieve the changes that we have before us. By way of example I start with my colleague the Minister for Local Government and Minister for Aboriginal Affairs, the member for Shepparton in the other place, Jeanette Powell, who spoke passionately in her contribution of the tragedy of the Irwin sisters, Colleen and Laura Irwin, who were raped and murdered in 2006 by William John Watkins, a convicted rapist who had been out on parole. Mrs Powell knew this family well; seven years later the family members still have not recovered, and she believes they never will. This tragedy has had a profound impact on their community, which I know is in the electorate of my colleague Mr Drum, the Northern Victoria Region. There were 700 people in attendance in that small town of Toolamba at the funeral of those sisters on 4 December 2006.

Another of my colleagues, Mr Clem Newton-Brown, the member for Prahran in the other place, also spoke of the tragedy in relation to a Mr Innaimo, who was killed by a person who had been jailed for murder. Only six months after being released on parole the offender killed again. He was released 10 years into a 13-year sentence for murdering Dennis Domm in 1995.

Other examples were also put by my colleague Mr Tilley, the member for Benambra in the other place, who is also a former police officer and who spoke passionately about the role of police in having to deal with these tragedies. In addition to Elsa Corp's case, he mentioned Raechel Betts, who was a young child-care worker murdered in 2009 by John Leslie Coombs, a man sentenced in 1998 to 15 years for murder; he was paroled in 2007 and was still on parole when he killed her. Mr Tilley also mentioned Tracey Greenbury, who was murdered in 2008 by Leigh Robinson, a man with previous convictions for murder and rape and a man described by psychiatrists as an aggressive psychopath who had shown no remorse for his crimes.

Mr Tilley mentioned Craig King, a young father and former soldier who was murdered in 2010 by Gareth Shannon Buck, a man with an extensive violent criminal history, a man who was released on parole three years early, a man who had been arrested and charged by police six times whilst on parole before he killed Mr King with a machete, and a man a psychiatrist described as having poor chances of rehabilitation.

The Corp family wishes to make it clear that by calling this law Elsa's law, all those stories will be carried. That will be important to remember in the application of this legislation and in the consideration of the circumstances of parole by the parole board and, most importantly, by those parolees who are allowed to be released as a privilege and not a right. If there is any doubt as to the government's clear intention with this legislation or the tragedies that have occurred to the Corp family — and some people have suggested that this bill may not be necessary — I ask members to stop for a moment while they listen to the victim impact statements of the Corp family, which were tendered at the eventual trial of their daughter's killer.

I will start with Gillian Corp, the mother of Elsa Corp. Her statement opens with these words:

> I dropped our girl off at 6.34 on Saturday night to catch the train to meet her friends, she was looking forward to this so much as it was the start of her holidays. Hairdressing can be exhausting.
>
> The next time I saw her was at the coroner's. I had to ask my husband if it was her.
>
> I don't know exactly what went on that night, it was a blind date organised by a friend …
>
> I have dreadful visions of what happened to our baby girl in that room. She weighed 50 kilos, a size 6; she had no hope. I try really hard to make these visions go away, but they just appear in my thoughts all the time. I physically shudder; she would have been so scared.
>
> We were supposed to protect her; it is the greatest instinct of a parent to protect your children from harm — we were asleep.

It goes on. I encourage all members to read it.

I now turn to the father, Andrew Corp, who opened his statement by saying:

> The grief of losing a parent is a shared experience for many. It is the natural order of things.
>
> However, words are inadequate to explain the grief of losing a daughter, especially under such brutal circumstances.
>
> No-one who hasn't experienced it can fully comprehend the depth of utter despair and emptiness, even with huge support from family and friends.
>
> As if this grief alone were not enough to bear, the impact on me has been magnified by a number of factors.
>
> The first was having to identify the horribly mutilated body of our beautiful daughter, knowing that someone she had trusted had deliberately done this to her.

It goes on, and I will jump to this bit:

> Revelation in the media that the murderer was on parole and on bail for another offence at the time of this murder hit us like a thunderbolt. Given that he should not have been at liberty on 1 February 2010, means that our daughter would have been with us today. Our feelings are indescribable.

I met them today, and those feelings remain.

The last victim impact statement I would like to briefly turn to is from the brother, Daniel. He opened his statement by saying this:

> I have remarkably good memory of growing up side by side with Elsa. She was very protective of her younger brother. She always looked out for me early on when we were both just learning the ropes, and taught me how to deal with the challenges that she'd been through a couple of years before. Just like our family, immediate and extended, we were fairly private people. We didn't often show open signs of affection that others could see, but after growing up together you develop an understanding, and a little smile or a glance is enough to know that we were watching over each other.

He then wrote a very detailed article published in the *Herald Sun* of 23 March 2012, with a further version of the article online, which I encourage all people to read. It not only describes his own personal grief but also — importantly, in relation to the recognition of this bill as Elsa's law — goes into statistics on parolees and into the reasons why this law needed to be changed. I will just read a paragraph of that, where he said:

> Today there is great research into rehabilitation of criminals, which I believe is necessary. However, wouldn't the first step towards an effective rehabilitation strategy be to show criminals that we condemn their actions through proper imprisonment periods? To have a system that fights for the rights of criminals over victims does not make criminals take responsibility, and may intensify a feeling of victimisation, which many offenders have sensed from authority figures their whole lives.

He finished by saying:

> Good and caring people within the community have to stand up and be heard on these issues —

and let our thoughts be known. He closed with these words:

> I truly hope that you are luckier than Elsa was.

I will allow others to continue their contributions on this bill. I will respond to the Law Institute of Victoria's submission on the radio that this somehow interferes with the presumption of innocence. It does not. It is very clear that on a second or subsequent offence a criminal might be charged with, they will be heard in the usual course. But what this bill will do is remove the failures that have occurred in the parole system in the past whereby someone who has already been convicted of an offence but has been allowed out into the community on parole as a privilege will have that parole cancelled upon being charged with a serious offence so as to protect the community whilst that charge is being considered. That was Elsa's family's wish. That is Elsa's law. It is good law, and if it can save one life, then it is worth supporting. I commend the bill to the house.

The ACTING PRESIDENT (**Mr Ondarchie**) — Order! This is a very sensitive bill, so I ask members to be silent while some of the important issues are introduced by way of contribution.

Ms MIKAKOS (Northern Metropolitan) — I would like to focus on one particular aspect of this bill. I point out that Mr Pakula began the Labor opposition's response to this bill in the previous sitting week. He addressed in particular the parole provisions in some considerable detail, so I do not propose to cover that same ground again in my contribution. But I take this opportunity, with your indulgence, Acting President, to note that this is Mr Pakula's last day as a member of this house, and I want to put on record my thanks to him for his very significant contribution as shadow Attorney-General during the past two years and also as a member of Western Metropolitan Region. I am very confident he will be the next member for Lyndhurst and will continue to make a very significant contribution in this Parliament, but in the other place. As I said, he began the Labor opposition's contribution to this debate, and I think he did so in a very significant way. I wish him well.

I just note that in his contribution Mr O'Brien focused a great deal on one aspect of the bill, and that related to the cancellation of parole in particular circumstances — that is, where prisoners are charged with or convicted or found guilty of certain offences while on parole. Listening to Mr O'Brien you might be forgiven for thinking that this is a significant change. I remind members that the Adult Parole Board of Victoria does actually have in its current practice the ability to do exactly what is being proposed in this bill: the ability to cancel parole if there is some reoffending. It is important that this not be held out in a way that suggests that the terrible circumstances that have occurred in the past will all be able to be prevented.

It is important that we provide for appropriate community safety in legislation but also in terms of resources that governments provide. That is about policing resources and it is about how we tackle the causes of crime, whether they be drug offending, mental health issues, or a whole range of other circumstances. I point out that whilst the Labor

opposition does not oppose the bill and the provisions that relate to the parole issues, we do have some serious concerns in relation to other aspects of the bill, which are completely unrelated. They relate to child protection matters in the Children's Court. I will come to that very briefly in a moment.

When the government seeks to present this legislation as being tough on crime and as dealing with community safety adequately it is important to look at what is actually happening on its watch. Assault rates have gone up by 17.2 per cent, drug offences have gone up by 19.1 per cent, burglary is up by 11.5 per cent and motor vehicle theft is up by 10.8 per cent. These are very significant increases and they are happening on this government's watch. In my own electorate, in just the Darebin police service area that covers the district of Preston, there was a 74.8 per cent increase in drug offences; and in the Banyule police service area that covers the district of Ivanhoe, family violence increased by 67.6 per cent. These are phenomenally large increases. I draw these statistics to the government's attention because it is important that these issues get some attention as well.

I now turn to other aspects of the bill. You would think by looking at the title of the bill that it is only about parole issues, but under the heading 'other matters' it deals with completely unrelated issues to do with children. I have to say I was disappointed that these issues were included in an omnibus bill because some significant changes that are being put in place relate to limiting the rights of children to legal representation in child protection proceedings before the Children's Court. It is important that these matters also receive some attention today. The opposition has some serious concerns about these particular provisions.

Clauses 10 and 11 of the bill amend sections 524 and 525 of the Children, Youth and Families Act 2005. The effect of these amendments is to say that no child under 10 years of age will be legally represented in the Children's Court family division, unless the court determines that there are exceptional circumstances. Where so-called exceptional circumstances exist a child can only be legally represented on a best interest basis rather than a direct instructions basis. What this means is that a child cannot obtain a lawyer for the specific purposes of informing the court what their wishes are on matters of huge significance to that child, such as with whom they will be living.

Let us remember that the children we are talking about here who go before the family division of the Children's Court are children involved in child protection matters. They are the most vulnerable children who have suffered physical, sexual or emotional abuse, have been neglected or abandoned by their parents, or are at further risk of such harm. I believe we have a responsibility to protect these children and young people. It is a shared responsibility that not only cuts across government but is also a responsibility of the broader community.

Each and every day in Victoria child protection workers face the very difficult and challenging task of receiving new reports of alleged abuse, having to investigate new cases and oversee hundreds if not thousands of children in out-of-home care. I acknowledge the very difficult work that those people do. According to the latest Department of Human Services annual report, over 63 000 child protection reports were made in 2011–12. I was advised in a briefing organised by the office of the Minister for Community Services, Ms Wooldridge, that of these reports only 7 per cent go on to require court intervention. I thank the minister's office for providing that briefing, but I point out that members of the opposition were not provided with a briefing in relation to the Children's Court provisions prior to the debate that occurred in the Assembly; that only occurred subsequently.

Nonetheless, fronting court is a traumatic experience for everyone involved, particularly young children, and their best interests should be at the forefront of the system. The amendments contained in this bill are a significant change from current practice. Up until now children aged seven or older were assessed as to their maturity to give instructions in child protection proceedings. If the child was mature enough, the act said they must have their own lawyer who acts on the child's instructions. This was deemed to be in line with accepted international human rights law and was in fact interpreted to be the case by Justice Garde in the 2012 Supreme Court decision in *A and B v. Children's Court of Victoria & Ors*. In making his ruling Justice Garde noted that just because a child may not be able to give instructions on all matters in a dispute it does not impact on their capacity to give instructions in the context of proceedings that affect them.

The changes in this bill, however, mean that children 7, 8 or 9 years of age will no longer be able to provide instructions to an independent lawyer on a matter that directly impacts them, and that is concerning to us on this side of the house. The advice that I received from the minister's office on this matter shows just how large an impact these changes will make on children in this age group. I was advised that of the 3893 protection applications issued in 2011–12, 528 related to children 7, 8 or 9 years of age — that is, 13.6 per cent; and that

of the 7621 secondary applications issued in 2011–12, 1005 involved children 7, 8 or 9 years of age.

The Baillieu government previously and the current Napthine government have argued that these changes are consistent with observations made in the *Report of the Protecting Victoria's Vulnerable Children Inquiry*, and I strongly disagree with this. Justice Cummins made a number of important recommendations in his report about protecting Victoria's vulnerable children, and particularly the legal representation of children. Section 15.3.1, which is on page 375 of the report, states:

> It is a matter of policy, law and human rights that children have an opportunity to have their voices heard in matters that affect them …

Justice Cummins recommended that the Children, Youth and Families Act 2005 be amended so that a child under 10 years is presumed not to be capable of providing instructions unless shown otherwise, and that a child over 10 years is presumed capable unless shown otherwise. It was not the intention of this recommendation that children under 10 can never have the capacity to give instructions. Justice Cummins also recommended that a child who is not capable of giving instructions should be represented by an independent lawyer on a best interest basis. Had these recommendations been implemented as intended, this would have meant that all children would be entitled to a lawyer, one who acted on instructions with a child who was capable of giving instructions or one who acted on a best interest model where the child was too immature.

During the briefing it was conceded by the minister's office that the government had indeed gone further than what Justice Cummins recommended, and that is clearly the case. The bill introduces an arbitrary age limit, where only children over 10 years can have a lawyer acting on a direct instructions model and under 10 they have no right to instruct their own lawyer other than in what are referred to, as I said earlier, as exceptional circumstances.

The Victorian Equal Opportunity and Human Rights Commission, in its submission to the Scrutiny of Acts and Regulations Committee, said that the amendment proposed in this bill limits the rights of children to protection in their best interests, the right to equality and the right to a fair hearing; all protection sections in the Victorian charter of human rights and responsibilities.

Despite the government claiming to be observing Justice Cummins's recommendations, the Victorian Equal Opportunity and Human Rights Commission makes clear in paragraph 60 of its submission that Justice Cummins's recommended amendments to the act would be less restrictive than those proposed in this bill.

The opposition is also concerned about the coalition's motives for burying such important changes in a bill that is about parole. I can only conclude that the government's move is one of convenience and not well thought out. It is also about saving money, unfortunately. Giving the funding challenges facing Victoria Legal Aid as a result of this government's cuts, it is all but impossible for the Children's Court to operate under the current laws. Victoria Legal Aid has been forced to alter its guidelines due to the failure of this government to provide additional financial support. There has been a considerable impact in my electorate in response to the legal aid cuts, with the Preston legal aid office set to close, and it has been reported that two dozen staff will be redeployed or offered redundancy packages. I am very concerned about that, and I know Mr Pakula also addressed this issue in the last sitting week.

There are issues in relation to added pressures on the Whittlesea Community Legal Service and so on, but this has to be seen in the broader context of the legal aid cuts having an impact on local community legal services and also on the Children's Court. I am aware that lawyers in the Children's Court have been acting pro bono to ensure that children under 10 continue to be represented even though legal aid funding has ceased in such cases. I would like to share with members a few case studies I was given to highlight the importance of such legal representation in child protection matters.

The first case involves a lawyer representing three children from the same family. The father in this case was alleged to have been violent towards the mother. The children were exposed to verbal abuse and intimidation of the mother by the father. The older children, who were both 16 years of age, were happy to continue seeing their father and instructed that the father did not abuse them. The youngest child, however, who was nine years of age, did not want to see the father at all because of what he had done. The child was scared of the father, and it was clear that the child would be traumatised if forced to see the father.

The children's lawyer referred the nine-year-old to another lawyer who acted pro bono to ensure that the child's fears and interests were taken into account by the court and the Department of Human Services. Without that representation all the court would have

heard from the children's lawyer was that the child was happy to see the father.

The second case involves an eight-year-old child who had been abused by her stepfather. The abuse included verbal abuse, intimidation, threats, pulling the child by the hair, slapping and hitting the child. The child said that the abuse was ongoing. The mother and stepfather suggested that the child would be happy to see the stepfather during access but the matter proceeded to a contested hearing. It was here that the child told her pro bono lawyer that it would be upsetting for her to see the stepfather, that his attitude was scary and that he should 'change his behaviour' before the access occurred.

The ACTING PRESIDENT (**Mr Ondarchie**) — Order! I thank Ms Mikakos. Her time has expired.

Mrs COOTE (Southern Metropolitan) — It gives me a great deal of pleasure to speak on the Justice Legislation Amendment (Cancellation of Parole and Other Matters) Bill 2013. I commend David O'Brien, a member for Western Victoria Region and the lead speaker for the coalition government in this house, for his eloquent dissertation on some of the challenges we are facing and reasons this bill has come about, on his poignant reference to the family which has been at the centre of the issues represented in the bill and indeed the poignant reminder of all of the people who have been affected in the past. With this legislation passing the house this afternoon, hopefully this will never happen again.

As Mr O'Brien pointed out, I have the role of Parliamentary Secretary for Families and Community Services, and I would like to focus my contribution on the changes to the Children, Youth and Families Act 2005. There are two elements to this bill, the amendments to the Corrections Act 1986 and the amendments to the Children, Youth and Families Act 2005, regarding the legal representation of children in the family division of the Children's Court.

Before I go further I would like to put on the record my praise for all child protection workers in this state. They do a most remarkable job. They are at the coalface. Together with the Minister for Community Services, Mary Wooldridge, and her excellent staff — Anna Schulze being her chief adviser — I deal with a lot of the correspondence that comes in about families who have been in major crises. It is a very challenging area. But I know that the procedures and regulations and the support that Minister Wooldridge has given to child protection in this state are second to none, and I praise her and indeed everyone at the coalface who is involved with these sorts of particularly difficult and challenging sets of circumstances.

That is why this bill is so important to us. Briefly, the bill will reform certain Children's Court processes relating to children aged 10 years and under in order to assist the court to become more child focused and child friendly. That issue has been left out of the debate by the opposition parties, and it is important to understand that this is a fundamental principle. The number of child protection applications heard by the family division of the Children's Court has grown significantly, as Ms Mikakos said, in the past 10 years, with protection applications increasing by 61 per cent and secondary applications by 88 per cent. Ms Mikakos was absolutely right when she alluded to that rise. But it is the result of an increase in the number of reports to child protection and is also due to the Children's Court being based on adversarial processes that have led to the development of an increasingly adversarial culture. Court contests are running for longer and having an increasing number of hearings per case. Imagine the ramifications of this on vulnerable children!

Ms Mikakos herself used the example of a family in which the children had been to the court. Think of the trauma those children have been put through! She mentioned a child who in fact was terrified of his father after what he had done to him and did not want to see his father. That sort of adversarial process is to be discouraged at all costs. We believe the current practice in the Children's Court is that children between the ages of seven and nine years, and sometimes even younger, who have been abused or neglected by either or both of their parents are put into the highly stressful position of having to provide instructions to lawyers about where and with whom they want to live. Imagine the trauma to these children! This is a very young age, and we do not believe it genuinely assists the court in determining the best outcome for the child. Instead it contributes to a highly adversarial, stressful long-running and expensive hearing process.

I would like to refute a couple of the things that Ms Mikakos and Ms Pennicuik said in their contributions to debate on the bill. Before I do, though, I will address the criticism that has been made this afternoon that this legislation is not consistent with Justice Cummins's report on protecting vulnerable children — the commissioning of which, I might add, was one of the very first things that Minister Wooldridge did. The report has been widely acclaimed, even by the opposition. It made some recommendations, all of which were accepted by the government, and a significant amount of money was allocated to make certain that those recommendations

could be implemented. Minister Wooldridge is to be congratulated, firstly, for deciding upon such a comprehensive study, and secondly, for following it through. Phil Cummins and his team are certainly also to be commended.

Justice Cummins recommended that the age at which a child can give instructions be increased to 10 and that children under that age be represented on a best interests basis. This legislation is consistent with that. Where we are going further is in providing for representation on the best interest basis for children under the age of 10 to be done through advocacy and representation by the child protection worker rather than the lawyer. Child protection personnel possess specific expertise and knowledge of a particular child and their family. This is often developed over months and in some cases years of contact. Their assessments and recommendations are informed by other key professionals.

I have seen this at the coalface myself; I have seen this in action. As I said, child protection workers possess extraordinary skills. There are family support workers, teachers and maternal and child health nurses; all of these people know the children well and can contribute to supporting them. It should be noted that the Children, Youth and Families Act 2005 is very clear on the requirements for children's participation and the consideration of their views and wishes at all stages of the child protection process.

I would also like to put on the record that this legislation has been widely supported by third-party advocates. It is not just the coalition parties supporting this. Justice Paul Grant, the Chief Magistrate, no less, of the Children's Court, was quoted in the *Age* of 17 January as saying that the changes were sensible.

The independent commissioner for children and young people, the highly acclaimed Mr Bernie Geary, has advised the minister that he is strongly supportive of the changes. Mr Paul McDonald, the chief executive officer of major service provider Anglicare, stated in a letter to the *Age* that the lawyers are simply wrong in their resistance to this change and asked readers to imagine being a child of seven years and being asked by a lawyer who they think they should live with. He said that representing the views of children at that age should be the task of the child protection workers who are well experienced at entering into conflicted family settings, engaging with often traumatised children and providing to the court expert advice, including the child's voice and view on what should happen. That adds third-party endorsement and advocacy for what is recognised in the bill.

In her contribution Ms Mikakos asked why this bill has been introduced and she made some quite interesting suggestions about its provisions. She said the legal representation of children should not be included in the bill. She described it as an omnibus bill and said this amendment was an inappropriate inclusion in the bill. I strongly dispute that. It is an important and urgent amendment because of the current uncertainty that exists in the Children's Court regarding legal representation of young children. That uncertainty exists as a result of a recent Supreme Court decision in which it was observed that the existing legislation does not provide for the court to use age alone to determine whether a child gives instructions. That is operationally unworkable and the uncertainty needs to be resolved urgently.

Ms Pennicuik spoke at length about children's rights and questioned whether the bill was in breach of children's rights. She mentioned, as did Ms Mikakos, the Victorian Equal Opportunity and Human Rights Commission. In response to whether the bill contains provisions that are in breach of children's rights, I state emphatically that it is not. Children have a number of rights, including the right to be protected from harm, to be heard and to participate in proceedings. In fact young traumatised children providing instructions to a lawyer may work against their right to have protection, as it can be highly distressing and it can leave the young child with the mistaken belief that they are carrying the burden of decisions. The government has decided that the better approach is, as I said, for skilled child protection practitioners to engage with young children and to inquire about the many aspects of the child's life, including the child's wishes.

I would like to clarify the issue of whether the bill's provisions are in breach of the United Nations Convention on the Rights of the Child. That convention provides that children capable of forming their own views must have the opportunity to be heard in judicial proceedings, either directly or through a representative or an appropriate body, which is precisely what this bill provides for. The right does not require children to have a lawyer. Rather, children must have the opportunity to participate by having their views ascertained and taken into account. That will be achieved by child protection workers inquiring about the child's wishes and conveying those wishes to the court.

Ms Mikakos also talked about saving money on fees. I will not bother to even answer that. That is absolutely spurious. It was a cheap political point.

In the very short time I have left I would like to concentrate on the issue of why the government wants

to remove the voice of children between the ages of seven and nine years, the issue raised by Ms Pennicuik. The government wants the views and wishes of children to be gathered by child protection practitioners in a manner that allows children to be heard whilst they are also being protected. I do not believe either Ms Mikakos or Ms Pennicuik could possibly say that at all times lawyers have the best interests of the child ongoing and that they know the rich history of a child to that point in time. This is a very important element because it allows children to be heard whilst also being protected from the stress and burden of providing instructions.

As I said before, child protection practitioners are best placed to perform this function. Specifying 10 years and above as the appropriate age for children to provide direct instructions is supported by child development theories and emerging research that at only around 11 years of age is a child able to use logic and reason in abstract decision making. There is data to back that up. It is an important issue that we must consider when debating this bill because this will be law not just today but for the future and we must try to work out what will be best and most appropriate into the future.

Ms Pennicuik said that children over 10 years of age may be left with no legal representation and asked how that could be good. It is possible that a court may determine that an older child is still not mature enough to give instructions to a lawyer and that it is not in the child's best interests to be put through the process of providing instructions as the child is not sufficiently mature. I would like to assure Ms Pennicuik that in the situation of a child under 10 the court can decide that there are exceptional circumstances and direct that they may be legally represented under the best interests model.

There was some discussion about other jurisdictions. It is very important to clarify exactly what happens in other jurisdictions. Shamefully, Victoria is the only jurisdiction in Australia that in practice has children as young as seven years — sometimes younger; there are accounts of children as young as four or five years being assessed by lawyers as sufficiently mature — being brought to court. Members should remember that that could be only hours after children have been removed from abusive situations in harrowing circumstances, often with harm having been perpetrated by either or both their parents. Then they have to turn around and provide direct instructions to lawyers whom they meet for the very first time. It is imperative to understand that.

As I have said before, child protection workers have a relationship with the family, have understood what has been happening within the family and in most instances the child has some familiarity with child protection workers. In no other jurisdiction in Australia is it considered appropriate for such young children to be exposed to the court and legal processes in this way. Rather, as in New South Wales, usually only children 12 years and older provide instructions. That is an important matter to understand.

I commend the bill. I believe it shows a reality of today. It shows understanding of small children and the trauma that they have to go through. Members are used to the Parliament and to courts and other formality. Although the Children's Court is far less formal than it used to be, how terrifying it must be for those little children who are ripped from their homes, having been taken away from the people they know and who have caused them harm — that is, the very people who have been supposed to have been caring for them. Members should try to imagine just how traumatised those children will be. This bill will help those traumatised children and I believe set them up for a more positive future. I commend the bill to the house.

Mr VINEY (Eastern Victoria) — I always find it disappointing that, when we have before the house bills such as this, there is an attempt to inflame debate and to make it a political operation rather than an explanation of what the legislation is attempting to do.

I pick up the particularly points raised by Mr O'Brien and Mrs Coote on different aspects of the legislation. On the comments made just now by Mrs Coote, one could only come to her view if you took the position that lawyers attempting to represent children in such matters as she described are not properly motivated. That I think is a nonsense.

Mrs Coote interjected.

Mr VINEY — Mrs Coote, let me just say at the outset that I am someone who, for very personal reasons, actually has an understanding of the impact of crime on victims. They are reasons that I am not intending to go into. Let us for a moment understand that no-one rises in this place without their own experience and knowledge. Government members can attempt to throw smears across the chamber as much as they wish, but the fact is that I can come in here with some legitimacy to talk about some of these issues, apart from the fact that as an elected member of the Parliament I am entitled to.

Let us put this in context. Where there is, as Mrs Coote correctly says, the incredibly difficult circumstance of a child being engaged in a matter before the family division of the Children's Court as a victim of some problem that is occurring within their family, to suggest that those children cannot express their view and cannot be properly represented by a lawyer in such a process is to have a flawed view of the system. Everyone is entitled to legal representation, no matter what age they are. If there is a circumstance in which someone, albeit a young child, is having their future and their interests considered by a court, it is perfectly appropriate for a legally trained and properly qualified person to represent them in court and advocate on their behalf.

The essence of the problem, as I understand it, is the lack of legal aid funding for people to be properly represented in court. That is where the basis of the problem lies. It is entirely within the hands of Mrs Coote and others in the Napthine government to fix that problem. The problem can be fixed with some funding. Instead the government proposes to fix the problem by changing the legislation so that children do not have the right to representation. Frankly, that is coming at the problem from the wrong direction.

People have the right to be represented. I notice Mr O'Donohue, as a lawyer, is listening intently. As I said, whether they are children or adults, people have the right to have their interests properly expressed and represented in a court by someone who is appropriately qualified and trained in the specific area of the law that is relevant. As a society we just need to fund it — that is all there is to it. The question of where the funding comes from and a whole range of other things will be part of that discussion, but let us tackle this from the right direction, not from the position that Mrs Coote has put to the house.

In relation to the principal provisions of the bill, the opposition will not oppose the bill. However, the bill does not do what is being advocated by the government — that is, provide a solution. I note the list of terrible incidents Mr O'Brien raised where people have been murdered by people on parole. I agree those were terrible incidents. The impact on families is exceptional and it must be absolutely devastating. Fortunately my experience is not that. The impact on these families. The problem I have with the examples that Mr O'Brien gave us is that the incidents would not have been prevented by this legislation. This legislation cancels parole in a circumstance where someone commits an offence.

Mr O'Brien — Is charged — big difference!

Mr VINEY — Is charged with an offence, I should say. Mr O'Brien should calm down. As I understand it, none of the examples that Mr O'Brien gave us would have been prevented by this change in the law because unfortunately the people were murdered by the offenders. I understand that these are proven cases. Mr O'Brien has to accept that none of these things would have been prevented by this bill. He has to concede that.

Mr O'Brien interjected.

Mr VINEY — Those are not the facts as Mr O'Brien presented them to this house, and as a barrister he would know that he needs to present the facts correctly. He did not present those facts in that way.

Mr O'Brien interjected.

The ACTING PRESIDENT (**Mr Ondarchie**) — Order! I gave Mr O'Brien the opportunity to speak without any interruption, and I ask him to afford Mr Viney the same courtesy.

Mr VINEY — My point is that if someone is charged with a violence offence when they are on parole as a result of a violence offence or if someone is charged with a sex offence when they are on parole for a sex offence, the current system is that their parole would be cancelled by the Adult Parole Board of Victoria. In effect this is all that this legislation does. This aspect of the bill will implement by legislation what is already taking place.

My position stands: that the cases Mr O'Brien presented to the chamber, as he presented them, would not have been altered — those murders would not have been prevented — if this legislation had been in place prior to those murders occurring. That is not to say that we are opposing this change. We are simply saying it is in effect legislating what currently takes place.

A number of members on the other side have talked about parole as a privilege. I am not proposing to argue that it is not, but I think we also need to remember the importance of parole. The system of sentencing people consists of two important basics. The first is that as a society we want to demonstrate through the sentence that a person's original behaviour was unacceptable in some form. Jail is obviously a significant aspect of the demonstration of the social unacceptability of whatever offence the person has been found guilty of. Therefore there is an element in sentencing of retribution by society.

There is also the very important aspect — often called rehabilitation — of ensuring that when a person comes out of a prison system, he or she is an improved person who is at least less likely to commit an offence. We all have to acknowledge that a number — not everyone, but many — of people who commit offences have all sorts of social and economic vulnerabilities and disadvantages. Sometimes they have psychiatric disabilities. Therefore an important aspect of the sentencing system is to provide opportunities for people to come out of jail as improved people. The parole system is an important part of that.

The alternative to parole is that people would be released at the end of their sentence without any supervision, guidelines or support. The parole system is a method of having people released from prison so that whatever the period of parole is they can be supervised and supported. We must ensure that we support the parole system so that it achieves in part those secondary objectives of the sentencing system. The Sentencing Advisory Council report of 2012 recommended that there be a significant improvement in the support for the adult parole system.

As I said, providing the appropriate legal aid funding might be a better way to tackle the issue of children being represented in the family division of the Children's Court rather than tackling it in this way through legislation. I would argue the same about the parole system. We on this side have no argument with the legislation in terms of its implementing what is, in effect, taking place and ensuring that it takes place under the current system. But surely it is equally important, if not more important, to support the parole system in the way that was recommended by the Sentencing Advisory Council in 2012, to add additional support so that it can be improved and so that when prisoners come to the end of their sentence or parole period they are improved people who are less likely to commit ongoing or further offences in the community. As a result our community will be a safer place for us all to live.

That is the difference, I think, between our position and the posturing of the government in relation to this bill. We are happy to support the changes without the posturing, but what we say is that the net benefit to the community — that is, the net result of this process — would be improved if we were able to do the things that are necessary and that have been recommended in the case of parole by the Sentencing Advisory Council 2012 report and if we were able to improve legal aid funding of children's matters in cases in the family division of the Children's Court.

Mr RAMSAY (Western Victoria) — I am pleased to make a contribution on this bill. I take a little bit of a different view from Mr Viney. I congratulate my parliamentary colleague David O'Brien who spoke from the heart about this particular piece of legislation and also about the families that have been affected and are active in looking for change. The contributions of Mr O'Brien and Mrs Coote demonstrate the importance of providing some heart, emotion and passion about things we believe in. I truly believe that is why we stand for election as members of Parliament; we are passionate about what we believe in. There is emotion tied to our ideals and also to our wants and our need to make the world a better place.

I believe this piece of legislation will provide safeguards and a better place for Victorian communities to live in. In saying that, I would also like to commend Mr Ondarchie on his work in highlighting the issues around bullying and the antibullying legislation and on the work he has done with Damien and Rae Panlock. I met Damien and Rae in Ballarat where the Attorney-General and I launched the government's antibullying program. Meeting face-to-face with that family and seeing their drive and determination to push through legislation that will change bullying in the workplace was significant, and I congratulate that family. I congratulate Mr Ondarchie on also having the passion and commitment to drive those changes, as I do for Mr O'Brien and Mrs Coote today. They have also shown passion and determination to make changes, in this case on behalf of the Corp family.

Given that Mrs Coote has spoken on the Children, Youth and Families Act 2005 and the changes made by the bill that will affect that act, I would like to make mention of just a few clauses in the bill. The purpose of the 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 clarifies that the Adult Parole Board of Victoria may impose a condition on a parole order requiring electronic monitoring of a prisoner whilst they are on parole, and Mr O'Brien has already made mention of that. The bill also amends the Children, Youth and Families Act 2005 to clarify the circumstances in which a child should be separately legally represented in matters before the family division of the Children's Court, and Mrs Coote has gone into some detail in relation to those clauses.

I say from the outset that parole should be treated as a privilege and not a right, and as a key performance indicator good behaviour should be assessed not only

whilst the offender is in prison but also during their parole period. This has not been demonstrated in the parole system in the past or in law, and that is why the government has brought this legislation to the house today.

In response again to Mr Viney and Ms Mikakos, who both stood up to say they supported the legislation and then spent their full contributions belittling the clauses within the legislation, I find it a bit hypocritical that they take the larger view of supporting the legislation and then go to great lengths to try to belittle what is within it. In fact, I take offence at that, because this is an important bill. It will have a significant effect on a range of families, and for the opposition to have stood up and belittle the legislation in this way has been disappointing.

Mr O'Brien interjected.

Mr RAMSAY — It is reflective of them, as Mr O'Brien says.

The coalition government has already introduced legislation to strengthen Victoria's parole system and the management of prisoners on parole. This legislation builds on those reforms and provides important powers to the adult parole board that will allow it to cancel parole if a parolee commits further offences. It will also improve communication between the board, Corrections Victoria and Victoria Police. That was not done in the past. It provides greater accountability in the decision-making process for parole, which will better reflect the expectations of the community — and that is important, as the community is demanding that we beef up the parole system. The adult parole board is an independent statutory body chaired by a judge of the Supreme Court of Victoria.

Already the government has responded to the Sentencing Advisory Council report recommendations on the framework governing the release and management of sentenced prisoners on parole. This bill toughens up these reforms, providing a strong message. It provides automatic cancellation of parole if a serious offender or sex offender is convicted of a further violent offence or sex offence whilst on parole. That is the difference. Mr Viney could not see it, but that is what is in this legislation. An important condition of every parole order under the act is that a prisoner released on parole not breach any law. The bill includes definitions of 'serious violent offence' and 'sex offence' for the purpose of the new provisions. The board will be required to reconsider parole if a prisoner on parole is charged with an offence punishable by imprisonment during the parole period. The board will also be required to reconsider the parole order and decide whether to vary or cancel the order.

There are other things I wanted to say, but due to time restrictions I will have to close my contribution. In finishing I say that this is important reform legislation to beef up the parole laws — —

Mr O'Brien interjected.

Mr RAMSAY — Thank you, Mr O'Brien — it is to protect the community. But, more importantly, it is what the community expects us to do. It called on us to protect families like the Corp family and other families affected by parolees who violate their parole. It is an important piece of legislation. It is not to be belittled as the opposition has done. I strongly recommend the bill to the house.

Mr ELASMAR (Northern Metropolitan) — I rise to make my contribution to the debate on the Justice Legislation Amendment (Cancellation of Parole and Other Matters) Bill 2013. It is necessary for the good and sound administration of the adult parole system in Victoria to provide for the recognition of a prisoner's ability to rehabilitate and re-enter the community after serving part of their custodial sentence in prison. The whole point and purpose of adult parole is to release a prisoner back into the community before the completion of their sentence and to have support mechanisms in place to assist re-integration. It is not to empty out the prisons to allow for more prisoners to backfill their cells. However, we understand that it is imperative for the effective management of the parole system that the Adult Parole Board of Victoria have the capacity to monitor and review parolees who have committed or are alleged to have committed further offences while on parole and consequently cancel or vary the parole of such prisoners. It is totally unacceptable to ignore breaches of the terms of parole, particularly in respect of people who have committed violent or sexual offences.

I know that during 2011–12 the adult parole board cancelled 659 parole orders, 552 of which were in relation to a failure of prisoners to comply with their parole conditions and 107 of which were in relation to further convictions and sentences. The bill proposes to add an existing provision whereby the board may cancel parole at any time to include specific circumstances where parole ought to be cancelled or is automatically cancelled.

The bill is straightforward and we do not oppose it, but we do have strong reservations about the lack of proper funding for the justice system in Victoria. The recent

closure of the Preston legal aid office has hit the streets of my electorate of Northern Metropolitan Region — which is your electorate as well, Acting President, and I am sure you are aware of this — like a grenade. People who receive a pension, including what has become the working poor — workers who do not receive a living wage and who cannot afford legal representation or, by definition, justice — are devastated by this harsh action by the coalition government. In the name of justice I call on the coalition government to reinstate adequate legal aid funding for the disadvantaged within our community.

Motion agreed to.

Read second time.

Committed.

Committee

Hon. M. J. GUY (Minister for Planning) — Acting President, I seek leave to have Mrs Coote join me at the table.

Leave granted.

Clauses 1 and 2 agreed to.

Clause 3

Hon. M. P. PAKULA (Western Metropolitan) — I was just wondering if the minister could outline to the committee what recommendations of the Sentencing Advisory Council's report on the adult parole system the bill is seeking to implement.

Hon. M. J. GUY (Minister for Planning) — I am informed that as this bill is a government initiative, it does not relate to the Sentencing Advisory Council recommendations directly.

Hon. M. P. PAKULA (Western Metropolitan) — All right; I understand that. Given, though, that there is a Sentencing Advisory Council report which has issued a number of significant recommendations with respect to parole and that this is a bill which impacts on the adult parole system, can I ask if the government intends to implement or is committed to implementing the Sentencing Advisory Council's recommendations?

Hon. M. J. GUY (Minister for Planning) — Mr Pakula would know that in 2012 the Sentencing Advisory Council was requested by the Attorney-General to review and report on the legislative and administrative framework governing the release and management of sentenced prisoners on parole in Victoria. In response to the Sentencing Advisory Council report's recommendations the government has already introduced reforms to the Corrections Act 1986 to improve the effectiveness of the parole system, and those legislative amendments were introduced in December 2012.

Hon. M. P. PAKULA (Western Metropolitan) — I appreciate that answer. I am wondering, though, whether the minister is in a position today to make any more expansive comments about the government's intention with relation to the balance of the report.

Hon. M. J. GUY (Minister for Planning) — No; not today.

Hon. M. P. PAKULA (Western Metropolitan) — I thank the minister, and I can assure him I only have a few more questions. Can the minister provide the committee with any advice about what modelling, if any, the government has done of the impact on prisoner numbers or prison beds that the passage of this bill will have?

Hon. M. J. GUY (Minister for Planning) — Yes. I am informed that modelling shows that the figure in the first year would be 100 that would be implemented — —

Hon. M. P. Pakula — One hundred additional?

Hon. M. J. GUY — One hundred additional, and then the per annum figure thereafter would be around 50.

Hon. M. P. PAKULA (Western Metropolitan) — I thank the minister. Wow — given the nature of this committee, I am almost sad to be leaving.

Honourable members interjecting.

Hon. M. P. PAKULA — I will never get another committee again.

Hon. M. J. Guy — Not even if you are in government.

Hon. M. P. PAKULA (Western Metropolitan) — The minister should not be so sure. Can the minister provide the committee with any advice as to how many instances there have been, for example, in the past 12 months, when the adult parole board has not revoked the parole of those who have been convicted of an offence while on parole?

Hon. M. J. GUY (Minister for Planning) — I apologise to Mr Pakula; we do not have that information. I could take it away and try to seek a reply,

but I could not guarantee that it would appear before the end of today's session.

Hon. M. P. PAKULA (Western Metropolitan) — Whilst it would obviously be useful to have it prior to the conclusion of the committee stage, or the passage of the bill, even if it is not available in that time frame, if it could be provided subsequently, that would still be of use, and we would still be glad to have it.

I ask the minister if he or his department are already in the process of gathering that information and if they could also seek to ascertain more specific examples where the adult parole board has not revoked the parole of those charged with new offences, specifically violent or sexual offences, and particularly in relation to prisoners whose crime involved sexual or violent offences.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! Is the minister happy to provide that?

Hon. M. J. GUY (Minister for Planning) — Yes, I am; I know it is fairly detailed and the member obviously appreciates that I could not get that immediately, but we will take it on notice to try to obtain that information for Mr Pakula.

Hon. M. P. PAKULA (Western Metropolitan) — I have one last question on this clause. Can the minister outline whether the government expects the reforms to impact on the workload of the adult parole board, and if so, whether the government believes additional resources are necessary for the adult parole board and whether they have been provided?

Hon. M. J. GUY (Minister for Planning) — Yes, my advice is that the government has provided new resources. There is a full-time member position available. It should be noted, though, that it is not necessarily about resources; it is also about tidying up legislation to ensure that the community gets an outcome from the parole system that it expects.

Ms PENNICUIK (Southern Metropolitan) — Following on from Mr Pakula's line of questioning, in my contribution during the second-reading debate I said that I had asked for figures as to how many prisoners had been convicted or charged with an offence while on parole and not had their parole cancelled. I was told that information is not collected by Corrections Victoria or by the adult parole board, but the minister is now telling Mr Pakula, as I have just heard, that he will get that information. How is the minister going to get that information when I have been told it is not collected?

Hon. M. J. GUY (Minister for Planning) — I understand one question was in relation to previous figures and one question was in relation to modelling, so they are two different questions, which is why one figure was taken on notice.

Clause agreed to; clauses 4 to 9 agreed to.

Clause 10

Ms MIKAKOS (Northern Metropolitan) — I turn now to the issue of the legal representation of children in the Children's Court in child protection matters. At the briefing I attended that was offered by the minister's office it was made clear that these provisions have gone further than the recommendations in the Cummins report on the vulnerable children inquiry, yet Mrs Coote in her contribution purported to claim that the provisions are consistent with the recommendations in the Cummins report. I ask the minister which recommendation in the Cummins report supports the proposition put forward by this clause — that children under the age of 10 should not be legally represented?

Hon. M. J. GUY (Minister for Planning) — I am advised that the Cummins report recommended that the age be increased to 10 years and that children under that age be legally represented on a best interests basis. The government is going further, because it is its view that child protection workers rather than lawyers are best placed to elicit the views of young children and convey them to the court, and provide the court with their assessment of all children's best interests.

Ms MIKAKOS (Northern Metropolitan) — The minister has made clear that the government has in fact gone further than the recommendation in the Cummins report, which was also my understanding. Can the minister advise whether this provision in clause 10 is consistent with the provisions of the Victorian Charter of Human Rights and Responsibilities and the United Nations Declaration of the Rights of the Child?

Hon. M. J. GUY (Minister for Planning) — That is a good question. I am advised that is not a breach of the United Nations Declaration of the Rights of the Child. That convention provides that children capable of forming their own views should have the opportunity to be heard in a judicial proceeding, either directly or through a representative of an appropriate body, and that that right does not require children to have a lawyer. Rather, children must have the opportunity to participate by their views being ascertained and taken into account, and this will be achieved by child protection inquiring as to the child's wishes and conveying those wishes to a court.

Ms MIKAKOS (Northern Metropolitan) — Then would the minister agree with the submission made by the Victorian Equal Opportunity and Human Rights Commission to the Scrutiny of Acts and Regulations Committee (SARC) which states that the bill:

> … limits the rights of children to protection in their best interests, the right to equality and the right to a fair hearing. These rights are protected in sections … of the Charter of Human Rights and Responsibilities Act 2006 …

In essence the Victorian Equal Opportunity and Human Rights Commission is saying in its submission to SARC that it believes the rights of children contained in the charter are in fact being limited. Does the government agree with that submission or not?

Hon. M. J. GUY (Minister for Planning) — No, the government does not agree with that point. We believe that children have a number of rights, including the rights to be protected from harm, to be heard and to participate in proceedings. All of those rights have to be balanced against each other and seen in the context of the age and stage of development of a child. There is not a legal right in the current act or international law for legal representation of children of any age in child protection proceedings. In fact for young traumatised children, providing instructions to a lawyer may work against their right to protection, as it can be highly distressing and leave the young child with a mistaken belief that they are carrying the burden of a decision.

The government has decided that a better approach is for skilled child protection practitioners to engage young children and inquire about many aspects of their lives, including their wishes. The child protection practitioner will then convey the child's wishes to the court, and the child will be assured that their wishes have been heard. This will allow for real participation in the process in an age-appropriate manner, and that is the government's view on this point.

Ms MIKAKOS (Northern Metropolitan) — Can the minister explain why the government has embarked on eliminating legal representation for children under the age of 10 who are mature enough to give instructions, as is the case today in many cases? I point out that there is no capacity under the bill to enable children under the age of 10 to prove maturity. The only measure works in reverse, such that those over the age of 10 can be determined as being not mature enough.

Hon. M. J. GUY (Minister for Planning) — I am advised that advice from key stakeholders was that making the age of maturity a rebuttable presumption would increase the court contests, causing increased delays, using up a lot of resources and preventing the timely resolution of cases, which is not acceptable when there are concerns for a child's safety and stability. Specifying the age of 10 years takes away any dispute about whether or not a child has capacity.

Ms MIKAKOS (Northern Metropolitan) — The minister just mentioned resources in his reply, and I want to come to that issue now. As I understand from the briefing, the urgency for the provisions in the bill is related to changes that Victoria Legal Aid made recently to deny legal representation in the cases of children, as we are talking about. Is it a mere coincidence then that the cuts that have been made to legal aid funding have precipitated these provisions in the bill? As I understand the quotes from Judge Paul Grant that Mrs Coote referred to in her contribution, the judge was suggesting that these provisions are necessary exactly because of the legal aid cuts and the fact that there is no legal representation, which is resulting in matters being adjourned at the present time. I see that there is a clear correlation between the cuts to legal aid funding and what is being put before us in this legislation. Can the minister elaborate on the issue of legal aid?

Hon. M. J. GUY (Minister for Planning) — I do not agree with the point. The purpose of these amendments is to protect very young and vulnerable children from the stress and trauma of having to advise lawyers, whom they may not know, as to where and with whom they want to live. It is also to clarify when children and young people will be represented in the family division of the Children's Court and to minimise the operational uncertainty about that issue.

Part of Ms Mikakos's preamble was to ask again why it is urgent. It is an important and urgent amendment because of the current uncertainty existing in the Children's Court regarding legal representation of young children as a result of the current wording of the legislation. The uncertainty also exists as a result of a recent Supreme Court decision that observed that the existing legislation does not provide for the court to use age-alone determination as to whether a child may give instructions. As such, this is operationally unworkable and needs to be resolved, and that is what the government is seeking to do with this bill.

Ms MIKAKOS (Northern Metropolitan) — Does the minister agree that the cuts to legal aid effectively created the urgency for this bill?

Hon. M. J. GUY (Minister for Planning) — No.

Ms MIKAKOS (Northern Metropolitan) — I find that quite extraordinary. The way I see it is that it is the

cuts to legal aid and the denial of legal representation that have effectively put the court in a difficult position. It is between a rock and a hard place because, if these amendments are not carried, the court will be in total chaos, as I understand from the briefing. That then puts the opposition in a difficult position as to what position it takes on these clauses, which is why earlier today I gave notice of a motion calling for an inquiry by the Legal and Social Issues References Committee into the impact of these changes on the operations of the court and these particular provisions. Putting that aside for a moment, can the minister explain what would be the impact if these particular provisions relating to the Children's Court were not passed today?

Hon. M. J. GUY (Minister for Planning) — I think I have outlined why it is urgent, and there was a long political preamble to that question. We have said that it is particularly in relation to uncertainty existing in the Children's Court regarding legal representation of young people, as I said before, as a result of the current wording of the legislation. As I said in a previous answer, there is uncertainty as a result of a recent Supreme Court decision. In issues as important as this the government believes that no time should be lost and that it should move on them as soon as it can, and that is why the government believes this bill is right for this time.

Ms MIKAKOS (Northern Metropolitan) — I will take up that point. The minister said there was uncertainty caused by a Supreme Court decision. In fact the Supreme Court decision did not create uncertainty; it is just that the decision of the court did not accord with the government's intentions to deny legal aid in particular circumstances. I take exception to that point. Can the minister advise whether, if these amendments are not passed, magistrates will be unable to make orders, which would result in matters escalating to the Supreme Court?

Hon. M. J. GUY (Minister for Planning) — I am advised that magistrates believe they cannot move unless the law is changed, and that might be impossible. As Ms Mikakos took exception to my comments, I take exception to her political points. As I said, the government's points in relation to timing have now been well articulated, as the reasons have certainly been well articulated.

Ms MIKAKOS (Northern Metropolitan) — Can the minister advise how many children under the age of 10 provided direct instructions to legal representatives in the past year in proceedings in the family division?

Hon. M. J. GUY (Minister for Planning) — I am advised that it is up to 1500 of those aged between 7 and 9.

Ms MIKAKOS (Northern Metropolitan) — This is my final question. I referred before to the fact that I have given notice of a motion. It would conflict with the anticipation rule to seek the minister's views on that issue, but is the government prepared to review the operations of the family division of the court and particularly to look at whether these changes to legal representation will cause difficulties in specific cases after a period of time? If there is to be such a review, can the minister nominate what that period of time would be?

Hon. M. J. GUY (Minister for Planning) — Pre-empting is the interesting point — whether it is or is not. To answer Ms Mikakos's question, yes, the government will certainly keep under review the operation of this bill should it pass.

Ms MIKAKOS (Northern Metropolitan) — Can the minister give an indication as to the time line — for example, would there be a review in 12 months?

Hon. M. J. GUY (Minister for Planning) — It would be continuous.

Ms PENNICUIK (Southern Metropolitan) — I take up where Ms Mikakos left off. I am particularly interested in the Supreme Court decision. As I understand it, the judge of the Supreme Court found the magistrate had erred by making the point denying the representation of the two children in *A and B v. Children's Court*. The magistrate had erred by saying that the children were not of an age — that is, using age as the reason for not allowing them to be legally represented. In fact the judge said that the use of an arbitrary age should not happen, and it should be about whether the children have the sufficient maturity and capacity. That was the judgement as I understand it. That is not what this provision does.

Hon. M. J. GUY (Minister for Planning) — I am advised that that decision and those comments were made according to the existing legislation, so the judge had to make comments in relation to age because under the current legislation there is no reference to it.

Ms PENNICUIK (Southern Metropolitan) — I thank the minister, but I have read what the judge said. I understand, and correct me if I am wrong, that he did not advocate that the law be changed to insert an arbitrary age. In fact he went to some lengths to say that more things need to be taken into account than a child's

age, such as their level of maturity and capacity to understand the proceedings.

Hon. M. J. GUY (Minister for Planning) — I am advised again that Justice Cummins believed 10 was an appropriate age. The current research says that from a maturity level, around 10 is the appropriate age, and the government had an intention to contest a case there. Again, the age of 10 would do that, and that is why the age of 10 has been specified.

Ms PENNICUIK (Southern Metropolitan) — The answer is yes, that is what the judge said. The reason we are standing here has nothing to do with a Supreme Court decision, because that is not what the judge said. The minister is now talking to me about evidence, which has not been produced. But certainly the decision of the Supreme Court is not behind this particular provision today.

I refer to the *Report of the Protecting Victoria's Vulnerable Children Inquiry*, where Justice Cummins said:

> A child who is under 10 years of age is presumed not to be capable of providing instructions unless shown otherwise and a child who is 10 years and over is presumed capable of providing instructions unless shown otherwise.

In that paragraph basically he is saying it is not up to the age of the child and that a child aged over 10 can also be deemed to be not mature enough. In fact a child aged over 16 could be deemed not to be mature enough. But he also said in paragraph 60:

> A child who is not capable of providing instructions should be represented by an independent lawyer on a 'best interests' basis.

He did not recommend that a child be represented by a child protection officer, so my question is: why has the government not picked up that recommendation, which is if a child is not capable of giving the instructions, they should be represented by an independent lawyer on a best interests basis?

Hon. M. J. GUY (Minister for Planning) — I made some comments in response to a similar question from Ms Mikakos about the government believing that below that age, or around that age, child protection would be able to manage those issues. However, in relation to what Ms Pennicuik has raised — her question around why are we not making the age of maturity a rebuttable presumption — the advice we have received from stakeholders was that making the age of maturity a rebuttable presumption would increase court contests. The committee has heard my point about court contests in terms of delays, resources, timely resolution of cases and of course not being acceptable to the concerns of a child's safety and stability. Thus specifying the age of 10 takes away any dispute about whether or not the child has that capacity. Sometimes those decisions may be difficult, but the government has made that decision.

Ms PENNICUIK (Southern Metropolitan) — Okay, so we have got to the government has made the decision, but it was not based on the vulnerable children's report or the Supreme Court's decision; it is the government's decision. The next question I have is that in the second-reading speech the minister said:

> … 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.

What are exceptional circumstances?

Hon. M. J. GUY (Minister for Planning) — I am advised that it would be a decision of the court on a case-by-case basis.

Ms PENNICUIK (Southern Metropolitan) — Needless to say, that means very rarely. My question is — and I think the minister answered a similar question from Ms Mikakos — how many children aged between 7 and 10?

Hon. M. J. GUY (Minister for Planning) — It was around 1500 between the ages of seven and nine.

Ms PENNICUIK (Southern Metropolitan) — In terms of that answer, that 1500 children of that age were represented by a lawyer, how many of those caused delays or upsets in the court? If that many children were represented, what is the problem? Has there been a problem with that representation or an uproar in the courts that has led us here, or have the majority of those 1500 cases worked well?

Hon. M. J. GUY (Minister for Planning) — It should be noted that we are not talking about the court system; we are talking about the impact on the children. That is a point that Mrs Coote made in her contribution to the second-reading debate. She referred to the vulnerability of a child and the very long court cases, some of them lasting many weeks. The vulnerability of children in that age group was paramount in the decision to protect them. The government felt that was an appropriate measure.

Ms PENNICUIK (Southern Metropolitan) — We are all concerned about children who are before the family division of the Children's Court. All members of this place are concerned about that, so the government cannot just claim that concern for itself. But this issue has certainly raised a concern about delays in the courts

and the provision of resources, which I am probably less concerned about. The Chief Justice of the Supreme Court was in this building this week talking to members about the need to resource the courts properly to ensure that people are properly represented.

The most vulnerable people in the courts are children. I am concerned that children will not be able to be represented if they have the maturity to directly instruct a lawyer or represented by a lawyer on a best interest basis if they do not have that maturity. The government is putting in place legislation whereby they will be represented by child protection officers.

Let me premise this by saying that I am in awe of the work of child protection officers, but I am querying whether they would always be the best person to represent the child in a particular case and whether they could always be regarded as an independent person in the way a lawyer would be regarded to be independent of any issue that has been going on with the family and the child protection worker. I query whether in every case that is going to be the best outcome for the child, if that is what we are talking about. Could a case arise where there was an issue with the child protection worker working with the family, representing other members of the family but also purporting to put the case of the child?

Hon. M. J. GUY (Minister for Planning) — As Mrs Coote pointed out in her speech during the second-reading debate, there are all sorts of health professionals who could be involved in certain cases. I think it is fair just to say that Ms Pennicuik has raised some points that are hypothetical, which I understand. But again, going back to the matter Ms Mikakos asked about — that is, the monitoring of the legislation should it pass — some of the points Ms Pennicuik has raised would obviously need to be monitored to ensure that they are working adequately, and that is one point the government would need to do should the bill pass today.

Ms PENNICUIK (Southern Metropolitan) — I will go to the point that Mrs Coote raised in answer to a query of mine, which was regarding other jurisdictions. My understanding is that in other jurisdictions the matter is not as arbitrary as it is in the case of this bill. There is a rebuttable presumption, so that a child under whatever the age is in other states can still be represented by a lawyer if the child is deemed to be mature enough to provide instructions. My question is: in which other state is there a deadset arbitrary age, as there is under this bill?

Hon. M. J. GUY (Minister for Planning) — I am advised the answer to that is none. But in relation to the other jurisdictions that Ms Pennicuik has asked about, it should be noted that Victoria, quite shamefully, is the only jurisdiction in Australia that, in practice, has children as young as seven years, sometimes younger — and there are some accounts of children as young as four or five years — being assessed by lawyers as sufficiently mature or being brought into a court. This is often only hours after they have been removed from abusive situations, possibly in harrowing circumstances, and they are providing direct instructions to lawyers who they meet for the first time at court. As I said, there is not a jurisdiction in Australia that considers it appropriate for young children to be exposed to the court and the legal process in that way. Rather, as is the case in New South Wales, only older children, usually 12 years and above, are providing instructions. Hence the government's bill today.

Ms PENNICUIK (Southern Metropolitan) — Could I have clarification on that? Is the answer that in every other jurisdiction there is a rebuttable presumption, because the minister then went on to talk about children as young as four years? My question is: is there another jurisdiction where the provision is so arbitrary that if they are of a certain age they cannot have legal representation?

Hon. M. J. GUY (Minister for Planning) — I will make two points. I believe what I stated before around younger children, for instance, was a different point to what Ms Pennicuik has just raised. I am advised that in relation to her question the answer is that every jurisdiction has different practices. So there is obviously no one standard. There is quite a range of different points over the different jurisdictions in Australia. I hope that gives a tiny bit of clarity.

Ms PENNICUIK (Southern Metropolitan) — Perhaps. I will not labour the point, but I will put it another way. If the bill is passed as is, will the Victorian provision be the strictest in the sense that it will have the strictest interpretation of age as a cut-off point for the ability to have legal representation?

Hon. M. J. GUY (Minister for Planning) — Yes.

Ms MIKAKOS (Northern Metropolitan) — I just want to give a case study on how the current system works, just in terms of fleshing out how this legislation is going to be a significant change. The case study that I referred to earlier and the one that I am about to refer to now are real case studies that a solicitor acting in the Children's Court has provided me with. I thank

Mr Howard Draper for providing me with these case studies.

Mr Draper has advised me that he acted for the father of an eight-year-old child. The child's stepfather had abused the child with verbal abuse, intimidation, threats, pulling the child by the hair, slapping and hitting the child. The child said the abuse was ongoing. The mother and stepfather suggested that the child would be happy to see the stepfather during access. The matter proceeded to a contested hearing. The child told her pro bono lawyer that it would be upsetting to see the stepfather, that his attitude was scary and that he should change his behaviour before any access should occur. The child said that seeing the stepfather would be traumatic. On the basis of what the child's lawyer told the court, access was refused.

What I wish to know is what will happen now with these changes in terms of the process that the Department of Human Services (DHS) will undertake, and that child protection staff in the department will undertake, to ensure that children like this eight-year-old child and other children in similar circumstances will have their desires taken into consideration?

Hon. M. J. GUY (Minister for Planning) — In the circumstances that Ms Mikakos raised — and that is quite harrowing — child protection personnel would speak with the child. In some instances they may have had a previous relationship with them. In presenting to the court they would obviously separate the views of what the child is saying and what their recommendation is. Why child protection personnel? Simply because child protection personnel possess specific expertise and knowledge of a particular child in many instances, and possibly the family, often developed over many months of contact with them. Their assessments and recommendations are informed by professionals who may have had months, possibly years, of in-depth contact with the child and the family, such as family support workers, teachers and maternal and child health nurses who know the child and their family. The government believes they are the best placed to assess and represent to the court what would be in the best interests of a young, vulnerable, possibly traumatised and abused child.

Ms MIKAKOS (Northern Metropolitan) — I thank the minister, but the key point here is that whilst the DHS people may be purporting to be acting in what they believe are the best interests of the child, at the end of the day they are not lawyers who are putting to the court the child's instructions. That is the key difference here. I do not want to belabour the point, I just want to conclude my remarks. I do not know if the minister wishes to add anything further in response to that.

I just want to clarify the Labor opposition's position on this clause and the subsequent clauses that relate to these provisions because we feel we are in a very difficult position here. Whilst we have very deep concerns about these changes and these provisions, my understanding is — and that is what I was asking the minister earlier — that if these provisions are not passed, this will cause significant problems for the court because of the Victoria Legal Aid cuts. Children are now not accessing legal representation, matters are already being adjourned, we are seeing legal aid cuts impacting the adult courts and there has been a lot of media coverage about that in recent times. We feel that for that reason we are in a very difficult position.

I noted that the Children's Court annual report 2011–12 was tabled in the Parliament earlier today. The president's report on page 3 states that there are significant delays in the family division at the moment, that the workload of the court has been increasing and that:

> … the court is unable, within its existing resources, to match the rate of finalisation of cases to the rate of initiation. This means delay is increasing. Delay in determining child protection applications is not in the best interests of children.

I certainly agree with the president of the Children's Court that we do not want to delay matters; we do not want to put vulnerable children at any risk. But if the provisions are not passed, that may well be the case. It is for that reason that we did not seek to move a reasoned amendment to this bill, which we could have done, but in fact earlier today I sought to give notice of a motion to be debated at a future point in time seeking to have an inquiry into all of these changes. That is the explanation of the position that the Labor opposition is putting and why we reluctantly will not be opposing these particular provisions, but as I said, with very deep reservations.

Ms PENNICUIK (Southern Metropolitan) — I think we have thrashed out this clause and ascertained that it does not come from a Supreme Court decision and it does not follow from the vulnerable children report; it follows from a government decision. The minister has told me that 1500 children between the ages of 7 and 10 have been represented by an independent lawyer in the family division of the Children's Court. Under this provision such representation will cease, so based on those figures that is 1500 children who will not be represented by an independent lawyer; even if exceptional circumstances applied in 1 per cent of the cases, that is only

15 children who will be represented by an independent lawyer.

I believe this is not in the interests of the welfare of children. The system as it works at the moment is better for the welfare of children. It is better for them to be represented by an independent lawyer, either being directly instructed or on a best interest basis, as Justice Cummins recommended. I have not heard anything from the government to say this is causing any problems with delays in the courts. I have only heard about resources. I say to the government: resource the courts and resource legal aid so that children and other people in the courts can be represented. We have court cases in the Supreme Court being stayed because of people not being represented by legal aid. That is the crux of this problem, I believe strongly, and I will not be able to support this clause.

Hon. M. J. GUY (Minister for Planning) — I have a couple of points. I would say to Ms Pennicuik that the crux of the issue is the trauma to children. In relation to the urgency points that were raised before, that is why the government is seeking to pass this bill now. I appreciate the comment from Ms Mikakos that child protection is hard; it is, and I think everyone acknowledges that it is. That is why there are difficult decisions that have to be made and, as in the case of this bill, decisions that need to be brought to the Parliament, and in the government's view they need to be brought forward fairly quickly.

Can I just make some points in relation to the child's position and the child protection position being put to a court. Ms Mikakos was referring to those points. Again I state that child protection personnel would raise both points — their position and the child's — to a court, so there would not be a conflict. Child protection practitioners are required to inform the court of their risk assessment and their recommendation about the best way of protecting the child. Sometimes a risk assessment and a proposed case plan is contrary to the wishes of a child; however, legislation requires both child protection and the court to consider the child's wishes when deciding on a course of action. Child protection practitioners will take the children's wishes into account every day, and both will be represented. It is not a challenge for child protection personnel to distinguish between and to convey to the court a risk assessment, their proposed case plan and the wishes of a child; it is just part of their normal job.

Committee divided on clause:

Ayes, 36

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

Noes, 3

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

Clause agreed to.

Clause 11 to 13 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Motion agreed to.

Read third time.

CRIMES AMENDMENT (INTEGRITY IN SPORTS) BILL 2013

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

For Hon. M. J. GUY (Minister for Planning), Hon. P. R. Hall tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

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

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

Overview of bill

The purpose of the bill is to create specific criminal offences that target persons who seek to fix a betting outcome or to profit from such a fix.

As there are no charter rights that are relevant to the bill, I consider it is compatible with the rights and responsibilities in the Charter of Human Rights and Responsibilities Act 2006.

Matthew Guy, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. P. R. HALL (Minister for Higher Education and Skills).

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

That the bill be now read a second time.

Incorporated speech as follows:

The government is introducing the Crimes Amendment (Integrity in Sports) Bill 2013 to address the threat posed to the integrity of Australian sports by the possible fixing of matches, races and other sporting events.

A number of incidents of match fixing in recent times, both in Australia and overseas, have caused understandable dismay amongst sporting fans. Technological advances in recent years have greatly increased the potential for Australian sports to attract betting interest and the potential for criminal involvement from around the world. The Australian Crime Commission report released last month has also highlighted concerns about the use of drugs and the involvement of organised crime in sport.

All members will be cognisant of the importance of sports to our social, cultural and economic life. Not only does sport provide entertainment, the rich calendar of sporting events in Victoria is a vital contributor to our state's economy.

Given the importance of sport, it is equally important to ensure the integrity of sporting events is maintained and that public confidence is not undermined. The fixing of matches and other sporting events is a pernicious activity that not only defrauds honest punters, but also undermines the confidence of fans and the broader community in the sport itself and in the players and other participants in the sport. Sporting heroes and champions should be role models for all to admire, untarnished by suspicion of malpractice or guilt by association. The Victorian government is committed to standing with the vast majority of Australian sportsmen and women, officials, volunteers and fans who want to stamp out unethical behaviours in sport. The government is a strong supporter of the national policy on match fixing in sport, of which a key part is the creation of criminal provisions for cheating at sport. The policy is supported by every jurisdiction and by all major sporting codes.

The bill also applies to racing. On 23 January 2013, Victoria's racing integrity commissioner, Mr Sal Perna, released the report on his own-motion inquiry into race fixing. Mr Perna found that there is no evidence of systemic race fixing in Victoria. Mr Perna did make 11 recommendations to improve and strengthen racing integrity assurance so that the racing industry is best equipped to address new and emerging challenges. The government has agreed in principle to each of the 11 recommendations included in the report and is working with Victorian racing industry stakeholders and the commissioner to identify the most effective process to achieve the intended outcomes.

One of those recommendations (recommendation 7) was that the government expedite the introduction of 'cheating at gambling' legislation as a major priority. This bill delivers in full on this recommendation 7 and is consistent with discussions held at a meeting of state and territory racing ministers in Hobart in May 2012. At that meeting it was agreed by racing ministers that racing should be included in any legislation aimed at addressing corruption in sport and that, wherever possible, a nationally consistent approach should be pursued.

The bill will also deliver on a recommendation from the 2011 review of sports betting regulation undertaken by Des Gleeson, former chairman of stewards at Racing Victoria. In that report it was recommended (recommendation 11) that 'the Department of Justice liaise with Sport and Recreation Victoria in relation to the development of criminal provisions to deter and deal with match fixing'.

Victorian racing has a world-class integrity assurance model and this legislation can only serve to further strengthen the position of our great racing industry.

The bill is closely modelled on legislation introduced recently in New South Wales and legislation currently before the South Australian Parliament. It will ensure that the law in these three states is closely aligned.

The bill creates new offences in the Crimes Act 1958 to tackle anyone who corruptly seeks to manipulate the outcome of a sporting event for betting purposes.

The definition of 'bet' is deliberately broad, so as to encompass all legal forms of gambling. The bill applies to betting on events themselves and on event contingencies. An event under the bill is not limited to sporting events; it includes any event upon which a bet can lawfully be made. An event contingency includes aspects of an event other than the event result itself that may be the subject of a bet, such as the score at a particular stage of an event or the player that scores the first goal or point.

The offences in the bill apply to conduct that corrupts or would corrupt a betting outcome of an event or an event contingency, being conduct contrary to the standards of integrity that a reasonable person would expect. Whether conduct is contrary to such standards in a particular case will be a question of fact to be determined by the court. The legislation does not criminalise conduct that might affect betting but does not involve any financial gain or cause any financial disadvantage.

The bill also creates in specified circumstances an offence for a person to encourage another person to conceal from a relevant authority conduct, or an agreement in relation to conduct, that corrupts or would corrupt a betting outcome.

In addition, the bill creates new offences in relation to the use of corrupt conduct information for betting purposes.

The penalties for offences under the bill are set at a maximum of 10 years imprisonment. This significant penalty is appropriate because of the nature of the offences and the potential for corrupt conduct to undermine confidence in events and to cheat law-abiding punters. The penalties are consistent with the penalties in the Crimes Act 1958 in relation to obtaining a financial advantage by deception and obtaining property by deception. They are also the same penalties as apply in the interstate legislation.

This bill sends a very clear message that the fixing of sporting matches and other events will not be tolerated in Victoria. It is a key component of the government's commitment to a strong policy and legislative framework to protect the integrity of sports in Victoria, integrity which is vital if the confidence and passion of Victorian sports lovers is to be secured for future generations.

I commend the bill to the house.

Debate adjourned for Mr LEANE (Eastern Metropolitan) on motion of Mr Lenders.

Debate adjourned until Thursday, 28 March.

PLANNING AND ENVIRONMENT AMENDMENT (GROWTH AREAS AUTHORITY AND MISCELLANEOUS) BILL 2013

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

For Hon. M. J. GUY (Minister for Planning), Hon. P. R. Hall 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 Planning and Environment Amendment (Growth Areas Authority and Miscellaneous) Bill 2013 (bill).

In my opinion, the Planning and Environment Amendment (Growth Areas Authority and Miscellaneous) Bill 2013, as introduced to the Legislative Council, is compatible with the human rights protected by the charter act.

Overview of bill

The bill amends the Planning and Environment Act 1987 (act) to enable growth areas to be declared anywhere in Victoria, to expand the functions of the Growth Areas Authority, to make further provision in relation to the criminal liability of officers of bodies corporate and make other operational improvements to the act.

The amendments relating to the criminal liability of officers of bodies corporate 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 criminal liability on officers of bodies corporate for corporate offending are appropriate having regard to the regulatory objectives of the act and to the nature of the offences.

The bill is consistent with reforms to directors liability provisions in the Statute Law Amendment (Directors' Liability) Bill 2012, as introduced to the Legislative Assembly in December 2012. The bill does not amend existing offences or existing penalties in the 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 applies a type 1 model liability provision in the act. Under a type 1 provision, an officer is liable where he or she failed to exercise due diligence to prevent the offending conduct by the body corporate.

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 creates or amends the criminal liability of an officer of a body corporate solely by reference to his or her position in the body corporate.

Currently, section 128 of the act imposes criminal liability on an officer of a body corporate for any offence committed by that body corporate under the act, and it places a reverse legal onus of proof on the accused.

Clause 17 of the bill will strengthen the right to the presumption of innocence by amending section 128 to replace the existing 'blanket' reverse onus provision with a provision that shifts the onus of proof to the prosecution and is more circumscribed in its application. The new section 128 will apply to six offences under the act: sections 48(2), 93(3), 126(1), 126(2), 126(3) and 137 of the act. These sections are central to the regulatory regime for controlling land use and development in Victoria.

On this basis, I consider that clause 17 of the bill engages but does not limit section 25(1) and is compatible with the charter act.

Conclusion

I consider that the bill is compatible with the charter act because it does not limit human rights protected by the charter act.

Matthew Guy, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. P. R. HALL (Minister for Higher Education and Skills).

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

That the bill be now read a second time.

Incorporated speech as follows:

The Growth Areas Authority was established in 2006 to plan and coordinate the strategic release of urban land in Melbourne's growth areas and provide the government with long-term advice on growth area infrastructure needs. Since then, the Growth Areas Authority has played a key role in streamlining the planning, approval and delivery of new development in Melbourne's growth areas and coordinating infrastructure provision.

The Growth Areas Authority has built up considerable skills and expertise in preparing strategic land use plans and improving planning processes to reduce costs and inefficiencies for developers and local government. The government and municipal councils could use these skills and expertise to progress and streamline planning in areas outside Melbourne's growth areas. However, under the existing legislation, the capacity for the Growth Areas Authority to operate in other parts of Victoria is limited.

This bill amends the Planning and Environment Act 1987 (act) to enable growth areas to be declared anywhere in Victoria and to expand the functions of the Growth Areas Authority. The amendments will give the Minister for Planning the flexibility to seek advice and recommendations from the Growth Areas Authority on matters relating to any land in Victoria. The minister will also be able to direct the Growth Areas Authority to provide advice directly to any municipal council in Victoria.

The bill has two other components. It reforms a provision in the act that imposes criminal liability on directors and officers of a body corporate for offences committed by that body corporate under that act. The reform complements the package of reforms to directors liability provisions in the Statute Law Amendment (Directors' Liability) Bill 2012, as introduced to the Legislative Assembly in December 2012. The other component of the bill relates to the administration and enforcement of planning permits issued under division 6 of part 4 of the act.

I will now turn to the bill.

Division 1 of part 2 of the bill enables a growth area to be declared anywhere in Victoria. As is the case now, the Minister for Planning will decide whether an area should be a declared growth area.

The Growth Areas Authority will continue to focus on growth areas within Melbourne's seven growth area councils, which are Cardinia, Casey, Hume, Melton, Mitchell, Whittlesea and Wyndham. However, the Growth Areas Authority could be directed by the minister to undertake work in other parts of Victoria that are experiencing growth and would benefit from its skills and expertise.

Once an area is declared a growth area, the Growth Areas Authority may perform the functions set out in section 46AS of the act. One of its primary functions is to advise the minister on the planning, use, development and protection of land in growth areas. Clause 6 of the bill expands the functions of the Growth Areas Authority so that it may give advice to the minister or a municipal council on any matter relating to land in Victoria or an objective of planning in Victoria. The matter could relate to the planning of an existing or proposed growth area or it could relate to other land.

The bill does not remove or change the planning powers and responsibilities of municipal councils. Instead, it enables the minister to support the work of councils by making additional planning skills and resources available to them. The aim is for the Growth Areas Authority to work in partnership with councils, to provide advice requested by councils.

The bill does not change the areas affected by the growth areas infrastructure contribution (GAIC) scheme. That scheme is designed to apply only to growth areas within Melbourne's seven growth area councils. Clause 7 of the bill inserts a definition of growth area in part 9B of the act to ensure the application of the GAIC scheme does not change.

Division 2 of part 2 of the bill amends the act so that the person or body nominated in a planning scheme as the responsible authority for the scheme becomes responsible for administering and enforcing any planning permit issued by the Minister for Planning at the end of a 'called in' proceeding. As is the case now, the minister will continue to be responsible for administering certain aspects of these permits.

Division 3 of part 2 of the bill reforms a provision relating to the criminal liability of officers of a body corporate for offences committed by that body corporate under the act. The existing liability provision applies to all offences under the act and places the legal onus of proof on the officer. Clause 17 of the bill replaces this with a type 1 model directors' liability provision. Under a type 1 provision, an officer's liability arises from a failure to exercise due diligence and it requires the prosecution to prove that the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate. The amended provision is consistent with guidelines approved by the Council of Australian Governments for directors' liability and it is appropriately targeted to six offences under the act.

Overall, this bill will improve the operation of the act, enable the skills and expertise of the Growth Areas Authority to be utilised more widely and ensure that the imposition of criminal liability on directors and officers of bodies corporate is targeted appropriately to the offences concerned.

This bill continues to lay out a vision for Victoria's economic future, and continues to secure Victoria's position as not just a leading state, but as a regional economic centre by accelerating planning reforms to increase certainty for councils, businesses and the Victorian community.

Victoria's regional cities offer cost and lifestyle benefits for our growing population. Planning policy needs to support the provision of flexible land use and economic adaptability in order to manage Victoria's population growth for the long term.

This bill advances the government's vision for Victoria by ensuring there is planning for future regional growth, provision of infrastructure and, importantly, bringing land supply and affordability into the market place.

I commend the bill to the house.

Debate adjourned for Mr TEE (Eastern Metropolitan) on motion of Mr Lenders.

Debate adjourned until Thursday, 28 March.

RAIL SAFETY 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. P. R. Hall; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Hon. M. J. GUY (Minister for Planning), Hon. P. R. Hall tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

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

In my opinion, Rail Safety National Law Application Bill 2013 (the bill), as introduced to the Legislative Council, is compatible with the human rights protected by the charter act.

I base my opinion on the reasons outlined in this statement.

Overview of the bill

In June 2009, the Council of Australian Governments (COAG) decided to pursue a range of national transport regulation schemes, including a national rail safety investigator and national regulators for the heavy vehicle, rail and commercial marine sectors.

On 19 August 2011, COAG members signed an intergovernmental agreement to establish a national scheme of rail safety regulation and investigation.

This agreement led to the development of the Rail Safety National Law (the national law) in the form of template legislation approved by commonwealth, state and territory transport ministers at the Standing Committee on Transport and Infrastructure (SCOTI) meeting on 4 November 2011.

South Australia is the host jurisdiction for the national law and the national regulator. The national law legislation is set out in the schedule to the Rail Safety National Law (South Australia) Act 2012 (SA) (the South Australian act) which was passed by the South Australian Parliament on 1 May 2012.

The bill applies the national law as the law of Victoria subject to certain necessary variations. A number of variations are required to ensure that the national law is compatible with the human rights protected by the charter act in Victoria.

Purpose of the bill

The purpose of the bill is to apply the national law (as set out in the schedule to the South Australian act) as a law of Victoria, subject to certain variations.

The following railways are captured by the national scheme —

(a) interstate passenger and freight heavy railway operations (involving operators such as the Australian Rail Track Corporation and Pacific National);

(b) all domestic metropolitan and regional passenger and freight heavy rail operations (involving operators such as Metro Trains Melbourne and V/Line);

(c) freight terminals (including North and South Dynon); and

(d) tourist and heritage heavy railway operators operating on lines shared with freight and regional commercial passenger trains under the accreditation of V/Line or which operate on stand-alone lines but which opted for national regulation.

However, the national law excludes some railways from its operation.

In Victoria, all trams and light railways are excluded as these are acknowledged to be purely local rail operations rather than national rail operations. These include the Melbourne metropolitan tram network, the largest tram network in the world.

It was further agreed at the SCOTI meeting on 18 May 2012 that the Victorian Minister for Public Transport could nominate specific tourist and heritage railway operators operating on dedicated railway tracks to be excluded from the national law, acknowledging that such operations are local rather than national operations.

Tourist and heritage railway operators that asked to be nominated for exclusion from the national law will be regulated under existing local Victorian rail safety laws, specifically the Rail Safety Act 2006 which is renamed by a companion bill to this bill as the Rail Safety (Local Operations) Act 2006.

Effectively, tourist and heritage railway operators who use main lines under the accreditation of national railway operators and tourist and heritage railway operators who did not ask to remain under local law will be regulated by the national law.

The bill, and the national law as varied by the bill, contain a number of provisions which engage human rights protected by the charter act.

Application of charter act

Interpretation of the national law

Clause 6 of the bill declares that the Rail Safety National Law set out in the schedule to the Rail Safety National Law Act 2012 of South Australia applies as a law of this jurisdiction, and applies as if it were an act. Accordingly, the interpretative provisions of section 32 of the charter act will apply to the national law in Victoria, as will the provisions in section 36 of the charter act with respect to declarations of inconsistent interpretation.

Scrutiny of legislation

The human rights impacts of the national law are assessed in this statement. However, as the national law is a South Australian act, future amendments to that act will not fall within the parliamentary scrutiny provisions of sections 28 to 30 of the charter act.

Obligations on public authorities

The national law provides for a rail safety scheme covering certain heavy railways in participating jurisdictions. The national regulator, whose office is established under the national law, is based in Adelaide, South Australia.

The national regulator will be the regulator of certain heavy railways in Victoria. However, the national regulator will delegate various functions and powers to the Victorian director, transport safety (the safety director). The safety director may sub-delegate these functions and powers to staff engaged by Transport Safety Victoria (TSV).

The arrangements between the national regulator and Victorian agencies and public servants will be supported by a service level agreement between the national regulator, the safety director and the Minister for Public Transport as well as by the delegations from the national regulator to the safety director and TSV staff. The service level agreement is a key aspect of the application of the national law as a law of Victoria.

The charter act applies to entities whose functions are, or include functions, of a public nature when the entity is exercising those functions on behalf of the state of Victoria or a public authority in Victoria.

The national regulator is an entity established for the purpose of Victorian law by Victorian statutory provisions, has functions of a public nature and will exercise those functions in and on behalf of the state of Victoria and through Victorian agencies. Therefore, the charter act applies to those functions.

The Office of the National Rail Safety Regulator (ONRSR) is similarly constituted and the charter act will apply to the ONRSR in respect of conduct and decisions in, or affecting persons in, Victoria, that is, the exercise of functions of the ONRSR in Victoria.

The charter act applies to the safety director and staff engaged by TSV in any event. TSV staff are public officials within the meaning of the Public Administration Act 2004. Delegates of the national regulator are therefore subject to the charter act when exercising functions and powers in Victoria.

Privacy — personal and health information

The provisions in the bill relating to information privacy are explained in this statement in connection with charter act rights and as an aid to interpretation of the provisions in the bill more generally. It is convenient to set out the provisions in this statement so that it can be seen how a person's information privacy is protected under the national scheme as applied in Victoria.

Regulation of the use of personal and health information in Victoria

The use and disclosure of personal information in Victoria is regulated by the Information Privacy Act 2000. The use and disclosure of health information is regulated by the Health Records Act 2001.

The Information Privacy Act and Health Records Act apply to any transfer of personal or health information by the safety director, the Department of Transport and TSV officers who are employed or engaged by the department.

It is important to understand that where functions are exercised in Victoria and information (including health records) are dealt with locally, the Victorian Information Privacy Act 2000 and the Health Records Act 2001 apply. This is distinct from information recorded or held in South Australia by the national regulator or the ONRSR.

Information and health privacy principles — application to information held in or trans-border flow of information from Victoria

Section 16 of the Information Privacy Act and section 21 of the Health Records Act require public sector agencies to comply with the information privacy principles (IPP) and the health privacy principles (HPP) set out in the respective schedule 1 to each of those acts.

IPP2.1(g) of the Information Privacy Act and HPP2.2(c) of the Health Records Act allow the use or disclosure of information where that use or disclosure is required, authorised or permitted, whether expressly or impliedly, by or under law.

Trans-border flow of information is also relevant. IPP9 and HPP9 authorise the transfer of personal and health information outside Victoria if —

(a) the organisation reasonably believes that the recipient of the information is subject to a law, binding scheme or contract which effectively upholds principles for fair handling of the information that are substantially similar to the information privacy principles or the health privacy principles (IPP9.1(a) and HPP9.1(a)); or

(b) the individual consents to the transfer (IPP9.1(b) and HPP9.1(b)); or

(c) the organisation has taken reasonable steps to ensure that the information which it has transferred will not be held, used or disclosed by the recipient of the information inconsistently with the information privacy principles or the health privacy principles (IPP9.1(f) and HPP9.1(f)); or

(d) the transfer is authorised or required by any other law (HPP9.1(g)).

Specific authorisation to transfer information contained in the bill

Clause 158 of the bill enables the director, transport safety (the safety director) to disclose to the national regulator personal or health information relating to rail safety operations or rail safety workers in connection with the safety director's rail safety functions under the Rail Safety Act 2006.

This is because certain heavy railway operators and rail safety workers regulated under existing Victorian laws by the safety director will, on commencement of relevant provisions in the bill, become regulated under the national law and by the national regulator. Changes may also occur in the future.

Transfer of existing records may be required in certain circumstances to facilitate the proper regulation of rail safety in Victoria. In particular, this will enable ongoing compliance and enforcement activities in respect of competencies such as health and fitness management.

However, because most compliance and enforcement activity is expected to take place at local level pursuant to the arrangements under the service level agreement and delegations to the Victorian safety director, almost all personal and health information may be expected to be dealt with under the Victorian Information Privacy Act 2000 and the Health Records Act 2001.

Where personal or health information is held or managed in South Australia, information privacy management by the national regulator and the ONRSR in South Australia will be dealt with under privacy standards which South Australian public bodies adhere to. These standards do not have a statutory foundation but are consistent with the IPPs and HPPs under the Victorian statutes.

Information about operators or their agents or employees who remain regulated other than under the national law will not be transferred.

Charter act

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. The provisions engage the right because they provide for the transfer of personal and health information. The engagement of the right overlaps with the Information Privacy Act 2000 and the Health Records Act 2001.

The bill specifically authorises the disclosure, transfer and use of information for the purposes of IPP2.1 (g) and HPP2.2(c) and enables the transfer of information outside Victoria pursuant to IPP9 and HPP9.

Oversight laws and privacy

Oversight laws applying to the national regulator such as financial audits, the Ombudsman and freedom of information will be the laws of South Australia.

As noted, South Australia does not currently have any privacy laws.

For that reason and as explained above, the Information Privacy Act and the Health Records Act remain the oversight privacy laws for national law information privacy management which occurs in Victoria and disclosure to the national regulator is supported by the bill.

South Australia does, however, apply administrative instructions (information privacy principles instructions) to government agencies.

Any information which is transferred by Victoria to the national regulator or ONRSR in South Australia will not therefore be held, used or disclosed by the national regulator or the ONRSR inconsistently with the information privacy principles and the health privacy principles under Victorian privacy laws.

Therefore, the transfer of information is specifically authorised by law and the Information Privacy Act and the Health Records Act standards apply or similar protections are provided. In any event, the provisions are not arbitrary. Accordingly, protections are in place to safeguard a person's personal and health information.

For those reasons, while the right to privacy is engaged, the right is unlikely to be limited in any significant sense. Alternatively, and if a view could be taken that the right is limited in any way, insofar as the right is limited I consider that any limitations are reasonable under section 7(2) of the charter act.

The national law also positively engages the right to privacy.

Protection in relation to samples

Section 129 of the national law provides a protection in relation to samples (such as blood and oral fluid samples) collected under the national law or the Rail Safety (Local Operations) Act 2006, as the Rail Safety Act 2006 will become once amended by the Transport Legislation Amendment (Rail Safety Local Operations and Other Matters) Bill 2013. Samples must not be used for a purpose other than that contemplated by the national law or the bill, in connection with the control or management of any work or activity associated with railway operations, or for the purpose of disciplinary proceedings against a rail safety worker.

Protection in relation to train safety recordings

Section 131 of the national law provides that train safety recordings must not be published or communicated other than in the course of an inquiry or investigation into an accident or incident or in connection with specified classes of criminal or civil proceedings or when otherwise permitted by law (including under the national law).

Section 132 of the national law provides further limitations on use of train safety recordings in civil proceedings, in that leave of the court is required to admit the evidence in proceedings.

The provisions therefore engage and protect the right to privacy. Any limitations which may exist (if, for example, leave of the court is given to admit recordings in civil proceedings) are reasonable and demonstrably justifiable.

National rail safety register

Section 42 of the national law provides for the establishment of a national rail safety register. The register will contain details of a person's accreditation or registration and

associated details including enforcement activities which have been undertaken in respect of the accredited or registered person.

While most information will relate to corporations, this may not always be the case. In any event, the provision engages the right to privacy because it allows publication of information. However, the right is not limited. The rail industry is considerably regulated including to secure community safety and service standards. The collection, retention and publication of relevant information are an aspect of this system of regulation.

Requirements to provide information

The national regulator may also require certain information from rail transport operators under section 120 of the national law.

A rail safety officer may also require a person to provide his or her name and residential address under section 168 of the national law in specified circumstances.

In each case, the person is required to only provide information in connection with compliance, enforcement and national regulatory activities under the statutory scheme.

I consider that any interference with the right to privacy through the gathering, recording, publication and transfer of such information is neither unlawful nor arbitrary. Accordingly, I consider that these provisions are compatible with the right to privacy in section 13 of the charter act.

Abrogation of the privilege against self-incrimination

Rights in criminal proceedings are engaged by section 155 of the national law which deals with the abrogation of the privilege against self-incrimination. Clause 46 of the bill varies the national law as explained below. The provisions also engage the right to a fair hearing of which the right not to be compelled to incriminate oneself is part.

National law powers

Once enacted, the national law will confer a range of powers of inspection, inquiry and search which are to be exercised for the purposes of compliance and enforcement of rail safety laws. These powers are contained in part 4 of the national law. Related enforcement provisions are found in part 5 of the national law.

Section 154 of the national law provides rail safety officers with powers to require any person in or on rail premises to produce any relevant documents in that person's custody or to which that person has access and the person can also be required to say who has custody of or access to a document and to answer any questions put to the person by the officer.

In addition, under section 145(3) of the national law, a rail safety officer has the power to direct relevant persons to give reasonable help to the officer so that he or she can effectively exercise powers under the national law, including the powers of search and inspection.

A person must comply with those requirements unless the person has a reasonable excuse for failing to comply.

Abrogation of right against self-incrimination

Section 155 of the national law provides that a person is not excused from answering a question or providing information or a document on the ground that to do so would incriminate the person. For that reason, the provisions engage the right not to be compelled to incriminate oneself. That right is protected by both section 25(2)(k) of the charter act (the right not to have to testify against oneself — rights in criminal proceedings) and also section 24(1) (the right to a fair hearing).

Limitations demonstrably justified — Purpose of abrogation of privilege against self-incrimination

The primary purpose of the abrogation of the privilege against self-incrimination in the national law is to ensure that rail safety officers have adequate powers to inquire into and to monitor compliance with the statutory obligations imposed on those who carry out railway operations.

The need to maintain rail safety and to prevent rail accidents by ensuring that statutory requirements are adhered to is an essential purpose of transport and other safety scheme legislation. For that reason, the provisions ensure that information, documents and evidence which support rail safety officers and the national regulator in those functions can be obtained albeit by coercive means.

Direct use immunity

Section 155(2) of the national law provides immunity to persons who have been compelled to provide incriminating information or a document. The answer to a question or information or a document provided by the person is not admissible in evidence in criminal proceedings or in any civil proceeding for a penalty, other than in proceedings in respect of the provision of false information.

This is called direct use immunity.

Extended immunity

Clause 46 of the bill provides that despite anything to the contrary in section 155 of the national law, information or documents obtained as a direct result or indirect consequence of a person answering a question or providing information or a document under a requirement or direction made under part 4 of the national law are not admissible as evidence against the person other than in proceedings arising out of the false and misleading nature of the answer, information, document or thing provided.

This extends the national law immunity to provide an indirect, or derivative use, immunity to persons compelled to provide information or documents. The extended immunity relates to information or documents obtained 'as a direct result or indirect consequence' of the information, document or answer provided by the person.

Charter act requirements

The right in section 25(2)(k) of the charter act is a right not to testify against oneself, the core idea being that a person should not be conscripted into incriminating him or herself.

The right has been held to extend to derivative use of the evidence obtained pursuant to compelled testimony unless the evidence is discoverable through alternative means (*Re*

Application under the Major Crime (Investigative Powers) Act 2004 [2009] VSC 381 (*Major Crime*)).

Major Crime decision

In *Major Crime*, Chief Justice Warren held that the Major Crime (Investigative Powers) Act 2004 (Vic) abrogated the common-law privilege against self-incrimination and restricted the use that may be made of compelled evidence by providing direct use immunity. However, the act failed to provide derivative use immunity, which was part of the right not to be compelled to incriminate oneself. The chief justice considered that right could not be adequately protected through the residual discretion of a trial judge to exclude evidence.

In finding that the proper approach was to interpret the Major Crime (Investigative Powers) Act consistently with the rights in the charter act, the chief justice said that derivative use immunity must be read into the Major Crime (Investigative Powers) Act.

The chief justice held that no distinction could meaningfully be drawn between the harm that flowed from incriminating information provided directly and incriminating evidence derived from such evidence. Parliament could not be understood as having enacted organised crime legislation in such a way as to provide a back door to prosecuting authorities to use compelled incriminating testimony against the testifier (i.e. by providing a direct use immunity but omitting to provide for a derivative use immunity).

The chief justice considered the relationship between the limitation in the Major Crime (Investigative Powers) Act and its purpose and found that the purpose of the limitation could still be achieved whilst retaining a form of derivative use immunity.

In the chief justice's view, derivative use of the evidence obtained pursuant to compelled testimony must not be admissible against any person affected by the provision abrogating the right against self-incrimination unless the evidence is discoverable through alternative means.

The chief justice considered that words providing for the derivative use immunity could be read into the act so as to ensure that such immunity always operates in relation to compelled testimony, where the evidence elicited from the interrogation could not have been obtained, or the significance of which could not have been appreciated, but for the evidence of the witness. However, in the light of the decision inclusion of a specific provision consistent with the decision in *Major Crime* and the charter act is the preferred course.

Variation in bill consistent with decision in Major Crime

Consistent with *Major Crime*, the bill varies the national law to provide for both not only for direct use immunity but also for derivative use immunity subject only to two exceptions which relate to evidence that is discoverable through alternative means. Where a person has the benefit of direct and derivative use immunities, there can be no limit on the privilege against self-incrimination protected by the charter act. While a person is required to provide information, they are protected from the information being used to incriminate them.

These exceptions are also consistent with Chief Justice Warren's judgement in *Major Crime*. They are also variations from the national law and are explained below.

Exceptions to immunity

Clause 46(3) of the bill provides that the immunity does not apply in relation to the following two classes of compelled documents or real evidence —

(a) information or documents that are required to be kept under the national law; and

(b) any information obtained from a person under the provisions of part 4 of the national law (securing compliance) that is contained in a document or item that the person is required to keep under the national law.

This means that a person who is required to provide incriminating information is protected against the direct or indirect use of that information against them in court proceedings except in these two situations where the information, documents or items are required to be kept in accordance with the national law in any event.

That is, the exceptions apply to evidence that is discoverable through alternative means to coercive questioning.

Compatibility of national law as varied by the bill

The direct use immunity, as contained in the national law, and the extended protection provided by the bill (the indirect, derivative use or 'chain of inquiry' immunity) ensure that a person remains protected when the answer to a question or the provision of information or documentation leads to a chain of enquiry and to evidence that might otherwise incriminate the person.

Although the abrogation of the privilege may be said to limit the rights under sections 25(1)(k) and 24(1) of the charter act, any limitations are demonstrably justified for the reasons stated above. The two exceptions are also compatible with the charter act, for the reasons explained below.

Compatibility of the two exceptions

Any limitation on the rights imposed by the two exceptions is reasonable under section 7(2) of the charter act. This is because the primary purpose of the exceptions to direct and indirect, derivative use immunity under the bill is to facilitate the prosecution of those who commit offences under rail safety legislation in circumstances where the documentation or information would be required to be kept by law anyway. The documentation or information would therefore be available upon a search in any event.

Protection to be accorded to documentary evidence

The search of and seizure of a person's records is not generally considered to breach the privilege against self-incrimination as the person has not been conscripted into articulating or producing what is expressed in the records. However, the privilege protects against the compelled production of documents as well as enforced oral testimony.

Despite that, the protection accorded to the compelled production of pre-existing documents (particularly those which are required to be kept by law) 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.

Application of principles to exceptions

Considering each of the two exceptions further, the first relates only to documents and information that a person is required to keep under the national law. The second relates to information contained in any document or item a person is required to keep under the national law and which has been obtained in accordance with the provisions of part 4 of the national law which relates to securing compliance.

The result is that only people participating in the regulated rail industry can be compelled to produce items either that they are obliged to create and maintain or that are related to and arise from their involvement in that activity.

I consider that the ability to enforce the national law in Victoria would be curtailed if evidence from documents that people participating in rail transport regulated under the national law are legally required to keep could not be used in criminal proceedings relating to breaches of their statutory obligations.

Abrogation of privilege against self-incrimination — conclusion

The limit on the right against self-incrimination is directly related to its purpose as described above. There are no less restrictive means reasonably available to achieve the purpose of the limitation. The only permission to use answers or information derived from a person in later proceedings, apart from the two exceptions where documentation or information is required to be kept in any event, is in relation to the falsity of an answer.

The provisions, including the derivative use immunity and the two exceptions to immunity contained in the bill advance the underlying objective of community and rail safety as well as promoting the maintenance of and continuous improvement in the risk management of rail safety. The extension of the immunity to include indirect use for the purposes of the national law and the provision of the two exceptions is consistent with the decision of the chief justice in *Major Crime*.

I consider that the provisions are compatible with the charter act and that any limitations are justified.

National regulator's coercive questioning powers

The national law contains additional coercive questioning powers.

Under section 20 of the national law, the national regulator may require information or documentation to be provided by serving written notice if the national regulator has reasonable grounds to believe that the person is capable of giving information, providing documents or giving evidence in relation to a possible contravention of the national law or that will assist monitoring or enforcing compliance with the national law.

If the national regulator is unable to obtain the information and documentation, the regulator has power to require a person to attend before the regulator to give either oral or written evidence and to produce documents. It is an offence to disobey without reasonable excuse.

If required to attend, the person may attend with a legal practitioner.

Privilege against self-incrimination applies

The abrogation of the privilege against self-incrimination in section 155 of the national law and the associated immunity provided in section 155(2) apply only to directions under part 4 of the national law. As a result, clause 46 of the bill also applies only to part 4. However, the national regulator's powers under section 20 are contained in part 2 of the national law.

This means that the common-law right not to incriminate oneself and charter act rights (including derivative use immunity, consistent with *Major Crime*) apply to requirements made by the national regulator under section 20 of the national law. For that reason, the extended immunity and exceptions provided for under clause 46 do not need to extend to the section 20 powers.

I also note that it is not an offence for an individual to refuse to answer a question put by a rail safety officer or provide information or a document to a rail safety officer under part 4 on the ground that the question, information or document might tend to incriminate the person, unless he or she was first given the warning required by section 156 of the national law.

In addition, section 245 of the national law provides (generally) that nothing in the national law requires a person to produce a document that would disclose information, or otherwise provide information, that is the subject of legal professional privilege.

Protection against double jeopardy

Section 26 of the charter act provides persons with a right not to be tried or punished more than once for an offence in respect of which the person has already been finally convicted or acquitted in accordance with the law (otherwise known as double jeopardy).

The national law and the bill contain provisions which protect this right.

National law (occupational health and safety legislation — no double jeopardy)

Section 48 of the national law explains the relationship between the national law and occupational health and safety legislation. That is, occupational health and safety legislation prevails to the extent of any inconsistency.

Section 49 of the national law provides that where an act or omission constitutes an offence under the national law and under occupational health and safety legislation, the offender is not liable to be punished twice in respect of the offence.

Protection against double jeopardy — laws of other participating jurisdictions

Clause 10 of the bill also provides that if an act or omission is an offence against the national law as it applies in Victoria and the offender has been punished for the offence under the law of another participating jurisdiction, the offender is not liable to be punished for the offence in Victoria.

In each case, section 26 of the charter act ensures that the provisions will be interpreted so that a person may not be prosecuted in Victoria if the person has been tried or punished for or acquitted of the occupational health and safety legislation offence or the offence of another participating jurisdiction.

Safety work infringements (statutory convictions)

Effect of a safety work infringement notice

Section 215B of the Transport (Compliance and Miscellaneous) Act 1983 provides for a safety work infringement notice scheme for rail safety alcohol offences.

A safety work infringement may be served by a member of the police force following the recording of a prescribed amount of alcohol concentration in a person's blood at the time of commission of the offence. If a safety work infringement notice is served, the safety work infringement takes effect as a conviction of the offence unless the rail safety worker to whom the notice was issued objects to the infringement notice within 28 days of the notice.

That is, a conviction is not recorded automatically if the person challenges the notice within the 28-day time limit. A person who receives a safety work infringement notice has the right, in accordance with the procedure prescribed in the Transport (Compliance and Miscellaneous) Act 1983, to have the matter dealt with by a court.

Clause 94 of the bill amends the definition of safety work infringement in section 208 of the Transport (Compliance and Miscellaneous) Act 1983 to extend its meaning to specified blood alcohol offences committed by a rail safety worker under the national law.

Charter act analysis

The provisions engage the section 24(1) charter act right to have a charge decided by a competent, independent and impartial court after a fair and public hearing and the section 25(1) right to be presumed innocent until proved guilty.

Insofar as infringement offences engage sections 24 and 25 of the charter act, any limitation on those rights as a result of an infringement notice process is considered marginal. The infringement process involves an alternative dispute resolution process whereby a person may accept a penalty without admitting guilt.

Unlike most infringement offences, safety work infringements result in a conviction being recorded without a court hearing (in the same way as occurs with certain road traffic drink driving offences). However, the person's rights are protected as the person is entitled to have the matter dealt with by a court if they elect to take that course.

Purpose of the section 24 right

The purpose of the section 24 right is to ensure the proper administration of justice and concerns procedural fairness — the right of a party to be heard and to respond to allegations. The right may be subject to reasonable limitations that can be demonstrably justified in a democratic society in accordance with section 7 of the charter act.

Rationale for and compatibility of safety work infringement process

Significantly, the primary elements of the offence (the presence of a certain blood alcohol concentration and the undertaking of rail safety work) have already been identified at the time the safety work infringement notice is served. Given that, the safety work infringement process is efficient and expedient and provides an alternative means of dealing with the allegations that an offence has been committed to laying a charge.

Although a conviction is recorded without the prosecution proving the guilt of the accused beyond reasonable doubt, as explained this does not occur where a person elects to proceed to court and requires the prosecution to prove the various elements of the offence. If a person wishes to challenge any element of the offence, including the blood alcohol concentration reading, he or she may do so and proceed to court.

Therefore, it is arguable whether the section 24 charter act right is limited because the matter can be taken to court. If any limitations nevertheless arise, I consider that they are minor. While the section 25(1) right to be presumed innocent is engaged for similar reasons to those set out above and reflects a fundamental common-law right, I also consider any limit on the right which may arise is reasonable and demonstrably justified in a democratic society in accordance with section 7 of the charter act.

Drug and alcohol controls — the bill

Clause 43 of the bill has the effect that drug and alcohol controls contained in the Rail Safety (Local Operations) Act 2006 (as the Rail Safety Act 2006 will become following amendments made by the concurrently presented Transport Legislation Amendment (Rail Safety Amendment Local Operations and Other Matters) Bill 2013) apply to the bill, with necessary modifications. Provisions in the Transport Legislation Amendment (Rail Safety Amendment Local Operations and Other Matters) Bill 2013 engage charter act rights and these are discussed in the statement of compatibility for that bill.

Drug and alcohol controls — the national law

Section 123 of the national law provides that a rail safety worker may be required to undertake a test for the presence of a drug or alcohol in accordance with the law and the provisions contained in the bill.

Section 126 of the national law also enables an authorised person to require a rail safety worker to submit to a preliminary breath test or breath analysis.

Section 127 of the national law enables an authorised person to require a rail safety worker to undergo a drug screening test, oral fluid analysis or blood test.

These provisions engage the right to a fair hearing, rights in criminal proceedings, privacy, protection from medical treatment without consent and freedom of movement. An analysis of these rights engaged is contained under the discussion of the clauses in the Transport Legislation Amendment (Rail Safety Amendment Local Operations and Other Matters) Bill 2013 in the statement of compatibility for that bill. The bills are necessarily to be read together in the

context of drug and alcohol controls and so I do not repeat that analysis here.

I do however note that evidence indicates that the use of drugs and alcohol can have adverse effects on the capacity of people to undertake tasks properly and safely, and ensuring compliance with alcohol and drug standards is an important means of protecting the safety of the travelling public, the community and workers in connection with railway operations in Victoria.

I also draw attention to section 128(3) of the national law, which provides that it is a defence to a charge relating to the presence of a prescribed drug in a person's oral fluid or blood if the person proves that he or she did not knowingly consume the prescribed drug. The effect of this wording, which mirrors the national law, is that the evidential onus of proof is reversed (as specifically stated in the provision, the accused must provide evidence). The evidence the accused must give is to be assessed on the balance of probabilities and will be within the particular knowledge of the accused. For that reason, I consider that any limitations on a person's rights in criminal proceedings are reasonable and justified.

Rights in criminal proceedings and the right to a fair hearing — evidential burden

The section 25(1) right to be presumed innocent requires that the prosecution must prove all aspects of a criminal charge.

The national law contains a number of provisions which place an evidential onus on the accused such as offences which contain a reasonable excuse defence. The effect of a reasonable excuse defence is therefore that once the prosecution provides evidence of the offence, the evidential burden shifts to the accused.

Where the evidential burden of proof is reversed, the accused must present or point to evidence that suggests a reasonable possibility of the existence of facts that, if they existed, would establish the defence. This goes beyond raising the possibility of the matters in question. The prosecution must then rebut the defence beyond reasonable doubt.

The following provisions of the national law contain an evidential onus:

Section 20 — a person must not, without reasonable excuse, fail to comply with a requirement to provide information or documentation to, or to appear before, the national regulator.

Section 101 — a rail transport operator must not, without reasonable excuse, fail to comply with the operator's safety management system for the operator's railway operations.

Section 104 — an accredited person must not, without reasonable excuse, fail to comply with a direction to amend the person's safety management system.

Section 145 — a person may be required to give reasonable help to a rail safety officer. A person must not fail to comply without reasonable excuse.

Section 154 — a person must not, without reasonable excuse, fail to comply with a requirement to produce documents or answer questions.

Section 159 — a person given a direction in respect of a seized thing must comply with that direction unless the person has a reasonable excuse.

Section 168 — a rail safety officer may require a person to provide his or her name and residential address in specified circumstances. A person must not fail to comply without reasonable excuse.

Section 184 — a person must not, without reasonable excuse, fail to comply with a non-disturbance notice.

Section 198 — a rail transport operator must not, without reasonable excuse, fail to comply with a direction to respond to certain reports.

Section 199 — a person must comply with a direction to stop, alter or not commence works unless the person has a reasonable excuse.

Section 227 — a person must not interfere with or disable a train or other things, or attempt to do so, without reasonable excuse.

Section 228 — a person must not apply a brake or emergency device fitted to a train or tram without reasonable excuse (trams are not regulated under the national law in Victoria).

Section 229 — a person must not cause a train to be stopped without reasonable excuse.

It is well established that the right to be presumed innocent is not absolute and can be limited provided that limitations are kept within reasonable limits and are not arbitrary or disproportionate.

In each case the limitation serves the important purpose of rendering prosecution an effective mechanism for ensuring cooperation with the activities of rail safety officers or the national regulator or to secure the safe operation of railways in Victoria. The imposition of an evidential onus ensures that the defendant must put any such reason at issue but still protects the presumption of innocence by requiring the prosecution to prove the absence of any such reason to the ordinary criminal standard.

The existence of a reasonable excuse will be in the person's own knowledge — that is, best known to the person him or herself. Producing evidence of the reasonable excuse should not be difficult. On the other hand, it is very difficult for the prosecution to prove a negative, i.e., that there is no reasonable excuse. Accordingly, to the extent that an evidential onus limits the charter act right in section 25(1) any limitation on the right is reasonable and demonstrably justified under section 7(2) of the charter act.

Secured sites

I also draw attention to section 149 of the national law which provides that a person must not enter or remain at a site the perimeter of which has been secured under that section without the permission of an authorised officer. An authorised officer must not unreasonably withhold permission.

However, that does not apply in circumstances where a person enters or remains to ensure the safety of persons, to remove deceased persons or animals, to move a road vehicle

or its wreckage to a safe place and to protect the environment from significant damage or pollution.

In the case of the four exceptions to the offence, section 72 of the Criminal Procedure Act 2009 provides that exceptions to criminal offences place an evidential onus on an accused to present or point to evidence that suggests that the exception would be established.

If permission is unreasonably withheld, some evidence to this effect must be put forward. However, drawing a matter to the court's attention should not be difficult if such circumstances exist.

In the event that a prosecution is brought, it would be necessary for the prosecution to prove each element of the offence. Insofar as the person charged must draw the circumstance which allowed the person to lawfully enter or remain at the secured site to the court's attention, for example the need to remain to ensure the safety of persons, this is not a difficult matter.

In any event, I consider that insofar as the provision engages the right to a fair hearing and rights in criminal proceedings, the provision is compatible with the rights protected by the charter act.

Offences of strict liability

The national law contains a number of strict liability offences including in relation to general safety duties. For example, section 60 of the national law provides that a person commits a category 3 offence if the person has a safety duty and the person fails to comply with the duty.

The prosecution must only prove the conduct of the accused for strict liability offences. However, unlike offences of absolute liability where the accused provides evidence of an honest and reasonable but mistaken belief in the existence of certain facts, the prosecution must then establish that there was not an honest and reasonable mistake of fact.

While the imposition of strict liability is sometimes categorised as limiting the common-law (and charter act) right to be presumed innocent, the imposition of strict liability may be considered a minor limitation because the imposition of strict liability will not criminalise honest errors. In addition, there are strong public safety reasons for ensuring that the rail safety regulatory regime is observed.

The right to be presumed innocent can be subject to reasonable limitations. The purpose of limitations is to secure rail safety. The limitations, if any, are reasonably connected to this purpose. In my opinion, there are no incompatibilities with the charter act right arising from the imposition of strict liability offences. For that reason, I do not set out each such offence in this statement.

Search, seizure and investigation powers

Section 143 of the national law provides rail safety officers with powers of entry to premises and powers that may be exercised on entry. Section 145 provides rail safety officers with powers of search, seizure and inquiry following entry to railway premises.

The powers of entry may be exercised in respect of railway premises which include premises (including an office, building or housing) used in connection with the carrying out of railway operations. A rail safety officer may also enter a place that adjoins railway premises if entry is required urgently for the purpose of dealing with a railway accident or incident. Entry may be made without consent.

Section 153 of the national law provides that entry to residential premises may only be made with the consent of the person with control or management of the premises, under a search warrant or for the sole purposes of gaining access to suspected railway premises but only if the rail safety officer believes that no reasonable alternative access is available and at a reasonable time.

Search warrants may also be obtained under section 150 of the national law on specified grounds and subject to certain procedures.

Engagement of the right to privacy

The powers of entry and related search and seizure powers engage the right to privacy, including in the context of interference with a person's home and private property.

However, expectations of privacy are lower in relation to activities involving a degree of governmental oversight, particularly where personal and public safety is at issue such as operating a vehicle or vessel.

I consider that to the extent that a person has an expectation of privacy in relation to railway premises, this expectation is diminished due to the highly regulated nature of the industry. It is reasonable to expect that rail safety officers will conduct checks of a rail transport operator's business and of railway premises. Indeed, these activities are essential for the proper oversight and regulation of rail safety in Victoria.

Limited power of entry to residential premises — compatibility

Any interference with privacy is not unlawful or arbitrary. The circumstances in which the right may be infringed are heavily circumscribed and are within a reasonable range of legislative responses given the paramount objective of securing rail safety.

The ability to enter residential premises without warrant or consent is very limited. Entry must be for the sole purposes of gaining access to suspected railway premises if the rail safety officer believes that no reasonable alternative access is available and the access is at a reasonable time would be exceptional and may be balanced against the paramount need to secure rail safety.

I consider the power to be within a reasonable range of responses to secure rail safety consistent with the overall regulatory scheme.

Other entry, search and seizure powers — compatibility

There are no lesser means available in respect of the balance of entry, search and seizure powers in division 5 of part 4 of the national law such as the use of electronic equipment to examine things. Interferences are precise and circumscribed. The powers can only be exercised in the controlled and prescribed circumstances set out in the national law. Prosecutions for offences under the national law would be frustrated in the absence of these powers as evidence may be concealed or destroyed if searches and enquiries could not be conducted for compliance and enforcement purposes.

In addition, a number of provisions ensure the accountability and transparency of the processes. Rail safety officers may not use more force than is reasonably necessary to exercise these powers. The national law provides detailed guidance as to the use, retention, access and return of seized items. Compensation may be payable in prescribed circumstances.

Rights of entry and privacy — conclusion

For all these reasons, I consider the provisions are compatible with the section 13(a) right to privacy.

Property

Section 20 of the charter act provides that a person must not be deprived of his or her property other than in accordance with law. The seizure powers in the national law (sections 158–167) may in certain circumstances amount to a deprivation of property but the powers are compatible with the section 20 right.

Any seizure of property under the legislation must be in accordance with law because the circumstances in which seizure can occur are clearly specified and safeguards against arbitrary deprivation of property are provided. These safeguards include the provision of compensation for damage caused to property during the exercise of these powers.

The national law also contains powers of inspection and examination of things and the power to examine or use equipment including electronic equipment. For example, section 147 of the national law deals with the use of electronic equipment and section 148 deals with the use of equipment to examine or process things. However, the provisions are not arbitrary and in most cases are temporary in nature. Insofar as these provisions also engage section 20 of the charter act, they are compatible with the right.

Freedom of movement

Under section 149 of the national law, an authorised officer (a rail safety officer or a police officer) may take all reasonable steps to secure the perimeter of a site at railway premises for the purpose of protecting evidence that might be relevant for compliance and investigative purposes. It is an offence to enter or remain, without the permission of an authorised officer, at a site the perimeter of which is secured. However, certain exceptions apply.

A rail safety officer may also issue a non-disturbance notice under section 182 of the national law to a person with control or management of railway premises to preserve, or prevent the disturbance of, a site. It is an offence under section 184 of the national law not to comply without reasonable excuse.

A person may also be required to give reasonable help to a rail safety officer under section 145(1)(k) of the national law.

Section 12 of the charter act provides that every person lawfully within Victoria has the right to move freely within Victoria. Assuming that these provisions limit the right in section 12, any such limits are demonstrably justified under section 7(2) of the charter act for the following reasons.

The right to freedom of movement is not regarded as an absolute right in international law and can be subject to reasonable limitations. The purpose of the powers is to enable rail safety officers to investigate whether offences have been committed and to preserve evidence relating to the commission of the offence. These are important purposes.

The powers can only be exercised in relation to sites at railway premises and any limit on a person's general freedom of movement is minor. The powers are subject to express and implied limitations. Implicitly, the site can only be secured for no longer than is required for the purpose of the provision — for example, to undertake the necessary search or to preserve evidence.

The limitations imposed on the right by the powers are directly and rationally connected to their purpose. There are no less restrictive means available to achieve these purposes.

The power of exclusion from a site and to regulate a site by serving a non-disturbance notice are essential to rail safety officers' function of investigation of rail safety incidents, including the need to preserve evidence. The requirement to provide reasonable help to the rail safety officer to exercise his or her powers on entry is equally essential to enable a rail safety officer to exercise his or her functions — for example, in the event of a rail accident or incident.

The right is also engaged by section 159 of the national law — a person may be given a direction under that provision in respect of a seized thing to take it to a specified place and, if necessary, to remain in control of it at the specified place for the period specified in the direction. The person must comply with that direction unless the person has a reasonable excuse.

Similar directions may be given about the thing's return under section 160 of the national law. Again, these powers are necessary to enable rail safety officers to properly fulfil their functions of compliance and enforcement relating to the maintenance and improvement of rail safety.

Freedom of expression

Section 15 of the charter act provides that all persons have the right to freedom of expression which includes a right not to impart information. Provision of information to authorities may engage section 15.

The national law contains provisions that require persons to provide information and to produce any documents relevant to an investigation. The powers of rail safety officers to require a relevant person to produce information, documents and related items are discussed above.

Section 15(3) of the charter act provides that special duties and responsibilities are attached to the right of freedom of expression and the right may be subject to lawful restrictions reasonably necessary —

(a) to respect the rights and reputations of other persons; or

(b) for the protection of national security, public order, public health or public morality.

In *Magee v. Delaney* [2012] VSC 407, Kyrou J said that section 15(3) of the charter act sets out obvious instances of restrictions that apply to the right to freedom of expression but does not define the boundaries of permissible forms of expressive conduct. The section is not expressed to be an exhaustive statement of the restrictions to which the right to freedom of expression may be subject.

It is questionable whether the provisions would require the production of information of a type protected by section 15 of the charter act. However, if they do, I consider that the provisions are compatible with the right.

The protection of rail safety, which is the essence of the statutory scheme, is a fundamental public policy objective that limits the right of freedom of expression to the extent necessary to secure positive rail safety outcomes, thus protecting the rights and freedoms of people not regulated by the bill and the accompanying national law.

The requirements in the national law to provide information in the interests of rail safety are reasonably necessary to secure the safety of others and to maintain public order. Therefore, I consider that the right is not limited. It is engaged only to a minor level. However, the analysis of the right and the provision is included for completeness.

Administrative decisions and the right to a fair hearing

Under section 24(1) of the charter act, a party to a civil proceeding has the right to have the proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

In *Kracke v. Mental Health Review Board & Ors (General)* [2009] VCAT 646, Bell J concluded that the right to a fair hearing is not confined to proceedings of a judicial character and can apply to civil proceedings which are of an administrative character. Bell J noted that in assessing compliance with the right, regard may be had to the whole decision-making process including reviews and appeals.

I have considered the effect of the provisions in the bill and in the national law on the fair hearing right.

In deciding whether there is a breach of the right to a fair hearing, the processes must be considered in their entirety, including any available rights of appeal or review. Considering these various procedures in this manner, they accord individuals their right to a fair hearing. In reaching this conclusion, particular weight may be placed on the fact that there is an opportunity for individuals adversely affected by a decision to seek a review by VCAT in respect of reviewable decisions: see clause 47 of the bill.

In each case, I consider that the procedures provided in the bill, including any rights of appeal or review that are available, are appropriate to the nature of the particular interests that are at stake.

In my opinion, there are no incompatibilities with section 24 of the charter act. None of the reviewable decision provisions or provisions to which appeal rights apply appear to test or infringe the Scrutiny of Acts and Regulations Committee's terms of reference.

As I have reached this view, I have not specifically referred to each reviewable decision or procedure in this statement.

Enforceable voluntary undertakings

Again for completeness, I refer to division 6 of part 10 of the national law which contains provisions relating to enforceable voluntary undertakings. These engage section 24 of the charter act.

I draw particular attention to enforceable undertakings because it is an offence to breach an undertaking that has been given. An undertaking may only be withdrawn or varied with the written agreement of the national regulator.

However, the provision of an undertaking is a matter of free choice for the person giving it and does not constitute an admission of guilt. In addition, enforcement of that breach is a matter for the court. The court may make a variety of orders including requiring the person to comply with the undertaking, discharging the undertaking or making any other order that the court considers appropriate in the circumstances.

In my opinion, there are no incompatibilities with section 24 of the charter act. To avoid doubt, section 25 is not engaged because the giving of an undertaking is not a part of criminal proceedings and does not amount to an admission of guilt.

Conclusion

I consider that the bill (including the South Australian-based national law which is applied by and varied in part by the bill) is compatible with the Charter of Human Rights and Responsibilities Act 2006.

The bill raises human rights issues but any limitations on human rights under the bill are demonstrably justified for the purposes of section 7(2) of the charter act.

Matthew Guy, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. P. R. HALL (Minister for Higher Education and Skills).

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

That the bill be now read a second time.

Incorporated speech as follows:

The prime purpose of this bill is to provide for a national rail safety regulation scheme, including a national rail safety regulator, and a national rail safety investigator in Victoria in accordance with the state's intergovernmental obligations.

Rail, including rail safety regulation and investigation, has predominantly been a state and territory responsibility since trains first ran in Australia. The rail history in this state is a rich one. The first steam trains in the country operated on the Sandridge line in the then colony of Victoria in September 1854, just 24 years after the world's first railway began in England. Victoria was also the first jurisdiction in Australia to electrify its rail lines, beginning with our suburban lines in 1919.

Almost 160 years after the first train ran, rail transport has become a critical part of the Australian passenger and freight transport networks and a critical enabler of the national and state economies.

Rail safety outcomes have traditionally been good in Victoria. Apart from level crossing tragedies we have largely avoided the types of major incidents that have led to significant deaths and injuries from time to time overseas and in other places in Australia. However, care is obviously needed to keep regulatory arrangements right in the rail sector as the area is one where low probability but high consequence events can occur at times with potentially disastrous effects for life and limb.

It goes without saying that the Victorian government is committed to ensuring that rail safety standards in Victoria remain high and improve. As required by our existing local statutes, the government's aim is simply to make sure that safety levels are not only maintained across the state, but continue to improve where practicable bearing in mind that privately managed rail operations are more extensive here than in any other place in the country.

However, at the same time as maintaining and improving safety levels we must also make sure that rail safety is regulated as efficiently as possible and in ways that reduce unnecessary red tape and costs to operators and which support the national and state and territory economies including Victoria's.

The state and territory-based nature of regulation and investigation has been a concern for national rail interests, who have advocated for a national system for some years. The basis of the concern centres on views that local systems impede national efficiency and hold back safety improvements.

In June 2009, the Council of Australian Governments agreed to pursue national schemes including dedicated regulators for the heavy vehicle, rail and marine sectors in addition to a national rail safety investigator. COAG members, including the Premier of Victoria, later signed intergovernmental agreements in August 2011 which set the structures and procedures for the rollout of these proposals across the country.

Overall, the measures form part of a broader COAG project which aims to improve national economic outcomes by seeking to reduce costs to business in complying with regulation and by assisting labour mobility.

Victoria supports the national rail safety scheme, the national rail safety regulator and the national rail safety investigator, and the bill before the house enables these rail initiatives to take effect across the state.

The national rail safety regulation scheme

The national rail safety regulation proposal is structured as an applied laws or template scheme. This harmonisation method requires the host jurisdiction to pass a law and the other states and territories to pass legislation to apply that law locally. South Australia is the host jurisdiction for the national rail safety regulation scheme and it passed a template national law last year thereby making it available for other jurisdictions to apply.

The bill before us creates a new principal statute to apply the South Australian law as Victorian law and enables the operation of the national regulator in this state. It includes substantive stand-alone provisions, including clause 6, which applies the South Australian-based national law, while also amending Victoria's Transport Integration Act 2010 and other affected Victorian statutes.

The pursuit of national rail safety regulation is not new. The key features of the national law applied by the bill before the house essentially adopt the policy template in Victoria's existing Rail Safety Act. That statute was later followed in a national model bill and progressively replicated in the laws of other states and territories between 2007 and 2010.

The key features of this regulatory framework have not changed markedly in the last seven years and they include provision for —

> general safety duties covering industry parties and individuals which require persons to ensure safety so far as reasonably practicable;
>
> accreditation requirements for rail operators including those who manage track and other rail infrastructure and operate rolling stock;
>
> safety management system requirements;
>
> an industry regulator;
>
> a range of measures which enable the rail safety regulator to take appropriate compliance and enforcement action.

As well as these matters, the new national law adopts some of the additional features of Victoria's scheme which were not picked up by the 2006 model bill including strengthened risk management requirements, cost-benefit protections against potentially gold-plated rail safety decisions, establishment of a general safety duty on persons who load and unload freight from rail wagons and other important matters.

The national rail safety law therefore essentially represents an updating of Victoria's existing framework. While the underlying regulatory scheme endures, the key changes made by the national scheme arise from the applied laws approach and, more fundamentally, the establishment of a national regulator.

It is important to note that the national rail safety scheme applies to most but not all railways in Victoria. The scheme covers the metropolitan passenger rail network operated by Metro Trains Melbourne, the regional network operated by V/Line and regional operations managed by the Australian Rail Track Corporation, Pacific National and other rail operators.

The key exclusions from the national scheme are purely local operations that remain under Victoria's existing Rail Safety Act by agreement between Victoria, the commonwealth and other jurisdictions. The exclusions include all tram and light rail operations including Melbourne's iconic tram system — the world's largest, operated by Yarra Trams — and seven tourist and heritage railways operating in regional areas of Victoria on stand-alone rail lines. I note that the excluded tourist and heritage railways chose to remain under state regulation after representations were made to the Minister for Public Transport by the Association of Tourist Railways which has concerns about extra costs from the national scheme identified in impact assessment material.

The national rail safety regulator has already been appointed and states and territories are progressively enacting their application laws. Despite jurisdictions each applying the

national law, only one national entity is actually created — the national rail safety regulator located in Adelaide.

In practical terms, having a national regulator means that rail operators working across multiple jurisdictions need only obtain one rail safety accreditation. As a result, the scheme particularly benefits rail operators who operate across state and territory borders who will need one safety management system and be ultimately responsible to one regulator only. As a result, the scheme is particularly positioned to reduce red tape and costs to national operators.

The government's aim of maintaining and improving rail safety requires the right balance of national and local safety management, oversight and resources. The agreement to implement the national scheme in Victoria comes with assurances that there will be no less resources and regulatory oversight applied here. There is too much at stake to cut corners and it is therefore recognised that continuation of the vigilance applied to safety in this state is necessary to maintain and improve standards and public confidence.

The centralisation involved in the national scheme is extensive and while it goes beyond arrangements in places like the European Union and Canada, it is nonetheless consistent with arrangements in the United States. It is important to note that the US rail safety scheme enables the national regulator to delegate powers back to states to ensure that major city and other domestic state rail systems in that country are overseen locally. This ensures sufficient ongoing local presence and involvement in the management and regulation of safety risks.

Consistent with this approach, rail safety regulation will continue to be provided in Victoria by the director, transport safety, or Transport Safety Victoria, the current industry regulator. The director will operate under a service level agreement or SLA with the national rail safety regulator along with sufficient accompanying delegations to ensure an effective, robust and practical arrangement. In recognition of the importance of good rail safety to Victorians, the bill provides that the minister and the director must both sign the SLA to ensure approval of the arrangement at both policy and operational levels.

The SLA is a key part of the management of the national scheme under the intergovernmental agreement for jurisdictions which choose to retain local involvement. The government notes that New South Wales is operating under an SLA, meaning that the busiest and most complex rail networks in the two most populous jurisdictions in the country have chosen to retain substantial hands-on local involvement in rail safety regulation.

The service level agreement and delegations are currently being negotiated. They will detail how the national regulator and Victoria's regulator will work together to maintain our high standard of rail safety in Victoria and continue the state's good safety record.

Victoria's safety record is one of two major reasons why the service level agreement approach was chosen for Victoria, as it ensures that sufficient local resources stay in place while still delivering the national consistency sought by the national rail industry. The second major reason is that most fatalities and major injuries associated with rail operations occur at level crossings. Better regulation and management of level crossing risks is of the highest priority to this government. Integration of regulation and management of level crossing risks is best achieved at the local level.

The national rail safety investigations scheme

The national rail safety initiatives affect safety-related investigations as well as industry regulation. The measures establish a national rail safety investigator to facilitate the pooling of so-called no blame or just culture investigatory resources from the two states which currently have this investigatory model — Victoria and New South Wales — while introducing a complete and dedicated investigation capability in other states and territories for the first time.

The Australian Transport Safety Bureau (ATSB) currently confines its rail safety investigation activities to the national rail lines which comprise the defined interstate rail network. It was resolved as part of the national agreement to extend the role of the ATSB by cooperation so it becomes a truly national rail safety investigator by having the capacity to conduct or oversee investigations on all nationally regulated rail lines in all jurisdictions for the first time.

As Victoria already has an established investigator in the chief investigator, transport safety, it is agreed that rail safety investigations in Victoria may be conducted either directly by ATSB or by the chief investigator acting on behalf of ATSB in accordance with the terms of a collaboration agreement between the agencies. If ATSB is not interested in a particular matter, the chief investigator may still investigate it under state law. Over time, it is expected that the majority of rail safety investigations in Victoria and New South Wales will, however, be conducted under commonwealth legislation, the Transport Safety Investigation Act 2003, either by ATSB directly or through the existing state investigation offices.

State and territory ministers currently have no power to direct ATSB to conduct an investigation under the commonwealth act, something which the Victorian minister can require of the chief investigator under local arrangements. The commonwealth act was amended earlier this year at Victoria's initiative, and with the subsequent agreement of all jurisdictions, to give state and territory ministers capacity to request that ATSB conduct rail safety investigations.

Conclusion

The regulatory and investigatory initiatives introduced by this bill are the culmination of work over almost four years by transport ministers, Council of Australian Governments members, and transport department and rail safety regulation and investigation agency staff across the country.

These new arrangements have been sought for many years by areas of the rail industry and by some governments and, as a result, they come with high expectations that they will deliver substantial improvements to rail safety and efficiency.

Victoria simply wants the initiatives to deliver what they have promised — that is, improved rail safety in Victoria and across the country, and reduced red tape for the rail industry in Victoria and across the country.

Victoria supports these schemes and we wish them well.

I commend the bill to the house.

Debate adjourned for Mr TEE (Eastern Metropolitan) on motion of Mr Lenders.

Debate adjourned until Thursday, 28 March.

TRANSPORT LEGISLATION AMENDMENT (RAIL SAFETY LOCAL OPERATIONS AND OTHER MATTERS) BILL 2013

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

For Hon. M. J. GUY (Minister for Planning), Hon. P. R. Hall tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

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

In my opinion, the Transport Legislation Amendment (Rail Safety Local Operations and Other Matters) Bill 2013 (the bill), as introduced to the Legislative Council, is compatible with the human rights protected by the charter act.

I base my opinion on the reasons outlined in this statement.

Overview of the bill

The bill is a companion proposal to the Rail Safety National Law Application Bill 2013. The purpose of the Rail Safety National Law Application Bill is to give effect in Victoria to the national rail safety regulation scheme, including a national rail safety regulator, and a national rail safety investigator as part of the state's intergovernmental obligations.

The local operations bill, on the other hand, modifies the scope of Victoria's existing rail safety statute — the Rail Safety Act 2006 — as a result of Victoria's entry into the national scheme. The Rail Safety Act must be adjusted to exclude coverage of the national rail operations regulated by the Rail Safety National Law Application Bill while retaining its application to the state's domestic rail operations which do not transfer to the national scheme.

Operations in this category include tram and light rail operations which stand alone from the state's other rail networks. The prime example is Melbourne's light rail and tram system.

The Melbourne metropolitan tram and light rail network is not connected to any national or interstate rail operation. Melbourne's network is a local rail operation. Many tourist and heritage tram and heavy railway operations operating in regional areas of Victoria on dedicated rail lines are in the same position.

For this reason, the commonwealth and other participating jurisdictions agreed that Victoria will retain tram and light rail operations under local regulation overseen by the director, transport safety or Transport Safety Victoria. Those jurisdictions also agreed that tourist and heritage railway operations on stand-alone lines could be nominated to remain under local regulation.

The Rail Safety Act is renamed by the bill as the Rail Safety (Local Operations) Act 2006 (Rail Safety Act). While the national scheme essentially adopts Victoria's existing rail safety policy and legislation framework, it nonetheless updates and modifies the framework.

The bill effects necessary and appropriate changes to the Rail Safety Act as a result of Victoria's entry into the national scheme to keep the local scheme current and to maintain national consistency in rail safety regulation. In particular, key aspects of regulation such as accreditation and exemptions, risk management, compliance and enforcement provisions and penalties are aligned with similar aspects of the national scheme.

In addition, the bill makes one change to the Bus Safety Act 2009 to enable red tape to be reduced in the bus industry by allowing exemptions from accreditation and registration requirements to be given to bus operators.

Purpose of the bill

The prime purpose of the bill is therefore to confine the scope of the state's Rail Safety Act 2006 to specified domestic rail operations.

The bill also deals with drug and alcohol controls for both the local and national schemes. The national scheme contains a number of provisions dealing with drug and alcohol controls but these are inadequate and do not work as a holistic scheme. As a result, the national provisions need to be heavily supplemented by provisions in Victoria's local law in order to maintain drug and alcohol controls for rail safety workers in Victoria.

The bill also contains a number of technical and procedural changes including consequential amendments to reflect the change in name of the Rail Safety Act. The bill also aligns a number of penalties to make them consistent with the penalties for the same offences listed in the national law. These changes do not affect charter act rights.

Protection against double jeopardy

Section 26 of the charter act provides persons with a right not to be tried or punished more than once for an offence in respect of which the person has already been finally convicted or acquitted in accordance with the law (otherwise known as double jeopardy).

Occupational health and safety — no double jeopardy

Consistent with the approach taken in the Rail Safety National Law Application Bill, clause 95 of the bill inserts new section 101A into the Rail Safety Act which provides that where an act or omission constitutes an offence under the Rail Safety Act and under occupational health and safety legislation, the offender is not liable to be punished twice in respect of the offence.

National law — no double jeopardy

Clause 95 of the bill also inserts new section 101B into the Rail Safety Act and confirms that where an act or omission constitutes an offence under the Rail Safety Act and under the national law, the offender is not liable to be punished twice in respect of the offence. The provision is again drafted consistently with the approach taken in the Rail Safety National Law Application Bill.

Protection clarified by the bill

The bill ensures that a person may not be prosecuted in Victoria if the person has been punished for the occupational health and safety legislation offence or an offence under the national law, consistent with the charter act right.

Drug and alcohol controls

Clause 89 of the bill inserts a new part 6 into the Rail Safety Act to replace the current part. The drug and alcohol control provisions in that part engage the right to a fair hearing, rights in criminal proceedings, privacy and protection from medical treatment without consent. It is questionable whether the provisions engage the freedom of movement and expression. However, if they do, I consider that the provisions are compatible with the rights.

Reverse onus provisions

The drug and alcohol control provisions in the bill contain offences which reverse the legal onus of proof. That is, where the legal persuasive burden is placed on the accused by requiring the accused to prove, on the balance of probabilities, a fact that is essential to the determination of innocence or guilt.

The provisions in the bill therefore likely limit the section 25(1) right to be presumed innocent until proven guilty according to law and the section 24 right to a fair hearing.

Noting the considerable overlap with section 25 rights, the right to a fair hearing applies more acutely in criminal proceedings because the accused has most at stake. However, any limitations on the right are justified for the reasons explained below.

These offences may also impact upon the presumption of innocence. For that reason, the risk that an accused can be convicted despite reasonable doubt of his or her guilt is analysed below. However, I note that reverse onus offences do not necessarily violate the presumption of innocence where they are within reasonable limits of what is at stake and maintain the rights of the defence.

Reverse onus provisions — presence of alcohol or drugs

New section 71 contains interpretative provisions which enable presumptions to be made where a certain concentration of alcohol or drugs is found to be present in a person's blood, breath, body or oral fluid within a certain time after an alleged offence, unless the contrary is proved.

The reverse onus provisions are as follows:

(1) for the purposes of part 6, if it is established that, at any time within 3 hours after an alleged offence against new section 76(1)(a) or (c) or 77(1)(a), a certain concentration of alcohol was present in the blood or breath of the rail safety worker charged with the offence, it must be presumed, until the contrary is proved, that not less than that concentration of alcohol was present in the rail safety worker's blood or breath (as the case requires) at the time at which the offence is alleged to have been committed;

(2) for the purposes of part 6, if it is established that at any time within 3 hours after an alleged offence against new section 76(1)(b), a certain drug was present in the oral fluid or blood of the rail safety worker charged with the offence, it must be presumed, until the contrary is proved, that the drug was present in the rail safety worker's oral fluid or blood at the time at which the offence is alleged to have been committed;

(3) for the purposes of part 6, if it is established that at any time within 3 hours after an alleged offence against new section 76(1)(c) or 77(1)(b), a certain drug was present in the body of the rail safety worker charged with the offence, it must be presumed, until the contrary is proved, that the drug was present in the rail safety worker's body at the time at which the offence is alleged to have been committed;

(4) for the purposes of an alleged offence against new section 77(1)(f) or (g), it must be presumed that the concentration of alcohol indicated by an analysis to be present in the breath of the rail safety worker charged or found by an analyst to be present in the sample of blood taken from the rail safety worker charged was not due solely to the consumption of alcohol after having carried out rail safety work unless the contrary is proved by the rail safety worker charged on the balance of probabilities by sworn evidence given by him or her which is corroborated by the material evidence of another person; and

(5) for the purposes of an alleged offence against new section 76(1)(b) or (c) or 77(1)(b), it must be presumed that a drug found by an analyst to be present in the sample of blood or oral fluid taken from the rail safety worker charged was not due solely to the consumption or use of that drug after carrying out rail safety work unless the contrary is proved by the rail safety worker charged on the balance of probabilities by sworn evidence given by him or her which is corroborated by the material evidence of another person.

However, new section 72 provides that a rail safety worker is not to be taken to be impaired for the purposes of new section 86B or 86D unless his or her behaviour or appearance is such as to give rise to a reasonable suspicion that he or she is unable to carry out rail safety work properly.

See also new section 79, which provides that evidence of the effect of alcohol or use of a drug on the accused is admissible for the purpose of rebutting a presumption in respect of the presence of alcohol in a person's blood or drug found in a sample of blood or oral fluid created by new sections 71(4) and (5) (explained above).

That is, that for the purposes of an alleged offence against new section 77(1)(f) or (g) it must be presumed that the concentration of alcohol indicated by an analysis to be present in the breath of the rail safety worker charged or found by an analyst to be present in the sample of blood taken from the rail safety worker charged was not due solely to the consumption of alcohol after having carried out rail safety work. However, evidence of the effect of alcohol on the accused is admissible for the purpose of rebutting this presumption. The evidence of the effect of alcohol on the accused is otherwise inadmissible.

In addition, for the purposes of an alleged offence against new section 76(1)(b) or 77(1)(b) it must be presumed that a drug found by an analyst to be present in the sample of blood or oral fluid taken from the rail safety worker charged was not due solely to the consumption or use of that drug after carrying out rail safety work. However, evidence of the effect of the consumption or use of a drug on the accused is admissible for the purpose of rebutting this presumption. The evidence of the effect of the consumption or use of a drug on the accused is otherwise inadmissible.

I note that these provisions are similar to other transport drug and alcohol provisions. See, for example, section 48 of the Road Safety Act 1986 and section 27 of the Marine (Drug, Alcohol and Pollution Control) Act 1988.

Effect of provisions

It can be seen that presumptions about a person's guilt are made on the basis that alcohol or a drug is found to be present in the person's oral fluid, blood or breath. Unless the person is able to prove otherwise, it is presumed that the accused consumed alcohol or the drug prior to carrying out, or while carrying out, rail safety work.

However, the presumptions are rebuttable by sworn evidence to the contrary and the provisions are limited by their terms. For example, sworn evidence may be given and corroborated by material evidence to rebut a presumption that the consumption or use of a drug was not due solely to the consumption or use of that drug after carrying out rail safety work. The sworn evidence, including corroborating material evidence, is to be assessed on the lower balance of probabilities test.

I also draw attention to new section 76(3) in clause 89 of the Bill, which provides that it is a defence to a charge relating to the presence of a prescribed drug in a person's oral fluid or blood if the person proves that he or she did not knowingly consume the prescribed drug. The effect of this wording, which mirrors the national law, is that the evidential onus of proof is reversed (as specifically stated in the provision, the accused must provide evidence). The evidence the accused must give is to be assessed on the balance of probabilities and will be within the particular knowledge of the accused. For that reason, I consider that any limitations on a person's rights in criminal proceedings are reasonable and justified.

Reverse onus provisions — drug impairment

New section 80 contains presumptions in relation to impairment by a drug.

In proceedings for an offence under new section 77(1)(b), proof that a rail safety worker —

(a) was carrying out rail safety work; and

(b) that one or more drugs were present in the rail safety worker's body at the time the work was carried out; and

(c) that the behaviour of the rail safety worker on an assessment of drug impairment carried out under the bill was consistent with the behaviour usually associated with a person who has consumed or used that drug or those drugs; and

(d) that the behaviour usually associated with such a person would result in the person being unable to carry out rail safety work properly

is, in the absence of evidence to the contrary, proof that the rail safety worker carried out rail safety work while impaired by a drug.

Effect of provisions

Again, presumptions of guilt are made on the basis of the presence of a drug or drugs and the behaviour of a rail safety worker at the time an assessment of drug impairment is carried out.

The presumptions are rebuttable by evidence to the contrary and the provisions are again limited by their terms. In particular, there is the need for the presence of a drug in a person's system at the time he or she carried out rail safety work and that certain behaviour was exhibited during a drug assessment.

Likelihood of an innocent person being convicted

In each case, I consider the likelihood of an innocent person being convicted as a result of the application of these presumptions to be remote bearing in mind the factual background required for the presumptions to be made.

I also take into account that the provisions enable the presumptions to be rebutted by evidence to the contrary.

The rail industry is regulated for public purposes which include maintenance and improvement of community safety and service standards. By choosing to engage in a regulated activity, it is reasonable to expect rail operators and rail safety workers to take steps to ensure that rail operations and safety work is only conducted lawfully and safely. This regulation is important to protect the rights and safety of others and the rights and safety of the community at large.

If reasonable steps have been taken by the regulated person to ensure legality and safety, the risk that an innocent person may be convicted of an offence is extremely low (if such a risk exists at all).

The purpose of imposing a burden of proof on persons subject to rail safety laws is to ensure that these offences can be prosecuted effectively and that they operate as a deterrent to the unlawful carrying out of rail safety work and rail transport operations by imposing a duty on operators and rail safety workers to actively take responsibility for the manner in which rail transport operations are carried out and rail safety work is conducted. That is, that rail safety work should not be carried out by a person under the influence of alcohol or a drug.

The demonstrable justification for these provisions, which are of a regulatory nature, is that maintenance and improvement

of rail safety is the paramount purpose of the bill and the provisions are needed to better secure the safety of rail operations in Victoria.

Evidential onus not preferred

The imposition of a burden of proof on the accused is directly related to its purpose as described above. Where the legal onus has been reversed, an evidential onus would not be effective as it could be too easily discharged by the defendant.

Having regard to the purpose of the offences, it would be unduly difficult and onerous for the state to investigate and prove the relevant components of the offences to which the provisions apply, noting that the presence of alcohol or a drug must be present, or certain behaviours exhibited, in each case.

It follows that a reasonable excuse provision is not preferred to a reverse onus defence in these cases and that no less restrictive means are considered to be reasonably available to achieve the purpose of the provisions in question.

Reverse onus provisions — right to a fair hearing

Insofar as the provisions also engage the right to a fair hearing, I consider that any limitations on that right is reasonable and justified for the same reasons.

Evidentiary provisions

Evidentiary provisions in the bill may engage the section 25(1) charter act right which provides that a person charged with a criminal offence has the right to be presumed innocent until proven guilty according to law. The section 24 right to a fair hearing may also be engaged by evidentiary provisions relating to the calling of witnesses.

Printout of breath analysis recording

New section 86 enables evidence of breath analysis to be given by way of a printout produced by the breath testing instrument in respect of that sample purporting to be signed by the person who operated the instrument where the question is whether a breath analysis instrument was incapable of measuring in grams the amount of alcohol present per 210 litres of exhaled air.

The provision engages the right to the presumption of innocence as the document is admissible in evidence and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it. The associated right to a fair hearing is engaged for the same reasons.

The limitation enables the operator of a device to sign the printout so that it may be used in evidence without the operator having to attend court to give evidence. The evidence relates only to the printout in respect of the sample.

The limitation is clearly related to its purpose which is to facilitate the effective prosecution of rail safety offences involving the use of alcohol. It simply provides a means of ensuring the printout from the instrument which shows the reading of alcohol in grams present in 210 litres of exhaled air is admissible in evidence in the specified circumstances.

I note that the provision again reflects evidentiary provisions in Victoria's road safety scheme.

The limitations on the right are reasonable and I do not consider that less restrictive means are reasonably available to achieve the purpose of the limitation.

Drug assessments

New section 86C enables evidence of authorisation to carry out a drug assessment to be given by way of certificate. The certificate is, in the absence of evidence to the contrary, proof of the authority of the person conducting the assessment to carry out an assessment. This provision also engages the right to be presumed innocent and the right to a fair hearing.

Again, any limitation is clearly related to its purpose which is to facilitate the effective prosecution of rail safety offences involving the use of drugs. I do not consider that there are less restrictive means available to achieve this.

Blood tests and oral fluid analysis

New sections 86I and 86J contain evidentiary provisions about blood tests and oral fluid samples. The provisions prescribe certificates which must be completed by analysts or experts regarding the presence of alcohol or a drug in a person's blood or oral fluid or the usual effect of a specified substance when consumed or used (including its effect on a rail safety worker's ability to carry out rail safety work).

The certificates relate to the taking of samples and the presence of alcohol or drugs and the usual effect of drugs on a person. The certificates may be used as evidence in a trial without the analyst or expert having to attend court. The matters stated in the certificates are, in the absence of evidence to the contrary, proof of the facts and matters contained within them.

The engagement of the right is fairly minor. Again, any limitation is clearly related to its purpose which is to facilitate the effective prosecution of rail safety offences involving the use of drugs. I do not consider that there are less restrictive means available to achieve this.

Provisions and limitations demonstrably justified

These provisions engage a person's rights in criminal proceedings (including the right to call and examine defence witnesses under the same conditions as prosecution witnesses) and the right to a fair hearing.

The limitation primarily arises because the bill limits the ability of the accused to cross-examine prosecution witnesses. For example, the bill provides that an accused may, with the leave of the court, require the person who has given the certificate to attend a court for cross-examination. However, leave may only be granted in particular circumstances.

In my view, any limitation on the rights is demonstrably justified under section 7(2) of the charter act because the certificates provide for procedures that must be followed under the bill which are appropriate to the nature of the matters in question.

The limitations are necessary to enable analysts to provide information about whether a person has taken alcohol or a drug and enables experts to provide information about the usual effect of alcohol or drugs on a person. Any limitation is clearly related to its purpose which is to facilitate the effective prosecution of rail safety offences involving the use of

alcohol or drugs. I do not consider that there are less restrictive means available to achieve this.

Breath tests

New section 86K relates to the giving of evidence about breath tests. A certificate is conclusive proof of the matters stated unless the accused gives notice that he or she requires the maker of the certificate to be called. However, in certain circumstances (such as where the person is dead) the provisions have effect as if such a notice by the accused had not been given.

Evidence may also be given by certificate as to authority to operate a breath-analysing instrument. That evidence, and evidence by a person authorised to operate an instrument about the instrument and the use of the instrument (including that any regulations with respect to the instrument were complied with) is proof of those facts in the absence of evidence to the contrary.

These limitations in the bill are clearly related to their purpose which is to facilitate the effective prosecution of rail safety offences relating to the use of alcohol. I do not consider that less restrictive means are reasonably available to achieve the purpose of the limitation.

Medical treatment

A number of provisions in the bill deal with alcohol and drug testing of persons engaged in rail safety work and may engage section 10(c) of the charter act (the right not to be subject to medical treatment without a person's full, free and informed consent). This is because persons may be required to provide a sample of his or her breath, blood or oral fluid for the purposes of testing to determine if the person is impaired by alcohol or drugs, despite the person not giving consent.

For example, new section 84 (in clause 89) deals with preliminary breath tests. New section 85 deals with breath analysis. New section 86E enables a rail safety worker to request that a sample of blood be taken. New section 86H deals further with blood tests. New sections 86B and 86C deal with assessments of drug impairment. New section 86D deals with oral fluid analysis and blood tests.

In each case, I consider any limitation on the section 10(c) charter act right reasonable and justified to protect the safety of that person and, importantly, the safety of the travelling public, the community and workers in connection with rail operations in Victoria.

Evidence indicates that the use of drugs and alcohol can have adverse effects on the capacity of people to carry out tasks safely. The use of illicit and illegal drugs like cannabis, ecstasy, ice and speed and the misuse of alcohol can be key risk factors in transport-related accidents and incidents and their effect on a person's capacities is well documented.

Therefore, the potential for injuries and possible deaths as well as damage arising from a rail accident or incident where rail safety workers have used these substances is high. As a result, the industry is regulated strictly in this area as the safety of Victoria's rail network is a paramount consideration. Putting in place appropriate controls to prohibit and test for alcohol and drug use by rail safety workers such as train drivers, signal operators and track workers is a key aspect of this area of regulation.

While blood tests may be more invasive than breath or oral fluid analysis, breath and oral fluid tests are the likely first processes to be undertaken in Victoria and blood tests are likely in the event that confirmatory tests are required, where the rail safety officer refuses to provide a sample of breath or oral fluid, or where the rail safety officer himself or herself asks to be tested. I also note that the bill contains refusal offences (where a person may be charged and may be liable to the same penalty as if he or she were tested and a positive result was shown, although the person has refused to undergo the tests).

Privacy

Various drug and alcohol control provisions in the bill engage the right to privacy, both bodily privacy (e.g. testing) and information privacy (e.g. recording of results, a person's name and address and provisions relating to videorecordings of drug assessments).

See, for example, new section 83(2)(a) in clause 89 which enables a transport safety officer or a police officer to require a rail safety worker to provide his or her name and address.

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. The provisions engage the right because they provide for the collection and retention of information, including in connection with drug and alcohol controls.

These provisions are supported by new section 86C in clause 89 which contains protections relating to the use of videorecordings and new section 86G which requires the destruction of identifying information where, for example, a rail safety worker has not been charged with a relevant offence at the end of 12 months after an assessment of drug impairment was carried out.

I consider that the provisions requiring the retention of personal or health information (such as the recording of information on samples) are demonstrably justified to secure compliance with rail safety laws. I again note that the provisions relating to the destruction of evidence help protect the charter act right to privacy and consider that there is no limitation on the right.

Privacy — protection in relation to samples

The bill provides a protection in relation to samples (such as blood and oral fluid samples) collected under the Rail Safety Act. Samples must not be used for a purpose other than that contemplated by that act. For example, new section 86H(5) provides that samples of a rail safety worker's blood must not be used in evidence in any legal proceedings except —

(a) for the purposes of section 86I; or

(b) for a proceeding for an offence against section 48(2); or

(c) for the purposes of the Transport Accident Act 1986.

However, a sample may be given to the Transport Accident Commission and, for the purposes of a review under the Transport Accident Act 1986, to the Victorian Civil and Administrative Tribunal (VCAT). A sample may also be given to the Department of Transport for the purposes of accident research. These exceptions are reasonable and are

authorised by the bill. To avoid doubt I have dealt with these provisions but consider that there is no limitation on the charter act right.

Privacy — information in court records

New section 81 of the Rail Safety Act (in clause 89) provides that details of the level of alcohol present in a person's blood or breath, or the concentration of alcohol recorded, shown or found to be present shall be entered in the court records on conviction of an offence under new section 76(1) or 77(1). While this provision engages the right to privacy it is clearly and demonstrably justified. The presence and amount of alcohol in a person's blood or breath is an element of the offences and as with other alcohol provisions in safety schemes, it is right that this information is recorded.

Rights in criminal proceedings and the right to a fair hearing — evidential burden (reasonable excuse defences etc.)

The section 25(1) right to be presumed innocent requires that the prosecution must prove all aspects of a criminal charge.

The bill contains a number of provisions which place an evidential onus on the accused. Various offences contain a reasonable excuse defence where the accused must point to or present evidence to raise an issue in the person's defence. The effect of a reasonable excuse defence is that once the prosecution provides evidence of the offence, the evidential burden shifts to the accused.

As the Scrutiny of Acts and Regulations Committee noted in practice note no. 4 issued on 10 December 2012, the evidential burden of proof may also be reversed when legislation 'sets out exceptions to criminal offences, using language such as "It is a defence to a prosecution for an offence if …" or "A person is not guilty of an offence if …" or a particular offence provision "does not apply if …"'.

The bill contains a number of provisions which may reverse the burden of proof. These are set out below.

Provisions which contain limitations but which do not appear to contain a reverse onus provision

For completeness I should say that while the whole bill has been analysed in relation to charter act rights, provisions such as that in clause 55 are not discussed as they do not appear to me to contain a reverse onus provision.

Clause 55 — which inserts new section 36 into the Rail Safety Act — provides that a rail transport operator must not carry out railway operations unless the rail transport operator is accredited, holds an exemption or is exempted by the regulations from the requirement to be accredited. Those aspects of the offence are elements of the offence rather than matters which impose a legal onus on the accused without express words to that effect.

This does not appear to be the form of provision contemplated by practice note no. 4.

Provisions which contain a reverse onus provision

Where the effect of a provision is that the evidential burden of proof is reversed, the accused must present or point to evidence that suggests a reasonable possibility of the existence of facts that, if they existed, would establish the defence. This goes beyond raising the possibility of the matters in question. The prosecution must then rebut the defence beyond reasonable doubt.

The following provisions of the bill contain an evidential onus:

New section 76(1) (in clause 89) provides that it is an offence to carry out, or attempt to carry out, rail safety work —

while there is present in the rail safety worker's blood the prescribed concentration of alcohol;

while a prescribed drug is present in the rail safety worker's blood or oral fluid; or

while the rail safety worker is so much under the influence of alcohol or a drug as to be incapable of effectively discharging a function or duty of a rail safety worker.

However, where a prescribed drug is present in the rail safety worker's blood or oral fluid, it is a defence if the defendant proves that he or she did not knowingly consume the prescribed drug present in his or her oral fluid, unless the rail safety worker believed that he or she was consuming a substance unlawfully but was mistaken, unaware of or indifferent to the identity of the prescribed drug.

This reverses the evidential onus and falls squarely within the provisions contemplated by practice note no. 4 as do the following defences or exceptions to the following offences:

New section 77(1)(f) makes it an offence if within 3 hours after having carried out rail safety work a rail safety worker furnishes a sample of breath for analysis by a breath analysing instrument under a direction under section 85 and —

the result of the analysis as recorded or shown by the breath analysing instrument indicates that more than the prescribed concentration of alcohol is present in his or her breath; and

the concentration of alcohol indicated by the analysis to be present in his or her breath was not due solely to the consumption of alcohol after having carried out the rail safety work.

However, it is a defence to a charge for the person charged to prove that the breath analysing instrument used was not on that occasion in proper working order or properly operated (see new section 77(3)).

New section 77(1)(g) makes it an offence if a rail safety worker has had a sample of blood taken from him or her in accordance with section 86H within 3 hours after having carried out rail safety work and —

(i) the sample has been analysed within 12 months after it was taken by a properly qualified analyst within the meaning of section 86I and the analyst has found that at the time of analysis more than the prescribed concentration of alcohol was present in that sample; and

(ii) the concentration of alcohol found by the analyst to be present in that sample was not due solely to the

consumption of alcohol after having carried out the rail safety work.

However, it is a defence to a charge for the person charged to prove that the result of the analysis was not a correct result (see new section 77(4)).

It is also a defence to a charge of refusing to provide a sample of breath under new section 83(1) of the Rail Safety Act (in clause 89) if the rail safety worker satisfied the court that there was some reason of a substantial character for the refusal, other than a desire to avoid providing information which might be used against him or her (see new section 85(9) in clause 89 which contains this restriction on or exception to the offence).

Nor must a rail safety worker be convicted of a breath test refusal offence where he or she has allowed a sample of blood to be taken (see new section 85(12) in clause 89).

Similarly, new section 86G of the Rail Safety Act (in clause 89) provides that it is an offence to use, or cause or permit to be used, or otherwise disseminate information derived from a videorecording or related material in relation to drug and alcohol controls where the videorecording or related information is required to be destroyed except in good faith for the purposes of a relevant offence. A person charged would need to show that he or she used or disseminated (or caused or permitted the use or dissemination) in good faith for the purposes of a relevant offence. This reverses the onus of proof.

Justification for provisions

In each case the limitation serves the important purpose of ensuring that prosecution is an effective mechanism for ensuring cooperation with the activities of transport safety officers or the safety director or to secure the safe operation of railways in Victoria (and, in the case of restrictions on the use of videorecordings, securing a person's right to privacy). The imposition of an evidential onus ensures that the defendant must put any such reason in issue but still protects the presumption of innocence by requiring the prosecution to prove the absence of any such reason to the ordinary criminal standard.

The existence of a reasonable excuse will be in the person's own knowledge — that is, best known to the person himself or herself. Producing evidence of the reasonable excuse should not be difficult. It is therefore unnecessary to discuss in any further detail whether an evidential onus limits the charter right in section 25(1) because any limitation on the right is reasonable and demonstrably justified under section 7(2) of the charter for these reasons.

Offences of strict liability

The bill contains a number of strict liability offences including in relation to general safety duties.

For example, new section 61K in clause 80 provides that a rail transport operator who has been granted an exemption must not contravene a condition or restriction of the exemption. New section 69C in clause 88 requires a rail transport operator of a private siding to be registered in the circumstances specified in the provision.

The prosecution must only prove the conduct of the accused for strict liability offences. However, unlike offences of absolute liability where the accused provides evidence of an honest and reasonable but mistaken belief in the existence of certain facts, the prosecution must then establish that there was not an honest and reasonable mistake of fact.

While the imposition of strict liability is sometimes categorised as limiting the common-law (and charter act) right to be presumed innocent, the imposition of strict liability may be considered a minor limitation because the imposition of strict liability will not criminalise honest errors. In addition, there are strong public safety reasons for ensuring that the rail safety regulatory regime is observed.

The right to be presumed innocent can be subject to reasonable limitations. The purpose of limitations is to secure rail safety. The limitations, if any, are reasonably connected to this purpose. In my opinion, there are no incompatibilities with the charter act right arising from the imposition of strict liability offences.

Requirements to provide information

The safety director may require certain information from rail transport operators under various provisions in the bill. For example, new section 61B(3)(a) in clause 80 where a rail transport operator has applied for an exemption from a designated provision of the Rail Safety Act (as defined in new section 61A).

In each case, the person is required to only provide information in connection with regulated activities under the statutory scheme. I consider that any interference with the right to privacy through the gathering, recording, publication and transfer of such information is neither unlawful nor arbitrary.

Accordingly, I consider that these provisions are compatible with the right to privacy in section 13 of the charter act.

Entry to residential premises

The powers of entry in the Rail Safety Act may be exercised in respect of railway premises. Entry may be made without consent. The national law (agreed by first ministers of participating jurisdictions including Victoria to be adopted as a law of each participating jurisdiction) contains provisions which enable rail safety officers to enter residential premises without consent or a warrant.

Consistent with the national law, new section 75 of the Rail Safety Act (in clause 89 of the bill) provides transport safety officers with powers of entry to residential premises in limited and highly contained circumstances.

New section 75 provides that entry to residential premises may only be made with the consent of the person with control or management of the premises, under a search warrant or for the sole purposes of gaining access to suspected railway premises but only if the transport safety officer believes that no reasonable alternative access is available and at a reasonable time.

Search warrants may also be obtained under the Rail Safety Act on specified grounds and subject to certain procedures.

Engagement of the right to privacy

The powers of entry to residential premises engage the right to privacy, including in the context of interference with a person's home and private property, and the right to property.

Any interference with privacy is not unlawful or arbitrary. The circumstances in which the right may be infringed are heavily circumscribed and are within a reasonable range of policy and legislative responses given the paramount objective of securing rail safety.

The ability to enter residential premises without warrant or consent is very limited. Entry must be for the sole purposes of gaining access to suspected railway premises if the transport safety officer believes that no reasonable alternative access is available and the access is at a reasonable time would be exceptional and may be balanced against the paramount need to secure rail safety.

I consider the power to be within a reasonable range of responses to secure rail safety consistent with the overall regulatory scheme. Insofar as there is any limit on the section 13(a) right to privacy or a person's property rights in respect of residential premises, it is a reasonable limit. I consider the provisions to be compatible with the section 13(a) right to privacy.

Freedom of movement

Section 12 of the charter act provides that every person lawfully within Victoria has the right to move freely within Victoria.

Freedom of movement is engaged by some provisions relating to drugs and alcohol, where a person may be required to undertake certain tests and to go to a certain place for that purpose, which necessarily although temporarily restrict a person's movement. For example, because a person may be required to accompany a police officer to a police station and remain there until a test has been conducted or until 3 hours after the person carried out rail safety work (new section 85(3) in clause 89). However, the right may be subject to reasonable limitations.

The right is arguably to be most acutely applied in the context of laws which seriously confine freedom of movement. This is not the case in respect of the provisions in the bill. While the provisions in the bill engage the right the provisions are highly limited in scope and consistent with Victoria's road safety scheme.

Assuming that provisions in the bill limit the right in section 12, any such limits are demonstrably justified under section 7(2) of the charter act for the following reasons:

> the right to freedom of movement is not regarded as an absolute right in international law and can be subject to reasonable limitations;
>
> any limitations on these rights occasioned by the use of these provisions are clearly and demonstrably justified. The limitations imposed on the right by the powers are directly and rationally connected to their purpose. There are no less restrictive means available to achieve these purposes.

Administrative decisions and the right to a fair hearing

Under section 24(1) of the charter act, a party to a civil proceeding has the right to have the proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

In *Kracke v. Mental Health Review Board & Ors (General)* [2009] VCAT 646, Bell J concluded that the right to a fair hearing is not confined to proceedings of a judicial character and can apply to civil proceedings which are of an administrative character. Bell J noted that in assessing compliance with the right, regard may be had to the whole decision-making process including reviews and appeals.

I have considered the effect of the provisions in the bill including the provisions which amend existing provisions in the Rail Safety Act on the fair hearing right.

In deciding whether there is a breach of the right to a fair hearing, the processes must be considered in their entirety including any available rights of appeal or review. I consider they accord individuals their right to a fair hearing. In reaching this conclusion, particular weight has been given to the fact that there is an opportunity for individuals adversely affected by a decision to seek a review by VCAT in respect of reviewable decisions.

In each case, I consider that the procedures provided in the bill, including any rights of appeal or review that are available are appropriate to the nature of the particular interests that are at stake.

In my opinion, there are no incompatibilities with section 24 of the charter act. None of the reviewable decision provisions or provisions to which appeal rights apply appear to test or infringe the Scrutiny of Acts and Regulations Committee's terms of reference.

As I have reached this view, I have not specifically referred to each reviewable decision or procedure in this statement.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities Act 2006.

Matthew Guy, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. P. R. HALL (Minister for Higher Education and Skills).

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

That the bill be now read a second time.

Incorporated speech as follows:

This bill is essentially a companion proposal to the Rail Safety National Law Application Bill.

Honourable members will recall that the purpose of the Rail Safety National Law Application Bill is to give effect in Victoria to the national rail safety regulation scheme, including a national rail safety regulator, and a national rail safety investigator as part of the state's intergovernmental obligations.

On the other hand, the prime purpose of this bill is simply to modify the scope of Victoria's existing rail safety statute — the Rail Safety Act 2006 — as a result of Victoria's entry into the national scheme.

Essentially, the Rail Safety Act must be adjusted to exclude coverage of the national rail operations regulated by the Rail Safety National Law Application Bill while retaining its application to the state's domestic rail operations, which do not transfer to the national scheme.

The key to understanding the bill is recognising that some rail operations are purely local matters which have little or no national strategic or operational importance. Operations in this category clearly include tram and light rail operations, which stand alone from the state's other rail networks. The prime example is, of course, Melbourne's light rail and tram system operated by Yarra Trams. This iconic network is the world's most extensive light rail and tram system and is larger than the world's other great systems found in other major cities like St Petersburg, Berlin, Moscow and Vienna.

While our tram and light rail network is a crucial part of Melbourne's transport system and makes a strong contribution to the city's famed liveability, the network is not connected to any national or interstate rail operation. Melbourne's tram and light rail network is, in short, about as local as rail operations get.

Many tourist and heritage tram operations and heavy railways operating in regional areas of Victoria on dedicated rail lines are essentially in the same position. These types of rail operations are heavily localised and while important to local communities and economies are not connected to national rail networks and are therefore not critical nationally.

It is these considerations which led Victoria to agree with the commonwealth and other states and territories to exclude the state's tram and light rail operations and seven tourist and heritage operators operating on stand-alone lines from the national rail safety scheme and to retain them under local legislation overseen by the director, transport safety or Transport Safety Victoria.

The retention of state coverage of tram and light rail operations was agreed early in the intergovernmental discussions and recognised in the agreement signed by first ministers in August 2011 which came out of those talks. However, the excluded tourist and heritage railways only nominated recently to remain under local Victorian regulation. This followed representations made to the Minister for Public Transport by the Association of Tourist Railways, which holds concerns about extra costs of national regulation identified in impact assessment material prepared by the National Transport Commission.

As indicated, the prime purpose of the bill before the house is to confine the scope of the state's Rail Safety Act 2006 to the domestic rail operations I have mentioned. A natural consequence of the change is that the bill renames the act the Rail Safety (Local Operations) Act in recognition of its abridged coverage.

A secondary purpose of the bill is to update our local statute as a result of the changes to rail safety regulation negotiated by Victoria and other jurisdictions during the development of the national law. The national law essentially retains and updates the state's existing regulatory framework. While the key features of the local scheme remain unchanged, adjustments and improvements are nonetheless made throughout to things like definitions, offences, penalties and other provisions, and these matters need to flow through to local laws to keep our rail safety legislation contemporary and nationally consistent.

A third purpose of the bill is to make sure that the drug and blood alcohol control provisions in the national law for rail safety workers such as train drivers and signal operators are properly fused with the drug and alcohol control scheme in Victoria's existing legislation. This is needed so that satisfactory national and local schemes are in place as the national provisions are skeletal and unsatisfactory in this important area. They require extensive supplementation from the state scheme in respect of offences, compliance and enforcement powers and testing requirements in order to set enforceable and workable standards and to maintain proper drug and alcohol controls in the rail industry.

Many of the changes made by this bill are technical including those which are of a consequential or transitional nature. I refer honourable members to the explanatory memorandum where further information on these and other matters in the bill can be found.

Finally, the bill amends the Bus Safety Act 2009 to enable bus operators to apply to the director, transport safety for exemption from accreditation and registration requirements in appropriate cases. The adjustment is supported by the red tape commissioner and brings the bus sector into line with rail by making the same statutory changes made by the bill to the Rail Safety Act 2006 which themselves draw on the precedent set in the national rail safety law.

The government anticipates that the exemption power will be used in appropriate cases to temper some of the inflexibility of the regulatory requirements in the rail and bus safety schemes and to reduce red tape in measured ways which do not compromise the state's high transport safety standards.

I commend the bill to the house.

Debate adjourned for Mr TEE (Eastern Metropolitan) on motion of Mr Lenders.

Debate adjourned until Thursday, 28 March.

COMPANY TITLES (HOME UNITS) BILL 2013

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

For Hon. M. J. GUY (Minister for Planning), Hon. P. R. Hall 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 Company Titles (Home Units) Bill 2013.

In my opinion, the Company Titles (Home Units) Bill 2013, as introduced into 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 implements the government's commitment to confer on the Victorian Civil and Administrative Tribunal (VCAT) the power to hear and determine neighbourhood disputes in relation to company title corporations and service companies for building subdivisions.

Human rights issues

The bill engages the following human rights:

Property rights — section 20 of the charter act

Section 20 of the charter act provides that a person must not be deprived of his or her property other than in accordance with the 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.

To the extent that a person's right to enjoyment of property amenities is affected by the bill, the rights to property are engaged.

Clause 8 of the bill provides that VCAT will have powers to make relevant orders to resolve a neighbourhood dispute. Relevant orders that VCAT will be able to make include an order requiring a party to do or refrain from doing something, and an order requiring a party to comply with a rule of a company title corporation or service company or a term of a service agreement. Such orders may affect a person's use of or access to property amenities. I note that clause 8 provides that an order cannot be made that alters a person's shareholding in a company title corporation or service company, and hence alters a person's interest in the property.

In my view, any interference with property resulting from a VCAT order authorised by clause 8 is lawful, and the right to property is not limited.

Fair hearing — section 24 of the charter act

Section 24 of the charter act provides that a person who is a party to a civil proceeding has the right to have the proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Clause 6 of the bill confers on VCAT the power to hear and determine a neighbourhood dispute. Clause 12 provides that any other court must stay proceedings if VCAT could hear the proceedings and the court is satisfied that the proceedings, which must arise wholly from a neighbourhood matter or matters, would be more appropriately dealt with by VCAT. Clause 17 confirms that the Supreme Court's jurisdiction is altered.

Clause 8 of the bill provides that VCAT may make any order it considers fair in determining a neighbourhood dispute, and clause 10 of the bill outlines the factors which VCAT must consider when making an order. Clause 9 of the bill provides that the maximum penalty which VCAT may impose for failing to comply with a rule of a company title corporation or service company is $250.

To the extent that these clauses vary the jurisdiction of VCAT and the jurisdiction of the Supreme Court, the right to a fair hearing is engaged under section 24 of the charter act.

In my view, these clauses do not limit the right to a fair hearing under section 24, as they simply allow for neighbourhood disputes to be heard in an alternative forum which constitutes a competent, independent and impartial tribunal.

Indeed, by being able to resolve neighbourhood disputes in the cheaper forum of VCAT, parties will benefit from lower costs and speedier access to justice. It is anticipated that the introduction of this alternative forum will increase access to justice and a fair hearing for parties who may have otherwise left disputes unresolved due to the costs involved in court actions.

Conclusion

I consider that the bill is compatible with the charter act because it does not limit any human right protected by the charter act.

Hon. Matthew Guy, MLC
Minister for Planning

Second reading

Ordered that second-reading speech, except for statement under section 85(5) of the Constitution Act 1975, be incorporated into *Hansard* on motion of Hon. P. R. HALL (Minister for Higher Education and Skills).

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

That the bill be now read a second time.

Incorporated speech as follows:

This bill gives effect to the government's commitment in its 2010 plan for consumer affairs to confer jurisdiction on the Victorian Civil and Administrative Tribunal to hear and determine disputes over neighbourhood matters affecting company title home units.

Company title home units are apartment blocks owned by corporations established under the Corporations Act 2001. A person becomes entitled to use and occupy an apartment by buying shares in the corporation, which then gives them a right of use and occupation for a particular apartment. The company title corporation's constitution typically contains the rules of the use and occupation in the block. These rules give the board of directors of the corporation the ability to control many aspects of the use and occupation of the apartments, including approval of share sales, leasing of apartments and matters such as whether apartment owners can have pets.

Stratum title properties combine elements of both a strata subdivision, with land or buildings subdivided into individual lots, and company title, with a service company established

under the Corporations Act managing the residual land. Rather than having a specialised owners corporation, unit owners under stratum title hold shares in the service company that manages the residual land.

Residents in company title and stratum title properties have similar issues regarding access to justice to resolve disputes that arise with their company title corporation or service company. Under the Corporations Act, the Supreme Court and other courts are the only fora to deal with disputes that may arise between members of a company and the company itself. Courts are an expensive option to resolve what are often relatively simple disputes, and hearing relatively simple disputes of this nature represents an inefficient use of court resources. This bill's conferral of jurisdiction on VCAT to deal with neighbourhood disputes affecting company title corporations and service companies in building subdivisions aims to provide a cheaper, faster jurisdiction for the resolution of these disputes, in the same way that members of owners corporations can resolve their neighbourhood disputes.

The bill proposes that VCAT will have jurisdiction to hear and determine neighbourhood disputes, which are defined as disputes that affect a company title corporation or a service company and that relate only to a neighbourhood matter or matters. A schedule to the bill contains an exhaustive list of neighbourhood matters, being matters concerning health, safety and security; residual land; units; design of residual land or units; behaviour of persons; dispute resolution; and notices and documents.

The bill specifically excludes several kinds of dispute from VCAT jurisdiction, including disputes relating to the sale, transfer or forfeiture of shares in a company title corporation or service company; disputes relating to the lease or licence of a unit in a building owned by a company title corporation; disputes relating to the winding up of a company title corporation; or disputes in which a party to a dispute claims relief from oppression under part 2F.1 of the Corporations Act.

The existing jurisdiction of courts under the Corporations Act is not limited by the bill, and the Supreme Court will remain the only Victorian court able to exercise the general oppression jurisdiction in part 2F.1 of that act. However, clause 12 of the bill provides that if a dispute relates wholly to neighbourhood matters, a court must stay proceedings if VCAT can hear the matter and if the court is satisfied that the proceedings would be more appropriately dealt with by VCAT. If a dispute does not relate wholly to neighbourhood matters, VCAT will not have jurisdiction to hear the dispute.

Clause 13 of the bill ensures that any attempt by a company title corporation or service company to exclude VCAT's jurisdiction will be of no effect. The bill also includes a displacement provision, ensuring that the Corporations Act is displaced to the extent necessary to avoid inconsistency with the provisions of clauses 12 and 13, and thus ensuring that the clauses are beyond successful challenge.

Parties that are allowed to apply to VCAT to resolve a neighbourhood dispute include a shareholder or former shareholder of a company title corporation or service company, a company title corporation, a service company, a unit occupier or former occupier, and a unit mortgagee.

The bill grants VCAT remedial powers to make any order it considers fair to resolve a neighbourhood dispute, except for orders that would alter a person's shareholding, lead to the winding up of a company title corporation or service company, or change the composition of the board of directors. These excluded orders could affect a person's interest in the property or change corporate governance arrangements.

The orders VCAT can make include an order that a person do or not do something, an order varying a term of a contract or agreement (other than a rule of a company title corporation or service company), and an order declaring a term of a contract or agreement (other than a rule of a company title corporation or service company) to be void or not void. VCAT will also be able to impose civil penalties of up to $250, to be paid into the Victorian Property Fund, for breaches of the rules of a company title corporation or service company.

Finally, the bill will amend the Estate Agents Act 1980 to enable VCAT's neighbourhood dispute jurisdiction, the administration of the bill and education and advocacy services to be funded from the Victorian Property Fund.

This bill represents a significant milestone in Victoria for residents in these types of residency arrangements, by improving their access to justice and ensuring that they are not disadvantaged solely because of their form of legal title to their home.

Section 85 of the Constitution Act 1975

Hon. P. R. HALL — I wish to make a statement under section 85(5) of the Constitution Act 1975.

Clause 17 of the bill states that it is the intention of clause 12 to alter or vary section 85 of the Constitution Act 1975. I therefore make the following statement under subsection 85(5) of the Constitution Act of the reason for altering or varying that section.

Clause 12 provides that if a person commences proceedings in a court that arise wholly from a neighbourhood dispute in respect of which VCAT has jurisdiction, the court must stay proceedings if the proceedings could be heard by VCAT and the court is satisfied that the proceedings would be more appropriately dealt with by VCAT. The reason for this is that it is intended to have an informal, low-cost procedure to deal with such disputes, without, for instance, the expense involved in having legal representation. It is considered critical to keep costs at a minimum to ensure that the benefit of any judgement is not effectively rendered useless by the costs involved. That intention is frustrated if proceedings relating wholly to neighbourhood disputes can be taken to the courts.

I commend the bill to the house.

Debate adjourned for Mr TEE (Eastern Metropolitan) on motion of Mr Lenders.

Debate adjourned until Thursday, 28 March.

RAIL SAFETY NATIONAL LAW APPLICATION BILL 2013 and TRANSPORT LEGISLATION AMENDMENT (RAIL SAFETY LOCAL OPERATIONS AND OTHER MATTERS) BILL 2013

Concurrent debate

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

> That the second-reading debate on the Rail Safety National Law Application Bill 2013 be taken concurrently with the second-reading debate on the Transport Legislation Amendment (Rail Safety Local Operations and Other Matters) Bill 2013.

Mr LENDERS (Southern Metropolitan) — Just very briefly on the motion, I congratulate the government on doing this. We on this side of the house think that where bills are related, bringing the second-reading debates on together is a useful way to use the time of the house. I rise to support the motion and, as I say, congratulate the government on showing this initiative.

Ms PENNICUIK (Southern Metropolitan) — I have consulted with my colleague Mr Barber, and the Greens support the motion as well.

Motion agreed to.

WATER LEGISLATION AMENDMENT BILL 2012

Committed.

Committee

Clause 1

Mr BARBER (Northern Metropolitan) — The Liberal-Nationals coalition took a policy on water to the last election, of which I have a copy. Under the heading 'Efficient use of water' it says:

> A Liberal-Nationals coalition government will:
>
> …
>
> direct water authorities to progressively replace water meters in flats and apartment blocks to ensure that, in the long term, every resident will have his or her own separate meter.

It appears to me that clauses 29, 30 and 31 are about the furtherance of this aim. Can the minister tell me whether it is still the government's intent to direct the water authorities to progressively replace water meters to ensure that every resident in a flat or apartment has their own meter, and if so, what is the timing on that? The original policy was to ensure that it would happen in the long term.

Hon. P. R. HALL (Minister for Higher Education and Skills) — For Mr Barber's information and in response to his questions I advise him that in respect of the timing of the rollout of the metering program, the government's election commitment was to be over the long term. Water corporations will continue their practice of installing meters in established properties when asked by a property owner or an owners corporation to do this. It is a matter to be agreed upon by the property owner and the property's water corporation. Installing meters in some existing multistorey buildings is not easily achieved because of the way they are constructed, and it can be cost-prohibitive for the property owner.

Clause 29 of the bill will not compel water corporations to install meters for existing businesses. Clause 29 amends section 142 of the Water Act 1989, which only enables a water corporation to provide or install and maintain a meter on land. Can a water corporation force a property owner to install water meters? The answer for existing buildings is no. I will go back to what I have just said, which is that the agreement or request of the property owner or owners corporation would be needed to do so. But for new property developments or new buildings the answer is yes.

Mr BARBER (Northern Metropolitan) — With regard to the original policy, which is to direct water authorities, is the minister saying that there has been no direction, presumably, from a minister under any act and that there is no intention that that will be the case?

Hon. P. R. HALL (Minister for Higher Education and Skills) — The intention is not to change the law insofar as it applies to existing buildings — that is, there is no direction that they must do that, because we are working with the landlords, owners or corporations in respect of those matters. But in the case of new buildings and new property developments there is a very clear direction from the government that water authorities must do so.

Mr BARBER (Northern Metropolitan) — Is it not the case that we are amending section 142 so that it relates to any piece of land where water is delivered? Then under section 142(2) the authority may provide or install a meter for each occupancy. I am certainly not seeing anything that excludes the ability of the water

authority to determine how water is metered on that land.

Hon. P. R. HALL (Minister for Higher Education and Skills) — Water is metered on the land. The question I think the member is asking is in relation to individual properties on that land. There is no question about a water meter measuring the volume of water collectively supplied on the land, but the issue of point is about individual water metering of properties. What I have clearly said in my comments so far is that where there are new property developments the government will direct water authorities to separately meter those, but in the case of existing developments and buildings the answer is that only at the request of the body corporate or the individual property owner will properties be separately metered.

Mr BARBER (Northern Metropolitan) — I am just not seeing it in the principal act or in the bill before us. I am simply seeing a provision that says an authority may provide or install and maintain a separate meter for each occupancy, which would take the example of many flats within the one block. It seems to be at the water authority's discretion as to how it meters water on the land. I do not see anything that restricts that, except in relation to new properties as opposed to old ones.

Hon. P. R. HALL (Minister for Higher Education and Skills) — I suggest the answer is probably in the terminology. The word 'may' has confused us in committees before. The law uses that term. I will seek clarification on that point.

I am advised that I was right in my interpretation. The term 'may' means a water authority is able to provide or install and maintain a separate meter for each occupancy, but another provision in the act states very clearly that it can only do that for an existing building where there is an agreement or request from the controlling entity of that building.

Mr BARBER (Northern Metropolitan) — I thank the minister. I ask if he might indulge me and point me to the other provision that he just referred to that is in the principal act. I am assuming it is somewhere around section 142.

Hon. P. R. HALL (Minister for Higher Education and Skills) — I am advised that it rests in section 145 of the Water Act and matters pertaining to that are contained in clause 31 of the amendment bill.

Mr BARBER (Northern Metropolitan) — Can the minister tell me how many properties are believed to fall under this provision — that is, the government's policy about multiple occupancies that do not have multiple metres — and, if you have the figure, how many occupancies there would be on those properties? I am assuming it is tens of thousands, possibly even more than 100 000 occupancies across Victoria — flats and apartments that were built some time ago.

Hon. P. R. HALL (Minister for Higher Education and Skills) — If that number is available I will certainly get it, but I suggest that it is probably in the tens of thousands. For quite a period of time in recent years I was in a block of units that did not have separate water meterage, but I will get some advice as to whether there is a figure on that.

I do have some figures, and these are from across various water authorities. Without giving members the names of any water authorities, for one the figure is about 48 000, for another it is closer to 40 000, for another it is about 44 500, for another 12 000, for another 2000 and for one of them it is only 200. So Mr Barber was right in estimating there to be tens of thousands of such occupancies.

Mr BARBER (Northern Metropolitan) — I have to say I have reviewed section 145 and I still cannot see anything in there that says that a property owner has the right to refuse a proposal for a connection or a new form of meter. There is plenty of information in there about interfering with meters and so forth. My concern is that where tenants in these flats and apartments are currently not receiving an individualised water bill, they are in fact paying their water bill via their rent — it is embedded in their rent. What will happen is that when the new, individualised water meter is installed, they will be issued with that bill and, in effect, they will be paying twice. I do not know if it is possible — and, from looking at the legislation here, I do not think it is — to determine who will pay for the installation. It could be something that the landlord attempts to recover from the tenant. In any case, I understand that it is only via the Residential Tenancies Act that such matters could be governed and have been in the past.

I have further questions about some other matters relating to other clauses in the bill, but if I am able to ask them now, I will do so in a minute.

Hon. P. R. HALL (Minister for Higher Education and Skills) — I am trying to answer the question, and hopefully we are getting somewhere. I think I will have to refer to sections 142 and 145 of the Water Act 1989 to get there. Section 145 relates to new dwellings, and therefore the bill very clearly requires the relevant water authority to install separate water meters in new dwellings. Under section 142:

(1) An Authority may —

(a) provide or install, and maintain, a meter on any land to measure the amount of water …

The word 'may' does not give the authority an explicit right to install water meters.

All I can say is that my advice is there is no duty contained in the provisions of clause 142 for them to do that. I would be happy to have an offline discussion with Mr Barber about this later on, but I can only give him the best advice I can while on my feet in this committee.

Mr BARBER (Northern Metropolitan) — I agree with that interpretation. There is nothing in here that forces the water company to come in and install separate meters. It is the water company's option to do so. But I have been looking for something that would allow a landlord, or a property owner let us say, to refuse. I cannot find it. There are people out there who reckon you can refuse to have a smart meter for electricity installed in your house. I am sure the minister and I have received many emails from them, but in relation to water I am not seeing a provision that allows a land-holder to refuse a particular arrangement of meters.

That is why I was keenly interested in the coalition's original policy, which was that it would direct water authorities to roll the meters out. At the moment water companies may do it; but they do not have to. The government's original policy from two and a bit years ago suggested to me that it was going to direct them to do so. I presume there are numerous sections of the act we could turn to that allow for ministerial directions. However, in the minister's earlier answer he seemed to suggest there was no attempt to direct.

Can I ask what the mechanism for cost recovery is in the instance where a water authority at its discretion decides to separately meter all the different occupancies on one property title?

Hon. P. R. HALL (Minister for Higher Education and Skills) — Mr Barber uses the term 'at its discretion'. It can only do so with the agreement of those who own the properties or the body corporate which owns those properties. The body corporate or landlord will make a decision about the apportionment of costs in respect of metering and water supply.

Mr BARBER (Northern Metropolitan) — What I meant was: what is the mechanism of cost recovery by the water authority? That is, does the water authority charge the property owner for the new water meter it installs?

Hon. P. R. HALL (Minister for Higher Education and Skills) — The answer is yes.

Mr BARBER (Northern Metropolitan) — From what I have read in the draft water plans the authorities have put forward to the Essential Services Commission, which will govern their fees and charges for coming years, new installations of meters are charged at anything from $100 to $300 per meter. If, as the minister has said, these meterings are even more complex and variable depending on the situation of the building, what is likely to be the cost that the water authority will seek from the property owner and that the property owner may therefore seek to redistribute amongst the various occupancies? What is the cost of this job of bringing in new meters?

Hon. P. R. HALL (Minister for Higher Education and Skills) — I am advised that the amounts that water corporations charge to carry out a basic installation of a meter for a residential property, which typically uses a 20 millimetre pipe, range between $100 and $300. Their charge for providing and installing a meter with a remote reading device ranges between $400 and $550. These charges do not include the costs a property owner can incur for the plumbing of individual water pipes for each occupancy. It is this aspect of the installation that can make the retrofitting of meters for each occupancy cost prohibitive for owners of older buildings. For example, meters for pipes wider than 20 millimetres, which are used for industrial sites with significant water usage, are considerably more expensive.

Mr BARBER (Northern Metropolitan) — This goes back to the original intent of the government's policy, described in its policy document under the subheading 'Efficient use of water'. To try to achieve more efficient use of water the aim was to direct water authorities to replace water meters in flats and apartments to ensure that every resident would have his or her own separate meter. What evidence does the government have that giving everybody a separate meter will mean they will become more concerned about their use of water? Yes, it is intuitive that people who are getting a bill might be a bit more careful about how they use water, but the government would have had the opportunity to do some sort of study or evidence gathering relating to blocks of flats where everybody has their own meter versus blocks of flats where they do not have their own meter. Has the government got any evidence base that suggests that giving everybody a meter at a cost of $300 will cause them to use less water and do so in a way that is cost effective?

Hon. P. R. HALL (Minister for Higher Education and Skills) — While I am advised I cannot give the member any case studies or comparative data to that effect, I want to remind Mr Barber that the installation of separate water meters will be at the request of the property owner or the body corporate associated with the property. It is therefore a decision those owners or those involved in the body corporate will collectively make as to the benefits or otherwise of having separate water meters installed at properties.

Mr BARBER (Northern Metropolitan) — The minister did not exactly point me to the bit of the bill that says a property owner can refuse a new metering arrangement, so we are still at odds on that. I take it, however, that there is no evidence base that any of these water authorities have collected that says people in separately metered apartments use less water than people also in apartments but who are on the one meter?

Hon. P. R. HALL (Minister for Higher Education and Skills) — Not to my knowledge.

Mr BARBER (Northern Metropolitan) — People in flats do not use as much water as the rest of us, because by definition they do not have gardens. Let us say that as a result of getting their own water meter and their own water bill they save 10 litres per person per day. Then over a year a typical flat might save about 10 kilolitres, and since water is two bucks a kilolitre, they would be saving about 20 bucks worth of water. It would seem that if the cost of installing a meter — which could be as high as $300 — is to be repaid at 20 bucks a year of annual water savings, that is an extraordinarily poor investment in terms of rate of return.

If the government wants to pursue this policy of water efficiency, it would be better off taking some of that money and doing a water efficiency retrofit in the apartments. It might make sure that all the toilets are changed over to modern half flush, it might put new showerheads in or it might give rebates to replace dishwashers. Those are all things you can do when the landlord has the incentive to reduce their own water bill, but once you go down this track the tenants will be paying the water bill, but the landlord will control the fixtures and the fittings. The effect of this policy is actually to split the incentive between the landlord and the tenant and cost everybody a lot of money along the way. In the process therefore you might actually find there is no water efficiency to be gained.

If the government has not got any evidence for this to date — and it has been two and a bit years since the government first thought up this idea, and we are implementing it today — then it is a concern to me that we are not entirely sure what we are doing here. It could be that hundreds of thousands of properties will have their meters changed over — under the original policy it said in the long term, but who really knows how soon that will happen?

Hon. P. R. HALL (Minister for Higher Education and Skills) — In his opening comments Mr Barber's hypothesis was, 'If there is little to be saved, why would you go to the expense of requesting separate water meters be installed for every single dwelling?'. I will go back to the point I made before. That is probably true, so therefore separate water metering on existing buildings will only come at the request of the controlling entity of those buildings, being the individual owners, the body corporate or the landlord.

In respect of the latter point about whether it would be more water efficient to make available the water efficiency measures which the water authorities offer to existing individual customers, my advice is that those water efficiency measures — and we are all familiar with at least some of them — are available to landlords and body corporates where the water usage is metered by a single meter. There is nothing preventing multiple dwellings on the one site being the beneficiaries of some of those water efficiency measures.

Mr BARBER (Northern Metropolitan) — Yes, that is right; but I am just pointing out that the way this policy would roll out is that it would actually split the incentive, where currently the landlord has the incentive to do those works. If they can charge this metering cost to their tenants and then have tenants pay their own water bills from now on, that is to the landlord's benefit. We have not had a meeting of the minds about whether a landlord can refuse to do that, but even if the landlord does not want to refuse that, the landlord can then put this cost burden on the tenant and wash their hands of the whole issue.

I am happy to move on to another aspect of this bill, if that is okay. Towards the back of the bill there is a provision that regulates how the Essential Services Commission (ESC) sets the consumer code. In a previous vote in this Parliament the Greens opposed the removal of a provision that had prevented retail water authorities from charging penalty interest, and we lost that vote. Urban retail water authorities can now charge penalty interest. Only the ESC consumer code determines how high that interest could be, and at the moment I gather it is capped at 10 per cent. Can the minister tell me whether the various retail water authorities around Victoria, including the new urban

ones, are charging penalty interest on late bills, and what sort of amounts they are collecting from that process?

Hon. P. R. HALL (Minister for Higher Education and Skills) — In regard to the amount of interest rate that can be charged, the Essential Services Commission's customer service codes for urban and rural water corporations, dated December, 2012, set the maximum rate of interest that a water corporation can charge a customer for unpaid fees. At present they are 10 per cent until 30 June 2013, and from 1 July 2013 an annual rate will be set by the commission each May based on the 10-year Australian commonwealth government bond rate, plus a margin to be determined by the commission. The ESC has advice on its website that the possible interest rate to apply from 1 July 2013 may be lower, such as around 7 per cent.

In terms of who is charging a fee and what amount they are collecting, I have been advised about the rate of interest being charged by water corporations for unpaid fees and charges as at March 2013. I have a list of these — for example, Barwon Water is not charging any fee to its urban customers; Central Highlands Water is charging 10 per cent; City West Water is not charging any fee; Coliban Water is not charging any fee; East Gippsland Water is charging 10 per cent; Gippsland Water is not charging any fee; Goulburn-Murray Rural Water does not have a figure available because it does not supply urban customers, but for rural customers it is 10 per cent; Goulburn Valley Water is charging urban customers 10 per cent; GWMWater is charging 10 per cent for both urban and rural customers; Melbourne Water is not charging any fee; North East Water is not charging any fee; Lower Murray Water is not charging any fee; South East Water is not charging any fee; South Gippsland Water is charging 10 per cent; Southern Rural Water is charging 10 per cent for both urban and rural customers; Wannon Water is charging 10 per cent; Western Water is not charging any fee; Westernport Water is charging 10 per cent; and Yarra Valley Water is not charging any fee.

In terms of the total amount collected in the last 12 months, I do not have that data with me. That information might well come through annual reports, but it is not available for us to give today.

Mr BARBER (Northern Metropolitan) — It appears that since I last obtained this information Grampians Wimmera Mallee Water has begun to charge penalty interest and that the urban water authorities — that is, the Melbourne city authorities, Western Water, Yarra Valley Water, City West Water and South East Water — have not charged it, despite now having the power to do so. I thank the minister for that information; it was something of interest to me.

The DEPUTY PRESIDENT — Order! I advise the committee that the minister's amendment 1 proposes to insert certain words into the purposes clause, which effectively enables the subsequent introduction of those words — that is, in the minister's amendment 2. Because amendment 1 enables the insertion of those words it is in fact a test for amendment 2. However, since amendment 2 contains the insertion of new clauses following clause 31, I particularly draw this to the attention of the committee now because when I invite the minister to move his amendment 1 it will bring on the substantive debate in relation to his amendment 2.

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

1. Clause 1, page 2, after line 5 insert —

"( ) reconfiguration plans; and".

As always, Deputy President, you are absolutely right in that this tests amendment 2, which is the substantial amendment inserting new clauses to follow clause 31. I offer the following comments as an explanation to those new clauses.

Amendments were made to the Water Act 1989 in 2005 relating to the ability of water authorities to undertake reconfiguration of their rural infrastructure. As many of us are aware, the connections project for Goulburn-Murray Rural Water Corporation in northern Victoria will involve the reconfiguration of its works for delivering water to irrigators in the Goulburn-Murray irrigation district, or GMID. I add that the connections project has been known to us better as the Northern Victoria Irrigation Renewal Project under the previous government, but it is now termed the connections project.

This particular project comes from significant investment by the Victorian and commonwealth governments of over $2 billion for the modernisation of irrigation infrastructure and on-farm irrigation. The connections project aims to create a modern, efficient, affordable irrigation system for farmers in the GMID.

Part 7A of the Water Act 1989 allows a rural water corporation to upgrade, downgrade or discontinue its rural water service works after following a reconfiguration planning process. There has been some concern in the community that the changes made in 2005 are inconsistent with part VII of the Constitution

Act 1975, which relates to delivery of water services. Part VII of the Constitution Act provides in summary that if at any time on or after the commencement of that part, being 12 June 2003, a public authority has responsibility for ensuring the delivery of a water service, it or another public authority must continue to have that responsibility. However, part VII of the Constitution Act does not prevent a water authority from reducing or even discontinuing the provision of water services to some customers or substituting a different water service for the irrigation service.

The house amendment will confirm that reconfiguration plans adopted by a water authority must not be inconsistent with the requirements of part VII of the Constitution Act and must provide clarity to irrigators within the GMID. Goulburn-Murray Water will ensure that each reconfiguration plan prepared for the connections project is consistent with the constitution.

Mr LENDERS (Southern Metropolitan) — The government briefed the Labor Party on this yesterday. I must admit that the first time I saw this it set some alarm bells ringing, particularly on the issue of what we might see as the privatisation of water. From our perspective the original view was one of some anxiety, but as has been put to me by departmental officers and the minister's office, and as the minister is saying here now — not in plain English but in configuration speak — what this seeks to do is consolidate the irrigation channels as part of a worthwhile project. The reconfiguration plans essentially deal with an anomalous area where there are some cooperative arrangements between farmers that are not actually the property of Goulburn-Murray Water. This is all being done for a greater outcome, which is to consolidate. It improves the infrastructure of the area. On that basis the Labor Party will not oppose the amendment to clause 1; in fact given we are strong advocates for the consolidation of channels and greater efficiency of water in the food bowl, we will probably go one step further and support it.

Mr BARBER (Northern Metropolitan) — New clause A, to be inserted by amendment 2, says in part:

> To avoid doubt, nothing in this Part empowers an Authority to adopt a reconfiguration plan that includes anything inconsistent with Part VII of the Constitution Act 1975.

Can the minister tell me who has been harbouring this doubt?

Hon. P. R. HALL (Minister for Higher Education and Skills) — If Mr Barber is asking me to name particular people, I am unable to do that. I understand that some landowners in that part of the state have concerns about this, so the amendment seeks to provide absolute clarity and to address their concerns by essentially saying that any reconfiguration plans must be consistent with those particular provisions within part VII of the Constitution Act 1975.

Mr BARBER (Northern Metropolitan) — I have no doubt that any action taken under an act has to be lawful and that that act must also comply with the provisions of the constitution, but it seems that the minister is saying to me that someone out there has some doubt and may be thinking of mounting a legal challenge to the minister's action. The minister is not so much avoiding doubt here but the possibility of legal action or striking out the potential cause for legal action. Is that the impetus for this amendment that has been rushed into the upper house and that now must go back to the lower house? I think the lower house may have shot through, Deputy President, so it will be next week before that happens.

The DEPUTY PRESIDENT — Order! Does the minister wish to say anything further?

Hon. P. R. HALL (Minister for Higher Education and Skills) — Only to say that this is not in any way an attempt to circumvent the constitutional rights of the people of Victoria. If we were seeking to amend the Constitution Act in any way, we would require a significant majority to get it through, and I am sure we would not get it through. This is designed purely, and without any further implication, to say, 'Your existing rights under the constitution are protected'. There is nothing sinister in doing that; it is just trying to clarify what some people may or may not believe.

Mr BARBER (Northern Metropolitan) — I guess we could insert many clauses like this, then, into many acts. Is it the case, though, that there is some infrastructure, as Mr Lenders seemed to be saying, for the distribution of water for irrigation that is individually or collectively privately owned versus that which is the property and asset of the water board or the water authority that is governed by part VII of the Constitution Act? Does doubt arise because of the dividing line between the different sets of assets — the private and public assets? Is there any confusion about who owns what, and is that what this is intended to close over?

Hon. P. R. HALL (Minister for Higher Education and Skills) — In this instance I am advised that the answer to Mr Barber's direct question is no. It does not arise because of any confusion between ownership of assets.

The DEPUTY PRESIDENT — Order! The question is that the minister's amendment 1, which is a test of his amendment 2, which seeks to add new clauses after clause 31, be agreed to.

Amendment agreed to; amended clause agreed to; clauses 2 to 11 agreed to.

Clause 12

Mr LENDERS (Southern Metropolitan) — In my contribution to the second-reading debate I flagged with the minister that I would be taking up the comments on this clause made by my colleague Richard Wynne, the member for Richmond in the Assembly, particularly the correspondence from Native Title Services Victoria. To cut to the chase, clause 12(2) seeks to repeal a provision in the act that allows a charge to be put on bottled water. In the briefing I received, the argument was that the collection fees for this charge, which from memory raised $60 000 a year, were much higher than the charge itself and that as a way of efficient collection of revenue and cutting red tape the government proposed to remove it. I have no particular issue with that.

However, Native Title Services Victoria has anxiety about it on the basis that it removes the ability of various Indigenous communities with access to land to raise revenue from that land. As was articulated by Mr Wynne in the Assembly, we have some anxiety about this. I ask the minister to comment on whether he or the government has considered this and whether they are of a view as to what amount of revenue will be denied to these Indigenous communities if the clause is adopted.

Hon. P. R. HALL (Minister for Higher Education and Skills) — I thank Mr Lenders for his question and for the courtesy of providing me with a copy of the letter from Native Title Services Victoria. At his agreement, I have made sure that the legal people who are looking after the bill have examined the letter in terms of my ability to give him a reply. My response is that there will be no detrimental effect, because a licence to take and use mineral water is not recognised as a land use activity under the Traditional Owner Settlement Act 2010. As such, there is no existing basis for traditional owner groups to access community benefits by way of a percentage of the surcharge.

Further to Mr Lenders's question, he asked about what sorts of revenues were being collected if it was recognised as a land use activity under the act. I recall that I have read about the amount of revenue collected by the surcharge, which was introduced in 1980 as a means of funding the enhancement of mineral springs and their environs. It collected between $150 000 and $500 000 per annum in the 1980s. It was later used to fund the Victorian Mineral Water Committee, although by 2008 the revenue collected had fallen to $70 000. As those trends suggest it is not a great amount of money anyway, but in relation to Mr Lenders's question I am advised that it is not recognised as a land use activity under the Traditional Owner Settlement Act 2010.

Clause agreed to; clauses 13 to 31 agreed to.

New clauses

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

2. Insert the following New Clauses to follow clause 31 —

'A New section 161BA inserted

After section 161B of the **Water Act 1989 insert** —

"161BA Reconfiguration plans

To avoid doubt, nothing in this Part empowers an Authority to adopt a reconfiguration plan that includes anything inconsistent with Part VII of the **Constitution Act 1975**.".

B Adoption of reconfiguration plans by Authority

In section 161F(2) of the **Water Act 1989**, for "An Authority" **substitute** "Subject to section 161BA, an Authority".'.

The government canvassed the arguments with respect to the new clauses when it was speaking to my amendment 1.

New clauses agreed to.

Clause 31 recommitted

Mr LENDERS (Southern Metropolitan) — The issues I wish to raise on clause 31 were predominately addressed in the debate on clause 1. However, as I flagged with the Minister for Higher Education and Skills in my second-reading speech contribution, my colleague John Eren, the member for Lara in the Assembly, made comments during the second-reading debate in that chamber. This is not a reflection on Minister Hall because he is handling the bill in this chamber on behalf of the government, but it is probably a reflection on the Minister for Water, Peter Walsh, and the government generally that when members in the Assembly have issues they wish to raise there is no committee stage in which they can pursue them. It is difficult for those issues to be pursued other than by

members of the Council, hence my dealing with clauses on behalf of Richard Wynne, the member for Richmond in the Assembly, and now on behalf of John Eren, the member for Lara.

I circulated to the minister the example used by the member for Lara of some of his constituents in Geelong. It goes to the meaning of 'applicant' under clause 31. I would assert that, as tenancy law provides, there is an obligation on lot owners and landlords to meet these costs. I invite the minister to comment on the issues raised by my colleague in the Assembly, so that he can outline the government's position on this issue.

Hon. P. R. HALL (Minister for Higher Education and Skills) — I am happy to try to provide clarification on that particular matter. Mr Lenders has done me the courtesy of providing me with the question that he proposed to ask. We had a fair amount of discussion about 'applicant' during earlier discussions in the committee stage. Clearly the 'applicant', if there is a single person, would be the landlord who owns all the dwellings on a piece of land or the owner of the land; and if there is a body corporate, where there would be collective owners of the land and they are adjoining, the 'applicant' would come from the body corporate. I remind Mr Lenders, and indeed myself, that clause 31 relates to new buildings and there is a direction for any new buildings that they be separately metered.

Clause agreed to; clauses 32 to 40 agreed to.

Reported to house with amendments.

Report adopted.

Third reading

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

That the bill be now read a third time.

I simply want to thank the opposition and the Greens for the responsible way in which a productive committee procedure was again undertaken. I thank them.

Motion agreed to.

Read third time.

MAJOR SPORTING EVENTS AMENDMENT BILL 2013

Committed.

Committee

Hon. W. A. LOVELL (Minister for Housing) — I seek leave to have Mr Drum sit at the table with me to assist.

Leave granted.

Clause 1

Mr TEE (Eastern Metropolitan) — The bill provides a number of new penalties and an extension of the operation of the Major Sporting Events Act 2009. Has there been any funding allocated for education or other campaigns to explain these changes and to ensure the new behavioural standards are met?

Hon. W. A. LOVELL (Minister for Housing) — There is no need for any additional government funding for this because education for authorised officers et cetera would be done by the event organisers.

Mr TEE (Eastern Metropolitan) — Just to be clear, is that funding in terms of educating the public or does the minister's answer include funding for any additional resources required by the police when they initiate prosecutions under this act?

Hon. W. A. LOVELL (Minister for Housing) — I was referring to funding for training of authorised officers et cetera. Education of the public would be done by the actual venues, as happens at the MCG where you see the sign that says it is an offence to run onto the pitch and the fine will be X amount of dollars. Education of the public can be done through those types of activities.

Mr TEE (Eastern Metropolitan) — We could deal with this through the bill, but I might be able to knock it off now. An additional three penalties are being provided. Will the revenue from those penalties go into consolidated revenue or will it be used to fund the implementation of the bill?

Hon. W. A. LOVELL (Minister for Housing) — It is not a revenue-raising activity. It is not expected that there will be large amounts of revenue raised from those offences, but the revenue that comes in if anyone is charged under this act will go into consolidated revenue.

Clause agreed to; clauses 2 and 3 agreed to.

Clause 4

Mr TEE (Eastern Metropolitan) — This clause, as I understand it, expands the operation of the legislation — the Major Sporting Events Act 2009. What criterion was used to determine that expansion and why, for example, was Simonds Stadium not included?

Hon. W. A. LOVELL (Minister for Housing) — The bill does not expand the number of events that are considered to be major events or the venues that are considered to be venues for major events; it deals with other things under this act. The reason that Simonds Stadium is not included is that the operators of Simonds Stadium have not asked for it to be included as a major events venue. If that stadium was named in the act, it would mean that every event that was run there would come under the additional requirements in the Major Sporting Events Act 2009. Certainly if there is a major event held at Simonds Stadium, it could ask for a major event order to be put over that particular event, which is probably a better outcome for a smaller venue like Simonds Stadium than to have it subject to the provisions of this act for every event that it holds.

Mr Ondarchie — Go Cats!

Mr TEE (Eastern Metropolitan) — Does the same answer apply to regional racing centres — say, in Bendigo or Ballarat — in the sense that they too are able to apply to have a particular event covered by the legislation?

The DEPUTY PRESIDENT — Order! Before I call the minister I remind Mr Ondarchie not to use unparliamentary language, such as he just used. He said, 'Go Cats!'.

Hon. W. A. LOVELL (Minister for Housing) — I did not know that 'Go Cats' was unparliamentary, but I would say, 'Go Tiges!'.

The DEPUTY PRESIDENT — Order! Remember that a Collingwood supporter is in the chair.

Hon. W. A. LOVELL — You have distracted me, Deputy President, and I have forgotten the question. The question was about other sporting events in rural and regional locations. For a major sporting event order to be put over an event, it would have to be a major event. Certainly there have been events in regional Victoria that have been covered by a major sporting event order, and one of those was a road race that was held in Geelong. On an individual basis event organisers can apply for a major sporting events order to be put over their particular event, but it would be onerous to require the provisions of this act to apply to every event in regional Victoria.

The DEPUTY PRESIDENT — Order! I call Ms Pennicuik, who I do not think is barracking for anyone at the moment.

Ms PENNICUIK (Southern Metropolitan) — I am loathe to mention it, given the persuasion of the Deputy President and the Anzac Day football match, so it is probably best if we do not go down that track.

The DEPUTY PRESIDENT — Order! Are Essendon players vegetarians as well?

Ms PENNICUIK — That is right, definitely. 'Go the Bombers', I could say, but I will not. Since we have opened this line of questioning, and I know the minister knows I am very interested in it, I ask: given her answers to Mr Tee about events requesting to be listed as major events, and given that the criteria under section 9 of the act, which I have read, are not very specific, such as section 9(2)(b) on the likely number of spectators for the event and section 9(2)(a) on the size of the event, what is the threshold for 'size' and what is the threshold for 'likely number of spectators'?

Hon. W. A. LOVELL (Minister for Housing) — There is no specific threshold for the numbers in the crowd et cetera; it is a matter of the minister being satisfied that this is a major event. The criteria are set out in section 9, and the minister would consider each of those criteria and the coming together of those criteria to establish whether it is a major event or not.

Ms PENNICUIK (Southern Metropolitan) — Okay, but in reality it would have to be some sort of substantial size and number of spectators.

Hon. W. A. LOVELL (Minister for Housing) — Yes, it would need to be significant.

Ms PENNICUIK (Southern Metropolitan) — Yes. My concern with these particular provisions of this bill, many of which override other acts and exempt corporations from having to comply with other acts, and with having the no compensation orders in the bill and having the somewhat draconian infringement provisions, is that we do not want them necessarily to apply to every sporting event in Victoria. There is no intention to spread this out to every event that possibly might want to be included?

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — There is absolutely no intention to spread this out to every event. There are very specific venues named in this bill, and it covers a

range of significant major events. No-one has the intention of applying this to the Goulburn Valley league junior football competition, for example. We need to be realistic about what we class as a major sporting event. Much as I think the Goulburn Valley league junior football competition is a major competition, because it is highly valued in our area and it gets children outside, running around and participating in sport, which is a great thing for them to do, it is certainly not something that needs the onerous provisions of a major sporting order put over it.

Ms PENNICUIK (Southern Metropolitan) — I take that point, of course, but I am more concerned about certain regional events wanting to be classed as major sporting events and the whole thing spreading out although that is not the intention.

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — I can assure the member that that is not going to happen. The minister will be diligent in his oversight of this act and would only apply a major sporting event order to something that truly was a major sporting event.

Clause agreed to; clause 5 agreed to.

Clause 6

Ms PENNICUIK (Southern Metropolitan) — My question regarding clause 6 is a general question. The clause inserts new section 67A into the act, creating an offence punishable by 20 penalty units. New section 67A(1) reads:

> A person must not deface or damage a sporting competition space within an event venue except with the authorisation of the venue manager or event organiser.

As I raised in my contribution to the second-reading debate, I am wondering why this is even needed, given that I would have thought that sort of offence was already an offence under the Crimes Act 1958 or under the Summary Offences Act 1966.

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — There are offences now for damaging such things as seats around the sporting event, but there is no specific offence in this act for damaging, for example, the cricket wicket at the Boxing Day test or the tennis court at the Australian Open Tennis Championships. We have seen cases in the past of damage to the playing space. An example of this was when the nets were pulled down at an Australia versus Iran World Cup qualifier at the MCG.

Under existing section 69 of the act, it is already an offence, as I said, to damage things such as the barriers, the seats or the electrical equipment but not the sporting ground itself. This bill includes the competition surfaces, and the amendment is designed to ensure that the surfaces and equipment that events depend on are protected. We do not want the squeegee damaged at the MCG either, because it sometimes rains and we want to be able to get play back onto the cricket wicket as soon as possible.

Event managers and venues support the addition of these offences to the act, and one of the big benefits of having these as specific offences under the act is that it then links to the banning orders that can be issued under section 87 of the act. If somebody were to run onto the MCG during the Boxing Day test and damage the wicket, or even do that on Christmas Day, it would enable them to be banned from that venue as well. This provision enables the legislation to deliver a comprehensive system of enforcement in relation to the inappropriate behaviour of some people at major sporting events.

Ms PENNICUIK (Southern Metropolitan) — I thank the minister for the comprehensive answer. I think she is trying to woo me with her references to the Boxing Day test and the Australian Open.

The minister has sort of answered my question of why section 67A or any criminal damage offences are necessary under this bill when such offences already exist under the Crimes Act 1958 and the Summary Offences Act 1966. People could already be issued with infringement notices under the summary offences legislation for this sort of criminal damage, one would have thought. My follow-up question to what the minister said, linking it with banning orders, is: is that not possible without these provisions? If someone was charged with criminal damage at a sporting venue, could they not be issued with a subsequent banning order?

Hon. W. A. LOVELL (Minister for Housing) — I think these are common-sense inclusions in the bill. As I said, there are already offences in the legislation that relate to things like seats or barriers et cetera, so it is common sense to include the sporting ground. That is probably even more integral to the event going ahead. I do not think anyone would think it was acceptable for someone to go onto the sporting arena and do damage and not be banned from the venue when they have interrupted the event, be it the Boxing Day test match, the Australian Open Tennis Championships or even — for me — the Australian Formula One Grand Prix, although that is not covered under this legislation. Fans who pay a lot of money to go to these events deserve

the protection of knowing that it is not going to be disrupted by one or two people.

Ms PENNICUIK (Southern Metropolitan) — I do not want to belabour the point, but this question is about mirror provisions that already exist on the statute books. That is the concern we raised about the original bill, so I am prosecuting that again. But the minister's answer was that there would be no way for someone to be banned from an event or venue if these provisions were not in this bill. My question is: if they were charged under the Summary Offences Act 1966 for criminal damage at a sporting venue, could they not still be banned from the venue?

Hon. W. A. LOVELL (Minister for Housing) — I think the difference between being under the criminal act and this legislation is that under the criminal act people would normally have to be trespassing to be — —

Ms Pennicuik — Criminal damage.

Hon. W. A. LOVELL — Criminal damage, I know. But they would have to be trespassing to be in an environment where they were doing the damage. If somebody broke into the Melbourne Cricket Ground, there is the offence of breaking and entering, and that would be an offence under the crimes legislation. But when people have actually purchased a ticket and have a legal right to be in a venue, this just clarifies that doing anything that is going to be damaging to that event is actually an offence under this legislation and that they will be charged and they could be banned from a venue.

Ms PENNICUIK (Southern Metropolitan) — I think the answer made it a bit more confusing. The minister mentioned that if they were in the venue with a ticket and so were legally in the venue but they caused criminal damage they would be charged under this legislation. The minister mentioned earlier with regard to the Boxing Day test that they could have been at the venue the day before. I wonder if they are actually covered by this legislation the day before or whether they would be covered by the Summary Offences Act the day before?

Hon. W. A. LOVELL (Minister for Housing) — With the inclusion of these provisions in the principal act they will be, and they can be banned. Under the current provisions in the criminal code, if they were to do damage, they could go to court and could be fined or charged for doing the damage, but they cannot be banned from attending future sporting events at that venue. This provision just clarifies that these are major events and it brings together the opportunity both to charge someone with an offence and also to ban them from future events at that venue.

Ms PENNICUIK (Southern Metropolitan) — I understand that, but the minister has raised the issue of someone being at the venue. In the case of the MCG, the MCG is a venue listed in the act, so it would be whenever someone was at the MCG. If I think about something such as the Caulfield Racecourse, someone could go into the Caulfield Racecourse before one of the events listed here. Would they be covered by this, even though the event had not begun? If they went into the course the day before the actual event listed here, they could not be charged under this bill. They would have to be charged under the Summary Offences Act 1966, because this bill only covers the duration of the event.

Hon. W. A. LOVELL (Minister for Housing) — The reason that would be covered under this bill is the definitions cover the event venues. The event venues include 'any venue specified as an event venue in a major sporting event order'. That particular location would be covered under this act for the purposes of the event Ms Pennicuik is speaking about.

Ms PENNICUIK (Southern Metropolitan) — But the bill says, for example:

> (ha) the Caulfield Racecourse on any of the following —
>
> (i) Caulfield Cup Day;
>
> (ii) Caulfield Guineas Day;
>
> (iii) Thousand Guineas Day;

but not the Caulfield Racecourse on other days.

Hon. W. A. LOVELL (Minister for Housing) — I have just been advised that when it is an event order, it is just for the period of that event, so the day of the event. If somebody were to break into Caulfield the day before, they would have to be dealt with under the criminal act.

Clause agreed to; clauses 7 to 9 agreed to.

Clause 10

Ms PENNICUIK (Southern Metropolitan) — I move:

1. Clause 10, after line 3, insert —

> '"(2) Before exercising a power under subsection (1), an authorised officer may warn a person that his or her behaviour may be disrupting or interrupting the event or

causing unreasonable disruption or interference to spectators and if the behaviour continues the officer has the power to issue a direction to leave to that person.'.

This is similar to an amendment I moved to the original act in 2009, which was about making sure that it is an obligation — not an absolute obligation, but an obligation in the act — and a right that the person be warned that their behaviour is disrupting or interfering with spectators, which they may not be aware of. They also may not be aware that they could be directed to leave. The reason for that is if they are directed to leave and they do not leave, there are other provisions in the act that come into play that could cause them to have an infringement notice issued against them. It is important that people are warned beforehand rather than just directed to leave. The warning would ensure that people who were not intending to disrupt or interfere would be given the opportunity to stop what the authorised officer feels was a disruption or interference, because they may not have realised the consequences or effects of their behaviour.

The DEPUTY PRESIDENT — Order! Before calling the minister or members — I will call Mr Tee in a moment — I inform the committee that I regard Ms Pennicuik's amendment 1 as a test of her amendment 2. As I did not advise Ms Pennicuik of that at the beginning of the committee, I invite her to add further comment to the commentary she has made if she wishes to do so.

Ms PENNICUIK (Southern Metropolitan) — The only other comment I make is that this would apply to behaviour which the authorised officer believed to be disruptive or interfering with spectators. It would not apply to behaviour that was dangerous or was going to cause an injury. The authorised officer will make a subjective assessment that the behaviour of a person is disruptive, and the person may not realise that and may not be intentionally behaving that way.

The DEPUTY PRESIDENT — Order! Ms Pennicuik's amendment 2 is in effect a consequential amendment to amendment 1, should it pass.

Mr TEE (Eastern Metropolitan) — I have a question for the minister pertinent to this amendment. I have some sympathy for the proposition put by Ms Pennicuik, but I am assuming that the option or the requirement to provide a warning, where it is appropriate, is already covered as part of the training or operation manuals or other guidance material that is provided in these circumstances. Could the minister confirm that that is the case?

Hon. W. A. LOVELL (Minister for Housing) — What I would say to Ms Pennicuik is that there is nothing in the act that prevents authorised officers from issuing warnings under the current provision, and I am advised that this often happens in practice. Specifying in the act that an authorised officer may warn a person is therefore not required, and it might actually have the effect of creating an expectation that a warning would be given, which in turn may in effect require officers to record the fact that a warning has been given before further action can be taken. This would significantly complicate the crowd management process by creating confusion as to who had received a warning and who had not, and it would create difficulties in managing fast-moving and volatile crowd situations. Depending on the crowd dynamics at the time, it is sometimes appropriate to issue a warning and sometimes not, so this proposed amendment would be both unnecessary and unhelpful. There are common-sense provisions in all cases, and if somebody was doing something that was disruptive and the officers asked them to stop and they stopped, then there would be no further action. But if they were continuing to flout the officers' warnings, then the full effect of the act should be applied.

Ms PENNICUIK (Southern Metropolitan) — I hear what the minister is saying, that there is a discretion, but there is also a discretion not to exercise the discretion. There is certainly enough evidence — for example, in the Ombudsman's reports — of authorised officers overplaying their hand, whether or not they are trained. I do not want to rely on what is in the training manual; I want to put into the statute that there is an expectation that a warning will be given. I do not mean it should be given in a situation where there is danger, but in the situation we are talking about where there is disruption or interference to other spectators which is not putting anyone in danger. That distinction is very clear. That is why I have not applied this to the other provision in the act which mentions immediate danger to people et cetera. It would not apply in the situation which the minister is talking about.

Hon. W. A. LOVELL (Minister for Housing) — I believe I have answered the member's question. In response to Mr Tee's question, there is an emphasis on win-win outcomes in the training on conflict resolution, so it would suffice to train people in establishing whether following disruptive behaviour there could be a warning or whether they would need to carry it further.

The DEPUTY PRESIDENT — Order! The question is that Ms Pennicuik's amendment 1 be agreed to, which is a test for her proposed amendment 2.

Committee divided on amendment:

Ayes, 3

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

Noes, 35

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

Amendment negatived.

Clause agreed to; clauses 11 to 16 agreed to.

Clause 17

Mr TEE (Eastern Metropolitan) — Clause 17 provides penalties for both lit and unlit flares. The clause provides a penalty of 5 penalty units for an unlit flare and a penalty of 7.5 penalty units for a lit flare. My question is: on what basis was this discrepancy arrived at? It appears to be much more dangerous to light a flare than simply to be in possession of an unlit flare. I am wondering if the minister can outline the basis on which that discrepancy was arrived at.

Hon. W. A. LOVELL (Minister for Housing) — The advice that I have is that under the principal act the penalty was set at 10 per cent of the maximum penalty that could be handed down by a judge in a court of law. The clause increases that to 25 per cent of the maximum penalty that could be handed down by a judge if the matter went to court. Therefore 7.5 penalty units is 25 per cent of the maximum penalty that could be handed down for having a lit flare.

Clause agreed to.

Clause 18

Ms PENNICUIK (Southern Metropolitan) — Clause 18 extends the application of the aerial advertising provisions to certain events such as one-day international cricket matches and Twenty20 international cricket matches et cetera. My question to the minister is: under the aerial advertising provisions in the principal act, would it be possible for an organisation such as the Transport Accident Commission (TAC) to undertake aerial advertising, as I suggested in my contribution to the second-reading debate? For example, during a football match at the MCG could TAC tell a captive audience of attendees, 'Do not drink and drive'?

Hon. W. A. LOVELL (Minister for Housing) — The banning of aerial advertising is to do with commercial advertising, so it would depend on the definition as to whether the advertising was for commercial purposes. Ms Pennicuik gave the example of TAC. That organisation is a significant sponsor of sporting events, as is WorkCover, so I would imagine that it would be considered a commercial activity. However, the bill allows the secretary of the department to make a decision about aerial advertising so an organisation seeking to advertise on a non-commercial basis could apply to the secretary, who would make a decision on whether to allow that aerial advertising to go ahead or not.

Ms PENNICUIK (Southern Metropolitan) — Just to clarify, because TAC is a commercial organisation it would not be able to do that? That would not be good.

Hon. W. A. LOVELL (Minister for Housing) — The secretary makes the decision, but he has to consult with the event organiser. Even if the TAC is not a sponsor, the event organiser may allow it to go ahead.

Ms PENNICUIK (Southern Metropolitan) — I thank the minister for her answer. That is sort of what we feared — that is, that where the advertising is for a public purpose, even though the organisation is not a sponsor of the event, there is a possibility that will not be allowed, which is a shame. You would think that sending a public safety message over the MCG, with its captive audience of 90 000 people looking at it, would be a good purpose for aerial advertising.

My next question is: if it were a not-for-profit organisation that wanted to send a message such as, 'Stop logging our water catchments', could it apply for a permit as it is not a commercial operation?

Hon. W. A. LOVELL (Minister for Housing) — I think I answered this in my substantive answer. Anyone

can apply to the secretary; it is up to the secretary to consult with event organisers. I do not think it is for us here in the chamber to decide what is appropriate or inappropriate advertising at events.

I also point out that we have a lot of to-ing and fro-ing of questioning from the Greens in committee. Members of the Greens were offered a briefing on this bill, which they declined to take up. The minister's office actually rang them to offer them a briefing; they did not have to ring the minister's office. They declined to take up the opportunity to have a briefing on this bill, as they do with most bills, yet they then come in here and ask all these questions in committee that could have been asked of the bureaucrats during the bill briefing.

Ms PENNICUIK (Southern Metropolitan) — I was quite happy to leave it as it was until I got that lecture from the minister. Let me say a couple of things. It is our business in here to decide what happens and whether advertising can take place or not, because that is actually what this provision does; it decides who can advertise and who cannot. I am just trying to clarify the provision in the public interest. I do not need to be told I cannot do that; that is our job.

I also do not need to be lectured about having briefings or not having briefings, particularly when there is such a short time between sittings and we have a lot of bills to deal with. We will choose the bills that we want to have briefings on. We take up the opportunity quite a lot. Mr Barber, Ms Hartland and I go to a lot of briefings on bills, but we understand that it is quite a load for the department to provide them, so we do not go if it is not necessary.

The purpose of the committee stage is not always just to assure me as the person from the Greens charged with the passage of the bill as to the reason for a provision but is to assure the public. This is a public statement on the provisions. Sometimes I will have a briefing, and I always thank the departments and the ministers' offices for their briefings. They are always very helpful, and they provide the information I ask for. That does not always satisfy me. I want to put on the public record what the concerns are, and I want to ask the minister what the provisions actually mean if I am not sure. I do not think we have clarified this provision totally, even now, but as it stands I am prepared to let it go. However, I do not need to be lectured about those issues in committee.

Hon. W. A. LOVELL (Minister for Housing) — I believe I did answer that question in my substantive response. I have already told the member that this clause is about commercial advertising at events, and anyone else who wants to advertise can apply to the secretary. It is then up to the secretary, in consultation with the event organisers, as to whether it is appropriate that advertising be allowed at the event.

Ms PENNICUIK (Southern Metropolitan) — I will finish, but I was told by the minister in her last answer that the clause does not talk about what is appropriate advertising. That is exactly what the clause does, and that is what I am pursuing. The actual clause in the bill talks about what is or is not appropriate advertising, and Ms Lovell is saying that is not something I should make my business. It is actually what the clause does.

Clause agreed to; clauses 19 to 30 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Motion agreed to.

Read third time.

ADJOURNMENT

Hon. W. A. LOVELL (Minister for Housing) — I move:

That the house do now adjourn.

Yabby industry: regulation

Mr LENDERS (Southern Metropolitan) — On this momentous day in Victoria I rise to speak in the adjournment debate on the matter of yabbies. In my time as shadow Minister for Agriculture and Food Security I have made it my business to look at many of the industries in the state of Victoria. I have been to a number of yabby farms and have followed through with the yabby industry. It is not just me who is interested in yabbies. I refer to the *Hansard* of this house of 20 April 2004 when none other than Mr Hall said:

> I call on the minister … to do more to encourage the aquaculture industry here in Victoria, particularly as it applies to yabbies.

Mr Drum — Yes, you decimated it. You decimated the yabby industry.

Mr LENDERS — I am glad Mr Drum is in the chamber, because his committee, the Rural and Regional Committee, tabled its report this morning on its inquiry into the impact of food safety regulation on farms and other businesses. The committee has recommended that the state government remove the

regulatory requirements around the handling of live seafood and yabbies in particular. As we know, over the last several years with the drought and the regulatory environment in Victoria the number of yabby farms has contracted. By one count it is down to three commercial yabby farms.

Mr Drum interjected.

Mr LENDERS — I take up Mr Drum's interjection, because his deputy leader, the member for Swan Hill in the Assembly and the now Minister for Agriculture and Food Security, Mr Walsh, when in opposition made some pretty bold promises to the yabby industry about the dynamic actions the incoming coalition government would take in its first few months in office. Of course, two and a half years later, the yabby industry is still waiting. I welcome the committee's report today, which calls for deregulation of the yabby industry, which would take it from underneath the oppressive burden of PrimeSafe. Mr Drum's committee recommended what the member for Swan Hill undertook to do in opposition, which is to look at the regulations and deal with them.

The action I seek on behalf of yabby farmers and consumers of yabby products is that the minister take action, do what he said he would do in opposition and deal promptly with the recommendation of the parliamentary committee which calls for the yoke to be lifted from yabby farmers. I call on the minister to respond positively to the recommendation of the parliamentary committee and take the regulatory burden off this important regional industry.

Latrobe Regional Hospital: federal funding

Mr P. DAVIS (Eastern Victoria) — I raise a matter for the attention of the Minister for Health, the Honourable David Davis. I refer the minister to the outrageous cuts to hospital funding in Victoria by the commonwealth government and particularly to the $107 million which was taken away from Victorian hospitals this year. After vigorous advocacy on the part of the Minister for Health and chairs of hospital boards across the state, the federal minister committed to put those funds back in for this year alone.

An article in today's *Latrobe Valley Express* states that the Latrobe Regional Hospital (LRH) chair, Kellie O'Callaghan, has said:

> We have already closed the beds, we did that at the time, so even re-activating them now is not going to make up those numbers … if we had to postpone someone's surgery, well, that has already happened … and now we already run at a full surgical load so we don't have the flexibility to 'make up' what we had to do to accommodate … when the cuts were made.
>
> …
>
> We also had staff resign from positions to go to other jobs but we couldn't fill their positions because we didn't know we had the funding.

The article also states:

> … Ms O'Callaghan said she believed LRH still faced a reduction in its revenue next financial year.
>
> 'We don't know how they calculate things but they are still indicating there will be a reduction … we hope to find out as soon as possible since it will be effective from 1 July', she said.

I refer to that article because it is symptomatic of hospitals across the state, particularly in the Eastern Victoria Region and Gippsland. Latrobe Regional Hospital, which is a major referral hospital for the Gippsland region, is struggling to deal with the needs of patients as a result of this appalling public policy implementation by the federal government to cut funding and reinstate funding. The curious thing is that none of those funds have yet flowed. LRH has not received $1 of the so-called promised reimbursement of funds for this financial year. Therefore it is unable to take any action to rectify its budget position and its throughput in that hospital. I ask the Minister for Health to investigate this matter and pursue the commonwealth government on behalf of LRH to secure that funding.

Environment: residential mandatory disclosure scheme

Ms HARTLAND (Western Metropolitan) — My adjournment matter tonight is for the Minister for Energy and Resources, the Honourable Nicholas Kotsiras, and relates to the proposed national residential mandatory disclosure scheme for energy, water and greenhouse ratings. This scheme will allow families to understand whether their new home will stay cool in summer and warm in winter at a low cost. Families deserve to know how much energy and water a home uses before they buy or rent it so they can choose a home that is cheap to run and creates less greenhouse gas pollution.

The residential mandatory disclosure scheme is currently under consideration by the Council of Australian Governments and was first committed to be implemented by May 2011. It was then delayed until 2012 by the Ministerial Council on Energy.

The consultation regulation impact statement on the proposed costs and benefits of various options for the proposed scheme was released in July 2011.

Submissions closed in 2011. A response to a question on notice in federal Parliament from Greens Senator Scott Ludlam in November 2011 was provided by the federal Minister for Finance and Deregulation, Ms Wong, and it said the decision regulation impact statement on the proposed measure was to be presented to the Council of Australian Governments in 2012.

The 2012 deadline for implementing this scheme has now passed. We cannot afford to wait any longer for this important scheme to proceed. Will the minister support the implementation of a residential mandatory disclosure scheme and push for the decision regulation impact statement to be publically released at the Council of Australian Governments meeting in April?

Hospitals: federal funding

Mr RAMSAY (Western Victoria) — My matter tonight is for the Minister for Health, the Honourable David Davis. I am asking Mr Davis if he would seek an urgent meeting with the federal Minister for Health, Tanya Plibersek, but given this afternoon's events and the circus and farce that went on in Canberra, we are not quite sure who that minister will be as of tonight. We have already seen the federal Minister for Regional Australia, Regional Development and Local Government, Simon Crean, lose his job. We have seen the federal member for Corio, Richard Marles, back the wrong horse and end up on the scrapheap. We can only assume that Tanya Plibersek will continue to be the federal Minister for Health.

On a number of occasions I have raised the subject of the impact the federal health funding cuts have had on hospitals in my electorate of Western Victoria Region, particularly in Ballarat. Even with the reinstatement of the $107 million, 490 admissions will still not be able to be catered for. At Barwon Health 473 admissions will not be catered for, even if the funding is returned, given the chaos the cuts have caused these health boards. Over 111 people on the waiting list at Ballarat will not be catered for, and we heard this morning that the Royal Children's Hospital will be 294 admissions down due to the cuts. Even with the reinstatement, there will be 111 on the waiting list who will not be catered for.

All the while we have the Good Friday Appeal, for which $16 million was raised last year. I congratulate the Victorian community, and I look forward to yet another good appeal. I wish the CEO of the Good Friday Appeal, Deb Hallmark, all the best for the Easter weekend.

I would also like to draw members' attention to the fact that in Colac — and I have mentioned this in the chamber before — over 1000 residents came to a meeting to discuss how we can continue the urgent care service in Colac. The $107 million of federal cuts had the hospital board looking at having to make cuts within its own budget, and therefore the urgent care was at risk. The federal member for Corangamite rode in on his horse and said, 'What we'll do is sack the board'. That went down like a lead balloon, and he was booed straight out of the community meeting, not to be seen again in Colac. I think most people were very pleased about that.

The action I seek from the minister is that he approach the federal minister, Tanya Plibersek, and seek to have the remaining $368 million returned to the Victorian health service and that he also seek an undertaking that there will be no future cuts to health service payments from the commonwealth midyear with all its attendant disruption to patients.

Ms Pulford — On a point of order, Acting President, on previous occasions it has been my experience in the adjournment debate that matters have been ruled out of order where the action sought is advocacy to a federal minister in an area of the federal minister's responsibility. Obviously everyone has an interest in the outcome of the federal election this year, and Mr Ramsay is most concerned about the outcome in the seat of Corangamite, but I was just wondering if we could perhaps have some clarification around this to assist members between now and 14 September.

Mr O'Brien — On the point of order, Acting President, there is no point of order. It is clear that Mr Ramsay's adjournment matter was directed to Mr Davis, in his capacity as the Victorian Minister for Health, who is dealing with the problem created by the commonwealth cuts. This sort of issue has been raised before, and there is no point of order.

Ms Pulford — Further on the point of order, Acting President, in response to Mr O'Brien's comments, the action Mr Ramsay sought was clearly advocacy to the federal government.

The ACTING PRESIDENT (**Mr Ondarchie**) — Order! On this occasion I do not uphold the point of order because I think Mr Ramsay's adjournment matter was relevant to Victorian government administration vis-a-vis the health portfolio.

Manufacturing: government procurement

Mr SOMYUREK (South Eastern Metropolitan) — I raise a matter for the attention of the Minister for Manufacturing, David Hodgett, concerning the Victorian Industry Participation Policy (VIPP). In doing so I would like to congratulate Mr Hodgett on his rise to the ministry. I look forward to asking him many questions with respect to the manufacturing industry.

One of the biggest issues in the manufacturing sector, and in fact one of the biggest drivers of the manufacturing sector, is government procurement. Therefore VIPP has been a key instrument of growth for the Victorian manufacturing sector since the Victorian Industry Participation Policy Act 2003 was passed by the Bracks government. Over the years VIPP has contributed to tens of thousands of manufacturing jobs being maintained and/or created in Victoria.

Despite the importance of procurement to the local manufacturing sector, Minister Hodgett appears not to have been given responsibility for the Victorian Industry Participation Policy Act. That is simply not good enough. The Victorian manufacturing sector deserves to be taken seriously. Having a manufacturing minister who does not have carriage over procurement is an absolute charade, and it does no favours for Mr Hodgett. I ask the Minister for Manufacturing to insist that he be given carriage over this important piece of legislation, the VIPP act, in order for the Victorian manufacturing sector to continue to grow.

B-24 Liberator Memorial Restoration Fund: Werribee land

Mr ELSBURY (Western Metropolitan) — The issue I raise this evening is for the attention of the Minister for Environment and Climate Change, the Honourable Ryan Smith. It relates to a tract of land which is currently held by Melbourne Water. There has been some discussion as to whether or not transfer of that land could be made to the Department of Sustainability and Environment. The reason is that the Wyndham region, and Werribee in particular, has had a very long affiliation with the air force. The Royal Australian Air Force (RAAF) bases at Laverton and Point Cook have for many years been servicing the RAAF quite adequately in the training of officers and in logistics. The Laverton airfield has been closed, and there has been some reduction to the operations of the Point Cook airfield.

During the Second World War some satellite airfields were dotted around the township of Werribee, as it was called back in those days. One of those airfields was held on to by the former Melbourne and Metropolitan Board of Works, which then handed it over to Melbourne Water, and this is where we are today — at this block of land that Melbourne Water currently looks after.

Places Victoria, part of another government department, has now started the process of redeveloping this particular section of land so that houses can be built and so that there can be continued growth in the city of Wyndham. On this land — we finally get to it — is a hangar that was left over from operations during the Second World War, which is currently being used by the B-24 Liberator Memorial Restoration Fund Inc. It is undertaking restoration work on an aircraft that was used in the defence of our great nation — namely, a B-24 Liberator. A letter was sent to the minister requesting that the Department of Sustainability and Environment take over the responsibility for this land from Melbourne Water. Unfortunately the minister stated in a letter to the secretary of the B-24 fund:

> The transfer to the Crown and the appointment of the B-24 Liberator Memorial Restoration Fund lnc. is not one that I can support due to the ongoing risks associated with the structural integrity of the building as outlined above. There are, however, a number of potential options with respect to future ownership of this site —

and he lists them.

I ask the minister to meet with members of the B-24 Liberator Restoration Fund to flesh out these options and to take with him any members of his staff he needs to discuss this more fully, so that a home can be found for this fantastic community project.

The ACTING PRESIDENT (**Mr Ondarchie**) — Order! I am about to give Mr Pakula the call, but before I do so, on behalf of all his colleagues in the chamber on what I think will be his last contribution, I wish him a safe and happy journey for his next adventure.

South Gippsland Highway–Hallam and Evans roads, Lynbrook: upgrade

Hon. M. P. PAKULA (Western Metropolitan) — Thank you, Acting President, and I may, by leave, say a few words at the end.

My adjournment matter is for the Minister for Roads and it concerns the intersection of Hallam Road, South Gippsland Highway and Evans Road in Lynbrook. The action I seek is that the minister commit to funding an upgrade of that intersection. The heavily congested and often dangerous intersection is located within the city of Casey and is the council's no. 1 priority for arterial road

intersection advocacy. The City of Casey is seeking to have the intersection upgraded and signalised as a direct crossroad between Hallam Road and Evans Road.

Some years ago, to avoid an uncontrolled cross intersection, the legs leading into the South Gippsland Highway from Evans and Hallam roads were offset, creating two separate intersections. In 2005 the City of Casey closed this section of Evans Road to traffic travelling to Thompsons Road for safety reasons. To put this in context, and I say this as a former parliamentary secretary for roads and ports, at the time the road was predominantly constructed to an unsealed gravel road standard and was not suitable for carrying the increasing volumes of through traffic using the link as an alternative to the surrounding arterial road network.

Evans Road has since been upgraded and is ready to be reopened to through traffic; however, this can only happen if the intersection is upgraded. Unfortunately the closure of Evans Road to through traffic has led to motorists rat-running through local roads to avoid turning right from this intersection. This continues to have a significant and detrimental impact on residents living in surrounding streets. With the impending closure of the landfill site in Clayton in the next 12 months, there will be a significant increase in the number of trucks accessing the Hallam Road site. Over 50 000 vehicles travel through this intersection each and every day, and this number will only continue to grow.

The city of Casey is one of the fastest-growing municipalities in the state. Young families are buying into new estates and building their dream homes, which is a good thing. However, in some parts of Casey the roads are simply unable to meet the demands of the community. That is why the Labor government made road funding in Casey a priority. Not a single budget went by without an investment in road upgrades in Casey. We understood that and we met the needs of growing communities. It is time the minister and indeed the Napthine government stopped their excuses, which are the same excuses that were used by the Baillieu government, and delivered the road upgrades that Casey so desperately needs. I ask the minister to commit to funding an upgrade of the intersection of Hallam Road, South Gippsland Highway and Evans Road.

Kindergartens: funding

Ms MIKAKOS (Northern Metropolitan) — My adjournment matter tonight is for the Minister for Children and Early Childhood Development. I understand significant changes have been made to the way in which applications for a second-year funded kindergarten are managed. Most children leave kindergarten ready to start prep; however, some children may have had difficulties in key learning areas, so a second year of kindergarten may need to be considered. According to the *Kindergarten Guide 2013*, issued by the minister's department, an early childhood teacher can declare that a child is eligible to receive a second-year of funded kindergarten if the child is observed as having delays in at least two outcome areas of learning and development, as detailed in the Victorian Early Years Learning and Development Framework, and if there is evidence to suggest that the child will achieve better outcomes if he or she attends a second year of kindergarten to strengthen the learning and development of skills in these areas to better facilitate the transition to school the following year.

The Diamond Valley and Eltham Kindergarten Teachers Association has advised me — and I understand it has also written to the minister — that the new processes outlined in the 2013 guide are incredibly onerous and would add to already enormous workloads for teachers. The previous process only required teachers, in collaboration with the family, to fill in a document outlining the issues behind the requirement for a second year of kindergarten. The association is extremely concerned that not only does the new process require this practice to continue but it also requires documented notes from meetings with the school, with any child-care centre attended by the child and with the relevant local preschool field officer.

The association has raised concerns about the increase in workload this will create for both kindergarten teachers and preschool field officers; the lack of consultation in relation to these changes — the association certainly was not consulted; the issue of whether or not families who enrol their child late in the year will be eligible for a second year, given that all the documentation will not have been collected; and the issue, given the same reasons, of whether or not families approaching a kinder for a second year late in the year will be eligible. Some families will not have seen the preschool field officer in time because of their own workload pressures.

I urge the minister to take on board these concerns and ensure that her department works closely with all of Victoria's kindergartens and field officers to ensure that children needing a second year of kindergarten are not denied one. I specifically ask the minister to advise whether cost pressures and an attempt to reduce the cost of funding a second year of kindergarten is what is driving these bureaucratic changes.

Nunawading Primary School site: safety

Mr LEANE (Eastern Metropolitan) — I would just take some licence to also wish Mr Pakula well before I raise my matter.

Honourable members interjecting.

Mr LEANE — He will be back. As the Opposition Whip, I would like to say he is one of the finest men I have had the pleasure to whip, so I wish him well. My adjournment matter is directed to the Minister for Education, Mr Dixon, and concerns the former Nunawading Primary School site — it is the site of a former school, and it is empty. I have been contacted by a constituent who is concerned at the state of the empty site and about the safety of local kids who might be mucking around in there and issues of hygiene. The action I seek from the minister is that he ask his department to just check if the site is safe and, if he could, to inform the people in the surrounding area and me of the plans for what that school site might become in the future.

Road safety: speed camera revenue

Ms PULFORD (Western Victoria) — My adjournment matter is for the attention of the new Minister for Police and Emergency Services and relates to the government's most recent campaign, 'See the bigger picture: cameras save lives'. The campaign tells us that speed is a factor in 30 per cent of road deaths, that speed cameras have reduced our road toll by one third, that speed cameras have reduced the number of accidents by 47 per cent and that the cost of speed-related injury to Victoria is $1 billion. I urge members to have a look at the website camerassavelives.vic.gov.au, because over time Liberal and Nationals MPs have sent some mixed messages on this question.

Kim Wells, the former Treasurer, has said:

> We do not have confidence in the speed camera technology and still maintain that the speed camera is basically a revenue-raising tool for the Treasurer.

He has also said:

> The bottom line is that the Victorian community deserves a police force that is out on the streets investigating illegal crime, not more police officers being tied up behind desks, babysitting prisoners or raising government revenue.

On a third occasion he said:

> … the government is more interested in focusing on raising revenue from traffic fines than on fighting crime, illegal drug activity, and producing community safety programs.

These were his words in opposition. Of course then Mr Wells became the Treasurer, so poacher turned gamekeeper.

For all the rhetoric, in the budgets delivered by Kim Wells the government has presided over a significant increase in revenue raised from traffic camera and road safety fines. In 2009–10 the revenue was $437.2 million; in 2010–11, $476.8 million; in 2011–12, $506.9 million; and in 2012–13, $590.9 million. When Mr Wells was Treasurer there was quite an increase in those figures. The midyear financial year report shows that revenue collected from motorists is propping up the state budget. The government's speed camera campaign asks us to look at the bigger picture, but perhaps we should look to the past and comments made by Mr Wells on these matters. I ask the new Minister for Police and Emergency Services to provide me with written advice as to whether or not he thinks speed cameras exist primarily to raise revenue or to save lives.

Rail: Diggers Rest station toilets

Ms TIERNEY (Western Victoria) — My adjournment matter is for the Minister for Public Transport, Terry Mulder, and it is in regard to public access to amenities at the Diggers Rest railway station on the Sunbury line. As members in the house may be aware, the Labor government spent $270 million on upgrading and electrifying the Sunbury line, which has seen more frequent services and therefore a significant increase in patronage. As the minister would be aware, as part of this upgrade since November 2012 the Diggers Rest station has come under the jurisdiction of Metro Trains Melbourne. Before the changeover to Metro, V/Line was operating at the station and staffed it during the peak morning period. However, since Metro has taken over the state government has determined not to staff that station. As a consequence the public toilets located at Diggers Rest station are now not available, because the policy states that amenities are only available at stations while they are staffed.

I recently received correspondence from the mayor of the City of Melton regarding the unsatisfactory situation that has arisen at the Diggers Rest railway station in respect of access to public amenities by public transport users. A number of constituents have also contacted my office and the offices of other members in relation to this. Labor understands that providing accessible and frequent public transport services is absolutely critical, but providing public amenities goes hand in hand with that, and it is access to those amenities that is the point I am making this evening. The amenities already exist; they do not need to be

built. All we are saying is that they need to be unlocked and the station needs to be staffed. I urge the minister to ensure that the necessary arrangements are put in place at the soonest possible opportunity to make those public amenities available to and accessible by all public transport users at that station.

Responses

Hon. W. A. LOVELL (Minister for Housing) — I have written responses to adjournment debate matters raised by Mr Philip Davis on 5 February, Mrs Petrovich on 19 February and Mr Barber on 20 February.

There were 11 issues raised on the adjournment tonight and I will pass them on to the relevant ministers.

Mr Lenders raised an issue for the Minister for Agriculture and Food Security regarding yabbies. I believe he was asking him to reduce the regulatory burden imposed on the industry by Labor.

Mr Philip Davis raised an issue for the Minister for Health regarding the federal government's failure to provide the funding that it promised to reinstate after it cut $107 million from this year's health budget. It promised to reinstate that money but failed to do so, and he asked the health minister to pursue that money with the federal government.

Ms Hartland raised a matter for the Minister for Energy and Resources regarding a mandatory disclosure scheme under consideration by the Council of Australian Governments (COAG). I do not believe the minister can pre-empt a COAG decision, but I am sure he will provide her with some information after COAG.

Mr Ramsay raised a matter for the Minister for Health, asking him to seek an urgent meeting with the federal Minister for Health, Ms Plibersek, regarding the federal government's failure to provide the $107 million it promised to reinstate in this year's health budget. He also asked the minister to pursue reinstatement of the further $368 million to be made in cuts over the next three years and to get an assurance from the federal minister that there will no further cuts to Victorian health services.

Mr Somyurek raised a matter for the Minister for Manufacturing regarding the Victorian industry participation project and procurement responsibilities, and I will pass that on to the minister — the new minister whom we all congratulate on his elevation to cabinet.

Mr Elsbury raised a matter for the Minister for Environment and Climate Change regarding land that is held by Melbourne Water and its possible transfer to the Department of Sustainability and Environment. On that land there is an ex-World War II hangar, and the member asked the minister to meet with the members of the B-24 Liberator Memorial Restoration Fund regarding future options for that land.

Mr Pakula in his valedictory adjournment debate raised a matter regarding his newfound interest in the electorate of Lyndhurst and in particular the intersection of Hallam Road, South Gippsland Highway and Evans Road. I note that the city of Casey in the electorate of Lyndhurst is a lot closer to Black Rock than the western suburbs of Melbourne. We wish Mr Pakula well in whatever he may do after he leaves this chamber. If Lyndhurst is not successful for him, I suggest that perhaps Hotham might be an option after today, after the career-limiting move by the federal member for Hotham in Canberra.

Ms Mikakos raised a matter for me regarding a letter from a kindergarten cluster management about second-year funded applications, and I advise her that I have also received that correspondence. The department has given me simply the information that it does not believe the provisions are onerous, but I have asked it to give me further information on that.

Mr Leane raised a matter for the Minister for Education regarding the former Nunawading Primary School site — which was probably closed down by Labor — and the safety issues on that site. I will pass that on to the Minister for Education.

Ms Pulford raised a matter for the Minister for Police and Emergency Services regarding a speed camera campaign.

Ms Tierney raised a matter for the Minister for Public Transport regarding public access to amenities at Diggers Rest station. I will pass all those issues on to the responsible ministers.

VALEDICTORY STATEMENTS

Hon. M. P. Pakula

Hon. M. P. PAKULA (Western Metropolitan) (*By leave)* — Tonight is a significant night for me. Due to some of the provisions of the state constitution I am obligated to resign from this place as a consequence of my decision to nominate as a candidate for the by-election in the lower house seat of Lyndhurst. I will be doing so early next week, which means that this is my final day in this chamber. Very briefly I take the opportunity to convey to all members the honour it has

been — we all say that — and the absolute pleasure it has been to serve as a member of this house.

I came into this Parliament a bit over six years ago, a bit younger in years but much younger in terms of experience and worldliness. I said at a meeting of our caucus today that when you look back at yourself circa 2006 — we all come into this place thinking that we know a bit — and you see how you have grown and developed and how this place has helped you to do that, you realise that you were indeed very green and quite young.

I have had the great privilege of having some fantastic people around me, and I do not just mean on my side of the house. I will not embarrass members by going into all the comments I made inside our own caucus room today, but I have greatly enjoyed serving with all the members of the Labor Party, both in this Parliament and in the previous Parliament. I paid tribute then and for the record I pay tribute again in particular to the Leader of the Opposition in this place, John Lenders, who has provided me and all members with every support and every encouragement, totally absent of anything other than a desire to see the people around him develop and grow, and be the best that they can be. I owe John Lenders a great deal for the support he has given me in here over the last six years.

I want to make particular mention of Jaala Pulford, who I think members know has been a great friend of mine since 1994. It is indeed a rare thing to serve in Parliament — a place that can be somewhat of a vipers nest — with someone who you truly regard as a genuine long-term friend. It will be a wrench for me not to be in this place; whether I am in another place or not, I will not be in this place. Having now shared an employer at the union, an office and this chamber, I will miss being in this place with her and also the rest of my colleagues.

I also want to genuinely say to members of the government and the Greens that there is in this chamber — and from what I have seen it does not seem to be quite as prominent in the other chamber — a genuine respect, camaraderie and sometimes maybe a civility, which appears to be absent from the Assembly. If I am successful, I suppose one of the things I may be able to inject into the Assembly, as one more member from the red morgue — and I do not overstate my chances of being able to do this — is some of the Legislative Council's civility and warmth.

That does not mean we do not play politics hard; we do — I am looking at Mr Finn. And it does not mean that we do not sometimes really get under each other's skin; we do, but most of the time we try to do it with a bit of a smile and in a way that is not rancorous or personally harmful.

I am disappointed that the President is not here right now because I would have loved to have had the opportunity to convey to him what a pleasure it has been to serve in this place with him presiding. I think the President has been an outstanding example of the independence that should be brought to the Presiding Officer's role. I have always found him to be someone I can confide in as a member of this house and someone I know implicitly will not play political games with the information that he undoubtedly has in his capacity as President.

It would be remiss of me to not also make some remarks about the clerks, who have absolutely always been as helpful as they can be. In my role as shadow Attorney-General I have often badgered them with regard to amendments, legislation and the like. I thank all the clerks.

I want to also thank Hansard, the redcoats — Michael, Greg, Peter, Patrick and Chris — and everyone who makes all our lives easier and who has certainly made my life easier as a member of this place.

I do not know what the result will be on 27 April. I am hopeful of prevailing. If I do, no doubt I will see you all again in the corridors. If I do not, then I look forward to being acknowledged on the rare occasion that I might come to reside in the public gallery. With those words, that is the end of my ride in the Legislative Council. Thank you, everyone.

Honourable members applauding.

Hon. W. A. LOVELL (Minister for Housing) — I would like to thank Mr Pakula for what was a very gracious valedictory speech after his final adjournment debate contribution. We all wish you well. It has been a pleasure to serve with you in this house. As you say, we might all have a go at each other across the chamber, but it does not mean we do not like each other or that we do not wish each other well. We wish you well in your future endeavours.

The ACTING PRESIDENT (**Mr Ondarchie**) — Order! On behalf of the President I would like to wish all members and staff a safe Easter and school holiday period. We look forward to seeing you all safe and well on your return. The house now stands adjourned.

House adjourned 7.18 p.m. until Tuesday, 16 April.