PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SEVENTH PARLIAMENT

FIRST SESSION

Thursday, 7 February 2013

(Extract from book 1)

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By authority of the Victorian Government Printer

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The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

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Legislative Council committees

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

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

Legislative Council standing committees

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

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

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

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

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

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

 # Participating member

Joint committees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Scrutiny of Acts and Regulations Committee — (*Council*): Mr O'Donohue. (*Assembly*): Mr Brooks, Ms Campbell, Mr Gidley, Mr Nardella, Dr Sykes and Mr Watt.

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

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

Parliamentary Services — Secretary: Mr P. Lochert

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FIFTY-SEVENTH PARLIAMENT — FIRST SESSION

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

Leader of the Opposition:
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Mr G. JENNINGS

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

Deputy Leader of The Nationals:
Mr D. DRUM

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Atkinson, Hon. Bruce Norman	Eastern Metropolitan	LP	Leane, Mr Shaun Leo	Eastern Metropolitan	ALP
Barber, Mr Gregory John	Northern Metropolitan	Greens	Lenders, Mr John	Southern Metropolitan	ALP
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
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Elasmar, Mr Nazih	Northern Metropolitan	ALP	Pulford, Ms Jaala Lee	Western Victoria	ALP
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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, 7 FEBRUARY 2013

Thursday, 7 February 2013

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

BUSHFIRES: BLACK SATURDAY ANNIVERSARY

The PRESIDENT — Order! Members would be aware that this is the fourth anniversary of the tragic Black Saturday fires in Victoria. As a mark of respect to those who lost their lives and in memory of the extraordinary work of so many people in the community in support of those affected by the fires, I would ask members to stand in their places for a minute's silence to commemorate this fourth anniversary of Black Saturday.

Honourable members stood in their places.

PAPERS

Laid on table by Clerk:

Statutory Rules under the following acts of Parliament:

Land Conservation (Vehicle Control) Act 1972 — No. 3.

Members of Parliament (Register of Interests) Act 1978 — No. 4.

Sex Work Act 1994 — No. 2.

Supreme Court Act 1986 — No. 1.

Subordinate Legislation Act 1994 —

Documents under section 15 in respect of Statutory Rule Nos. 1 to 3.

Proclamations of the Governor in Council fixing operative dates in respect of the following acts:

Independent Broad-based Anti-corruption Commission Amendment (Examinations) Act 2012 — Remaining provisions — 10 February 2013 *(Gazette No. S32, 6 February 2013).*

Independent Broad-based Anti-corruption Commission Amendment (Investigative Functions) Act 2012 — 10 February 2013 *(Gazette No. S32, 6 February 2013).*

Victorian Inspectorate Amendment Act 2012 — 10 February 2013 *(Gazette No. S32, 6 February 2013).*

BUSINESS OF THE HOUSE

Adjournment

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

That the Council, at its rising, adjourn until Tuesday, 19 February 2013.

Motion agreed to.

MEMBERS STATEMENTS

St Arnaud Primary School: Right Choices

Ms BROAD (Northern Victoria) — This week I received a written response from the Premier to a matter I raised in an adjournment debate in August last year concerning the need for sustainable funding for the Right Choices student support program at St Arnaud Primary School. I thank Mr Baillieu for his response and the action he has taken to require the Minister for Education to consider what assistance is available to support Right Choices, and I note that Mr Dixon has visited the school and been briefed on the program.

The extensive community support for Right Choices, acknowledged by Mr Baillieu in his response, has resulted in funding support from many sources in 2013, including the Bendigo Bank, the Commonwealth Bank, Uniting Care, the Sisters of Mercy and St Vincent de Paul. However, the fact remains that Right Choices does not have sufficient funds to meet the needs of students for the whole of 2013, and the program does not have sustainable ongoing funding. The need for sustainable ongoing funding for Right Choices is clearly demonstrated by the fact that there were 47 students enrolled in Right Choices in term 3 of 2012, which was nearly a quarter of the student population.

On behalf of the St Arnaud community, which believes that it is time for the government to step up and share responsibility for funding Right Choices, I urge the Baillieu government to choose to make this program a priority in the 2013–14 Victorian budget so that all students can get the support they need to prosper.

Bushfires: Black Saturday anniversary

Hon. W. A. LOVELL (Minister for Housing) — Four years ago today Victoria was bracing itself for its most dangerous fire conditions on record. We were warned to prepare for the worst, but the worst was so much more extreme than any of us expected. Today, on the fourth anniversary of the Black Saturday fires, the Country Fire Authority, the Metropolitan Fire Brigade

and the Department of Sustainability and Environment are once again on alert. A heatwave again has Victoria in its grip.

Victorians are fire-savvy — we have to be. Despite this, 173 lives were lost on Black Saturday. Like many Victorians, I have mourned friends whose lives were lost on that day. Allan and Carolyn O'Gorman and their 18-year-old son, Stuart, of Humevale are often in my thoughts. So are the twins they left behind, Patrick and Bronwyn. Today my thoughts are with all those who lost family, friends and neighbours on Black Saturday.

Four years on, those who survived are continuing to reclaim their towns. Every new building is a sign of new hope. Every new resident is a sign of a positive future. I am impressed by the strength and spirit I see when I visit communities hit by such tragedy. While we will never forget the tragedy of Black Saturday, we will also never forget the resilience of Victorians.

Vocational education and training: TAFE funding

Mr EIDEH (Western Metropolitan) — Wednesday 1 May will mark the first anniversary of a serious education deficit in this state. It will mark the date when the Premier locked out thousands from accessing a TAFE qualification to create a better life for themselves. It will also be remembered as the day that changed the hospitality, business administration, event management and sports and recreation industries forever, as they have been the worst hit by the slashes to funding.

The cuts have had a profound impact on my constituency in the west. I am not surprised that I am still receiving letters of distress and visits to my electorate office from seriously concerned constituents. We are all aware that the western suburbs of Melbourne form the most disadvantaged area in the state. Unemployment rates are high in my electorate, in particular in the Brimbank municipality, secondary education levels are low, incomes are low and many live below the poverty line. That is why TAFE education is so vital. TAFE offers a different perspective and approach to learning and education, from vocational to pre-apprenticeship. This kind of education opens the pathway to employment. This state needs these skilled workers to continue to grow and flourish.

Bushfires: Black Saturday anniversary

Mrs PETROVICH (Northern Victoria) — Today marks the fourth anniversary of the Black Saturday bushfires, which killed 173 people, left 5000 people injured and destroyed 2029 homes and left 5000 people injured. The horrors of Black Saturday will be etched into the psyche of the Victorian people for decades to come. In my electorate areas such as Marysville, Yarra Glen, Bunyip, Horsham, Beechworth, Mudgegonga, Kinglake, Flowerdale, Wallan and Healesville were burnt during the Black Saturday bushfires. The lives lost during Black Saturday will never be forgotten.

In the days and weeks following Black Saturday I spent a great deal of time working in those fire-affected communities. What struck me most was the immediate resilience of the communities and their ability to come together and help each other in a time of great need. However, the royal commission that followed in the months and years after the fires found that the effects of Black Saturday will last into the future. The financial pressures faced by those burnt out during those fires added to the pressures. Environmentally, the intensity of the Black Saturday bushfires damaged the quality of the topsoil, native vegetation, waterways and catchments.

We live in a state that is one of the most bushfire-prone regions in the world, and as a community we have a responsibility to manage those areas that have been identified as high risk. Today let us remember those communities that suffered and continue to support them in their journey of recovery. Our emergency services should also be congratulated on their work, as many fires burn across the state in one of the most bushfire-prone areas in the world.

Marriage equality: federal policy

Ms PENNICUIK (Southern Metropolitan) — It has all been happening in the UK this week: the House of Commons has voted 400 to 175 in favour of marriage equality after Prime Minister David Cameron allowed a conscience vote. Inspired by this, Greens Senator Sarah Hanson-Young will reintroduce her marriage equality bill into the Senate, providing an opportunity for the federal Leader of the Opposition Tony Abbott to follow his conservative counterpart and for our Prime Minister to support marriage equality, as the majority of Australians do.

King Richard III: legacy

Ms PENNICUIK — Also this week in the United Kingdom a skeleton, uncovered in Leicester last year, has been identified as that of King Richard III. This is an amazing historical and archaeological story. Controversially portrayed by the Tudors and Shakespeare as a villain, Richard III was a social

reformer and legal innovator. His Parliament was the first to use English to record acts of Parliament. It was enlightened, focused on legislation that favoured the lower classes, not just the gentry, addressing maladministration and bribing of jurors. Richard III introduced the bail system so that accused persons could not be imprisoned or their property confiscated unless they were found guilty. He abolished forced loans to the Crown, and he supported the fledgling printing industry by removing trade restrictions, reflecting his own interest in and love of books.

Bushfires: Black Saturday anniversary

Mr DRUM (Northern Victoria) — I too wish to use my members statement to acknowledge the four-year anniversary of the Black Saturday bushfires. In some areas around the state including the Gippsland region, fires were burning well before 7 February 2009, but it is this day that is mainly recognised as the anniversary of all those fires. People affected by the Beechworth fire and people in my home town in the city of Bendigo, where 60 houses were lost and one person died, also went through the horrific Black Saturday bushfires. But it was mainly the areas around Kinglake and Marysville which bore the brunt of the fires which we remember as Black Saturday.

It is important to remember the sense of loss that was experienced and how the community had to deal with losing family, friends and neighbours and how people had to deal with dislocation and having to find temporary accommodation, having seen their family home razed to the ground. In the days, weeks and months following the Black Saturday bushfires it was evident quite early that it was going to take people who were directly affected a considerable amount of time to get over it.

This is an opportunity to thank the Country Fire Authority, the Department of Sustainability and Environment firefighting crews and the State Emergency Service for their work and also to thank the hundreds of thousands of people who donated money to the Red Cross appeal.

Royal Children's Hospital: Good Friday Appeal

Ms DARVENIZA (Northern Victoria) — Tatura toddler, 15-month-old Fletcher Dunne, has been named as the face to appear on the Royal Children's Hospital Good Friday Appeal fundraising envelopes which will be distributed to schools across Victoria. Fletcher spent two weeks at the hospital, including time in the paediatric intensive care unit in October last year when he developed meningococcal disease. The disease had poisoned his blood and shut down his organs, including his heart, lungs and kidneys. Blood had stopped circulating to his limbs, and Fletcher almost lost his legs. Money raised from the fundraising envelopes will buy an ultrasound device for the paediatric intensive care unit at the hospital.

Fletcher's parents, Simone and Hayden, are proud to know their son is encouraging schools and families across the state to donate to the incredibly important work of the Royal Children's Hospital. I am pleased to report Fletcher has made a full recovery and is now a robust 15-month-old toddler. I congratulate the Royal Children's Hospital for providing outstanding care for Victoria's children and their families for over 140 years.

Bushfires: Black Saturday anniversary

Ms DARVENIZA — On another matter, I, too, along with my parliamentary colleagues, wish to acknowledge the anniversary of the Black Saturday bushfires which devastated my electorate of Northern Victoria Region. We have not forgotten the loss and the devastation that occurred as a result of those bushfires, but we are also very pleased to see the rebuilding and regeneration of those areas.

Bushfires: Black Saturday anniversary

Mr ONDARCHIE (Northern Metropolitan) — The 2009 Victorian bushfires brought devastation and destruction on a scale never seen before in modern Australia. The Black Saturday firestorm claimed 173 lives, destroyed over 1800 homes and burnt more than 400 000 hectares of regional Victoria's landscape. Beyond the 173 deaths — 120 of them caused by a single firestorm — the fires destroyed over 2030 houses and more than 3500 structures and damaged thousands more. Many towns north of Melbourne, like Kinglake, Marysville, Narbethong, Strathewen and Flowerdale, were all but completely destroyed. Houses in Steels Creek, Humevale, Clonbinane, Wandong, St Andrews, Callignee, Taggerty and Koornalla were also destroyed or severely damaged.

My family and I lost friends. My children farewelled their mates. Many others have died since because of the emotional pain and distress caused by the Black Saturday bushfires. I send my love and prayers to not just those affected directly by the loss of life but also those who tended to them — our emergency services, social services and pastoral services. The temperature in Melbourne on Black Saturday reached 46.4 degrees Celsius, the hottest temperature ever recorded in an

Australian capital city. We should never forget the tragedy that was Black Saturday, and my heart goes out to all those affected.

Personal alert devices: waiting list

Ms MIKAKOS (Northern Metropolitan) — I rise today to highlight the failure of the Baillieu government to support the personal alert service, which provides 24-hour emergency assistance to frail older people and people with disabilities who are isolated and vulnerable yet living independently. Since the Baillieu government came to office the total number of people waiting for a personal alert monitoring device has more than doubled from 638 in March 2011 to 1283 in March 2012. On 11 December last year I asked the Minister for Ageing, David Davis, what he was going to do to address this waiting list, and he has failed to provide any answer. I remind the minister that I am also yet to receive responses to my questions on notice, which are now overdue, and also an FOI request seeking further information.

The Baillieu government is no longer in touch with the needs of senior Victorians, particularly in light of last year's cuts to the home and community care program, another program aimed at assisting older Victorians to live independently at home. I also point to the Department of Health figures showing that 179 public aged-care beds have already closed. It is not a mere coincidence that these cuts have followed the Vertigan report, which recommended that the government vacate public aged care altogether. The government's attitude is also evidenced by the state budget update handed down in December, which foreshadows cuts of $75 million to public-sector residential aged care and a significant shift towards the privatisation of aged-care beds. Our senior Victorians have every reason to be concerned about this government's agenda in aged care.

Australian Labor Party: federal performance

Mr FINN (Western Metropolitan) — Later this year every adult Victorian has the opportunity to do their state a huge favour. In November 2010 the current federal government declared war on Victoria. That war has extended to New South Wales and Queensland, where Labor was swept away in electoral tsunamis over the past couple of years. However, the Gillard government's real hatred has been directed at Victoria and Victorians.

We can speculate on exactly why the Prime Minister has treated Victoria so shabbily, but nobody can dispute the fact that Victorians are being unmercifully ripped off by the federal Labor government. Some of these financial outrages against our state may have gone largely unnoticed, but when the commonwealth Minister for Health, Tanya Plibersek, decided to attack our hospitals, she crossed the line. Public anger against the Gillard government health cuts has been white hot. In Melbourne's west, Werribee Mercy Hospital and Williamstown Hospital in particular have been victims of Labor cuts, but there has not been a hospital in Victoria that has not felt the pain of the Gillard-Swan-Plibersek king-hit to some extent.

As mentioned earlier, Victorians will get the chance to right the wrongs soon — just not soon enough. In September those who have perpetrated these injustices face the people they have hurt so badly. Any Victorian who votes for more is clearly a masochist, but I have no doubt the overwhelming majority will vote for change, for a fair go for Victoria and for a Tony Abbott-led Liberal-Nationals coalition government for this nation.

Breast cancer: My Journey Kit

Mr LEANE (Eastern Metropolitan) — I am sure everyone in the chamber appreciates the great work Breast Cancer Network Australia does. Recently it released a kit to help women diagnosed with this terrible disease understand their diagnosis and treatment. With 14 000 Australian women diagnosed with breast cancer each year, we hope this will be of great assistance. The My Journey Kit includes things like subscriptions to *The Beacon* magazine for women with breast cancer, a personal record book and a booklet with tips to assist women along their journey. I encourage everyone in the house to help advertise this new service from Breast Cancer Network Australia, whether that be through their websites or on some of the material they send out. Hopefully this will be of real assistance to women who have to suffer through this terrible disease.

White Ribbon Day

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I commend the Dandenong community and Victoria Police for their participation in the Pop into Dandenong event in support of White Ribbon Day, which highlights violence against women, violence in the community more generally and violence in families. The Pop into Dandenong event used a series of soccer matches between Victoria Police and community teams, along with a skills clinic for juniors, to engage the community. It was very successful at highlighting the message White Ribbon Day seeks to send. The event drew community leaders, including federal Victorian Liberal Senator Mitch Fifield, Brad Battin, the member for Gembrook in the other place, and

Emanuele Cicchiello, the Liberal candidate for the federal seat of Bruce.

I would like to congratulate Pop into Dandenong organiser Joanna Palatsides, who developed the idea, on running such a successful event for the Dandenong community.

Bushfires: Black Saturday anniversary

Hon. P. R. HALL (Minister for Higher Education and Skills) — I join with my colleagues in observing today as the fourth anniversary of the Black Saturday bushfires. We are reminded on such occasions of the impact of that event on Victoria four years ago, and we observe the fact that its impact continues. For those who were close to the 173 people who lost their lives, that impact will last a lifetime. Equally, many communities are still rebuilding. If you drive through areas like Callignee, which is near Traralgon, in my electorate, you will see that while some homes are being rebuilt, there are other blocks of land from which houses were razed that will probably never be built upon again. Communities are still recovering.

Unfortunately again this summer bushfires have ravaged parts of Victoria and other parts of rural Australia, and lives have been lost. I particularly want to observe that one of my local constituents, Mr Peter Cramer of Tyers, a volunteer firefighter, lost his life when he suffered a heart attack while assisting in fighting fires in Tasmania. The local community around Traralgon and Tyers paid due recognition to Peter Cramer, and I have to say that his was one of the biggest funerals I have ever attended. Also unfortunately in the Seaton fire another person lost their life.

Bushfires are a fact of life, but we ought be grateful for those who assist in preventing and minimising their impact. I pay due regard in particular to those in the Country Fire Authority and the Department of Sustainability and Environment.

Bushfires: Black Saturday and Ash Wednesday anniversaries

Mr O'DONOHUE (Eastern Victoria) — Like other colleagues this morning I would also like to acknowledge the fourth anniversary of Black Saturday, which occurred on 7 February 2009. The fires claimed 173 lives, including 11 in the Gippsland region. The Black Saturday bushfires also affected other parts of Eastern Victoria Region, including the Upper Yarra around Warburton and places in West, Central and East Gippsland.

Later this month we will be marking another sad bushfire anniversary, and that is the 30th anniversary of the Ash Wednesday bushfires, which killed 75 people, 47 of those in Victoria. Those 3 bushfires included 21 in fires in Upper Beaconsfield and Belgrave Heights, now part of Eastern Victoria Region. These anniversaries come while bushfires are still burning in the Gippsland region. The Aberfeldy fire has already consumed tens of thousands of hectares, and while we believe the threat to residential areas has subsided, fires are still burning in some remote areas and continue to be closely managed.

I would like to acknowledge the work of the Department of Sustainability and Environment, the Country Fire Authority and other government and volunteer organisations. In particular I wish to congratulate Wellington Shire Council on leading the recovery effort during the Seaton fire. Much has been learnt from the recent sad experiences of flood and fire.

Bushfires: Black Saturday anniversary

Mrs PEULICH (South Eastern Metropolitan) — I wish to echo the sentiments expressed by my colleagues in relation to the losses suffered as a result of Black Saturday on its fourth anniversary.

Mrs Peulich: *Age* articles

Mrs PEULICH — I wish to place on the record some remarks in relation to a series of articles written by Royce Millar and published in the *Age* from 18 January. The articles were predicated on a bogus email — as the *Age* admitted on page 2 of its 23 January edition — and were based on hearsay from persons with political motives and fabricated documents, including one document purportedly written by me to a 'Brian' on internal party matters, as I have been advised by a third-party recipient who received the portable document format version of the document from Royce Millar on 14 January at 11.16 a.m. I wish to emphasise to the chamber and to the community that this was fabricated document. The *Age* will therefore be unable to authenticate it. The *Age* is unwilling to admit this because its elaborate attempts to character assassinate me and my family would become even more apparent.

Other allegations and imputations attributed to parties with political motives are also unsubstantiated and disclose no impropriety. The landowners association issued a media release, an abridged version of which was published in the *Age*, rejecting any imputations of impropriety which were inferred by Royce Millar and the *Age* in its publication. I therefore call on the *Age* to

correct, retract and apologise, or it will be seen to be defending biased, inaccurate and unfair reporting. I also encourage the Leader of the Opposition in the other place to blow the whistle and make sure his personnel get out of the dirt unit.

PLANNING AND ENVIRONMENT AMENDMENT (GENERAL) BILL 2012

Second reading

Debate resumed from 29 November 2012; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Mr TEE (Eastern Metropolitan) — I welcome the opportunity to speak on this bill, which is wide ranging and deals with reforms to the Planning and Environment Act 1987. The purpose of the bill is an attempt by the government to improve the operation of the act. It is also worth referring at the start of my contribution to the Attorney-General's remarks in his second-reading speech, where he said the role of the Planning and Environment Act was to provide a solid framework for planning in Victoria. He indicated that it has worked well, but that some improvements were required.

By way of context, it is important to recognise that the act sets out the framework within which planning occurs in Victoria. The act is the overarching legislation which determines the way business is conducted. It determines confidence and the level of investment. When you have a look at all these measures you will see that the construction sector in Victoria, which really sits at the bottom of the regulations provided by the planning act, is in dire straits.

The construction sector employs some 220 000 Victorians and is the second-largest employer in Victoria after manufacturing — and there is only a small margin between manufacturing and construction. In comparison to the rest of the country the Victorian construction sector, particularly residential construction, is struggling. Between 2011 and 2012 there was a 20 per cent decrease in residential construction in Victoria. The number of building permits issued dropped by 10 per cent and the value of domestic building permits declined. In terms of the absolute numbers but also in terms of their value there has been a 10 per cent decline.

It is important we look at the regulatory framework within which this industry operates. We believe the government is right to look at how you go about doing business in Victoria and the framework within which that occurs. It is also important to recognise that while the regulation is important there are other factors dragging down Victorian jobs in the construction industry, and other factors are pulling Victoria down compared to the rest of the country. While some of those might be picked up in amendments to the framework, others go to business confidence, and the blame for these issues can be laid at the feet of this government and its inability to get things done and provide that pipeline of work.

Whereas the government can talk about the importance of the legislative framework — and that is one issue — it is also worth noting the importance of good policy. As well as good design, we need to think about good policy. As we have seen, there is nothing in the pipeline to give any confidence to investors and the business community. The horse might have already bolted in terms of employment and investment in Victorian industry. The victims of that are the 220 000 Victorians who are employed in this industry, whose jobs are increasingly precarious as investment in this area moves interstate.

One of the key elements is investment confidence. One of the factors that is worth briefly speaking on is the government's investment arm in the form of Places Victoria. Places Victoria is a key plank in the planning system because it is a driver of investment, jobs and benchmarking in terms of priorities for government and for the industry. When you look at Places Victoria, you can see it is a basket case. It is haemorrhaging — $80 million has been written off its assets. It has gone from an operating surplus to a deficit that is twice as large as that which its predecessor, VicUrban, had during the global financial crisis. Staff morale is at an all-time low. One in four employees will be sacked in coming months.

The impact this has on the market cannot be underestimated. Places Victoria has some 2500 hectares of land and 50 000 new homes under development. These developments are spread across Victoria — in Swan Hill, Shepparton, Mildura, Melbourne, Doncaster, Coburg and Docklands. Right across the state Places Victoria is an important part of the construction dynamic. It also provides infrastructure such as railway overpasses and upgrades to intersections. Yet there are concerns about its future and its capacity to deliver on those projects.

You only need to look at the $1.3 billion Dandenong project to see this. According to the *Age* — and I know Mrs Peulich has a different view about the value of that newspaper — that project may never be finished. Again

the concern is the signal that goes out to the market when the government's investment arm and the government itself is failing in such a horrendous way. To see this you need only look at the revolving door in staffing at Places Victoria. I repeat that one in four staff are about to be sacked. The chair, Mr Peter Clarke, has stepped aside, but is still on the board and on full pay. Mr Sam Sangster, the CEO, has resigned one year into his four-year contract. There are real questions about the capacity of Places Victoria and the strain that that puts on the regulatory framework that is underpinned by the Planning and Environment Act 1987.

We only have to look at the revelations in relation to the building and plumbing commission to see what a mess that body is in. That body is a critical part of the planning and environment framework in terms of the implementation of regulations made under the Planning and Environment Act. We only have to look at the concerns about the way the commission has operated, particularly the tender process that exists and the evidence that has come out about that process. There is also the impact these matters can have on the capacity of families to have confidence that regulation in Victoria is being done properly and effectively.

There are important reasons for this government to take stock, because from all indications the wheels are coming off. The concern has to be not only about families and jobs in the construction industry but also about investment confidence and, incredibly and critically important, the safety of the industry and all of the components which go together to make up this sector. To me and many others I suppose the best expression to use for the current state of affairs is that the wheels seem to be coming off.

It is in this context that we are looking at this bill. I should indicate at the start that the opposition will not be opposing the bill. Our context for looking at the bill involves asking questions. For example, does the bill promote the development that is so sorely needed? As I said, Victoria has gone from being at the top of the class to being at the bottom when it comes to investment. Victoria has gone from being at the top of the class when it comes to regulation to now having a cloud hanging over the way regulation is being done in this state. We have gone from being at the top of the class in terms of confidence in the system to being at the very bottom.

Opposition members are asking themselves whether this bill enhances the sector, which is in such turmoil, or takes away from it. Does the bill undermine our built heritage, or does it build on that heritage? That is incredibly important. It is important that we make sure that development and job growth continue, and that they continue in a way that is consistent with the heritage we are privileged to have inherited.

Mr O'Brien — Like the Windsor Hotel.

Mr TEE — It is incredibly important in terms of the maintenance of our heritage that community aspirations can continue, and that is a fine balance, Mr O'Brien. It is a fine balance between making sure we have the jobs but also maintain our heritage. It is an important balance, because you have got to get both right. You must have heritage, which is what makes Melbourne such an attractive place to come to to live and work. You must have heritage, which, as we have seen in our suburbs, is about having unique suburbs. In our city heritage is about having laneways, cafes and an entertainment precinct. We have to maintain this heritage because that is what makes people come and live here. But you also need change through a combination of investment and jobs growth.

Startlingly this government seems to have failed on both counts. It has trashed the built heritage and ridden roughshod over communities. The government has disregarded councils. At the same time not a jot of investment is occurring, and people are literally voting with their feet and moving to construction jobs interstate.

Opposition members are keen to look at the bill to see how it streamlines the planning system, which is what the second-reading speech sets as the benchmark, but we will not have a bar of anything that compromises the built heritage and the rights of community members to have a say about the look and feel of their community.

In these areas — and I will go through some of them in detail — this bill is found wanting, and there are questions about the propensity of this government and this minister to centralise more power in the hands of the minister, and therefore developers, at the expense of local communities. That is something that we, on this side of the house, will not tolerate.

I will now look at some of the detail in the bill. The bill sets up a planning action committee, which will have the capacity to deal with specific matters, specific planning applications or the jurisdiction of a particular local council. There are two areas of responsibility. The first is that a planning application can be referred to the planning action committee or a part of the jurisdiction of the council can be referred to the committee. Once again, of course, the minister is the gatekeeper; all these applications have to go through the minister, and there

is an important distinction in outcomes in terms of whether a particular matter is referred to the planning action committee or a jurisdiction.

If it is a particular matter, then the decision of the planning action committee is a recommendation, whereas if you hand over a jurisdiction, you are then — —

Mr O'Brien interjected.

Mr TEE — Thank you, Mr O'Brien. If you hand over jurisdiction, you are then outside of the decision-making process. Once a council's jurisdiction is handed over, there is no further role for the council in that jurisdiction in relation to that matter. It has no further say, no further input and no further rights. That is something we will want to monitor, because we do not want to be in the business where councils lose jurisdiction, where they are taken out of the equation and have no further say in how a particular area of responsibility is dealt with. We will observe that very closely because that is an issue that we are not entirely comfortable with. With that reservation, we will see how the Planning Application Committee (PAC) continues to work.

The other aspect of the bill I want to talk about is the division of a referral authority into either a determining authority or a recommending authority. Currently referral authorities, quite rightly, have extensive powers over planning matters that are determined by, say, a council. Referral authorities, like the Department of Sustainability and Environment or the Department of Primary Industries, and statutory authorities, like VicRoads and the Country Fire Authority (CFA), play a critical role in ensuring that the planning applications that are submitted are appropriate and ought to be approved, and if so, under what conditions. Today we mark the fourth anniversary of the bushfires, so it is worth noting the incredibly important role that the CFA plays in this space. It has a critical role in ensuring that developments do not place communities at risk and at times like these we should be aware of exactly how important that role is. The CFA's view, in terms of where and how you should build, should be paramount because these are literally matters of life and death.

When you look at these changes to the powers of referral authorities, such as the CFA, you see that what matters now is that under this legislation there is a watering down of that power because some referral authorities will no longer have the final say, as it were, but will simply become a recommending authority. They will no longer be a determining authority. This will make a huge difference to their power. As the language suggests, a recommendation can be ignored. However, as is the case with the status quo, the views of a determining authority cannot be ignored.

We are concerned about what is a dilution and a diminution in the powers of referral authorities. These concerns are heightened by the fact that no information is available on what will be a determining authority and what will be a recommending authority. These issues are important. If you look at the role of the CFA, you can see how incredibly important it is to know whether that will become a determining or a recommending authority. When we look at this bill we are concerned that there is no basis set out for how you will decide in which camp a particular referral authority sits. It is telling, of course, that we are considering it on this important date.

Those opposite might say that if you are a recommending authority, your capacity to influence an outcome is reduced, but you can go to the Victorian Civil and Administrative Tribunal (VCAT). Your recommendations cannot be entirely ignored because if your recommendation is not picked up, you can go to VCAT. That authority — it might be the CFA — has to go through the cost and delay of a VCAT proceeding. We know that increasingly VCAT is a black hole into which matters go and then never seem to see the light of day. We know that under this government — —

Mr Barber — What do you mean exactly?

Mr TEE — What I mean is that the delays seem to be getting longer and longer in terms of people obtaining justice at VCAT. As we know, justice delayed is justice denied, unless, of course, you have the money to jump the queue. Again, we are concerned that this is the fallback position for referral authorities. We are concerned about whether it is an appropriate mechanism.

We will continue to monitor this. We are concerned that we are expected to vote on a proposal which is so broad and yet has so little information out there in terms of criteria. On a reading of the legislation, the CFA could be dumped from being a determining authority to being a recommending authority. That would be a disastrous outcome. For the community's sake, we urge the government to consult on the criteria and get that information out. We would prefer to have the full picture before we are required to vote on this legislation, but, as we have come to expect, that is not the case.

There is another clause in the bill that I want to consider, which is clause 44. Again, as we have seen

before with this minister, it is a power grab. We will get Stalinist centralisation of power in the minister's office — —

Mr Finn interjected.

Mr TEE — Very few have access to that office. I understand that Mr Finn is one of those few who has access to that inner sanctum where the deals are done.

We can see once again with this bill, as we have seen with code assess and with work-in-kind agreements, what you have is threadbare legislation which in a clause literally two strips away community access and community rights. It takes all those powers and puts them into this hierarchical office, which is the minister's office. We are increasingly seeing planning responsibility being taken from councils and communities and being put into this office. Clause 44 is such a clause.

Mr Finn interjected.

Mr TEE — Mr Finn should have a look at the clause. It is a very short provision, but the sting, the impact of that clause, is significant. It says that a planning scheme amendment can be taken out of the hands of the community and dealt with by the minister in his office under whatever criteria he sees fit. It will be interesting to see how the government members defend that. If the minister decides to deal with a planning scheme application in-house, as it were, he will not have to consult with the local council, he will not have to allow that planning scheme to be inspected at the local council offices and he will not have to consult with owners who are materially affected. I would like to see how Mr Finn could justify that. He is an owner of land that is going to be materially affected, and therefore the minister does not have to consult with him. If Mr Finn, as a member of the public, wanted to have a look at this change, he would not see it at the local council. Let me tell him where it is: it is all sitting on the minister's desk. He is the start and the end point. If Mr Finn wants to know where the power lies when it comes to this provision, he need go no further than the minister's office.

We are incredibly concerned about the lack of criteria and specification. These are very broad terms, as we have seen with the 'code assess' standards, where the minister can take any matter out of the legislative framework and deal with it in house. We have also seen it with work-in-kind agreements, where the minister can sit down with developers and come up with an agreement in secret. Here we have another example of this minister taking away the rights of the community to be consulted. He takes away the rights of the community, he takes away the rights of the council and, most worryingly, he takes away the rights of those who are materially affected.

If a community member and their family finds they are going to be impacted in some way by this planning scheme amendment, they will also find that the minister has taken away the requirement for him to consult with them. We are very concerned about this clause. We do not understand why the minister would want to take away the rights of those members of the community who are going to be 'materially' affected — that is the word in the legislation. We do not understand why the minister would want to take away the right of relevant public authorities to be notified; we do not understand why owners and occupiers who are going to be materially affected should not be notified; we do not understand why the minister would want to take away public notice provisions so people could come and see what is planned; and we do not understand why requirements to advertise have been taken away.

We think it is about the minister effectively giving himself a blank cheque, and we will not be supporting this open-ended provision. We will not be supporting the further diminution of the rights of communities to be consulted or to have a view, so we will not be supporting this clause. We on this side cannot understand why the minister would do this, other than it being a pattern of conduct. This minister has form when it comes to these areas, and that form has been demonstrated in the taking away of the rights of the communities and councils and increasingly locking up that power in his office. I am told he now has so much power he needs to increase the size of his desk to field all the matters for which he has given himself responsibility. We are concerned about that provision and we cannot support it.

If one looks at the way in which this minister operates, all he seems to do is tick off on particular developments without any consideration of the broader impact in terms of infrastructure, community support and the impact it will have on Melbourne's livability. Our concern is that if you are not operating in an informed manner, you will detract from Melbourne's livability and that will impact on people being attracted to come to Melbourne to live and invest — —

Mr Finn interjected.

Mr TEE — Mr Finn might line up on the side of the minister taking increased power, but on this side we line up on the side of the community and its members' rights to have a say about what happens in

their backyards, in their neighbourhoods and in their city — —

Mr Finn interjected.

Mr O'Brien — Like how you listened to the community on the Windsor Hotel!

Mr TEE — Mr O'Brien need only take a minute to read this legislation to see the draconian powers being handed over to the minister. He should look at the bill and see what it does for communities and how it will take away their rights. This legislation takes away the community's rights and it takes away the rights of councils. What Mr O'Brien will see if he takes a minute to read the legislation is that all power resides with this minister, which will reframe the way Melbourne looks and how it works. We are concerned about the impact on Melbourne's livability.

You cannot keep taking away the pillars of our planning system in the way the minister does with every piece of legislation he brings in. You cannot continually take away the pillars of our planning system without it having a direct impact on the look and feel of our suburbs. That is what is going to happen under this legislation and for those reasons we will not be supporting that clause.

Mr O'BRIEN (Western Victoria) — It is with great pleasure that I rise to make a contribution on behalf of the government in relation to the Planning and Environment Amendment (General) Bill 2012. I begin by joining with Mr Tee in acknowledging the sombre occasion of the fourth anniversary of the Black Saturday bushfires and also the upcoming 30th anniversary of the Ash Wednesday bushfires.

I would like to caution people taking away from Mr Tee's contribution any suggestion that the bill will in any way undermine or affect the powers of the Country Fire Authority (CFA). I also take this opportunity to reaffirm the government's commitment not only to the CFA but to the implementation of the recommendations of the bushfires royal commission.

It is at that point that I depart from many of the central tenets of Mr Tee's contribution. We note that the opposition is not opposing the bill, but Mr Tee's contribution was remarkable in that it highlighted many of the factors that members such as Mr Finn have identified as part of what is called the Labor disease — which is, a tendency to do one thing in office and say another in opposition. We are seeking to correct the mistakes made by the previous government, which in this case was the stripping away of powers from local councils by development assessment committees (DACs). This decision by the previous government took away the powers of local councils as responsible authorities and was not an opt-in, opt-out system, as is made clear in existing section 97MF of the Planning and Environment Act 1987, and I quote:

> **Powers of a DAC**
>
> In deciding a DAC application, the DAC has all the powers that the responsible authority would have had to decide on the application if it were not a DAC application.

That is the existing regime. 'Regime' is a good word; it is a Stalinist word that aptly applies to the way the previous government, in its 11 years in power, progressively stripped away the rights of the local community and took more unto itself.

Mr Finn — Comrades Hulls and Madden.

Mr O'BRIEN — Hulls and Madden and others, including the member for Albert Park in the Assembly, who also made an interesting contribution in the lower house to which I will respond in due course.

In classic Labor mode the previous government took powers away from the local community. We then released an election policy that indicated that we would be reforming this Labor Party initiative and restoring planning to a more locally driven process, firstly by delegating an opt-in power. We are providing something that has been very foreign to Labor governments for many years, which is choice. We provide a choice to local communities and local councils as to whether they wish to use this particular tool for a particular type of planning application.

The next thing that I must immediately correct is Mr Tee's suggestion that the local councils by utilising this opt-in system would be somehow denuding themselves of decision-making powers in the case of projects they oppose. This bill provides choice to the local councils, in the first instance in terms of the whether to use a Planning Application Committee and then also in terms of the outcome. The reason that is the case is that councils will at all times retain the important power of being a responsible authority. It is a significant contrast to the current provisions in the legislation that will be repealed by this bill. That is the first example of how Mr Tee, quite shamelessly, comes in here and bases his whole speech around a false assumption. In fact the true situation is entirely the reverse.

Mr Tee made a minor error a number of times by using the phrase 'planning action committee', which is the sort of nomenclature a Labor government would have

used, as Labor likes terminology that is all spin. In fact under the legislation it is a Planning Application Committee. I corrected Mr Tee by way of interjection, but the error he made is important because it reveals a failure to look at the detail of what the planning minister has brought to the Parliament in this bill. Labor members make erroneous assumptions about legislation and then trot those assumptions out to the community, and this has been the case with many of the contributions that have been made to the debates on this bill and other planning reforms.

The government has taken precisely the opposite position to what has been claimed. We are reforming the Labor government's stripping away of powers from councils by delivering on our election commitment to bring in the Planning Application Committee, or PAC, which will be an opt-in, opt-out system. The system is certainly not Stalinist and will not strip away council powers.

That takes me to the contribution by the member for Albert Park in the other place, Mr Foley. Again picking up some themes from Mr Tee's contribution, Mr Foley talked about stripping away local powers. He did not provide much substance for this claim, and he repeatedly referred to the Fishermans Bend development. That was in December last year. What we have seen since from the member for Albert Park provides a real insight into the inner workings of the Labor Party. He produced a discussion paper, which he has headed 'The Twilight saga of Labor renewal', which opens with these words:

> The ALP is a bit like being caught in an endless loop of the Twilight saga.
>
> The days of factional 'warlords' in the party have given way to the vampires of the undead empire insisting on the party being a world apart from mere mortals.

Mr Leane — On a point of order, Acting President, I fail to see the relevance of an internal party document to this planning bill.

Mr O'BRIEN — On the point of order, Acting President, Mr Tee began his contribution with a 10-minute context debate. This is the lead speech for the government. The document is relevant because it is responding to the contribution to debate that was made previously and the suggestion that this government is stripping away powers with this bill.

Mr Tee — On the point of order, Acting President, in my introductory remarks I did not refer to any of this material. This is an expansion into an area which is completely irrelevant. The member is making no reference to anything that is contained in this bill or the debate in the Assembly.

Mr Finn — On the point of order, Acting President, Mr O'Brien is in fact very relevant. He is referring directly to a contribution made by another member in the other house.

Mr Tee — Not on this debate.

Mr Finn — It is absolutely on this debate. He was referring to the planning issues that were raised by Mr Foley in another place. In that context he is being absolutely and totally relevant to this debate.

The ACTING PRESIDENT (**Mr Tarlamis**) — Order! There is no point of order, but I would ask Mr O'Brien to speak to the substance of the bill.

Mr O'BRIEN — I will briefly deal with this point and then return to the bill. The document is important for the Victorian government to finally be able to understand what was at the heart of the previous government's 11-year administration. The document continues:

> Like the Twilight saga own our 'Volturi' — the vampire royalty class — enforce their codes of compliance and control — sadly minus the good looks. They falsely promise eternal political life in return for our political soul.

The ACTING PRESIDENT (**Mr Tarlamis**) — Order! I believe Mr O'Brien is now straying far from the substance of the bill, and I ask him to come back to the bill.

Mr O'BRIEN — I urge members to read this document. I am happy to make it available. Certainly members from the other side will be familiar with it. The Victorian public would gain an understanding of the inner workings of the ALP from this document, certainly in terms of Stalinist control, which were the words of Mr Tee. It is a very disturbing document, but it provides an insight that assisted me in understanding how we have come to where we are.

Turning back to Mr Tee's contribution about the balance that needs to be maintained in this state in planning decisions, he referred to the importance of good planning and preserving our heritage. We need no further example of the irony of this submission than looking across the road to the Windsor Hotel. Rather than listening to the local community, according to a media strategy document that inadvertently found its way to the ABC, the previous planning minister decided to engage in a sham consultation process, where the decision to refuse this development would then appear to have been due to the minister having

listened to the community. The process of consultation the previous government undertook was a sham, as reported in the media release.

What is so disturbing about the Windsor Hotel decision, which became public about three or four days after the leak, is that the minister did not do what the consultation document said he would do which was to refuse the development. In order to prove that he was not somehow operating in a Stalinist, secretive, closed, vampirish way — if they are the words I should use — he decided to approve the development, so we had a consultation process that not only shut out the community but also resulted in a very large development in the heritage precinct in which the Parliament building is located. It is therefore ironic that Mr Tee said in his contribution to the debate that somehow this bill will strip powers from local communities and destroy our heritage. In fact it is doing the exact opposite and is returning those powers to local communities.

The bill will also do other things. It is part of a suite of very positive and significant planning reforms that this minister and this government have taken to the Victorian community. It was this wider economic context that Mr Tee also addressed in his contribution. Yes, times can get tough in this country and in this state. But it was very important that this government was elected at the time it was elected, because it has put at the very heart of its economic strategy the importance of economic responsibility; cutting red tape; and enabling the business community, the development community and the people of Victoria to fulfil their aspirations and get on with developments that are appropriate but which enable this state to continue to be a leader in the nation. Victoria is now the only state with a AAA stable credit rating, which is a very important matter that must be at the heart of any economic activity and debate.

In relation to planning, the minister has been engaged in a suite of very considered reforms. They were outlined in the policy we took to the election and, to use Mr Tee's words again, the people voted with their feet and elected this government. Because of that, we have started to unwind in a progressive way many of the poor policies that were made by the previous government. Regretfully planning decisions that have already been made in reliance on that policy cannot easily be revoked because of sovereign risk. However, the laws and discretions that the previous government used to call in applications that ought not to have been called in, which arguably were abused in many instances, are now being more carefully structured and decisions are being made more democratically.

In that regard the bill also provides for two types of referral authority that will be set out in planning schemes. At the moment there is a single referral authority, which effectively has the power of veto. The new provisions will allow some decisions to be referred for recommendation and advice and others to operate under the previous system. The minister will be available in committee to answer specific questions. The catchment management authorities were mentioned in the election policy as being in the latter category, but there has been no suggestion that the Country Fire Authority would also be in that category. As I said, the minister will be available to answer questions about the process under which the two types of authorities will be gazetted. Again this will cut red tape where it genuinely ought to be cut while preserving an important role for referral authorities.

The bill will also improve the process for amending planning schemes and accessing planning permit applications by reducing delays and speeding up the exchange of information. This is consistent with amendments in the Planning and Environment Amendment (VicSmart Planning Assessment) Bill 2012 that were brought to the house last year and opposed by the Labor Party. In the case of the VicSmart bill, the amendments related to smaller applications that would allow mums and dads to get on with sensible renovations whilst preserving livability, heritage and amenity and referred court decision-making powers to the Victorian Civil and Administrative Tribunal (VCAT). The bill will also improve the decision-making process of VCAT.

The bill will improve the operation of planning agreements by expanding the options for amending or ending section 173 agreements, as they are called. The bill will also make miscellaneous changes to improve the operation of the Planning and Environment Act 1987, which will reduce uncertainty and delays and deliver better planning outcomes.

An important thing to note about the establishment of the Planning Application Committee and the abolition of the development assessment committees is that it was councils that did not support the heavy-handed approach of the development assessment committees. As I said in my opening remarks, this government has restored the power of councils to opt in or out in relation to the Planning Application Committee. This is done in the context of the minister providing councils with a flying squad, particularly for rural and regional councils where resources can be much scarcer than in metropolitan councils because of the sheer weight of numbers related to the rating powers of those metropolitan councils.

An important aspect of the new Planning Application Committee, particularly in relation to regional and rural councils, is the flexibility this bill will provide to the membership of the committee. The minister will appoint the Planning Application Committee under clause 10 of the bill. Membership of the PAC will be flexible in order to cater for different planning proposals. The key is that the membership of the PAC and PAC subcommittees will be tailored to provide the best expertise to local councils for them to respond to proposals. This may include councillors, council officers, departmental officers and expert town planners. We hope no vampires will find their way onto those committees, but it will be for local councils to determine the exact composition of each of these committees. In that regard it is an important bill in allowing flexibility.

If there is a deeper context in the planning debate that occurs, and certainly in my experience as a town planning lawyer there was and always is a tension between the so-called experts — the people who make a living in the town planning game, which of course includes town planners, environmental consultants, engineers, lawyers — —

Mr Finn — And other hangers-on.

Mr O'BRIEN — And other hangers-on, as Mr Finn says.

Mr Leane — Bloodsuckers!

Mr O'BRIEN — Bloodsuckers and perhaps some vampires and leeches. I will have to ask Mr Foley exactly who they are, as he is the one who has named them, and I am sure there are plenty of them. Mr Leane may know a few.

Mr Ramsay — Is Mr Leane on the bloodsucking right faction or the bloodsucking left?

Mr O'BRIEN — I am not sure if Mr Leane is on the bloodsucking right or the bloodsucking left faction.

Mr Ramsay — Which blood bank does he belong to?

The ACTING PRESIDENT (**Mr Tarlamis**) — Order! Mr Ramsay is not in his place.

Mr Leane — I'm full, thanks!

Mr O'BRIEN — Mr Leane says he is full.

Mr Ramsay — No traveller!

Mr O'BRIEN — No traveller for Mr Leane. The point is that there are these people who work in the industry and make a living out of it, including experts. They form a very important part of Victoria's planning system, have great expertise and are involved in, say, decisions of the Victorian Civil and Administrative Tribunal as tribunal members and in panel hearings. However, there is another very important and perhaps wider body of people in the planning system, and that is the citizens of Victoria — the members of the local council or the resident of a street or suburb — who are very important participants either as individuals or community members or, ultimately, as citizens who can democratically elect local councillors and local governments.

There has been a debate, and there remains a continuing debate in the community, about the proper role of these two classes of participants, if you like — the experts and the democratically elected councillors. It is an important part of this government's philosophy that in setting the rules and regulations and in taking our policies to the electorate we are very mindful and very committed to the role of democracy. That is why we went to the last election with a detailed planning policy, and we note again that the vampires of the Labor Party went with nothing. They have sucked the blood out of Victoria, and they have clearly sucked the blood out of their planning policies because they did not take any to the last election.

We made an election commitment to have an opt-in, opt-out planning assessment committee. We will have regard to local communities and democracy in setting the rules, but we will also allow those expert participants to provide advice and, where necessary, make structured, delegated decisions. In doing so we are restoring certainty, fairness, equity and democracy to this great state, and we wish that it be preserved from the vampirish fangs of the Labor Party for many years to come.

Mr BARBER (Northern Metropolitan) — I will write myself a note to talk about Mr Foley's demonology and where we all fit into it before I finish my speech. Mr Tee asserted that this bill gives the Minister for Planning a whole new set of powers; he described it as a grab for power. I ask Mr Tee: how can that be when the Minister for Planning's powers, using the act, are already total? As Mr Tee would well know, the Minister for Planning can overnight, without warning, rewrite the rules for any parcel of land in Victoria or any class of land, make him or herself the planning authority and then decide all of the planning permits against the rules he or she has just written.

All the tweaks and changes that have been made to the act from time to time have been described as reform, but they are really just creating different types of convenient mechanisms for the minister to exercise that type of power. The minister can even call in from the Victorian Civil and Administrative Tribunal (VCAT), if he wants, a decision that had been appealed to VCAT after the minister had previously called in the same matter. There is absolutely no limit to the minister's ability to intervene and make decisions. Mr Tee understands that perfectly well because he was an adviser to the previous Minister for Planning, and I understand it perfectly well because I was a local councillor when it happened to me and my local community, so let us not pretend that there is anything particularly new and scary going on with this bill. What we should be turning our attention to, given this opportunity, is the way that power has been exercised.

The government had some very specific critiques about how that power was exercised when Labor was last in power. Mr Tee's concerns are a bit more fluffy — he seems to think there is something wrong with planning that is simultaneously destroying the confidence of investors and destroying the quality of life through our planning system. He did not say how he would be striking this new balance. He also speculated that the Minister for Planning had to get himself a bigger desk for all the matters he was intervening in. That brings us to an interesting question. Not only is the Minister for Planning rightly described as the Emperor of Planning given his ability to decide any matter through edict, but it is even more interesting that a huge proportion of that power is exercised under delegation — in some cases to quite junior officers and on quite sensitive and even large-scale matters.

There is a story about that in today's *Age* newspaper. It relates to the Naroghid wind farm. I believe that wind farm has been the only one so far to have been unsuccessful in getting an extension of time on its pre-existing permit. In the majority of cases wind farms have received their planning permit extensions from the minister's own hand. I compliment him on that. In a couple of other cases, though, where the minister mucked around and took too long — I am thinking of the Bald Hills wind farm in particular — the permit-holder had to go to VCAT to appeal the minister's failure to make a decision. In that case the permit-holder was successful. VCAT found that the minister had no defensible reason for failing to make a decision on the Bald Hills wind farm extension within the necessary time, so VCAT went over the top of him and did it anyway.

Amongst that batch of expiring permits, it seems that the last one we are waiting on is Naroghid. The *Age* newspaper has reported that the 20-turbine Naroghid wind farm, which is near Warrnambool, sought an extension of time for its permit. Acting under delegation from Mr Guy, a senior planning official, David Hodge, refused the plans. The applicant has now taken the government to VCAT, sought a review of the decision and argued that there was significant bias in the way decision making was carried out under delegation. The applicant, or at least their lawyer — William Grinter from Middleton's law firm, which is now known as K&L Gates — emailed Mr Guy, seeking to go over the head of the delegate, Mr Hodge. Mr Hodge reacted strongly to this and said, 'You do not email the minister directly'. He then described Mr Grinter as incompetent, a rock star and something else that I cannot quote because I do not think it would make it into *Hansard*.

I understand that all this material has been put into an affidavit that is before VCAT. At least one side of the story has been put down in legal terms. In a later email Mr Hodge said that Mr Grinter's conduct demonstrated 'a complete lack of understanding of how to achieve "outcomes" for clients', and that 'there is no substance to the service or advice you provide to the clients you represent'. It is a real worry that a decision-maker under the Planning and Environment Act 1987 would be engaging in that kind of communication, which, if it did happen, is not only abusive but also builds up a case for bias, thereby affecting the integrity of the decision.

Since the new powers under this bill are also subject to delegation from the minister down the ranks, I would like the minister, during the committee stage, to say whether that particular individual is still in a position of making delegated decisions. When I look at the dozens of planning scheme amendments the minister has intervened in over the last two years I see that many were not made by the minister but by Mr David Hodge. As late as July last year Mr Hodge was still making planning scheme amendments under delegation, and in some cases we know that meant planning permits, although the Department of Planning and Community Development website is not transparent about that.

The minister is not only the Emperor of Planning, he can delegate almost all his powers to other people under the act. The only exceptions to that, if I remember rightly, would be the power of delegation itself and compulsory acquisition. I think there is another exception, but I will check that and come back to it. But in any other case the ability to approve a major development or approve a planning scheme amendment, with or without the support of a local

council, can be delegated. Mr O'Brien might be interested to know that under the previous government, I sought to obtain a copy of that instrument of delegation, which made a very interesting read. It should probably be a public document so that we know which decisions the minister has made and which ones he has outsourced.

Mr Tee expressed concern over decisions being made about people's backyards. Right now I know of a set of decisions that are being made in stealth that relate to the backyards of public housing residents in Fitzroy, Richmond and, we hear, possibly in Stonnington and other inner city public housing estates. These decisions will mean that open spaces and parklands — including ovals, barbecue areas, community gardens and the rest of it — that surround those estates are up for grabs for private development and possibly some low-income housing, but we are told there will be no additional public housing.

As the Minister for Housing told us yesterday, under the former government a funding agreement was made between the state director of housing and the federal government — that is, the agreement was made between a state ALP government and a federal ALP government. The tenants in those estates have never been asked what they want. Nobody has even talked to them about what may happen in their backyards, and these are their backyards. These are the places where they relax and socialise; they are the places where their kids play; and they are the places where community festivals, like the Moon Lantern Festival, are held. At the Moon Lantern Festival, participants walk around the estate with their moon lanterns. I participated in that festival in Richmond. What is going to happen when those estates are built up more densely? Will the community festival be held at the designated body corporate barbecue area for an hour before its permit expires? Will community members continue to enjoy the freedom of that public space? Will people who live in areas adjoining those estates continue to enjoy that freedom?

In summer it can get very hot for those who live in a tall apartment building. I have heard that on really hot nights people go out into the gardens together with their sleeping bags and mattresses. In that style of accommodation people can really suffer from the heat. There were many deaths in the weeks prior to Black Saturday four years ago, and this is a real prospect whenever there is a series of days and nights that are that hot. Thankfully we have not had such a series of hot nights going for more than a day or two this summer. Once it gets to three days and three nights in a row, people literally start dying — that is, people who are vulnerable. Consideration of that should be paramount in any plans that are made for those public housing estates.

However, Minister Guy, with his planning powers, has swept in there, taken control and made himself the planning authority for the estate. The Minister for Housing has to talk to him in order to get the development she wants under a deal with the federal Labor government. That is something Mr Tee could get very concerned about if he wanted to.

On the subject of bushfires, which Mr O'Brien raised in the context of this clause about the Country Fire Authority (CFA) and its referral or responsible authority powers, Mr O'Brien's government has got a lot more work to do to follow through on the recommendations of the 2009 Victorian Bushfires Royal Commission as they relate to planning and the role of the CFA in providing comment on new developments in bushfire-prone areas.

If Mr O'Brien would like to go back to the royal commission recommendations and read the literal wording of what the commission was proposing, he would see that the protection of human life was paramount in all the recommendations that came from the royal commission — not that the protection of human life would be balanced up against the interests of developers and other land-holders who would like to subdivide their land but that the protection of human life was to be the paramount decision-making consideration.

In relation to specific zones that the commission named, including farming zones, rural conservation zones and green wedge zones — the types of zones commonly in place in some of our most bushfire-prone land — the commission was seeking tougher subdivision controls and a positive bias against new developments which put new homes and families in harm's way in those areas.

I have been tracking cases at VCAT both during and after the royal commission's findings, to see how it has been responding to the findings. Most importantly, when this government, which said it would implement every one of the bushfires royal commission recommendations, made its response, it was not to implement the recommendation for clamps on subdivision and development in bushfire-prone areas. This government's recommendation was that it would review the royal commission's recommendation to see if there was a better way of doing it than the method that the royal commission had specifically prescribed. Since we now have a bushfires royal commission

implementation monitor who can actually only monitor the government's implementation plan, not the implementation plan's truthfulness to the original recommendations, Mr Comrie has given the government the tick for doing what it said it would do, rather than what the royal commission told it to do.

Where does that leave the CFA as a referral authority? It does not have the strategic backing it needs, and in any case at VCAT it has always been dammed whichever way it goes. If the CFA supports the development, it is taking a risk that there will be loss of life in that development sometime in the future; if it opposes it, the CFA has all the forces of development up against it. With the current difficulties the CFA is having, not to mention some of the cutbacks in its funding, you have to wonder how the CFA is able to keep across so many different planning matters when the rule book itself is not as strong as the royal commission wanted it to be.

While the CFA's status as a referral, responsible or consultation authority under the scheme is what is up for grabs here — and we will not know until the minister creates his regulations — I argue that, more importantly, what Mr Tee as well as the government should be paying attention to are the rules that the CFA may be able to use to enforce its position, not to mention the resources it might have to keep on top of such things. In any case, in many instances it is not the CFA itself which might appeal but various other local residents — objectors — which automatically brings the CFA into the VCAT process as an organisation which provides comment.

There are some other provisions in the bill in the same vein. We abolished the development assessment committees (DACs), which is good; I voted against them the first time because I did not see the point. It seemed to be part of a push by industry to remove decision-making powers from councils in planning matters and get more industry friendly people making decisions — people more ideologically aligned to the view of industry. That was a big push under the Labor Party. Ironically the Liberal-Nationals coalition got in and pushed back in the other direction. The Planning Application Committee process is a lighter version of that but with some more flexibility.

Mr O'Brien — Not according to Mr Tee.

Mr BARBER — Mr Tee is a victim of his own history, is he not, Mr O'Brien? His government brought in DACs. He now needs to find a way to climb down from that position, and the answer is to make a lot of loud noise and point in another direction.

The planning application process should be open to local government in the same way as the minister has the provision to create a committee to advise him and after receiving advice from that committee to then go on and make a decision. That is routine with a whole range of planning panels, advisory committees and so forth, including the one looking at Mr Guy's new residential zones. By some estimates there have been 2200 submissions to that particular process. Before Christmas this house passed a unanimous resolution that the house required those 2200 submissions to be tabled here last Tuesday. In fact the minister has defied the house and put up a lame excuse as to why he cannot simply photocopy and deliver those 2200 submissions.

Frankly, the minister wants to buy himself some time until he can make a decision, which as we know he can make anytime, anywhere. He can implement the whole thing at the stroke of a pen; we could all wake up tomorrow in a brave new world. I do not know whether he is quite willing to take on all of that burden. I think he would like to share some of that power and responsibility with local councils. In any case, until in his mind it is a done deal, we are not going to see the 2200 submissions. Even though they are supposed to be providing input to the advisory panel, the submitters themselves will not know what anyone else has said. One submitter might find that 2000 others have already said the exact same thing, but we will never know.

It is a real discourtesy to this house that while we are debating a bill that will give the minister a more convenient way to amend planning schemes, he will not even tell us about the current wide-ranging process he is involved in with the residential planning zones. There are a series of zone reforms coming down the line, and then the metropolitan strategy — I almost said Melbourne 2030 — that he is working on. It is the big granddaddy of them all as far as Melbourne is concerned. Will the public submissions to that process be made public?

Let us go back to some statements that Mr Guy's boss, Mr Baillieu, now the Premier and then the shadow Minister for Planning, said at the time Melbourne 2030 was implemented. He, like me, was outraged that the submissions made under the Melbourne 2030 process were kept under wraps until all the big decisions had been made — and members can read about that in the annals of the Legislative Assembly from around the 2003 period. I remember it well, because I was a councillor at the time and Melbourne 2030 was going to have a major impact on our area. In fact Mr Baillieu, the then shadow planning minister, made a number of visits to our council and was very supportive of us in

dealing with some of the problems we were having at the time with the implications of Melbourne 2030.

Mr Guy says he has abolished Melbourne 2030 — actually, I am not sure if he says it, but people say that he has abolished it, and that seems to be out there as a belief amongst certain planning groups and newspapers. In fact we only need to look at the planning scheme — and we can do that right now — to find at the high level of the scheme more than a dozen references to Melbourne 2030 and Melbourne @ 5 million. It is still there, still the law of the land and still what VCAT will look to when it makes a decision on a particular application. It will sit there until Mr Guy's new metropolitan strategy is completed, and I imagine that could be a year or more away. We will have had four years of Melbourne 2030 under the party that vowed to abolish it.

All this creates a kind of Kafkaesque situation — —

Mr O'Brien interjected.

Mr BARBER — It is not Stalinist, Mr O'Brien — that is totally the wrong analogy. It is Kafkaesque to try to engage with the planning scheme. People think of the rules in the planning scheme as being like speed limits — things you either obey or do not — but they are not. It is more like having performance-based speed limits — there is an advisory speed limit, but if I can make a good case for going faster under my circumstances, I will be allowed to do so. That is effectively what developers do whenever they come to VCAT with their highly paid lawyers, expert witnesses and planning consultants. There is a revolving door between members of that last profession and the decision-makers — the councils and the minister.

We will support this modest bill. In my view it makes very little change, if any, to the balance of power between the government and the citizenry. It is the citizens, and often their local councils, who are the best defenders, protectors or watchdogs of the livability of their communities. It is mind numbing to think that on any given day the minister of the day can make a completely political decision with no checks and balances and wipe away some of the things that communities value so much.

On the technical issues of the bill, we are hoping to ask a few questions in the committee stage.

Mr SCHEFFER (Eastern Victoria) — Members will be aware of a report by the Victorian division of the Planning Institute of Australia on a questionnaire that it conducted in September 2011 to identify what its members believed were the important planning issues for Victoria. The survey was contained in a submission to what was then still a relatively new coalition government's review of Victoria's planning system.

Unsurprisingly, the respondents nominated the provision of infrastructure, particularly public transport in growth areas, as the biggest problem. They said that the best opportunity to fix the problems lies in depoliticising the decision making in the planning system. The second biggest issue for planners is that the system, they say, does not give enough weight or incentive to considering the impacts of climate change. The third issue they nominated was the problem of excessive urban sprawl and the difficulty of intensified infill development to meet population growth. Further down the list they nominated the overcomplexity and sometimes unnecessary level of detail of the planning process, and the need to speed up decision making. They also nominated ministerial powers and prohibitive costs to councils, the single-track assessment of permits, unnecessary advertising requirements and inconsistency across local governments.

An overwhelming majority of respondents felt that the most positive feature of the planning system in Victoria was having a consistent statewide system while still maintaining the ability to tailor development to local conditions. They also valued community and stakeholder engagement in strategic planning, as well as third-party appeal rights. My sense is that the range of issues that planners nominated in the survey, and their relative importance, is consistent with the views of most others involved in the planning system. I think the results of the survey give a fair account of what the priority should be for the government and for the Minister for Planning, Mr Guy.

The Planning and Environment Amendment (General) Bill 2012 attempts to tackle some of the issues identified by the Planning Institute of Australia member survey, and it appears from a reading of the 2011 submission that the planning minister has taken some notice in this bill. However, as we know, the planning portfolio is fraught with opportunities and temptations for an eager and still newish minister to make his mark, to win friends and to shape outcomes through sometimes inappropriate interventions.

Before I come to the bill itself it is important to keep in mind that in the two short years of the life of what may be a short-lived government much credibility has been lost in the planning portfolio. In my electorate of Eastern Victoria Region residents are still very raw over the government's so-called logical inclusions exercise, which handed sections of the green wedge to developers. Residents remain dismayed over the

Ventnor rezoning debacle on Phillip Island, which as we know has some way to run as legal actions against the minister remain on foot.

Besides their concern over the loss of green wedge land, residents in the Pakenham area are concerned — and they have said so loudly and clearly — that there is no provision for the infrastructure necessary to support the additional housing mooted for the area. In his contribution Mr Tee drew our attention to the profound concern right across the community over the lack of public investment in infrastructure and also the government's failure to manage this critical area of public administration. Pakenham residents ask, 'Where are the schools, where are the health services and where are the public transport developments that are necessary?' Similar concerns have been voiced in inner city communities, where in general most people would welcome increased urban density, in relation to Minister Guy's plans for high-density and retail development of railway station sites and Fishermans Bend. There are important concerns that the minister is not thinking enough about the consequential increased traffic congestion, for example, and the necessary infrastructure services.

We have more recently learnt of the government's proposals for the so-called redevelopment or privatisation of public housing land, and Mr Barber had something to say about that in his contribution. The opposition has also voiced its concerns and questioned the minister over aspects of the very deep disorder within Places Victoria, and Mr Tee examined that matter in his contribution. The public has seen emotional resignations at the very top of Places Victoria, a deterioration in its financial position and mass sackings of employees just before Christmas. Also, as we know, an important Dandenong redevelopment has evidently stalled. The point is that this government and minister have form in the planning space, and this is increasingly alarming communities and leaching away whatever credibility the minister may have started with.

As we see in its first clause the objective of the bill is to improve the operation of the land planning system in Victoria, and the explanatory memorandum sets out eight key reforms that this piece of legislation introduces. As we have heard, Labor will not oppose the bill, because the government made a clear commitment prior to the 2010 election that it would amend Labor's development assessment committees, which is the key measure contained in the bill. Besides abolishing the development assessment committees, the bill provides for the establishment of the Planning Application Committee that the government believes will improve the planning system.

The minister's second-reading speech presents a detailed account of the purposes and provisions contained in the bill, including changes to the planning permit and referral authority process, the planning scheme amendment process, planning agreements and some changes to the Subdivision Act 1988. Many of these changes are uncontroversial. Mr Tee has already presented the opposition's view on the bill, so I will not take up any time going over those issues again, except to say that Labor's establishment of development assessment committees was, in the end, supported through the previous Parliament after a period of protracted negotiation.

The fundamental point about the establishment of those committees is that they filled a gap. They provided a decision-making structure in which planning decisions necessitated state and local governments reaching a joint decision. The development assessment committees that this bill abolishes created a single process that could bring together the consideration of both local and state policies in a particular planning scheme. Development assessment committees did not remove local government from its role as the responsible authority, but they did require local government to exercise that role in conjunction with the committee, and the appeal rights of third parties were protected.

The second-reading speech suggests that the government does not support development assessment committees because they compromise local government's role as decision-maker for planning decisions within its municipality. The speech suggests that development assessment committees are therefore undemocratic because they dilute the capacity of residents to have a say about their neighbourhood. It is argued in the second-reading speech that the committee process was secretive because decisions were made behind closed doors.

All these accusations were made at the time of the passage of the legislation. I said during those debates, and I still believe, that there is no evidence that supports those views. Contrary to what the critics said at the time, the legislation introducing the development assessment committees passed through the Parliament. The members of the committees were selected on a collaborative basis. The chair was selected by the minister of the day in consultation with peak local government organisations on the basis of consensus, and then the minister and the relevant local council

appointed the four remaining members to each committee.

The objective was to establish a cooperative and effective partnership between the local authority and the state government, yet the critics characterised the policy as a disenfranchisement of local government and democracy, as though democracy were synonymous with local government and that any involvement of the state was inherently illegitimate. The criticisms ignored the fact that some planning issues are beyond the capacities of some local governments. In the time that I have been a member of Parliament in this place, local government representatives have said to me that it makes sense to develop large projects in partnership with the state government. Of course it does.

However, now we have before us a new proposal from the current coalition government for the establishment of a Planning Application Committee, and it does not seem to me that this new committee addresses the criticisms made of the development assessment committees. Clause 10 of the bill tells us that the minister is required to consult with peak local government bodies and the development industry in the preparation of a list of individuals from which he can appoint a chair. As well, the minister can appoint four other members to the committee, so overall it seems to me that the minister's hand is strengthened in his control over the complexion of the committee. On that we also heard from Mr Tee that the opposition is not prepared to support clause 44, because in our view it hands too much unchecked power to the minister.

The functions of the Planning Application Committee are similar to those of the development assessment committees, but they differ in that responsible authorities can decide that they wish the Planning Application Committee to involve itself in planning matters over which they have responsibility. The difference between this approach and Labor's approach is that Labor's approach obliged responsible authorities to engage in the development assessment committee process, and our government consequently ensured that the structure of the committee was representative. On the other hand, the coalition has reduced the representative structure of the Planning Application Committee and that appears to give responsible authorities more latitude when it comes to participating in the process — that is, they can opt in or opt out. This is why Labor will not be opposing the bill, with the exception of clause 44.

Mr RAMSAY (Western Victoria) — It gives me pleasure to speak on the Planning and Environment Amendment (General) Bill 2012, and I do so because it is a good piece of legislation which makes amendments that will support local councils. I suspect that all of us in this chamber, as both government and non-government members of Parliament representing our electorates, know the most significant issues raised with us are planning issues. Invariably our constituents are not clear on or get confused about the roles of local government and state government. Any bill that comes to this chamber that provides greater support for decision making in planning is to be commended. On that basis I note that the opposition and the Greens are supportive of this bill.

In previous roles within industry and in my current role as an MP a number of issues have come to me in relation to past planning decisions. I will cocoon these issues and say that in essence they were due to the disasters that happened under Labor — and I will mention a few of them, including the urban growth boundary, which has already been discussed today. Labor is very quick and keen to criticise metropolitan and regional planning measures put forward by the government as part of its regional growth planning structures, but Labor has offered nothing — just a vacuum, similar to its planning policies when in government.

We only have to look back at matters involving the urban growth boundary, the Melbourne 2030 policy, green wedges, brown wedges and rural zones, to see that they have created heartache, hardship and conflict in both metropolitan and rural communities across Victoria. I have not even mentioned the abysmal wind farm planning permits issued under the previous government. In addition, matters concerning the Hotel Windsor debacle have been well covered in contributions from this side of the house this morning. All of these matters are testament to the abject failure of Labor's rule in planning.

This bill fulfils an election commitment made by the government and is very transparent in what the government seeks to achieve. There has been plenty of time for discussion and consultation, which was not the case under previous Labor government decision making in relation to planning. We have before us a bill the intent of which is not only to reduce bureaucracy, administration, red tape and regulation but at the same time to support our local government authorities in quick, decisive decision making and provide support to local government in relation to planning issues.

In that vein I take this opportunity to congratulate the Minister for Planning, the Honourable Matthew Guy not only on making some very hard and tough decisions in relation to the former planning portfolio — —

Mr Barber interjected.

Mr RAMSAY — But also, Mr Barber, on making time to go out and visit every one of the regional councils in rural Victoria to discuss the impact that rural zones and potential new planning legislation may have on local government's capacity to make decisions in the interests of their communities. I commend the minister for paying those visits right across the state, for having full consultation with local councils and local community members and for digesting the information and talking with the department about how we might better serve our communities under the local government regime.

The Baillieu government, through the Minister for Planning, has made significant and important reforms in planning, both in metropolitan and rural areas, and this bill is an example, as it contains amendments that will improve the efficiency and effectiveness of Victoria's planning system. It also implements a number of government election promises, to which I have referred, including delivering a fair, consistent and transparent planning system for Victoria, which is something the state has not had for 11 years. The bill will reduce paperwork, simplify processes, remove impediments to quick decision making and add support to local councils. Most importantly, the bill restores a sense of certainty to residents, councils and businesses, which has been lacking over the previous Labor government's reign of 11 years.

The bill abolishes development assessment committees (DACs), a measure I have to say was never supported by local councils; it was seen as burdensome and did not provide a network of support in relation to planning decisions they had to make. Under the new body, the Planning Application Committee (PAC) — which will replace the DACs — local councils will be provided with much more support to their decision making. With the minister's consent, councils as relevant authorities will be able to seek advice from the PAC to assist in decision making. I am sure members could refer to many cases where members of the community have been tied up in decisions that local councils were not able to make or were unwilling to make and which had been pushed into the Victorian Civil and Administrative Tribunal (VCAT), which we know had been a cumbersome and slow process of judgement for many years.

I am pleased to see the minister establishing flying squads, which will go into areas where councils are having difficulty in moving forward a number of decision-making planning processes and add support so local councils can speed up the process, whether it be through VCAT or themselves as relevant authorities. As well as that there will be more than $1 million in funding through the planning portfolio to provide support for VCAT to push forward cases that otherwise would get bogged down in technicalities. These reforms to planning permit applications improve the process of referring applications to referral authorities, such as the Department of Sustainability and Environment, the Department of Primary Industries, the Department of Transport, VicRoads and the Country Fire Authority, as we have heard. This is in stark contrast to Labor's one-size-fits-all approach, which was littered with ministerial interventions causing havoc across vastly different rural and regional communities.

I do not wish to prolong my contribution, but I would like to say that from a rural perspective it is important that the government has a structure that provides support for local government, which is principally the relevant authority in terms of decision making in planning. People in local government need to have that support not only in making their final judgements but also in the planning process of making decisions, because a lot of the growth and prosperity of rural communities is dependent upon good decision making and planning — that is, where councils can think about how they can plan their communities for growth in the future. I am talking about providing farmers with certainty in relation to them being able to continue their farming practices without being hindered, both financially and from a productivity point of view. I am also talking about the encroachment of development, and that is why farming zones were introduced originally.

The reforms also mean that businesses can have some flexibility in relation to carrying on and being able to expand their business without the constraints of planning rules and regulations in the future. There also needs to be flexibility in residential planning so that people can build or buy a house without having imposed on them through no fault of their own some large structure which affects their livability. Councils also need to be able to plan for the future in relation to where different industries or residential developments sit.

Equally I respect the need to provide the appropriate public spaces between rural activities, farming activities and urban developments. Obviously a lot of work has been done on regional growth plans to provide certainty not only to farming and rural communities to enable them to do business but also to developers who want to invest in areas that will provide opportunities for urban residential and industrial development.

On that note I commend the bill to the house, and I congratulate the minister on progressing these planning reforms. I also congratulate the Baillieu government on providing with this bill an instrument to support local governments, and I hope the outcome of this legislation will be faster, more sensible decision making in relation to planning.

Mr LEANE (Eastern Metropolitan) — I am happy to speak on the Planning and Environment Amendment (General) Bill 2012. In dissecting the bill I found that one of its main actions is to replace development assessment committees (DACs) with the Planning Application Committee (PAC), which could explain the flurry of activity we have seen within the planning portfolio. Commentators say the Baillieu government might be a bit slow moving out of the box in a number of areas — if it is moving at all — but in the planning portfolio the minister has managed to fire things up. He is out there creating a big flurry of activity in this area.

When you look at what all the activity is about and compare it to the consequences of that activity and what has actually been done it presents an interesting contrast. We know that in line with changing DACs to the PAC the planning department has changed its name from VicUrban to Places Victoria, and I am sure that is a big change to implement in the planning department — the signs out the front of their offices would have been changed. There would have been a lot of activity around changing the name on the letterhead.

The ACTING PRESIDENT (**Mr Finn**) — Business cards!

Mr LEANE — Business cards — you cannot have people who are working in a department that changed its name from one day to the next having business cards that reflect the old name of the department rather than the new one which is supposed to reflect a great change and a new world in planning.

There is constant talk about all this activity, but when you dissect it a lot of it is smoke and mirrors and spin. This particular bill is a beauty. It talks about flying squads — and this is supposed to come from a no-spin government! We are going to have these flying squads aligned to the PAC — we must make sure we say PAC, not DAC. Like the bat-signal, the PAC-man light will beam into the sky, and it will beckon the flying squad. This is an all-activity government. Quick, the PAC flying squad is coming to the rescue. Talk about a no-spin, transparent government! It is an absolute joke.

But in saying that, at least the Minister for Planning is prepared to be seen to be busy when compared with some of the other members in the cabinet. I give him credit for that. He would be accessible to a delegation of his own MPs if they wanted to meet with and talk to him about an issue. I am sure that he would be more than accessible, compared with the current leader of the state, who according to reports will not even meet with a delegation of his own MPs. Good luck if you are a concerned council member or developer, and good luck if you have been affected by the adverse planning decisions made by his government and are trying to see this Premier, because apparently there are a couple of bouncers at the door who will check you out. If you have got the wrong shoes or the wrong hat or if you are of the wrong gender, you might not make it inside; a couple of goons at the red rope will stop you.

Honourable members interjecting.

The ACTING PRESIDENT (**Mr Finn**) — Order! I ask members on my right to calm down just a little, but I also advise Mr Leane that he may well be straying from the bill significantly. At the moment his journey is something akin to going to Perth via Brisbane. If Mr Leane could stick to the bill, I am sure everybody in the house would appreciate it.

Mr LEANE — Good ruling, Acting President. Basically the DACs were set up by the previous government to oversee projects such as the Doncaster Hill project. Doncaster Hill's DAC existed for a very brief period of time, but I have to put on the record that I have an interest in Doncaster Hill because I live there. It is a great project, I enjoy the area and I really appreciate that it is going ahead so that people like me can enjoy living in that area for a number of years.

Mr Barber — Have you been able to catch the train to work?

Mr LEANE — I have tried to catch the Doncaster train to work, but I got sick of standing for a couple of days at the stop. However, I have been assured by the Premier and the member for Doncaster in the other place that the government definitely will build a rail line to Doncaster, and I very much look forward to that day. Maybe we need the PAC-man light or the flying squad to get the train operating to Doncaster. I will wait to see.

This flurry of activity around the planning portfolio is from the new no-spin government. Let us look at the realities of what is happening in this state in the building industry, which is affected by the planning portfolio. Victoria is faring far worse in terms of residential construction than the rest of the country. The number of building permits in this state has dropped by

10 per cent in the last year, which is amazing. That will cost the economy $12.3 billion. The total number of permits declined remarkably in public buildings.

Mrs Coote — On a point of order, Acting President, I do not believe the member has told us where he is quoting these figures from. Is it the *Age*?

The ACTING PRESIDENT (**Mr Finn**) — Order! I do not believe that is a point of order. If Mr Leane would like to enlighten us, I am sure members of the house would appreciate it, but there is no point of order.

Mr LEANE — These are figures from the appropriate authorities that I collated. They have been fully costed and accounted for.

The sobering figure is that 95 per cent of building companies have gone into liquidation in the last year. When we look at today's unemployment rate in Victoria we see it has gone up by 0.5 per cent.

Mrs Coote — Who said?

Mr LEANE — The unemployment rate people. Let us look at the proof instead of the spin, the smoke and mirrors and the flurry of activity — —

Mr Elsbury — On a point of order, Acting President, did Mr Leane say 95 per cent of construction companies went into liquidation?

The ACTING PRESIDENT (**Mr Finn**) — Order! There is no point of order.

Mr LEANE — I would like to thank Mr Elsbury. If that is what I said, it was incorrect. I read it incorrectly. Actually, 95 Victorian building companies went into liquidation. I appreciate Mr Elsbury's assistance.

We now have Places Victoria, and DACs will be replaced with the PAC. There is a flurry of activity around planning. But the proof of the pudding will be in seeing from the work that is being done around the building industry, the creation of the Building Commission and the name changes that are occurring.

The bottom is falling out of the domestic building industry. Tradesmen are leaving the state in droves. You just have to look at recent articles to see that 12 000 skilled tradesmen are leaving the state to find work. The flurry of activity, the spin and the changing of names and business cards is all super, but it does not mean anything unless there is a boost to the industry.

As I said, at least the minister in this portfolio is seen to be doing things. I understand why he would look attractive to a number of people as an alternative to someone Mr Barber yesterday compared to an Easter Island statue. I see that there could be an attractive alternative in that. We will wait and see. Maybe a delegation can go to see Mr Guy. I am sure he will meet with any delegation of government members. Mr Guy would be more than pleased to see them. I am sure he does not have a rope and a couple of bouncers in front of his office.

The ACTING PRESIDENT (**Mr Finn**) — Order! We have been down this track before and, if my recollection is correct, I warned Mr Leane about straying from the bill, which he has managed to do once again. I ask him to return to the substance of the bill.

Mr LEANE — I am happy to return to the flurry. When I said that previously, Mr Lenders and Mr Jennings were not here. My ego would suffer if I did not get the gold star on my folder this week.

Mr Tee went through the bill forensically, so I will not do that. I have acquainted myself with the bill. I can see that there has been a big move with the change from DACs to the PAC. I am sure that is terrific and will greatly change the future of everyone involved. One DAC was established, but the minister pulled the plug on that as soon as he came in after talking tough and saying that he was going to do that in his flurry of activity.

I look forward to the flying squads coming out when there is a big PAC-man light in the sky. I am sure it will all be great, but the reality is the bottom is falling out of the industry. The figures today show that unemployment has gone up. This government can spin, it can change the DACs to a PAC, and it can change names, letterheads and business cards, but it does not make a difference. The proof of the pudding will be in the eating.

Business interrupted pursuant to standing orders.

QUESTIONS WITHOUT NOTICE

TAFE Transition Taskforce: consultant

Mr LENDERS (Southern Metropolitan) — My question without notice is to the Minister for Higher Education and Skills, Mr Hall. Can the minister confirm the appointment of Marianne Lourey as an external consultant to lead the Victorian TAFE Transition Taskforce?

Hon. P. R. HALL (Minister for Higher Education and Skills) — Employment functions have been undertaken by the department by various people to assist with particular projects that the government

might be undertaking at any time. Marianne Lourey is working with the TAFE reform panel to deliver a report to government.

Supplementary question

Mr LENDERS (Southern Metropolitan) — I thank the minister for his answer, and I further ask: can the minister confirm that Marianne Lourey is employed at $517 000 for nine months work on a contract that was not put out to tender?

Hon. P. R. HALL (Minister for Higher Education and Skills) — I said in answering this question that employment functions are undertaken by the department, and therefore I am not privy to the terms of her engagement.

Smoking: regulation

Mr O'BRIEN (Western Victoria) — My question is to the Minister for Health, the Honourable David Davis, and I ask: can the minister advise the house on any new measures for tobacco control in this state?

Hon. D. M. DAVIS (Minister for Health) — I thank the member for his question. I am pleased to advise the house today of the government's announcement that it will take further steps in tobacco reform. The house will remember that in the recent period shopper loyalty schemes were outlawed and smoking on patrolled beaches was tackled directly by legislation through this Parliament.

Today we announced that we will begin a short six-week consultation process with councils, the Municipal Association of Victoria (MAV) and relevant children's sporting groups in taking steps towards banning smoking in and around children's playgrounds and children's sporting events. This will also include pools and skate parks. We look forward to receiving feedback from councils, the MAV and the broader community and ultimately a bill coming before the Parliament in forthcoming months.

We look forward to that input. I pay tribute to those councils that have taken steps on behalf of their own communities to ban smoking in key locations such as children's playgrounds and skate parks. A number of children's sporting associations have taken steps of their own volition to prevent smoking in and around events that they undertake or run. Auskick, for example, has taken specific steps in that regard.

It is important that a clear message is sent to children. It is also important that children are not exposed to tobacco smoke and that they have the opportunity to undertake some of these activities in an environment that is smoke free. I look forward to receiving input from across the community to ensure that practical steps are taken. We will certainly be drawing on the contributions of those councils that have already taken steps in this regard and will learn from the lessons that stem from their particular regulatory approaches. This will send a message about the importance of children and family.

Tobacco control is a key step. The costs of tobacco use in terms of lives and the economic impact on the community mean that further tobacco control measures taken incrementally over time will send an important signal about protecting the community. Over a long time and in a bipartisan manner governments of all political colours in this state have taken important steps towards tobacco control. Just as Mr Drum led the charge on key steps towards point-of-sale regulation and the federal government took significant steps in terms of plain packaging, this government is also taking further steps on top of the earlier steps it has taken over the recent period.

I look forward to receiving broad community support and the input of councils, the MAV and relevant children's sporting bodies for what will be a very important package. Further steps will be taken in the area of tobacco control over time, and the government will make announcements in due course on those matters.

Employment: government performance

Hon. M. P. PAKULA (Western Metropolitan) — My question is to the Minister for Employment and Industrial Relations. Can the minister update the house on the Australian Bureau of Statistics unemployment numbers released today and their implications for Victoria?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — Seasonally adjusted there were 2 859 100 Victorians employed in January 2013. This is compared to 2 843 000 in December 2010, which is an increase of 16 100 jobs since the Victorian coalition government came to office.

Supplementary question

Hon. M. P. PAKULA (Western Metropolitan) — I thank the minister for deftly avoiding answering the question about the unemployment rate. I would ask if the minister could at least confirm that while the national seasonally adjusted unemployment rate has

remained steady at 5.4 per cent, Victoria's unemployment rate has grown to 6.1 per cent, up from 5.6 per cent, making us the equal worst state in the nation with South Australia. Can the minister explain to the house the reason for this startling deterioration in the state's unemployment rate?

Hon. R. A. DALLA-RIVA (Minister for Employment and Industrial Relations) — I restate the figures I outlined earlier. We have seen an increase of 16 100 jobs since the Victorian coalition came to office. Mr Pakula in particular asked about some of the challenges facing Victoria and its economy. Let me be very clear about some of the challenges we face in Victoria. There is a carbon tax, which has a direct impact on the retail and manufacturing sectors. We have a deterioration in the industrial relations environment in Victoria, where those opposite are happy to stand shoulder to shoulder with the Construction, Forestry, Mining and Energy Union and support some of their militant behaviour, as opposed to what we are doing, and that is standing up to the militancy of the union movement.

We have said there are an enormous challenges. But for every step we take forward, the federal Labor government seems to want to help us to go two steps backwards, and those opposite do not even help.

Kindergartens: participation rates

Mrs KRONBERG (Eastern Metropolitan) — My question without notice is directed to the Honourable Wendy Lovell, the Minister for Children and Early Childhood Development. Will the minister inform the house of the findings of the report on government services on kindergarten participation rates in Victoria as compared to other Australian jurisdictions?

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — I was very pleased to see the report on government services come out last week and that it reported that Victoria had the highest participation rate of any state or territory for kindergarten participation. In fact Victoria's participation rate was over 100 per cent — 102.7 per cent — as compared to a national average of only 72.5 per cent.

The reason the rate was over 100 per cent is because the report on government services includes second-year participants who are funded to attend a kindergarten class in the year before school. Victoria's actual participation for four-year-olds in kindergarten is 97.9 per cent, and that is always reported in the state budget. This is the highest rate on record in Victoria, so I am very proud to see that the Baillieu government's investment in kindergarten is paying off and that we are seeing more four-year-olds attending kindergarten than ever before.

We also saw in the report on government services that we have the best qualified kindergarten workforce in the country, with 94.6 per cent of all kindergarten staff holding a formal qualification. This is vitally important for delivering quality programs to our four-year-olds in kindergarten. We also see from the report that the cost to families for kindergarten in Victoria is lower than the national average. We have cheaper kindergarten costs, greater participation and the best qualified workforce. This is a great result for families in Victoria.

The Baillieu government has invested heavily in early childhood services over our first two budgets to achieve these results. We saw in our first budget more than $100 million extra for kindergarten and early childhood services, a 10.8 per cent increase on Labor's last budget. Last year there was a further $104 million, a 17.6 per cent increase, which was the highest increase in any portfolio area in last year's budget. Our investment is paying off for families, and I am proud of our ongoing success in the kindergarten sector. I am proud that we are leading the nation in attendance, and I congratulate the service providers and the educators on their achievements in this area. Victorian families can be proud that they have a system that is recognised nationally as being the best.

Teachers: enterprise bargaining

Mr LENDERS (Southern Metropolitan) — My question is to the Minister responsible for the Teaching Profession, Mr Hall. I draw the minister's attention to page 77 of his annual report, which shows $4.881 billion as the total employee expenses in his department for the year. If one adds government wages policy to that, it is an extra $122 million a year, and if one adds the Australian Education Union (AEU) claim to that, it is an extra $205 million a year. How does the minister reconcile those figures with the figures attributed to him in the *Age* of 1 February showing that the wage claim of the AEU would come to $13 billion?

Hon. P. R. HALL (Minister responsible for the Teaching Profession) — Mr Lenders would be aware that I have spoken before about wage matters and particularly about issues that have been the subject of negotiations with both the Australian Education Union and the Australian Principals Federation. I am delighted that currently those negotiations are ongoing. Indeed there have been several meetings this week.

As members would know from press comments, there will be a further meeting tomorrow between the department, the Australian Education Union and the Australian Principals Federation. These matters involve some consideration of salary issues, and as such I am not able to give commentary on, explanation or expansion of any of those matters publicly because I would be in breach of the good-faith provisions of the Fair Work Act 2009.

In terms of a response to Mr Lenders's question, in summary, because of the ongoing negotiations and because of the confidentiality agreements between the parties, I am unable to comment specifically on the matter that he raises.

Supplementary question

Mr LENDERS (Southern Metropolitan) — I thank the minister for his answer. However, I am confused at how the minister can say in this house that he cannot comment on that but his spokesperson, as reported in the *Age* of 1 February, could put out a figure of $13 billion. I ask the minister: in light of the fact that his office has put this on the public record, will he reconsider answering my substantive question?

Hon. P. R. HALL (Minister responsible for the Teaching Profession) — That comment was made prior to the current resumption of negotiations.

Honourable members interjecting.

Hon. P. R. HALL — It was. Members may well laugh, but I have a duty to observe the law in this state, and I do so. In that regard any comments that were made before those formal negotiations recommenced were legitimate, but, once again, those negotiations are now subject to a confidentiality agreement between the two parties, and I observe those conditions.

Small technologies: government initiatives

Mrs PEULICH (South Eastern Metropolitan) — My question without notice is directed to Mr Rich-Phillips, the Minister for Technology. I ask: what is the Baillieu government doing to enable the Victorian small technologies industry to get into the global export market?

Hon. G. K. RICH-PHILLIPS (Minister for Technology) — I thank Mrs Peulich for her question and for her interest in the small technologies sector. As Mrs Peulich certainly appreciates, the small technologies sector is of great importance in south-eastern Melbourne. Just on the edge of the region that Mrs Peulich and I represent we have the Small Technologies Cluster, which is a very important, well-recognised hub for small technology operators in Victoria. It is a globally recognised centre of excellence that brings together capacity in research and development, prototyping and also low-volume manufacture of small technology and nanotechnology products.

The Victorian government is committed to working with the small technologies sector to grow that market. Over the last two decades we have seen the growth in ICT in Victoria and the important role the ICT sector has played in Victoria not only as an industry sector in its own right but also as a driver of productivity in the Victorian and Australian economy. We see a similar opportunity for biotechnology and a similar opportunity for small technologies. Part of what the government has sought to do through its technology plan is to drive that productivity outcome for our economy but also to drive the sector in its own right.

I was delighted that earlier this month the Victorian government was able to support the Small Technologies Cluster and 14 separate small technologies companies to participate in the Nanotech 2013 conference in Tokyo, Japan. This support from the Victorian government under the Technology Trade and International Partnering program allowed for a Victorian and Australian presence — an Australian pavilion — to be established at that expo. Last year there was no Australian presence; this year there was an Australian pavilion as well as 14 companies under the banner of the Small Technologies Cluster represented in Tokyo last week.

This was a great opportunity for the small technologies sector in Victoria to promote its wares and expertise to the international market. Around 45 000 delegates attend that conference in Tokyo each year. It is a great opportunity for our Small Technologies Cluster, which is recognised as a centre of excellence, to promote the opportunities and innovation that we have in small technologies in Victoria. The Victorian government is delighted to be supporting the Small Technologies Cluster in that endeavour.

Teachers: duty of care

Mr LENDERS (Southern Metropolitan) — My question is to the Minister responsible for the Teaching Profession. Has the minister received advice on whether teachers still have a legal duty of care to students while on school camps outside of their standard 38-hour working week?

Hon. P. R. HALL (Minister responsible for the Teaching Profession) — The department takes its responsibilities in respect of duty of care very seriously, as you would expect; parents expect that. Principals are reminded about that responsibility in terms of planning school camps or other extracurricular activity. They are advised that they need to make arrangements to ensure that there is appropriate supervision of students so that that duty of care is exercised.

Supplementary question

Mr LENDERS (Southern Metropolitan) — I thank Mr Hall for his response, but he is reported in the *Latrobe Valley Express* of 28 January as saying that teachers have no free time. Principals in that area received a circular from deputy secretary Dr Jim Watterson on 11 December last year saying that they did have free time, so my supplementary question to the minister is: has he had advice?

Hon. P. R. HALL (Minister responsible for the Teaching Profession) — In terms of the question about duty of care, I said very clearly that the department recognises that when students are under the supervision of teachers or at a school activity there needs to be the proper duty of care exercised — that is, adult supervision of those students appropriate to the activity in which they are engaged. Parents expect that. The content of the memo that Mr Lenders referred to reminded principals of that responsibility and advised them to plan any extracurricular activities so that that duty of care was fully covered.

The PRESIDENT — Order! I take this opportunity to wish Mr Scheffer a happy birthday today.

Manufacturing: government initiatives

Mr RAMSAY (Western Victoria) — My question is to the Minister for Manufacturing, Exports and Trade. Can the minister outline to the house what practical policy leadership the Baillieu government is taking to revitalise manufacturing?

Hon. R. A. DALLA-RIVA (Minister for Manufacturing, Exports and Trade) — I thank the member for his question. This government has obviously had a priority from day one to help Victorian manufacturers through some very difficult structural challenges. We know that manufacturing is still the state's largest full-time employer and a significant source of exports and investment, but we also know that times have been getting tougher and manufacturers need to be dynamic, innovative and world class in their performance and productivity to remain competitive. That is why the Baillieu government in December 2011 announced its strategy to revitalise manufacturing, and that is why we backed it up with $58 million in last year's budget to fund a range of new, tightly targeted initiatives to lift productivity, build new markets, generate innovation and ensure that manufacturers have the skills they need to compete on the global stage. This strategy is a strong example of the government's commitment to practical policy leadership to assist manufacturers to better equip themselves to meet the multiple challenges they face.

As we are moving ahead with the release of our strategy, as we move forward in terms of the 42 manufacturing businesses that have already benefited from two rounds of grants to encourage investment in leading-edge technology and, as I mentioned on Tuesday, the 14 collaborative networks between businesses and between business and research institutions, I am left wondering, as are many in this chamber and as are people in Victoria, where the intense media speculation is with regard to the commonwealth's long-term plan to deal with relief for manufacturing in its long-awaited innovation and industry statement. It beggars belief that on the eve of the federal election it is still no closer. Maybe the federal Minister for Industry and Innovation, Mr Combet — the real Mr Combet, not the one over there who looks like him — has gone to the Prime Minister and asked, 'When can I release our federal manufacturing strategy? What can we do?', and maybe the Prime Minister said, 'I am offering you nothing'.

We know that in Victoria we are very committed to our policy approach. We have developed that; we have funded it; and I advise those opposite, who seem to bark across the chamber, it is interesting that we have already set, as I said, a very clear, coherent and strategic plan for the manufacturing industry. We have already released a range of programs.

It is interesting to hear the noise that emanates from those opposite when you talk about the manufacturing sector, because their strategy for manufacturing at a national level, and indeed I would suggest at a state level, is just to support the carbon tax. That is their solution for manufacturing here in Victoria whilst we are delivering real strategic direction for manufacturing. All we have is those opposite, who at a time when the manufacturing sector here in Victoria is under enormous stress and who we have said need to be facing the challenges both nationally and internationally — —

Mr Lenders — On a point of order, President, the minister is debating the question. He has now moved

from government administration onto federal matters which I have not contested. He has moved from government administration to how he believes another party in Victoria should respond to a federal policy initiative. I urge you to pull him up on the basis that he is clearly debating the question.

The PRESIDENT — Order! I uphold the point of order; in fact I was surprised it did not come earlier in the piece. The fact is that the minister has been debating this matter. He started out by laying out a fairly clear line in terms of his jurisdiction and Victoria's position, but then he started to waltz into commentary on both the federal government and particularly another party. I regard that as debating the answer.

Hon. R. A. DALLA-RIVA — As I said, we are of course very keen about our practical policy leadership, which the Baillieu government is delivering. We are ensuring that we deliver policies that are strategic and make sense, as opposed to the rubbish we consistently read from those opposite.

Ambulance Victoria: Footscray mobile intensive care ambulance

Ms HARTLAND (Western Metropolitan) — My question is to the Minister for Health, and it is in relation to the eviction of the Footscray mobile intensive care ambulance (MICA) unit from its current site. As the minister would know, MICA paramedics save lives with their higher clinical skill set and ability to perform more advanced medical procedures. The eviction will leave residents in the inner west vulnerable, without their local MICA paramedics. This unit is the second busiest in the state. Obviously saving lives in the inner west is much more important than the rent, and the question I ask the minister is: will the government find the funding to make up the shortfall so the MICA unit can stay in the Footscray area?

Hon. D. M. DAVIS (Minister for Health) — I thank the member for her question. On the precise details of the costs at Footscray, I will come back to her with a response. In terms of the government's commitment to MICA and the spread of MICA across the state, we have a very strong commitment. Under the government's $151 million package, which has been funded and is working its way through the system, there will be 100 more ambulance officers in metropolitan Melbourne and 240 officers in country Victoria — bringing it to 340 in total, comprising 310 paramedics and 30 patient transport officers. There is a very strong commitment to more paramedics, including a better situation in metropolitan Melbourne.

In terms of MICA paramedics, we are very committed to their rollout in country Victoria as well, naming 10 regional locations, such as Wodonga, Mildura, Shepparton, Warrnambool — all those key country centres that have never had MICA support before in a coordinated way. There will be a proper single-responder MICA roster in each of those regional centres. We are very concerned to see MICA units supported across the state. We are concerned because survival rates often depend on early MICA intervention, and a formal MICA intervention is something we are seeking to spread across Victoria.

By way of note, I am concerned at commentary by the Labor spokesperson on ambulance services, who seeks to hamper or prevent the rollout of MICA across country Victoria and those 10 regional centres that are for the first time having mobile intensive care ambulances — —

Mr Lenders — On a point of order, President, Mr Davis got a question from Ms Hartland about government administration. I put to you that he is debating the matter to start commentary on what other people in Victoria, who are not in charge of government administration, may think of an issue. I ask you to ask him to stop debating.

The PRESIDENT — Order! Mr Lenders has won one, and he has lost one. I do not uphold the point of order on this occasion, because I do not accept that Mr Davis is debating as such. The words he has used so far indicate where there may be some threat or constraint to part of that rollout which is under his administration. Certainly if he were to continue to discuss the opposition spokesperson's views in great detail, then I would tend to share Mr Lenders's concern, but at this stage I do not think he has crossed the line in suggesting that he has some concerns about the program he has outlined in this answer based on some sort of commentary that has been made that is unsettling that program.

Hon. D. M. DAVIS — My point in making that commentary about the further rollout of MICA across the state is that it is something we are very — —

Ms Hartland — Footscray. One month.

Hon. D. M. DAVIS — Ms Hartland, I am actually trying to be quite serious about this.

Ms Hartland interjected.

Hon. D. M. DAVIS — I will come back to Footscray. I have told Ms Hartland that I will provide some additional information. I want to be absolutely

accurate with the information I provide to her, so I will investigate the precise details she raises about the Footscray location. She asked about MICA services, and I am indicating our strong commitment to the rollout across the state, including the additional 100 ambulance officers who are being put into the metropolitan area under the government's $151 million package.

I indicate that there is a threat to the MICA services we are trying to roll out, and there are some in the community who would not allow the clean rollout of those MICA services and would seek to disrupt the rollout of the new MICA services that will provide additional coverage to key locations in country Victoria, which is something the government is very committed to. It is very determined to get an outcome because ultimately the presence of MICA officers at strategic locations and times will save lives and get a very strong outcome for the community.

On the specifics, I will come back to Ms Hartland with further information, but I can strongly assure her that the government is committed to ensuring that MICA is strengthened in the state.

Supplementary question

Ms HARTLAND (Western Metropolitan) — The average ambulance response time for Melbourne is 17 minutes, despite the benchmark being 15 minutes. Moving Footscray's MICA to Port Melbourne or Laverton would increase response times by 15 minutes minimum and up to 30 minutes in heavy traffic. Add this additional travel time of 15 to 30 minutes to the average response time of 17 minutes, and you have a MICA paramedic arriving anywhere between 32 and 47 minutes after the 000 call has been made. Obviously this can be the difference between life and death for someone suffering from a stroke or heart attack, as the minister would know. I asked a very specific question. In one month the Footscray MICA unit will be evicted from its base in Footscray. Will the minister do something about that or will he just let it slide?

Hon. D. M. DAVIS (Minister for Health) — As I have indicated, I will come back to the member with a precise response on that matter. I can indicate generally that survival rates are improving.

Ms Hartland — If the ambulance gets to the person.

Hon. D. M. DAVIS — I have to say that the very best test is the survival rate, and Victoria is doing very well on improving its survival rates. Ms Hartland may shake her head, but survival rates are improving in Victoria, and that is the key point. We will certainly come back to Ms Hartland with a very detailed response.

Vocational education and training: national agreement

Mr P. DAVIS (Eastern Victoria) — Just to change the subject, I direct a question without notice to the Minister for Higher Education and Skills, Mr Hall.

Mr Lenders — He is right in front of you.

Mr P. DAVIS — I wish to share this with the chamber. Given that yesterday the minister mentioned the very positive outcomes of Victoria's vocational training efforts in 2012, I ask the minister what implications this will have for the national partnership agreement on skills reform, which the Premier and the Prime Minister signed in April 2012?

Hon. P. R. HALL (Minister for Higher Education and Skills) — That is a very good question that has been asked by my colleague Mr Davis, and I thank him for it. I mentioned yesterday that 2012 was a very positive year — —

Hon. M. P. Pakula interjected.

Hon. P. R. HALL — Are you all right? Do you want to listen to this?

Hon. M. P. Pakula interjected.

Hon. P. R. HALL — I have had a question from Mr Davis. Mr Pakula has had his chance to ask a question. He should have asked me his question before. This is Philip Davis's question, not his. Mr Davis asked a very relevant question. It was about the impact of the positive year that Victoria has just experienced on vocational education and training activity. He wants to know what that will mean for the national partnership agreement on skills reform.

Mr Davis mentioned that I cited to the house some of the figures that were involved in last year's training activity in Victoria. We have seen an 18 per cent increase in the number of students participating in vocational education and training. We have seen a 28 per cent increase in the number of hours in which they were involved in training. Areas like foundation studies have increased by 120 per cent, and there were significant increases in the number of people with special learning needs in terms of their involvement in training activity.

In April 2012 the premiers and the Prime Minister signed a national partnership agreement to provide some funding to the states under certain conditions and

criteria to assist with training activity. It is now high time that the federal government delivered on its signed commitments, because Victoria has met every element of that national partnership agreement.

Honourable members interjecting.

Hon. P. R. HALL — Mr Pakula seems very excited. He had an opportunity to ask his question earlier.

Hon. M. P. Pakula interjected.

Hon. P. R. HALL — You cannot ask questions by way of interjection.

That national partnership agreement was stalled by the former federal minister, Senator Chris Evans. I have written to Senator Evans to wish him well on his retirement, despite the fact that we have had some very robust discussions and differences of opinion. That negotiation now rests with the new federal minister, Chris Bowen. I look forward to working with him. As I said, every element of this national partnership agreement has been met by Victoria in terms of its TAFE activity over the last 12 months.

I could go through each of the areas. Suffice it to say that while this agreement was looking for an increase nationally of 375 000 people involved in training over the four-year life of the agreement, Victoria alone has had an increase of 120 000 students involved in training in just one single year. Whereas this agreement requires states to put in place training guarantees for certificate III and above, for the last three years this state — and this started under the previous government — has had a training guarantee up to advanced diploma level. I could go on.

Every element of the terms of this agreement has been met by Victoria. One of my first tasks now is to talk to Chris Bowen, the new federal minister, as I intend to, and negotiate what will be fair for Victoria. This is a figure of $43.5 million that the feds are holding out on. It is high time they delivered, because Victoria has delivered on every aspect of its side of this agreement.

Hon. M. P. PAKULA (Western Metropolitan) — I seek leave to ask the Minister for Higher Education and Skills, who is also the Minister responsible for the Teaching Profession, to update the house on the progress of the teachers dispute, given that Justice Jessup handed down a decision on the injunction while the house was engaged in questions without notice today.

Leave refused.

PLANNING AND ENVIRONMENT AMENDMENT (GENERAL) BILL 2012

Second reading

Debate resumed.

Mrs COOTE (Southern Metropolitan) — It was a great pity that most members did not come into the chamber earlier to hear the absolute diatribe from Mr Leane in his contribution to the debate on this bill.

Hon. M. J. Guy — It was embarrassing.

Mrs COOTE — Mr Leane was seriously embarrassing. He made an appalling contribution. He seemed to have a fixation on the word 'flurry', and it is a pity that Hansard cannot register his hand movements, because they went with the terminology. He got into quite a state; he was in a real flurry himself about the entire bill.

I refer to some of the statements he made. He said that this government was going to be looking to change its letterhead, he talked about spin and he talked about proof instead of spin. I suggest that that was the most breathtaking bit of hypocrisy he could possibly have come up with. For someone from the Brumby government to be talking about spin is quite reckless. No wonder he made a point about letterheads, because members of the Brumby government were the masters of changing letterheads. They changed their letterheads, business cards et cetera. This bill is more important than that.

When Mr Leane spoke about flurries, changing letterheads and a whole range of other extraneous matters in his contribution he was hiding what was actually a planning disaster. In the former government, of which he was part, Mr Madden, who is now the member for Essendon in the Assembly, was the Minister for Planning. We only have to go out to the front steps of this building to see what a mess Mr Madden made of planning. I remind members about the Hotel Windsor debacle. Day after day there was a litany of failures, cover-ups and innuendo. We almost had some poor young woman out of Mr Madden's department go to jail here. For those members who do not know, there is a jail in this building; it is in the basement. This poor woman was nearly on her way there. It has been a very long time since that has happened. It was an indictment of the former government and shows the complete and utter failure of its policies.

What about Mr Madden's ridiculous activity centres? In fact they were tunnels of wind and, so far as traffic

congestion, tunnels of chaos, as well as a whole range of other things.

Let us look at clearways. What a great idea clearways were! That was another idea that Mr Madden dreamt up. What an absolute indictment. I remind the chamber that I presented a petition outlining how disastrous clearways were for small businesses and how disastrous they were for a whole range of other areas. That petition contained 40 000 signatures.

In his contribution Mr Leane talked about proof instead of spin. It is quite extraordinary that the examples Mr Leane went on to give were all quoted from the *Age*. When I asked him where he got these figures from — and I commend him for his honesty — he said he added them up. What credentials does he have to verify the correctness of his adding up? I would like to know what is going on. He comes into this place, throws his arms around as if he were a windmill in a flurry and then talks about figures that he actually dreamt up! His response was light-hearted and frivolous and did not display the dignity that this chamber should be afforded. It was an appalling contribution.

Returning to my contribution to the debate on the Planning and Environment Amendment (General) Bill 2012, I commend the Minister for Planning on the way in which he has brought this bill before the Parliament, indeed as he has done with many other bills. As an aside before I get going, Mr Leane said Victoria's residential construction figures are worse than those for other states — another one of his made-up figures. I suggest he have a look at Southern Metropolitan Region, for example, and the enormous amount of construction that is about to take place at Fishermans Bend. It is going to be one of the largest urban developments in the country in this decade; it is enormous, and who is responsible for it? The Minister for Planning, about whom Mr Leane is so scathing.

This bill is effective in demonstrating the Victorian coalition government's consultative approach, something the former government did not have. It came in with a unilateral approach. It had big boots, and it did not listen to the community. It made mistakes, and we have been wearing the pain ever since. We can all attest to the professionalism of Minister Guy, and he has brought a degree of respectability, focus and strategy to the planning portfolio, which is a refreshing change after what happened under the Brumby and Bracks governments.

This bill is comprehensive. The explanatory memorandum describes eight key areas it seeks to reform, and I will touch on a couple of those. We have heard significant contributions on the bill from other members in this chamber, and I commend Mr Ramsay on his contribution, which highlighted what the ramifications are going to be for country Victoria. The coalition members who have spoken on this bill have been very comprehensive, but I would now like to give members an example of a consultative approach.

In my electorate of Southern Metropolitan Region, close to my office in Port Melbourne at Beacon Cove there is a former gymnasium centre, a building which has been empty for some time. For members who know the area, it is at the end of the light rail, at Station Pier. The people who live here form a close-knit community that cares about what happens in the area. They are understanding about sharing the area with Victorians, people going to Tasmania and people coming in on cruise ships. They are a particularly understanding group of people and are very amenable to appropriate planning. They know they have to share that area, and they know how important it is.

However, the land where the former gym is situated is now owned by a Kuwaiti company, which has plans to build a tower. It is a pity we cannot see exactly what the proposed Port Melbourne tower will look like. Prior to the state election an article in the *Age* of 18 October 2010 said:

> Secrecy surrounding a contentious apartment tower in Port Melbourne by a billionaire Kuwaiti royal has fuelled resident claims that the project has been deferred to avoid a voter backlash before the state election.

However, voters in the Beacon Cove area were not deterred. They are very smart and were aware of what the Labor government was doing. Indeed the scheme would have required former planning minister Justin Madden, now the member for Essendon in the Assembly, to overturn a three-level height limit introduced by the Bracks government in 2000. But, as this article goes on to say:

> A senior government source said the sheik's development company in Melbourne had received a 'nod and a wink' that approval would be granted by the Department of Planning.

I just remind members of that: a nod and a wink from the former planning minister, Mr Madden. We would not see that from the current, very professional Minister for Planning, Mr Guy.

The article goes on:

> 'It's my understanding that it'll be approved after the election in November, then planning authority will be handed back to council sometime next year', the government source said.

> ALP strategists are believed to be concerned the massive development could anger local residents, which would damage the re-election prospects of Albert Park member Martin Foley.

During the election Matthew Guy said the council could in fact be the planning authority for this piece of land, and he honoured that promise after the election when we got in. He said, 'This is a City of Port Phillip decision. It should decide what is best for its community and what the community's interests are. It should decide whether it has a 7-storey or 32-storey tower. It is up to the locals to decide'.

What does this excellent example say about this minister, and what does this bill reinforce? It reinforces that this minister has been consultative; he has been to the community. We are not going to have a disaster like the one Mr Madden spread around Victoria, particularly in Melbourne, where people were not asked. People suddenly had huge high-rises next to their houses without even having known they were going to go up. There was no consultation process at all. But Minister Guy's encouragement of locals to have input shows how consultative he is.

A decision on the tower has not yet come down. A comprehensive consultation process has been undertaken by the City of Port Phillip, and we are all awaiting the outcome. The new Cr Andrew Bond has been particularly interested in listening to what the locals have to say about this issue. He has made it his business to find out, because he too is being very consultative. I praise Andrew Bond for the approach he is taking to this particularly important issue.

As I have said, planning issues are dealt with by my office on a regular basis. People are very concerned about what is next going to happen to them and how it is going to impact upon them. Nobody wants an inappropriate development to suddenly spring up next door or across the road from their house. Equally important is the right of property owners to exercise their property rights over their land. It is therefore essential for the planning process to be open, transparent, consultative and able to provide certainty to all parties involved. Whether they be developer, neighbour or council, everyone in the process needs certainty.

It is important that local government decisions are made in consultation with local people and local government. As members of Parliament we meet with local residents in our regions and we know some of the issues that affect their daily lives. As I said before, councillors, such as the very good Cr Andrew Bond, also meet with residents in the community and they have a thorough understanding of the character of existing neighbourhoods. That is why local councils are frequently the most appropriate bodies to consider development applications, with a few obvious exceptions such as in the capital city zone.

Most of us were members of this chamber when the previous government diluted the say of local councils with the introduction of development assessment committees (DACs). It was a long and tortuous debate, if I recall correctly. The previous government spun these heavy-handed committees as promoting the joint cooperation of state and local government, but in reality they diluted the say of local government.

If I recall correctly, one of the reasons DACs were introduced was the proposed Camberwell railway station development. This was a good example of former minister Madden not listening to the people. He did not listen to the people of Boroondara, including the people of Camberwell. People were literally marching in the streets. People such as Geoffrey Rush and a range of others — local people living near the Camberwell railway station — did not want this high-rise building to go ahead. The council said it did not it want to go ahead, the local people said they did not want it to go ahead, but Mr Madden wanted it to go ahead. He got trounced, so he figured he needed to have further control, hence the introduction of DACs. He did not want members of the local community to have a say.

I put on the record my praise for Mary Drost regarding this instance. She did an extraordinary job in leading the charge against the development, and that campaign had a big win. I suggest that Mr Madden did not know how to deal with this, did not like losing control and therefore introduced the development assessment committees, which, as I said before, diluted the opportunity for people to have a say.

The previous government stripped planning powers from local councils; this government is giving them back under this bill. The councils in Southern Metropolitan Region are particularly pleased about that. They want to have a say, they want to be involved, and this is going to give them some certainty.

Not all councils have the resources to hire development experts and planners, and the government is overcoming that problem by providing for a new Planning Application Committee. The bill establishes the Planning Application Committee, which is described in the second-reading speech as being a pool of expert resources available to local councils to assist them in making decisions on complex matters. It is important to note that unlike Labor's development

assessment committees, the power remains in the hands of councils. The committee will provide advice to the councils, but it cannot outvote them in the way the Labor DACs could. This is about letting local councils make local decisions for local people.

In conclusion, the bill is about improving the planning process to make it more open, accountable and transparent and to provide certainty to the relevant parties. It strengthens the role of local government in the planning process, giving councils and councillors more control over how neighbourhoods and communities develop. I commend the Minister for Planning, Matthew Guy, and I commend the bill to the house.

Mr EIDEH (Western Metropolitan) — To make you happy, Acting President, I will not say we are not opposing this bill but that we support it. However, I must declare that I am not happy with all aspects of it, as I have serious — —

Mr Finn — If you are supporting the bill, why are you speaking against it?

Mr EIDEH — I have quite a few comments. I am not happy with some aspects of the bill, as I have serious concerns about planning policies under this government — a government that seems to be far more interested in the financial success of developers than in the protection of the rights of average residents of our communities. Indeed, time after time since this government was elected it has displayed far greater interest in developments and high-rise buildings and in concreting the state than in the environment, education, health care or family-friendly communities. The latest concern is the decision to abolish transparency in tendering for and costing major building projects, but I will return to that issue later.

I refer now to clause 44 of the bill, which inserts a new section 20A into the Planning and Environment Act 1987. We have no real idea what the new regulations will be or how they will be assessed. What we do know is that the government has dropped Labor's initiative of development assessment committees, which involved respected bodies such as the Municipal Association of Victoria. Instead it is creating a Planning Application Committee, which will be effectively controlled by the minister — a far less satisfactory and less transparent approach than that of the Labor government. The government will allow municipal councils to opt out if they so choose. How this can be regarded as open and transparent is beyond me. How this can be viewed as supporting representative democracy is beyond everyone, except members of the government.

We need to know precisely what this government will do about the need for a hospital in the Melton-Wyndham area, the fastest growing area in the nation. We need to know exactly what it will do about the serious issues of traffic congestion and limited public transport in my electorate. We need to know if the minister will push more 20-plus storey buildings across the state like those he has supported to date at Caulfield and Flemington racecourses, and which the Moonee Valley community fears he wants at Moonee Valley racecourse. Why else would he install a committee to examine the plans when he previously stated at a Turkish community luncheon with the Leader of the Opposition, Daniel Andrews, other MPs and the Governor of our state that he would not get involved and would leave that decision solely to the Moonee Valley City Council? Related to all that, we need to know — and the community demands to learn — whether neighbourhood community character will have any value under this government or, as we have seen to date, whether the government will instead support concreting anything not already concreted.

I am also concerned about how the government has significantly slashed staff positions at Places Victoria. We need these experts to work with the Planning Application Committee if developments are to be as sound and as reasonable as possible. Instead we have a situation that is very troubling. Indeed I wonder how long it will be before we have our new Auditor-General in office. I think that he or she will be deeply interested in what is going on and how the wrong decisions could well affect the public purse. In the meantime, please stay tuned, Mr Ombudsman.

This bill is a part of a raft of policy and legislative changes in the planning area that are being forced down the throats of the community by this government with very little consultation other than possibly with developers. As such the community at large has every right to ask questions, to demand clarity, to call for transparency and to become involved via the PAC. That is why I will also wait to see who will be appointed to PAC and what criteria will be used to appoint them, because, unless they represent more than just developers and like interests, they will fail the people of Victoria on a scale that will have devastating effects for decades to come. That is important since all of the planning decisions being made by this government will be around for decades and will thus change the face of our state as we know it, and not necessarily for the best.

If they build new cities at Fishermans Bend and at other locations without requiring and ensuring greater public transport, the traffic congestion that will also be created will be immense. I could go on, but I will only mention

in passing that the then opposition fully supported the growth areas infrastructure contribution proposed by the Labor government. Under that scheme developers would at least be making substantial contributions to infrastructure.

In closing I wish to set in stone my belief that planning must never ignore the needs of the broader community and of families, and the need for people to live healthy and happy lives. People rightly expect that we will protect their rights to live in healthy communities.

Sitting suspended 1.00 p.m. until 2.02 p.m.

Ms CROZIER (Southern Metropolitan) — I am pleased to rise to speak in the debate on the Planning and Environment Amendment (General) Bill 2012. I am pleased that those opposite are not opposing this bill. It is an important bill that introduces much-needed changes to Victoria's planning system. It will certainly restore a lot of confidence and certainty in the planning system and make it more accountable and easier to understand. It will take us back to the days when council municipalities had more say over planning processes and they afforded people more choice and far more certainty. As we know, the Labor government introduced measures such as the development assessment committees (DACs), which took away a local council's autonomy over planning, and sought to force planning decisions into a centralised one-size-fits-all model which took away choice.

We are reminded of the decisions made by the former Minister for Planning, Justin Madden, who is now the member for Essendon in the Assembly. Victorians are only too aware of his sham consultation processes, which seemed to be his modus operandi in a number of areas.

Mr Finn interjected.

Ms CROZIER — That may be, Mr Finn, but I think Victorians know what he did and I do not think they have forgotten.

I am going to speak about Mr Tee's contribution. He said that under the administration of the Minister for Planning, Mr Guy, the sector is in turmoil. I spoke yesterday on the Ombudsman's report on his own-motion investigation into the governance and administration of the Victorian Building Commission. The report revealed the turmoil that existed in that entity under the previous government's administration. It highlighted how standards in the management and governance of the Building Commission had declined under the Labor government's administration. What occurred under the Labor government's watch was abysmal, and all Victorians would be appalled if they read that report in its entirety.

As I said, the bill we are debating today is another move to restore confidence to the sector and to do away with the turmoil presided over by the previous planning minister, Justin Madden. The record of turmoil and shambles that existed within the planning portfolio speaks for itself, and Victorians rightly condemned the minister's actions and those of the Labor government. The Baillieu government has inherited that legacy; it is part of the mess we are fixing up. I am pleased that this bill will return certainty to the planning process.

The bill reforms multiple sections of the planning system, including abolishing the DACs and allowing for the extension of expired permits. Other members have spoken about the technicalities of the bill, so I do not propose to go into detail here, but I want to mention the processes and responsibilities of the Victorian Civil and Administrative Tribunal (VCAT).

The bill allows for an extension of expired permits and gives the responsible planning authority, such as a local council, the ability to extend the time that a planning permit remains valid without the applicant having to go through the costly, unnecessary and onerous process of applying to VCAT for an extension. We know that freeing up VCAT's resources will be a good thing. It already has enough to do in terms of administration without having to be responsible for the more onerous tasks it had to administer in the past. The Attorney-General noted that in his second-reading speech, and he asked why it was necessary to have such a burdensome administrative process when development application extensions made within 12 months are very rarely contentious.

The bill will do a number of other things. It will seek to improve and streamline the process for planning scheme amendments. There will now be a common-sense and efficient process, cutting out unnecessary bureaucratic red tape and providing further certainty in planning decisions.

Part 2 of the bill abolishes Labor's development assessment committees, which is an important aspect of the bill. These committees stripped councils of their role as decision-makers when it came to local planning matters. It was extraordinary listening to Mr Tee's contribution earlier.

Mr Lenders — It was good.

Ms CROZIER — As I said, Mr Lenders, it was quite extraordinary because I thought he was arguing the complete opposite of what he claimed to be arguing,

but then again one cannot be too surprised with what comes from the shadow Minister for Planning at times.

As I said, the bill will abolish the development assessment committees and give councils more of a say. Under the previous regime the local community did not have much say on how its streets should look or feel. This will return that certainty. I know there are many planning issues in Southern Metropolitan Region, including in the city of Port Phillip and the suburbs of Camberwell, Prahran and Malvern, which were widely affected by some decisions under Mr Madden's watch. Those communities still have concerns about those decisions. The DACs were inherently antidemocratic, and I am glad to see that this bill is undoing Labor's attempts to undermine local representation and communities' choices.

I am glad to see that this government is serious about cutting red tape and implementing sensible reforms such as this. I would like to commend the minister for the thorough and detailed work he has undertaken in listening to communities and stakeholders who will be affected by the planning process and who will be directly impacted by the reforms in this bill. As I said, I am pleased that the opposition is not opposing the bill. I reiterate my support for the bill and commend it to the house.

Mr FINN (Western Metropolitan) — I rise with pleasure to speak on the Planning and Environment Amendment (General) Bill 2012. In doing so I commend the Minister for Planning, the Honourable Matthew Guy, for the work he is doing in this regard. He is an energetic minister, he is a proactive minister and I have to say he is a very caring minister. He is a minister who actually cares about the people he is making decisions about. It has to be said that in years gone by that was not always the case, but it certainly is now and I think that makes for a balanced planning system and one we can all be proud of.

I listened to Mr Tee earlier. It was not always in silence. I thought his contribution was pretty pathetic. As I look over to the opposition benches, I see not a sausage! Oh, no, there he is. He was hiding behind a chair. I am sorry. Mr Tee was hiding behind a chair, but he has popped up at the last minute. He is the only one over there. If I had listened to his performance earlier, I would have left too. It was not flash at all.

One point in particular that I want to make about Mr Tee's effort is that I think his attempt to use the Country Fire Authority to make a political point on this, the anniversary of Black Saturday, was low. I thought it was lower than this Parliament deserves and the people of Victoria deserve. I hope that Mr Tee might have a think about his standards and about what he uses in the course of parliamentary debate to make a political point from here on in, because to use the anniversary of Black Saturday is absolutely despicable.

We also heard Mr Tee talking about the Stalinist nature of the Minister for Planning's regime, which made me laugh given the Minister for Planning's views on Stalin, communism and most other things of that nature. If anybody would know about Stalinism, it would be a man who not only comes from the extreme left but who also worked for a bloke called Rob Hulls, who was a former Attorney-General and former Minister for Planning. That bloke was so Stalinist that he attempted to reshape Victoria in his own image. Such was the giant ego of the man, he thought everybody should be just like him. I can only say thank God that did not turn out to be the case, and thank God he is no longer in this Parliament. However, unfortunately the smell lingers on, and we have seen evidence of that from the other side of the chamber today. It is very sad indeed.

We heard from Mr Tee on a whole range of points, but I felt a bit sorry for him, as I often do, because I am a compassionate man and he is clearly struggling. That was one of the reasons I threw in the odd interjection — just to help him out. He was clearly struggling, and during some of the points he made he could not even keep a straight face. For him to smile is really something. For him to laugh means we have hit the jackpot today, have we not? This is sensational! Some of the points he was making were so ludicrous and nonsensical that even he was laughing at them. How can we be expected to take him, or anything that he says on this matter, seriously?

Reference has been made in this debate to the change that we have seen over the last couple of years to planning processes in Victoria. As I mentioned earlier, we have a can-do minister and somebody who has restored consistency and integrity to the planning system in this state. I remember that for my first four years in this house, when I sat on the benches opposite, Justin Madden was Minister for Planning. He sat just over there to the left of where I am sitting now. You would have to wonder if he knew what day it was. I was tempted a couple of times to give him a calendar, because that would have been the only way he would have known. It did not matter whether it was the Windsor development — about which he did not seem to have a clue, even though his office had created a sham consultation and made the whole process the laughing-stock of Victoria, if not Australia — or his own electorate office in Brimbank, where one of the greatest acts of shysterism in this state was perpetrated;

he did not seem to know about that either. He should be very wary when he crosses the road, because a tram might be coming and he might not know it is there until the bell rings — I have cleaned that up considerably.

It gives me a great deal of pleasure to support this bill today. Mr Koch is making hand gestures at me, which means that I regretfully cannot continue, as I might for a considerable amount of time, as there are many points that I wish to make about Mr Tee and Mr Leane, who also made a contribution that can only be described as 'Leane-istic' — —

Hon. M. J. Guy — Apparently he's an MP!

Mr FINN — Apparently! Word has it. As the minister says, apparently he is an MP. One of these days we might work out why; better still, he might, and that will be a good thing too. I commend the bill to the house. I commend the minister. It is wonderful to know that planning in this state is once again in strong and safe hands.

The ACTING PRESIDENT (**Mr Ondarchie**) — Order! I thank Mr Finn for his quiet contribution.

Mrs KRONBERG (Eastern Metropolitan) — What a delight it is to stand here and make my contribution to the Planning and Environment Amendment (General) Bill 2012 with none other than the Honourable Matthew Guy, Minister for Planning, in the chamber. I want to commend the minister on his fine work in general and specifically for the drafting and presentation of this bill to this house.

May I also offer my condolences to Mr Tee, on this basis — that Mr Tee has certainly drawn the short straw. Imagine aspiring to make your way through the opposition ranks, aspiring to once again be in government in this state, if —

Mr Finn — All hell freezes over.

Mrs KRONBERG — All hell freezes over — thank you very much for your assistance, Mr Finn — and finding yourself as the shadow Minister for Planning, lined up against one of the most brilliant people to ever sit in this chamber, our very own Minister for Planning, Mr Guy. My condolences go out to Mr Tee as he struggles for relevance, struggles for traction, struggles to put together a cogent argument and in general just struggles.

I must take Mr Tee to task on some of the grand statements contributed by Labor members over the last couple of days. I have written a little note here that quotes Mr Tee as saying that not a jot of investment is occurring in the state. I beg to differ with Mr Tee. I have just completed a two-year inquiry into development in this state — —

Honourable members interjecting.

The ACTING PRESIDENT (**Mr Ondarchie**) — Order! Mrs Kronberg should move along.

Mrs KRONBERG — Thank you for your assistance, Acting President; I am trying to contain myself from being overcome with mirth at the prospect of Mr Tee being taken seriously when he said that not a jot of investment is occurring. I wonder to which development cohorts he is talking? Perhaps those that were very closely aligned to Mr Madden, who are still crying in their tea — or should that be beer? There were many examples of malfeasance attached to the previous planning minister; there were many examples of that 'corruption' word as well. Thank goodness we have a minister who sets an example of integrity in motion and also the application of wisdom.

I will be brief, because these things have been said before, but it is important to stress that this bill implements the election commitments made by the Baillieu government to the people of Victoria to improve the efficiency, transparency and accountability of the Victorian planning system. I say, 'Hooray! Isn't it wonderful to see this coming out of the dark ages of 11 years of Labor government'?

The bill also implements matters arising from the 2009 review of the Planning and Environment Act 1987. As a member of the Baillieu government I am just so proud. Once again this is proof positive that the government is delivering on its deliverables and implementing its pledges, hand on heart, to the people of Victoria — —

Mr Barber — A true believer.

Mrs KRONBERG — I certainly am a true believer; it is in my DNA. The development assessment committees will be replaced by planning referral authorities (PRAs), which will be triggered on an opt-in basis via a vote of the relevant municipality. I have had a very close working relationship with not only the 9 municipalities within my region but also with the 10 interface councils, and I know they will be overjoyed at this initiative.

PRAs will be able to apply to any geographic area of any municipality, as deemed by the municipality, providing a big opportunity for buy-in and opt-in by the municipalities. This will percolate down to the people living in that municipality. The citizens of Victoria will

feel that their views are being taken notice of at a critical point. A responsible authority would be able to formed for any application within the municipality. A five-member Planning Application Committee can be formed from a list of names which must be nominated by the municipal council and industry bodies.

How wonderful is this legislation? It builds on the VicSmart legislation debated in the second half of last year, which streamlined and expedited processes. One of the things that is really hard to come by in society nowadays is patient money. The investor community wants to know how long its money will be hanging out there, in a nebulous state, and not getting the return on investment that it requires.

These are the triggers. This is what Labor never understands — that people's money has to be applied and provide a return. By streamlining these processes — and this is another way of having the community involved, as well as the municipal authorities as planning authorities — we will see a smooth passage of planning decisions from which everybody will benefit. Economic activity will flourish as a result.

Once again I commend the minister for bringing forth this very wise legislation and upholding the promises that we pledged to the people of Victoria. I commend the bill to the house.

Motion agreed to.

Read second time.

Committed.

Committee

Clauses 1 to 9 agreed to.

Clause 10

Mr TEE (Eastern Metropolitan) — I have a couple of questions about the way in which the Planning Application Committee (PAC) will work. As I understand it, and I am hoping the minister can confirm this, if there is a specific planning application that is referred to the Planning Application Committee, then the PAC's response is in effect a recommendation for the referral authority to consider it, as opposed to, say, if the local council refers part of its jurisdiction, in which case the council has no further role to play in relation to that part of its jurisdiction.

Hon. M. J. GUY (Minister for Planning) — The whole discussion around the PAC, as opposed to Labor's development assessment committees (DACs), is interesting. First of all, I noticed in the second-reading debate that Mr Tee did not even know the proper name of the PAC, so I am glad he has the name right this time. He called it a 'planning action committee', and then had the gall to tell everyone on my side of the chamber that they should go and read the bill.

The difference between a PAC and a development assessment committee, which was proposed by the previous government and is what is being replaced, is that a PAC is opt-in, opt-out; it is entirely up to a council. Mr Tee has made comments about the minister being the gatekeeper of the PAC. That is completely wrong. Yet again comments made in the second-reading debate by Mr Tee are factually wrong. What do we need to get to in this chamber before Mr Tee realises that he is either making a fool of himself or is factually wrong on the majority of the evidence that he presents in his second-reading argument?

Mr Tee is asking questions, and I refer to his second-reading contribution when he said to Mrs Kronberg, 'Go and read the bill. Have you read it?'. I ask Mr Tee if he has read the bill, because the bill is very clear about PACs being opt-in, opt-out, at the request of a council. We are replacing a body, a development assessment committee — which involved the council having two members of a five-member committee, with three of those members then chosen at the behest of the state government — to remove the council's planning responsible authority (RA) status in areas where the council had no chance to opt-in or opt-out. That is the difference.

Mr Tee says, 'What part of the process will it apply to?'. It will apply to what the council wants. This is a support mechanism for councils. It is another way this government is providing support to councils and another mechanism by which the government is saying to councils, 'You can take control of some of your more important areas, and if you want support, we will give it to you'. Whether it is a wind farm in the south-west of Victoria, whether it is a major project somewhere in the Doncaster activities area, whether it is in an individual area or in a region, it will be up to the council.

Mr Tee has walked into this chamber and said that as the minister I am going to be the gatekeeper for the Planning Application Committee, and he is wrong. He is factually 100 per cent wrong again. He supported the development assessment committees, which removed planning authority from councils and removed responsible authority status from councils.

Development assessment committees took it away, and we are replacing it.

It is far from the second-reading diatribe that we heard — and I am putting this on the record now, and I will wait to see what other questions follow — saying that the bill is about removing council planning authority. Mr Tee should go and read the bill. He should take his own advice and have a look at what the bill says. It returns RA status to councils.

Do not ask me for my opinion, ask the Municipal Association of Victoria, the Victorian Local Governance Association and the councils in the central activities areas that are going to have their planning powers returned under this model, as opposed to Labor's development assessment committees, which Mr Tee supported.

Mr TEE (Eastern Metropolitan) — Stepping back a bit, can the minister confirm that nothing can be referred to a PAC by a council without his consent?

Hon. M. J. GUY (Minister for Planning) — A PAC is established and a council makes a reference to the Planning Application Committee through a process established by the department, which will then assess whether it goes to the Planning Application Committee or not. We are not going to have situations where councils simply say, 'We are no longer going to be a planning authority for any part of any area in our council ever again'.

It is going to be a decision body. It is going to be an advice body as opposed to a replacement body for the responsible authority status that Labor proposed. This is an advice body that is being put forward and paid for by the department and by the taxpayer, and one which will be used as an advice mechanism. Yes, councils will make an application to the Planning Application Committee, which will then be assessed by the department.

Mr TEE (Eastern Metropolitan) — As part of that process, will the minister's consent be required before the Planning Application Committee can deal with that matter?

Hon. M. J. GUY (Minister for Planning) — My consent as minister will be for the Planning Application Committee mechanism to apply. That is the case because a Planning Application Committee can be used as a replacement for responsible authority status, and that decision must be made by an elected official. On this side of the house we believe in the power of elected officials when it comes to planning. That is why we are removing Labor's development assessment committees and putting that power in the hands of councils. That is why we are establishing a PAC to give elected councils a level of support. We are going to do that so elected officials are responsible for their actions, as opposed to the development assessment committees which they are replacing, which were unelected bodies that were supported by the opposition.

Mr TEE (Eastern Metropolitan) — Is that a yes that anything referred to the PAC by a council can only go to the PAC with the minister's consent?

Hon. M. J. GUY (Minister for Planning) — I do not know whether Mr Tee has bad hearing, bad staff or just does not listen, but for the third time the answer is yes. It is yes because elected officials should make decisions like this on planning, as opposed to what we are replacing, that is, an unelected body of five people. We are replacing it with a body to which a council can refer a responsible authority status, and that decision needs to be taken by people who are accountable to an electorate. That is either me, the state government or a council. That is in stark contrast to the previous government which in Doncaster Hill, Frankston, Box Hill, Geelong, Dandenong and Ringwood wanted to remove councils from the planning equation as a majority.

Mr TEE (Eastern Metropolitan) — I thank the minister. It took him, I think, three or four goes to get there but we got — —

Hon. M. J. GUY (Minister for Planning) — It took you three times to get to listen to it.

Mr TEE (Eastern Metropolitan) — But we got there in the end. I thank the minister. In relation to specific matters that are referred to the PAC, if it is a specific planning application can the minister confirm that the PAC's decision comes back as a recommendation for the council to consider?

Hon. M. J. GUY (Minister for Planning) — Mr Tee was saying that this was such an easy bill; I would have said that it was an easy bill. It depends on the kind of referral from the council — from the elected people — not from an unelected body that you supported but from the council. If the elected council says, 'Can we have this application dealt with as a responsible authority with the PAC to make the decision?' and it is approved by the minister, that is how it will be. The decision will be the council's. If the council says, 'We want advice' and it goes to the PAC and it is approved by the minister, then it will simply be advice. But the decision will be made by the council and that is in stark contrast to what the PAC is replacing.

Mr TEE (Eastern Metropolitan) — I thank the minister. That is another yes — just to translate. If, however, the council refers part of its jurisdiction to the PAC, can the minister confirm that as far as the council is concerned it has no further role in the determination of matters that come within that jurisdiction?

Hon. M. J. GUY (Minister for Planning) — It would depend on what the council referral is. It depends on the scope of the council referral and what is approved.

Mr TEE (Eastern Metropolitan) — If part of a council's jurisdiction is referred to the PAC and the particular matter is within the jurisdiction that has been referred to the PAC, my question is: is that the end of the council's involvement in the determination of those matters?

Hon. M. J. GUY (Minister for Planning) — If the council chooses that to be the case and that is what is approved, then that is the case.

Mr TEE (Eastern Metropolitan) — In which case, if a council refers jurisdiction to the PAC, the council can refer that jurisdiction on the basis that any decision of the PAC in relation to matters within those jurisdictions are simply recommendations for the council to deal with.

Hon. M. J. GUY (Minister for Planning) — The Chair will have to forgive me, I am struggling to work out what Mr Tee's question is. I believe I just answered it. The answer was that it depends on what the council reference is. If the council reference is that it wants it to be a responsible authority change and it is approved by the minister, then that is what the PAC's role will be. If it is for a referral stage and that is what is approved, that is what the PAC's role will be. If it is for an advice stage and that is what is approved, that is what the role will be. If the council is asking for the responsible authority to change, then that ends the council's involvement in the determination of a permit — at the will of the council.

Mr TEE (Eastern Metropolitan) — If in that last example the minister gave the council were to refer jurisdiction to the PAC and it has no further involvement, can a future council or that same council withdraw that jurisdiction from the PAC?

Hon. M. J. GUY (Minister for Planning) — It would depend upon how far the permit process has gone.

Mr TEE (Eastern Metropolitan) — We are talking about a jurisdiction that has been referred to the PAC. Is the minister saying that if there is a particular matter within that jurisdiction the PAC is dealing with, then the council cannot withdraw that jurisdiction while that application is ongoing?

Hon. M. J. GUY (Minister for Planning) — It would be a pretty odd circumstance in which a council would ask for a planning panel for instance and then midway through it say, 'We want you to stop, we don't want to consider it any more' or say, 'We want a ministerial advisory committee' and then midway say, 'We've changed our mind, we don't want this to be the case. We're going to chop and change'. That may be how Mr Tee conducts his policy — and it does seem to jump around from one speaker to the next with Mr Leane's comical performance in saying that this was simply a rebadging of existing Labor policy and Mr Tee saying that the world is about to end. I am not sure where he lines up — perhaps halfway between — but usually most councils, like any state or commonwealth government, once a decision has been made on a referral on a status such as this, go through a process that is not undone midway through. It is a process that is fulfilled and followed through.

If it is for a referral authority, then they can choose to accept the advice or not. If it is for a responsible authority status change, then that decision had been made by the council and usually the permit will have then been issued. It would obviously be very hard, in fact ridiculously hard and raises sovereign risk issues, for the council to try to withdraw the permit. I would have thought that that would be straightforward, in the same manner in which a planning panel, a ministerial advisory committee or any other matter such as the council considering it would be dealt with.

Mr TEE (Eastern Metropolitan) — I thank the minister. Again I am assuming that what he is saying is — and maybe he can clarify it — that it would be unusual for a council halfway through a particular matter to withdraw its consent, but in theory it can do so?

Hon. M. J. GUY (Minister for Planning) — I will just it say again — over and over again. Mr Tee may not understand how the system works. Once a voluntary process such as this is put in place and a council has of its own volition referred a process to another body, be it a PAC, a panel or an advisory committee, it depends on the context in which it has been referred. If it is simply at a referral authority stage, then the council will get the response back and can choose to accept it or not. There is only one instance, I believe, in relation to what Mr Tee is asking, and that is whether the council has conferred a responsible

authority status. If it has conferred that to a planning committee, then that will be the end of the matter.

Mr BARBER (Northern Metropolitan) — I know we are on clause 10, but clause 11 grants the power to do the things clause 10 contemplates. It inserts new subsection (3), which says:

> A responsible authority, with the consent of the Minister, may by instrument delegate to the Planning Application Committee any of its powers, discretions or functions under …

those sections. Do we take it from the quote that it is the same clause that would be used to un-delegate — that is, if they change their mind and want to take back the delegation?

Hon. M. J. GUY (Minister for Planning) — I am kind of flabbergasted; it must have permeated the benches of the Greens as well. Once a council has made a decision to delegate responsible authority status on a permit, the Planning Application Committee will begin the process of any permit assessment. Whether it is for a site or otherwise, it will begin that process. That is up to the council. If it is for a precinct and a future council chooses to review what had been done by the previous council, that would mean that the permits in that precinct would obviously stand. That is common sense. Any future permits to be issued in that precinct may then be determined by a local government authority, but if it is an individual matter, once it has been referred, if the council had chosen for responsible authority status to be conferred on the PAC, then the PAC will make the decision.

Mr BARBER (Northern Metropolitan) — Absolutely, once a permit has been issued, nobody can lawfully withdraw that permit — certainly not using this section. But what is actually being delegated here are the powers, discretions or functions under those sections in relation to an application for a permit or an amendment to a permit or a class of applications for permits or amendments. It does not have to be one permit; it can be a class of permits. I am simply asking the minister: since there is nothing in here about un-delegating such powers I presume it is implicit in new section 188(3), which is inserted by clause 11, that a council would then have to go back to the minister. It would need the consent of the minister, according to this, and it would effectively write a new instrument of delegation which would make whatever changes the council wanted to make.

Hon. M. J. GUY (Minister for Planning) — In the precinct state Mr Barber is referring to, of course you could un-delegate a referral — obviously not once the permit has been issued, but if it is a precinct state, as he is referring to, of course you can un-delegate a referral, just as you can change from a priority development zone right now and just as you can change your responsible authority status right now.

Mr TEE (Eastern Metropolitan) — Congratulations to Mr Barber; he got there. I think we talked about the fact that in order for a matter to be referred to a PAC it needs the minister's consent. Does the same apply if the council wants to take back that authority or that power?

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

Mr TEE (Eastern Metropolitan) — Just to be absolutely clear, once a council has handed over jurisdiction to a PAC, it cannot take back that jurisdiction from the PAC without the minister's consent?

Hon. M. J. GUY (Minister for Planning) — I must be going mad again. This is the same question in different wording. Our committee stages on planning are held up by the same question being asked three times. How much more specific could I be? I just said yes. I say it again: the answer is yes. Have we got this clear? The answer is yes.

Mr TEE (Eastern Metropolitan) — I suppose I am surprised that a council, having handed over jurisdiction to a PAC, cannot take back that jurisdiction without the minister's permission, whether it be a future re-elected council, a newly elected council or a council that changes its mind.

Hon. M. J. GUY (Minister for Planning) — Good for Mr Tee. Mr Tee wanted to take the whole thing from them altogether. He supported the removal of council planning authority — the whole thing. He supported taking away all council planning power and any chance to have it handed back whatsoever. He gave councils no chance to have a say in referral or a chance at handing it back, and therein lies the difference between this side of the house and Mr Tee.

I find it astounding that Mr Tee now comes up and says, 'I find it surprising that you would want to have to go through the minister to have this answered'. I find it astounding that Mr Tee would make that argument when not three years ago he was supporting a proposition where councils would in fact lose all of their responsible authority status under a development assessment committee model, which he is still advocating for in his drive to take Melbourne 2030 back to its inception. Now he walks into the chamber and says, 'I'm surprised, and it would be such a draconian move to actually have to ask for that

permission to be returned by a future council', when in fact he gave them no choice. He was going to remove all planning power, and there was no chance for the community to have any say in that decision.

Mr BARBER (Northern Metropolitan) — It is hardly a revelation, given that the minister already has power to strip a council of its responsible authority status at any tick of the clock. Mr Tee's government did it to me when I was a local councillor at the City of Yarra. We woke up one morning and found that Mary Delahunty had taken control of the Abbotsford Convent site simply by signing a piece of paper. Mr Guy has done it to the Yarra council on a number of occasions as well. That is already in the existing act. We cannot get particularly hung up on this one clause, because it is simply a piece of mechanics that goes with a different way of the minister exercising the same power they already have.

Mr TEE (Eastern Metropolitan) — I just want to ask a couple of questions about the funding for the PAC. I see there is the capacity for a responsible authority to contribute to the costs of the PAC. Is it the minister's intention that this recovery of costs will be on the basis of it being a cost recovery model?

Hon. M. J. GUY (Minister for Planning) — I was just getting some clarification. I wonder if Mr Barber in his next contribution might want to follow up in relation to where exactly in the city of Yarra I have removed a responsible authority status. As he has come from the city of Yarra, I would like to put Mr Barber on the spot. I will answer Mr Tee's question and then hopefully Mr Barber will get up and clarify that. I have checked the matter with my staff, because I do not believe I have removed anything in the city of Yarra. I am happy to be corrected. I will wait for the Greens to come through with the goods on that comment.

Mr Finn — Don't hold your breath!

Hon. M. J. GUY — It might be that they come through with the goods in a green envelope with a huge bill attached to it.

As to Mr Tee's question, the answer is that it is up to me. On the approval of the referral I can issue costs back to a council or they can come from the department on the costs that were allocated to a development assessment committee.

Mr TEE (Eastern Metropolitan) — It is at the minister's absolute discretion, but will he put out some sort of guidance material or criteria on which he will make that decision? I suppose councils will be assisted if they know when they will be required to pay the costs and again whether it will be on a cost recovery basis or some other basis.

Hon. M. J. GUY (Minister for Planning) — There are a range of mechanisms now in terms of Planning Panels Victoria where that is the case. I will take advice from the department as to where costs could or should not be awarded back from a council.

Mr TEE (Eastern Metropolitan) — I suppose it might be helpful if there was some advice from the minister in advance so that councils know before considering making an application to him whether or not they will be up for the costs of the PAC and what contribution will be made towards those costs. Will that material be available?

Hon. M. J. GUY (Minister for Planning) — What material? I have just said that I will take advice from my department on the costs borne by the department, by the council or a shandy of either. I wonder if Mr Tee could clarify what guidelines he is now referring to.

Mr TEE (Eastern Metropolitan) — The answer I received from the minister suggests that he will be making the decision on a case-by-case, council-by-council, application-by-application basis. My question is whether he is considering putting out some guidance material so that prior to making an application councils will have an idea as to how the minister intends to exercise his discretion. Again that might be a matter of the costs they will need to pay in. It might be a matter that the minister would like to consider.

Hon. M. J. GUY (Minister for Planning) — Under Labor's development assessment committee model all the costs were passed back to the council. In the planning panel process all the costs are passed back to the council. Under the government's PAC model, which will hopefully come into operation with the passage of this bill, there is an option that the department will pay some or all of the costs as opposed to the previous DAC model that Labor introduced, which is being replaced, where councils pay all the costs.

Mr TEE (Eastern Metropolitan) — I take it the answer is no. I wonder at what stage of the process councils will be advised. I suppose the question is: can councils make a decision to refer a matter to the PAC or refer a matter to the minister for him to consent for it to be referred to the PAC, which would be subject to them finding out from him what element of the costs would be paid by them?

Hon. M. J. GUY (Minister for Planning) — No, that will be a conversation with the department, as you would expect it would be.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! I ask Mr Barber if his question is in relation to clause 10.

Mr BARBER (Northern Metropolitan) — I am now responding to the minister's question. I have to say that a minister has never before asked me a question during a committee stage.

Hon. M. J. Guy — It's the first!

Mr BARBER — There have been rhetorical questions, but this is a real one. I have discovered that amendment C145 was gazetted on 21 July 2011, which introduced schedule 10 to the development plan overlay for the Richmond precinct and the Fitzroy precinct housing estates — and they have been my favourite subjects this week. The amendment makes the Minister for Planning the responsible authority for approving and amending the development plan, and for issuing planning permits for the land covered by the overlay. We are going to be talking a lot more about that particular power as the development plan rolls out.

Hon. M. J. GUY (Minister for Planning) — I think Mr Barber will find that that amendment began under former Minister for Planning Justin Madden.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! Are there any further questions on clause 10?

Mr BARBER (Northern Metropolitan) — I do not have a question, but I have a comment. One aspect of clause 10 is that it would allow a local government authority that was both the proponent of a development and inevitably the responsible authority for it to delegate decision-making powers over its own development, and I think that is a good thing — for example, in my local council sometimes we had to issue permits to ourselves. For the purpose of governance it is actually good for a council to have the ability to refer to another body the decision-making power over its own developments, because sometimes those developments can be very large, very complex and often controversial amongst the whole community. I think councils already have the power to do many of the things provided by this clause as a special committee under the Local Government Act 1989. I appreciate that the minister has created some mechanics for them to do it through the Planning and Environment Act 1987, which is probably neater and in some ways more transparent. We have no particular opposition to this clause.

Clause agreed to; clauses 11 to 13 agreed to.

Clause 14

Mr TEE (Eastern Metropolitan) — This is the issue that has taken up some time during the debate in relation to a determining authority versus a recommending authority. The concern is that certainly in the legislation, or indeed elsewhere, there is not a lot of material to determine whether or not an authority will become a determining authority or a recommending authority. My question is: will the minister be putting out advice on what he would expect to see by way of a determining authority versus a recommending authority?

Hon. M. J. GUY (Minister for Planning) — This is a direct result of a coalition election policy that focused directly on catchment management authorities only. This part of the legislation will apply to catchment management authorities, and guidelines will be issued to advise on that.

Mr BARBER (Northern Metropolitan) — I appreciate it is a statement of the coalition's policy, but of course it is there to be used by any future government forevermore. Can the minister tell me how many authorities currently operate in the planning scheme under the existing provisions? I have seen some — the catchment management authorities, the Country Fire Authority and VicRoads. We know of those ones, but how many are there in total?

Hon. M. J. GUY (Minister for Planning) — I could not tell Mr Barber off the top of my head. It would be dozens.

Mr TEE (Eastern Metropolitan) — The status of a referral authority would be determined by a planning scheme. Is the minister saying that he will only allow planning schemes that have catchment management authorities as recommending authorities, so no other referral authorities other than a catchment management authority will be a recommending authority?

Hon. M. J. GUY (Minister for Planning) — The scope of our election commitment applied to catchment management authorities, and that is what will be implemented.

Mr TEE (Eastern Metropolitan) — If the planning scheme comes through a council and it would like VicRoads or some other authority to be a recommending authority only, and the relevant authority agrees to that, will the minister support that planning scheme change?

Hon. M. J. GUY (Minister for Planning) — There are some situations where authorities that are in the determining stage could go into a recommending stage, and this may be of interest to Mr Barber. Some of those are private companies — for example, utilities. It should be taken into context as to where some of those companies are. Mr Finn raised a very good point in the debate, particularly when the Country Fire Authority will not be impacted whatsoever by this clause. Catchment management authorities are the government's scope, and that is what will be implemented.

Mr TEE (Eastern Metropolitan) — On the issue of the catchment management authority, will that apply as a blanket rule? Will all catchment management authorities be recommending authorities only?

Hon. M. J. GUY (Minister for Planning) — With respect to the committee, I only want to say this once: yes.

Mr TEE (Eastern Metropolitan) — I thank the minister and welcome the succinct nature of his response, and I encourage him to continue that approach so that we can get out of here sometime today.

Hon. M. J. GUY (Minister for Planning) — If I did not have to deal with the ridiculous nature of some of the second-reading contributions, then I would not have to correct them in the committee stage.

Clause agreed to; clauses 15 to 43 agreed to.

Clause 44

Mr TEE (Eastern Metropolitan) — Again this is a very broad power, notwithstanding Mr Barber's constant reminder that the minister already has significant powers under the act. My question is: in what circumstances does the minister intend to use this power?

Hon. M. J. GUY (Minister for Planning) — This clause concerns the amendments in new section 20A. I noticed there was considerable debate around the amendments in new section 20A from the opposition and the Greens. The amendments in new section 20A should be around mapping anomalies or errors which come through in planning schemes. I have had to correct 139 technical amendments over the last year and a bit that I have had to correct. In calendar year 2012 amendments 77 to 172 were technical corrections, maps and clauses. This is a straightforward, sensible way of correcting errors in planning schemes without going through a long and convoluted process. As I said, it may be a mapping anomaly. Sometimes in planning schemes maps are produced and they do not align to correct boundaries; things along those lines. That is the intention of what we want it to be used for.

Mr BARBER (Northern Metropolitan) — This clause will operate in addition to section 20, if I read correctly the way this bill is working. Section 20 reads:

> (1) A planning authority may apply to the Minister to exempt it from any of the requirements of section 19 or the regulations …
>
> (2) If the Minister considers that compliance with any of those requirements is not warranted …

These are the normal steps that we go through when we exhibit a planning scheme amendment. The minister can exempt a planning authority from any of the requirements, likewise the minister can impose conditions on the exemption. However, as section 20 reads:

> (3) The minister cannot exempt a planning authority from the requirement to give notice —
>
> (a) to the owner of any land, of an amendment which provides for —
>
> (i) the reservation of that land for public purposes; or
>
> (ii) the closure of a road …
>
> (b) to any Minister prescribed under section 19(1)(c) …
>
> …
>
> (4) The Minister may exempt himself or herself from any of the requirements of sections 17, 18 and 19, and the regulations …

The minister has this huge power now. Although sections 17, 18 and 19 — that is, making copies of the amendment available to certain persons and giving notice — can be exempted, is that not the section the minister currently uses routinely when making these technical amendments, correcting these mapping errors and for that matter some much larger matters?

Hon. M. J. GUY (Minister for Planning) — In this case section 20(4) is used.

Mr BARBER (Northern Metropolitan) — Why does the minister need new section 20A?

Hon. M. J. GUY (Minister for Planning) — It is simpler. It broadens out what section 20(4) should be used for. It allows the government to put in place a mechanism for the use of that, and it actually separates new section 20A, which, as I was saying before, then

has the ability of redundant provisions — the boundary of an overlay to remove the provision from land in a flood overlay where it is no longer subject to flooding, an environmental audit overlay no longer required in an area of land, a public acquisition overlay after it has been acquired, a road closure overlay after the road has been closed, removal of a redundant referral or notice requirement where the relevant agencies agree — things such as that.

Mr BARBER (Northern Metropolitan) — Yes, I get it, but section 20(4) of the act says:

> The Minister may exempt himself or herself from any of the requirements of sections 17, 18 and 19 and the regulations in respect of an amendment which the Minister prepares —

and this is the important bit —

> if the Minister considers that compliance with any of those requirements is not warranted or that the interests of Victoria or any part of Victoria make such an exemption appropriate.

There is something resembling a set of criteria or a decision guideline there, whereas under new section 20A the minister does not even need to consider that. He does not even need to sit there for 2 minutes and say, 'You know, I reckon it's in the best interests of Victoria that we do not exhibit this amendment'. The minister's predecessor would have at least had to mount some kind of defensible argument that the exemption from those requirements — advertising, notice and the rest of it — was warranted or that the interests of Victoria or any part of Victoria made such an exemption appropriate. Now the minister will not need to even consider that; he can use new section 20A to say, 'You know what? We are just doing it, and that is the end of the story'.

The difficulty that creates for me is that under the existing act I might have some kind of grounds for appeal. Let us take a not-so-hypothetical example — a bushfire management overlay that might roll out over a large part of Victoria. As a question of administrative law and integrity of ministerial decision making, the minister would have to consider that compliance with any of those requirements is not warranted or that the interests of Victoria or any part of Victoria make such an exemption appropriate, whereas if new section 20A is used, the minister does not need to meet any such test.

Hon. M. J. GUY (Minister for Planning) — I do not know what the question was.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! I ask Mr Barber to put the question again.

Mr BARBER (Northern Metropolitan) — I put it to the minister that new section 20A means he does not need to consider the interests of Victoria in exempting an amendment from the requirements for notice, advertising and the rest of it, whereas without this new section he would have to consider the best interests of Victoria before making the decision.

Hon. M. J. GUY (Minister for Planning) — I will come to my predecessor's view on this a bit later, but new section 20A is where we have prescribed the class of amendment. It is not just about what Mr Barber is saying, that you can pick anything here and there. It is about where the type has been prescribed, and it will then be used. It is for technicalities that I listed before. If Mr Barber wants to broaden that based on a hypothetical situation, that is a point he may choose to make, but I think I have been pretty clear as to where it would apply.

Mr BARBER (Northern Metropolitan) — No, because once the minister has used new section 20A(1) to prescribe the class of regulations then new section 20A(3) is where the minister makes the determination that sections 17, 18 and 19 do not apply. The minister does not have to test that in any way before he does that. He does not have to apply the test that is at section 20(4) of the act. I see new section 20A operating in addition to but in many ways giving the minister the same set of powers as section 20 of the act.

Mr TEE (Eastern Metropolitan) — I understand the rationale for this provision, and that is in relation to the technical and redundant provisions and so on. It would seem that a defence or protection mechanism would be section 19(1)(b) of the act, which requires notice to be given to people who are materially affected by the amendment. It would seem to me that the intention is that this provision not apply where a landowner is materially affected. My question is: why has the minister removed the requirement that a landowner who is materially affected be consulted?

Hon. M. J. GUY (Minister for Planning) — I take it that this is the clause the opposition is opposing.

Mr Tee — Yes, it is.

Hon. M. J. GUY — That is very interesting, and I appreciate that clarification, because way back in December 2009 the then Minister for Planning issued a paper called *Modernising Victoria's Planning Act — Planning and Environment (General) Bill 2009 — Commentary on the Draft Bill*. As Mr Tee was a parliamentary secretary in the previous government, he might remember that time. One of the key points of the

document *Cutting Red Tape in Planning* was action 10, 'Make local planning policy stronger', and the then opposition agreed with some of the key points under that action. It was all about cutting red tape in planning. This part of it was originally developed when Rob Hulls was the Minister for Planning and Mr Tee was an adviser for him. Part of that was the establishment of a new section 20A process. It could be suggested that any policy-neutral impacts arising from this process could be fast-tracked by ministerial amendment. The document went through what it might be used for:

> Establish an expert team or teams to provide independent advice to councils about more effective expression of existing and new local planning policies to provide greater certainty and facilitate amendments to planning schemes arising from this process.

Arising out of that was appendix 1 to the *Modernising Victoria's Planning Act* report, 'Section 20A amendments — streamlined amendment process'. It goes through the criteria — including the removal of redundant provisions and minor technical corrections — and through the preparation of the 20A amendment process. As I said at one point on streamlining planning, we support it. It again materialised through the *Modernising Victoria's Planning Act* report under the heading 'A new streamlined amendment process' on page 27 of that document and under 'What will be achieved?' on page 28. All these ideas, which were supported by the Liberal Party in opposition and are now materialising now that we are in government, were put forward by the Labor Party when it was in government. Mr Tee was a parliamentary secretary when the *Modernising Victoria's Planning Act* report was presented to this house.

By way of clarification, I listened to the speeches in the second-reading debate and noted that Labor will vote against this clause. Despite being the architects of the clause, supported by the coalition in opposition, now Labor in opposition will oppose a clause that it drafted. In fact the man leading the charge to oppose the clause was a parliamentary secretary in the government that put to this Parliament the paper that would put in place the amendments in new section 20A.

Mr TEE (Eastern Metropolitan) — I am still unclear as to why the minister is removing the current right of an owner of land that may be materially affected by the amendment. Why is the minister removing the requirement that they be consulted?

Hon. M. J. GUY (Minister for Planning) — They might have a flood overlay on their property that is no longer applicable. They may have an overlay that is no longer applicable and should be removed quite speedily in a process to assist the resident. It was a good idea proposed by the previous government. Who said I do not credit the previous government? It was a good idea proposed by the previous government, and we will put it in place through this bill, should it pass the Parliament. I find it astounding that the Labor Party will now oppose the idea that it drafted. The current shadow minister was a parliamentary secretary in that government, and when it was originally proposed he was an adviser in the office of the Minister for Planning.

Mr BARBER (Northern Metropolitan) — Mr Tee asked the minister why he is taking away the right of a land-holder to be notified. Land-holders never had a right to be notified. The provision for land-holders to be notified comes from section 19. However, section 20 always gave the minister the power to make changes to planning rules without notifying that land-holder. New section 20A does the same thing again in a different way.

Mr Guy will be pleased to know that the Greens are trying to be consistent. We will not confuse him with sudden U-turns. We think section 20 existing in the principal act is already too open. We think there should be more requirements on the minister to make the government's case for not exhibiting a planning scheme amendment. I agree that there should be circumstances in which a minister can make a planning scheme change without going through the full exhibition process. Technical amendments would be one example, interim controls would be another. To make an emergency interim control over an area also relies on section 20. Where ministers make a limitation on the removal of the requirements, they often do so for, say, 12 months. For example, 'Here is a control. It's in place for 12 months. If you haven't notified, advertised and exhibited within those 12 months, your control will lapse'. I support in certain circumstances the use of interim controls.

As a matter of policy the Greens are quite consistent and clear on this. We think section 20 itself needs to be tightened to make some more criteria for when the minister suspends these rights that Mr Tee refers to. They are not really rights because they can be suspended. His minister did it all the time in the previous government. However, new section 20A blows the whole thing wide open and creates a mechanism where there are no decision-making criteria for the minister, and it is for that reason that we oppose new section 20A. We are trying to be consistent with our view on how section 20 itself needs to be rewritten.

Hon. M. J. GUY (Minister for Planning) — I love it when the Greens talk about planning policy consistency. I will respond to Mr Barber. About a week ago Mr Barber had a prominent article in the *Sunday Herald Sun* in which, in relation to the environment effects statement (EES) process, he says:

> … the wind farm should be approved —

no EES required —

> I'm a pretty big greenie, and if I thought there was any real risk to any species with this project, I'd be onto it like a seagull onto a hot chip …

Yet he said about the east–west link in relation to EESs:

> The minister simply has to 'have regard to' environmental laws rather than actually obey them …
>
> This means no appeal rights, and all the environmental protections we've built up over the years being wiped aside.

Mr Barber talks about policy consistency. I agree with him that on policy consistency Labor Party members have been found appallingly wanting during contributions to the second-reading debate and in how they intend to vote on a clause that they drafted, but I would say that the Greens are not far from them.

Mr BARBER (Northern Metropolitan) — The minister makes my point extraordinarily well. He is now referring to the Environment Effects Act 1978. Attached to that act is a big set of guidelines that were created, I think, by John Thwaites in his capacity as Minister for Planning, but the original promise was that those would be built into the act. When the minister sits down to make a decision about whether or not to order an EES, he has to make reference to some guidelines. I never suggested that he would suspend the Planning and Environment Act 1987 in relation to that wind farm — —

Hon. M. J. Guy — That is a rewrite of what you said.

Mr BARBER — How could I? I was referring to the Environment Effects Act 1978 and the minister's exercise of power under that act.

Hon. M. J. Guy — No spin from the Greens!

Mr BARBER — Have a look at what I have said in Parliament about all these acts, particularly when the time has come to vote on them — and the Major Transport Projects Facilitation Act 2009 for that matter. The then opposition was grinding its teeth when it was forced to vote for the Major Transport Projects Facilitation Act 2009, yet now the minister is waving it around like a samurai sword.

To use the Moolap wetlands as another example, it is pretty clear that down there, under the Planning and Environment Act 1987 and the coastal strategy, canal estates are banned — prohibited by the coastal strategy — yet the minister is ordering an EES on a proposal that I do not think he is even legally able to approve under the current planning act. I will be interested to follow the minister's position on that, but the minister should not doubt, as he now understands from reading the *Sunday Herald Sun*, that I carefully scrutinise every one of his decisions under the Environment Effects Act 1978 for consistency and, for that matter, for protecting the environment.

Mr TEE (Eastern Metropolitan) — I want to take the minister back to his answer in which, as I understand it, he said he was not going to notify owners and occupiers of land that would be materially affected by an amendment, because the decisions he would be making would be something they would see as being in their favour. Am I correct in saying that that is how he is putting the proposition?

Hon. M. J. GUY (Minister for Planning) — No. It is not about me not notifying them; it is about Mr Tee not notifying them in 2009 or in 2005, when he worked for Rob Hulls, who drafted the amendment we are now talking about. Mr Tee should not talk to me about me not notifying people; he was probably the man who drafted the provision. Congratulations, I agree with it. Here it is. It has materialised. Regarding the removal of redundant provisions, let me again read from Mr Tee's own document:

> Removal of a public acquisition overlay after the land has been acquired.

Does that not make sense? It was put forward by the previous government; it is a point I agree with. Also:

> Removal of a road closure overlay after the road has been closed.

That was a good point put forward by the previous government. I supported it in opposition, and I support it in government. Also:

> Removal of a redundant referral or notice requirement where the relevant agency agrees.
>
> Removal of unnecessary or irrelevant reference material.

That was put forward by the previous government, and I agree with it. It is a sensible way forward to remove redundant provisions through a new section 20A in the Planning and Environment Act 1987. It was a sensible

proposal from the Labor Party in government. It is a sensible proposal that we have put as part of these reforms today. I find it astounding that Mr Tee now opposes a reform that was sensible when it was proposed by a government he was part of.

Mr TEE (Eastern Metropolitan) — This provision is limited to redundant provisions. Why is it that occupiers and owners who are materially affected will not be notified?

Hon. M. J. GUY (Minister for Planning) — If you have a public acquisition overlay (PAO) on your land or on a former part of the land and it has been removed or the road is not going to be built, the PAO is removed. I do not think anybody is going to disagree with that. That is a very straightforward technical amendment that can go through, and anyone would be very pleased with that.

Mr TEE (Eastern Metropolitan) — They may be pleased or not pleased with the proposed amendment. My question is: why is the minister not giving them an opportunity to be notified so they can have their say? They are being materially affected.

Hon. M. J. GUY (Minister for Planning) — I would have thought the 'correction of lot boundaries to align with the cadastral map base' materially affects someone's property, but it is one that they would not oppose. It would be exactly the same with 'correction of an error or mistake in the provisions'. The next matter, 'removal of a provision that duplicates another provision', would be along the same lines as the two I have just read. I would have thought it was pretty straightforward. Those things have a material impact upon someone's land ownership.

On the matter of the 'correction of lot boundaries to align with the cadastral map base', there are situations when in putting forward precinct structure plans some of the lot diagrams or other mapping is incorrect. It needs to be corrected and can be corrected with a straightforward and sensible approach through a new section 20A amendment, which is what we are putting forward today and what Labor drafted in government. It is a sensible way forward, and it is going to be used in a straightforward, clear and prompt manner to ensure that these planning errors are corrected within a quick time frame.

Mr TEE (Eastern Metropolitan) — I suppose the concern is that once again the minister becomes the sole determiner of what is in people's interests. The best we can take away from this is that he will not consult with people about what is in their interests, but that he has made an undertaking that he will do something that people will be favourably disposed to. Can the minister give them any assurance beyond that?

Hon. M. J. GUY (Minister for Planning) — I would be the sole determiner under a section 20(5) process, as would former planning ministers Madden, Hulls, Thwaites, Delahunty, Maclellan, McCutcheon have been the sole determiner under a section 20(4) process, which is what this is replacing. In relation to a sole determiner, under the new section 20A amendment it is exactly the same situation as the process was under section 20(4).

Mr TEE (Eastern Metropolitan) — The minister's justification now is not that he is going to be the determiner of what is in people's interests, but that this provision is consistent with previous provisions. I am just trying to get a handle on why it is the minister will not notify people who are going to be materially affected by this provision.

Hon. M. J. GUY (Minister for Planning) — Just because Mr Tee's argument to oppose this amendment is in chaos, I do not want him trying to misinterpret what I have just said. I have made it very clear why this provision is being brought forward. I have made it very clear to the Parliament where this amendment originated, and I have made it very clear what kind of amendments it will correct. I have made it clear that the process under section 20(4), in terms of who would be a sole determining authority, is the same as the process under section 20A and who would be a sole determining authority there. I cannot be any clearer. As I said, if Mr Tee's argument is in chaos, I suggest he work out a new one rather than trying to convolute my response.

Mr BARBER (Northern Metropolitan) — I think we are drawing to a close, but I wanted to say that it is section 20(4) that makes the minister the Emperor of Planning. That is literally where it comes from. We believe there need to be a few more checks and balances on the emperor. Section 20A certainly allows him to do things that he would do under section 20(4). It is for that policy reason that we are opposing section 20A, because we think this whole provision needs to be reformed.

Mr TEE (Eastern Metropolitan) — The opposition will be voting against this clause. On any fair reading I do not think the minister has provided any justification for why landowners or occupiers who will be materially affected by these changes should not at the very least be notified. I do not think any justification has come

forward for the removal of the rights of those individuals.

Hon. M. J. GUY (Minister for Planning) — Under any fair reading one will go back and obviously see the origin of this amendment and its process through to a piece of legislation and debate in the chamber today. As is now going to be restated for, I think, the fifth time, this amendment had its inception when Rob Hulls was planning minister and Brian Tee was an adviser to that minister. It is a sensible amendment put forward in a reasonable document that talked about streamlining planning processes in Victoria. Some concerns on some points, like this one, which were straightforward, should have been accepted.

In 2009, when Justin Madden was the planning minister, a document called *Modernising Victoria's Planning Act — Planning and Environment Amendment (General) Bill 2009 — Commentary on the Draft Bill*, was brought forward for public comment. It states that when we have situations where minor technical corrections, such as lot boundaries aligning with cadastral maps and mistakes in provisions in those maps, there should be a mechanism through which they can be corrected and corrected swiftly. It was a sensible point put forward by an at times very nonsensical planning regime under Justin Madden, but it was one of the few sensible points he put forward and which received support from the Liberals and Nationals in opposition.

Today, in government, the Liberals and Nationals are bringing that point forward again, having supported what was a Labor Party-initiated minor technical amendment process to replace a section 20(4) process, which gives, in Mr Barber's words, the 'planning tsar', being the planning minister, all the responsibility for the section 20(4) process, which is no different under a section 20(5) process, suffice it to say sections 17, 18 and 19 not being adhered to. But all the status, which is still in the responsible authority status, is to the Minister for Planning, as is the case with section 20A, so there is no change in that process.

I find it astounding that Mr Tee said that on any fair reading there was no justification to support the provision and that he would want to delay removing a provision that allows residents to have wiped off their property encumbrances such things as mapping errors of things in public land areas where a public acquisition overlay exists, such as a road having been put in place a long time ago. Those are sensible, common-sense planning technicalities that should have a clear and straightforward way forward. As I said, it was proposed by the Labor Party. It was something that we supported in opposition and we have brought forward in government, and Labor's vote against this proposal today outlines to all in this chamber the boldest level of hypocrisy we have seen in planning policy in this state in 20 years.

Committee divided on clause:

Ayes, 21

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

Noes, 19

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

Clause agreed to.

Clauses 45 to 92 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Hon. M. J. GUY (Minister for Planning) — I move:

That the bill be now read a third time.

Mr BARBER (Northern Metropolitan) — There are some things in the bill that are nice to have and might make things work a little bit better. However, the provision that has just been added is an extraordinarily dangerous provision, although not in the way that the minister tells us he intends to use it. In the past there have been many appeals on ministerial decision making made under section 20(4) and I believe that new section 20A will create an open-ended capacity for any future minister to enhance their existing powers as the Emperor of Planning. For that reason it is our preference that this new section not be in the bill, and therefore, on balance, the Greens are going to vote against the bill.

The PRESIDENT — Order! The question is:

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

House divided on question:

Ayes, 36

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

Noes, 3

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

Question agreed to.

Read third time.

PARLIAMENTARY COMMITTEES

Membership

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

That —

(1) Mr Koch and Mr Viney be members of the Independent Broad-based Anti-corruption Commission Committee; and

(2) Mr O'Donohue and Mr O'Brien be members of the Accountability and Oversight Committee.

Motion agreed to.

TRADITIONAL OWNER SETTLEMENT AMENDMENT BILL 2012

Second reading

Debate resumed from 13 December 2012; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Hon. M. P. PAKULA (Western Metropolitan) — It gives me pleasure to rise to speak on the Traditional Owner Settlement Amendment Bill 2012. This is a relatively straightforward bill. It makes a number of changes to the 2010 act, some of which are substantive and some of which provide clarification in regards to the original intention of the legislation. We have been advised by the government that a number of the amendments contained in the bill have arisen principally through a process of consultation with Native Title Services Victoria (NTSV) but also with the Victorian Traditional Owner Land Justice Group about the template documents that have been used when conducting negotiations in accordance with the Traditional Owner Settlement Act 2010.

I am very grateful to my colleague, the member for Richmond in the other place, Mr Wynne, who has in some detail indicated the key aspects of the bill. I do not propose to reprosecute or restate all matters raised by the member for Richmond during my contribution.

However, I make the point that in terms of the changes to the act that I want to highlight, the bill amends the definition of a traditional owner group; it deals with whether or not a grant of Aboriginal title in land is taken to extinguish native title; it enables the state to enter into a carbon sequestration agreement to land that is granted title; it adds some additional authorisation to land use activity agreements, including consent for the use or development of coastal Crown land, a lease for surf lifesaving associations, a licence to construct works on a waterway, or a carbon sequestration agreement; it adds some additional activities within the definition of land use activities such as fisheries and aquaculture licences, classification of a wildlife reserve, proclamation of land under the Forests Act 1958 or preparation of a management plan for coastal Crown land; it makes some changes to the way that negotiations or agreements in regards to land use can or cannot be carried out in regards to alpine resorts; it inserts a new section which provides that a land use activity agreement may include standard conditions in relation to community benefits, which are being determined by a formula in the land use agreement template as opposed to starting from nothing in terms of an appropriate compensatory amount; it provides that a traditional owner group entity is charitable for taxation purposes; and it makes a range of other minor changes.

With regard to stakeholders, Native Title Services Victoria wrote to the Attorney-General as a consequence of the consultations and also corresponded with others, including me, with regard to some of the ongoing concerns it had after viewing the bill and after the consultation had been concluded. One of the concerns of Native Title Services Victoria relates to clause 4.2. I do not want to read great slabs of the correspondence that was sent to the Attorney-General

in September last year, but in short it makes the point that the bill will replace paragraph (a) of the definition of 'traditional owner group' in section 3 of the principal act. NTSV also makes reference to what it understands the intention of the amendment to be. It then raises a question about membership of a traditional owner group as it is defined in the bill and it has requested a change to the wording. Where the bill makes reference to the term 'enter into' in regard to land use agreements, NTSV says that that should be replaced with the term 'authorise', thus defined in the same way as the federal Native Title Act 1993.

The Attorney-General has replied to Native Title Services Victoria, saying the following:

> I understand that the policy intent behind the amendment relating to the definition of traditional owner group is supported, and that the concern raised is largely a technical matter. I am advised that the wording of clause 4.2 is capable of referring to a group that is broader than the signatories only, but that the wording you suggest would provide greater certainty. Accordingly, I am willing to introduce an amendment to replace the words 'may enter into' with 'may authorise the making of'. Thank you for drawing this to my attention.

It is possible that we may deal with this in the committee stage but it would be equally appropriate for it to be dealt with by whoever is the lead speaker for the government. The advice I have been given by opposition members in the other place is that that amendment was not made in the lower house, and so I seek some clarification as to whether the intent signified by the Attorney-General's letter had in fact been carried out when the bill was presented to the Assembly.

If the advice I have been given is not correct, I will be more than happy for a member of the government to simply make that clear during the second-reading debate. But it is my understanding that the bill that was passed by the Assembly did not reflect the undertaking given by the Attorney-General in his correspondence to Mr Storey from Native Title Services Victoria on 8 November 2012. It seems that Mr O'Donohue may be the lead speaker on behalf of the government, and I would be grateful to him if he could clarify that matter during his contribution.

The second issue raised by Native Title Services Victoria is in regard to the classification of land use activities in alpine resorts. I think it is appropriate to classify the position of the Attorney-General in his response to Native Title Services Victoria as agreeing to disagree with it in regard to that matter.

The third issue raised by NTSV relates to clause 19 of the bill. It is my understanding that there is no undertaking by the government to accede to the matters raised by Native Title Services Victoria. As I understand it one of the concerns raised by NTSV is that the clause as it is currently drafted could limit the authority of the Victorian Civil and Administrative Tribunal's (VCAT) to determine the amount of community benefits. The government indicated to the opposition during the briefing that that was not the case, but Native Title Services Victoria has requested clarification of that amendment during the second-reading debate.

The Attorney-General's correspondence to NTSV says:

> This clause does not prevent a traditional owner group entity from seeking a VCAT determination in relation to a negotiation activity, and the formula does not apply to activities on which no agreement is reached — this much is said in the template for the land use activity agreement. The formula cannot be binding on VCAT.

That may be the same clarification government MPs propose to refer to during the second-reading debate, but I think it would be useful for all involved if that matter could ultimately be clarified either during the second-reading debate or, if necessary, the committee stage.

I also make the point that the same concerns brought forward by Native Title Services Victoria have been echoed by the Victorian Traditional Owner Land Justice Group. Whilst this group was integral to establishing the bill in the first place, the level of consultation undertaken with NTSV on alterations to this bill was not extended to the Victorian Traditional Owner Land Justice Group, and I understand it is somewhat disappointed by that.

I should say for the record that the former government, particularly former ministers Wynne and Hulls, worked extremely hard in consulting with traditional owners to develop the Traditional Owner Settlement Act. The Victorian Traditional Owner Land Justice Group played a very prominent role in the development of the original act, but feels that it has been somewhat sidelined during this entire process.

It is incumbent on the government of the day, including both the Attorney-General and the Minister for Aboriginal Affairs , Mrs Powell, to ensure that traditional owner groups, the Victorian Traditional Owners Land Justice Group and Native Title Services Victoria are in all cases and at all times appropriately consulted and involved in discussions about matters that are integral to the communities that they represent.

With those words, however, the opposition indicates that it will not be opposing the bill. Whether this bill requires any further consideration in committee of the whole will be dependent on what matters can be elucidated by government speakers during the second-reading debate.

Mr BARBER (Northern Metropolitan) — I have received substantially the same material, briefings, correspondence and so forth from Native Title Services Victoria as Mr Pakula just outlined, and I agree substantially with his comments in terms of the issues that require further clarification, so I look forward to that clarification from the government as we continue with this debate.

We all understand it is the federal law that governs the minimum standards, if you like, for how the state government approaches these negotiations with traditional owner groups. The bill before us, like other legislation we have had, is really a framework for the negotiations to proceed between the parties without the negotiations having to be in the Federal Court of Australia and its various other mechanisms.

However, what the bill really then represents is the approach that the state government is willing to take in addressing this fundamental issue of land justice. The generosity of spirit that the government is willing to extend is right here in front of us. As we have heard, there are a number of issues where the legal representatives of the current claimant groups have suggested that the bill could be improved from that point of view. On those three issues — the clause 4(2) issue, the alpine resorts issue and the clause 19 community benefits question — if the government wants to do those things, it can simply do them. There is nothing stopping the government from doing them.

I hope as this bill has come through the Parliament any members with interests in alpine chalets that might involve leases that apply over the alpine resorts have disclosed those, because that would potentially be a material interest in the outcome of the negotiation that is being framed up in this act.

Overall I do not want to lose sight of the benefits that land justice is going to have and the reason why we would want to go further than what the federal law barely requires of us. Every party in this Parliament has signed up to Close the Gap, a program of action involving funding and other actions that are meant to address the staggeringly large disparity in this state between black and white in terms of health, in terms of social and economic wellbeing — you name it. The land justice question is treated off to one side, yet we know that around the world — it has been studied in detail — wherever traditional and Aboriginal communities have been granted land, the outcomes for those communities have been better than in comparable communities where they have not been granted land.

It was Waitangi Day just the other day, commemorating the Treaty of Waitangi. I am a Kiwi, and there is more than one reason to be proud of what has been achieved through Waitangi. I am not an expert on the Canadian and North American situation, but I know there have been outcomes arising out of treaties that were originally signed a long way back.

Unfortunately in Australia we have never taken that step. Very few people know this, but under the strict secret instructions given to Captain Cook — although they did not use the word ‘treaty’ — where he found native peoples he was to enter into agreements with them, and where he did not find native peoples, where he found empty land, he was to claim it for the Crown. He did not follow that part of his instructions. However, that does not mean that we cannot go back and get it right. A treaty with the Aboriginal nation or nations would be the fundamental underpinning on which questions such as these would create some equity among the parties.

At the moment we are just standing here as a bunch of whitefellas making laws for blackfellas. Without a framework of nation-to-nation equity we cannot really say we are giving Aboriginal people a true, informed and agreed-to set of choices. But that is a matter for another day. I believe all parties in the Parliament are supporting this legislation. We are seeking some clarification from the government, so I will not spend any more time going through the detail of the bill.

Mr O’DONOHUE (Eastern Victoria) — The government welcomes the support of the opposition and the Greens for this piece of legislation. As Mr Pakula articulated in his contribution, the second-reading debate in the other place was quite expansive. It looked at the history behind the original 2010 bill and the reasons for this amending bill. The second-reading speech delivered in this place also provides further information about the purposes of this legislation where it says:

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

The speech goes on to detail the progress of the 14 claims before the Federal Court and the purposes of the bill.

Mr Pakula articulated three concerns in relation to the bill which principally picked up on correspondence from Native Title Services Victoria, and Mr Barber echoed those concerns. I will do my best to respond to those three issues. The first dealt with clause 4(2). The second Mr Pakula characterised as the government agreeing to disagree, which I think is accurate. The third dealt with clause 19 of the bill.

Dealing with the first issue, a house amendment was circulated by the Attorney-General and agreed to in the other place which specifically addressed the technical concerns raised by Native Title Services Victoria and the Land Justice Group in relation to the definition of 'traditional owner group'. Therefore I think that concern has been addressed. As I said earlier, I think Mr Pakula has characterised the second issue appropriately. As for the third issue, which relates to the role of the Victorian Civil and Administrative Tribunal (VCAT), in a situation where an activity proponent — a responsible person — and a traditional owner group entity cannot agree about a negotiation activity, a VCAT determination may be sought. If VCAT determines that the activity can go ahead, it may also determine the amount of community benefits that might apply to the doing of that negotiation activity.

Clause 19 of the bill provides the statutory support for a formula to be included in a land use activity agreement and for it to be binding on the parties to the agreement. VCAT is not a party to the agreement, and the formula cannot bind it. Also the formula would not apply to a land use activity where an agreement is not reached — that is, it would not apply to a land use activity for which a VCAT determination is sought. These matters are further clarified in the template for the land use activity agreement, which is available from the Department of Justice and which was finalised following a period of stakeholder consultation, including significant input from Native Title Services Victoria and the Land Justice Group.

I hope that clarification addresses Mr Pakula's concerns. It may not be to his complete satisfaction, but it provides a response to the three issues raised in the second-reading debate. As Mr Pakula said, the bill has 36 clauses. It refines and clarifies a number of issues related to the original act. The aim is to better manage traditional owner settlement issues.

The government welcomes the support of the opposition and the Greens, and I hope the clarification I have provided to the opposition and to Mr Barber adequately responds to the concerns articulated in the second-reading debate.

Mr EIDEH (Western Metropolitan) — We on this side of the house have long believed in and advocated for greater justice for the Aboriginal people of our state. Therefore I will support this bill. Just as it was a Labor Prime Minister, in Mr Gough Whitlam, who first recognised the rights of traditional owners, it was another Labor Prime Minister, in Mr Kevin Rudd, who made the famous apology that the federal Leader of the Opposition, Mr Abbott, totally opposed; and of course there was the famous Redfern speech by the then Prime Minister, Paul Keating, between those two.

The Traditional Owner Settlement Act 2010 was a great product of the previous state government. It was an act that recognised the need for traditional owners to regain their land if reconciliation was to be meaningful at all. The regaining of their traditional lands is not about building extravagant homes with swimming pools. No, it is about Aboriginal faith and culture, the Dreamtime and what they believe in.

This bill is about making changes to the 2010 act, some of which are minor and others significant. I take the opportunity to congratulate members of this government on doing something that is extremely rare for them, and that is consulting. Unlike so many other bills that we on this side of the house could easily list, in coming to this bill the government actually consulted with the Victorian Traditional Owners Land Justice Group and Native Title Services Victoria. That is why many of the changes this bill makes to the act are reasonable. However, these groups were not happy with every change suggested by the government, so the bill will not be popular and may be limited in its positive effects. Ongoing consultation should be mandatory, and I hope the government agrees. However, by amending the definition of 'traditional owner group' the bill provides that a grant of Aboriginal title in land is not taken to extinguish native title.

It should be noted that we lead the world in so many ways with legislation such as this regarding Australia's first inhabitants and other legislation, both state and federal. I say this because friends who live in the United States of America have advised that there are no equivalent laws and rights for their indigenous peoples. I am certain they could learn from the many strides forward that we have experienced in Australia.

This legislation opens the door much more widely than ever before to encourage Aboriginal Australians to better utilise natural resources to create economic prosperity for their people. In partnership with

government they could create jobs and industries that enhance the lives of their communities through tourism opportunities in particular — but not exclusively, as they may be interested in commercial fishing ventures. That would be for them to consider.

As a Parliament representing all the people of Victoria, including the Aboriginal communities, we need to assess means by which we can better support them and make amends for past wrongdoings. We did not commit any of those wrongdoings, but as a civilised nation we accept that we must do what we reasonably can to make amends. This bill is also about recognising the hurt done to Aboriginals over the years, just as former Prime Minister Keating acknowledged at Redfern all those years ago and just as former Prime Minister Rudd recognised when he made the all-important apology, a move that proved again that our side of politics truly cares about all Australians and not simply the wealthiest and most powerful. In my role as a member of Parliament I have met with many Aboriginal elders and attended many functions where they played key roles. To see them involved in activities on Australia Day, at citizenship ceremonies and at many other events is a sign that peace and harmony are not just words bandied about by successive Labor and Liberal governments but philosophies we truly believe in and actively support.

Motion agreed to.

Read second time.

Third reading

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

That the bill be now read a third time.

In doing so, I thank members for their contributions.

Motion agreed to.

Read third time.

CORRECTIONS AMENDMENT BILL 2012

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

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

In my opinion, the Corrections Amendment Bill 2012, as introduced to the Legislative Council, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill makes miscellaneous amendments to the Corrections Act 1986 (the act). The specific purposes of the bill include to:

allow the appointment of a non-employee to act as principal medical officer in relation to prisons;

provide for officers to provide oral information to the Secretary to the Department of Justice (the secretary) in relation to the security and good order of a prison or the safe custody and welfare of prisoners, as well as the security and good order of a location or the safe custody and welfare of offenders at a location;

provide for the provision to a victim of a copy of an order made under the Serious Sex Offenders (Detention and Supervision) Act 2009 in relation to the perpetrator;

rename official visitors as independent prison visitors and associated consequential amendments to provisions;

provide that the secretary must notify the Victorian registrar of births, deaths and marriages (the registrar) of certain details in relation to prisoners;

provide for new powers under the act to direct offenders to submit to alcohol or drug testing for the management, good order or security, the safety and welfare of offenders, or in order for an offender to perform unpaid community work;

provide regional managers with the power to order a community corrections officer to search and examine an offender at a place the offender is required to attend for educational, recreational or for any other purpose;

to provide new provisions authorising the use of disclosure of personal or confidential information;

to permit associate judges to be appointed to the adult parole board;

to require the adult parole board to include additional information in its annual report;

to provide that the adult parole board has the power to revoke parole even though the parole period has expired, if the offender is subsequently sentenced to any term of

imprisonment for an offence that occurred during, or partly during, the parole period;

to introduce a new police custody transfer order scheme where permission is sought from the Supreme Court for a prisoner to be absent from prison to voluntarily provide information to Victoria Police;

to allow interest earnt on prisoner trust funds to be used for the purposes of assisting victims of crime or their families; and

to make other miscellaneous amendments to the act.

The bill also makes amendments to the Parole Orders (Transfer) Act 1983 regarding the registration of parole orders.

Human rights issues

Information sharing and the right to privacy

Section 13 of the charter act provides that a person has the right not to have his or her privacy unlawfully or arbitrarily interfered with. An interference with privacy will not be unlawful if it is permitted by a law that is accessible and precise. An interference with privacy will not be arbitrary if the restrictions it imposes are reasonable, just and proportionate to the end sought.

Registered victims and sex offenders

Section 30A(2AA) of the act presently enables a registered victim to be given certain information about an offender who is the subject of an extended supervision order, supervision order and detention order or information relating to applications for such orders under the Serious Sex Offenders (Detention and Supervision) Act 2009.

Clause 12 of the bill amends section 30A(2AA) to extend the information that may be given to a registered victim to include copies of orders making or renewing or varying extended supervision orders, supervision orders and detention orders.

A copy of an order making or renewing or varying an extended supervision order, supervision order and detention order is likely to contain personal information about an offender, such as their identity, place of residence, curfew times, and treatment or rehabilitation programs or activities. Accordingly, amended sections 30A(2AA) and 30A(2AC) engage the offender's right to privacy in section 13 of the charter act.

Clause 12 also amends section 30A(2AC) to make clear that a victim can be given this information despite, for example, suppression orders restricting the identification or whereabouts of the offender under section 184 of the Serious Sex Offenders (Detention and Supervision) Act 2009.

While these amendments allow for the provision of the personal information of offenders to victims, the provision of this information will not be unreasonable, unjust or disproportionate.

Section 30A(3) of the act provides that the secretary must not disclose the information if he or she reasonably believes the disclosure of the information might endanger the safety or welfare of the offender. In addition, the extent of distribution of the offender's personal information is limited. Section 30A(2AA) of the act requires that there be a nexus between the registered victim and the offender in question. The secretary may only give a copy of a court order to a registered victim in respect of a relevant offence for which the offender is or was subject to an extended supervision order, supervision order or detention order, or an application for such an order. Furthermore, existing section 30H of the act provides that a registered victim to whom information is disclosed must treat that information in an appropriate manner that respects its confidential nature. Therefore, the circumstances in which court orders, and thus the personal information contained in the orders, may be disclosed are clearly circumscribed, and the information will not be disclosed if its disclosure would endanger the relevant offender.

Additionally, the provision of orders to victims fulfils the important purpose of ensuring that victims can be confident that offenders are receiving the supervision and treatment which they require so that they no longer pose an unacceptable risk to their victims and the community.

For these reasons, I consider that these clauses do not unlawfully or arbitrarily limit the right to privacy under section 13 of the charter act.

Prisoners' details and the register of births, deaths and marriages

Clause 19 of the bill inserts a new section 47M in division 5 of part 6 of the act. Division 5 of part 6 regulates applications by prisoners for registration of a change of their name or the name of their child. New section 47M provides for information-sharing arrangements between the secretary and the registrar. Subsection (1) states that the secretary must notify the registrar of the prisoner's name (including former names), their date of birth, and former address. If the secretary has given notification under section 47M(1), the secretary is required under subsection (2) to notify the registrar as soon as practicable of the prisoner's release from prison.

New section 47M engages the right to privacy of prisoners, as it clearly relates to the sharing of a prisoner's personal information. However, the information-sharing arrangements are neither unlawful nor arbitrary. The purpose of the provision is to ensure that the registrar is provided with relevant information to facilitate the effective operation of the name change approval process. The amendment will bring the provision into step with other similar provisions. If the information was not provided the registrar would not be aware of who is prohibited from changing their name without permission and would be unaware if an offence would be committed. Consequently, any infringement of the privacy of prisoners occasioned by this provision will be reasonable and proportionate. Therefore, the provision does not limit the right to privacy.

The provision of information to the secretary by officers

Clause 10 of the bill inserts a new section 20(5A) into the act, which provides that an officer, when required by the secretary, must provide oral or written information to the secretary in relation to the security and good order of a prison or the safe custody and welfare of prisoners. Similarly, clause 30 inserts a new section 90(2A) into the act, which provides that an officer, when required by the secretary, must

provide oral or written information to the secretary in relation to the management, security or good order of a location or the safety and welfare of offenders at a location.

The information that the secretary may require officers to provide may include personal information regarding prisoners and offenders, such as details regarding the personal relationships of prisoners and offenders. These clauses consequently engage the right to privacy by authorising the provision of personal information. However, in my view, the clauses do not limit the right to privacy as the provision of information will not be unlawful or arbitrary. The provision of personal information will only occur in the limited circumstances provided for in the clauses — that is, where the secretary requires the information to be provided for the purposes of managing prisons and locations, and ensuring the good order and security of prisons and locations, as well as ensuring the safety and welfare of offenders and prisoners.

It is necessary for the secretary to be able to require this information in order to properly oversee prisons and locations, so that any interference with the right to privacy occasioned by this power is proportionate and reasonable in the circumstances. For these reasons, I consider that clauses 10 and 30 do not limit the right to privacy.

Authorised use or disclosure of personal or confidential information

Clause 35 of the bill inserts a new part 9E into the act, which authorises the use or disclosure of 'personal or confidential information' in a range of specified circumstances. These new provisions replace the confidentiality requirements currently in sections 30 and 91 of the act, which are repealed by clauses 11 and 31 of the bill.

'Personal or confidential information' is defined in new section 104ZX in part 9E, and includes, for example, information relating to the personal affairs of a person who is or has been an offender or a prisoner; information that identifies any person or discloses his or her address or location (or from which his or her address or location can reasonably be determined); and information concerning procedures or plans to be adopted or followed in a prison in the event of an emergency. 'Information' covers photographs, fingerprints, samples and results of tests.

Under new section 104ZY, relevant persons may use or disclose personal or confidential information in certain specified circumstances. These circumstances include use or disclosure of the information: where it is reasonably necessary for the performance of the person's official duties; where it is reasonably necessary to lessen or prevent a serious and imminent threat to a person's life, health, safety or welfare or to public health; where the person to whom the information relates has authorised the use or disclosure; with the authority of the minister; to the Ombudsman or the Ombudsman's officers; to a person on the victims register for the purposes of making a victim submission; if the information concerns the current location of the prisoner, to the prisoner's lawyer; in accordance with the Health Records Act 2001; if the information is in the public domain; if the use or disclosure is to an Australian lawyer for the purpose of obtaining legal advice or representation in relation to the administration or operation of the corrections legislation; if the use or disclosure is specifically authorised or required under a Victorian act; and to various Victorian and commonwealth departments and agencies where the disclosure is reasonably necessary for the performance of a specific function.

New section 104ZZ makes specific provision for information given to the adult parole board that is not disclosed in a decision of the board or in any reasons given by the board for a decision of the board. Under that section, use or disclosure of such information will only be authorised if reasonably necessary for the administration of legislation administered by Corrections Victoria, or in preparation for, conduct of, or participation in criminal matters in court or tribunal proceedings, or to lessen or prevent a serious and imminent threat to a person's life or safety.

Under section 104ZZA, it is an offence for a relevant person to disclose personal or confidential information other than in accordance with sections 104ZY and 104ZZ. The penalty is 120 penalty units.

As the new sections 104ZY and 104ZZ provide for the disclosure of personal or confidential information in certain circumstances, they engage the right to privacy. However, as the circumstances in which this disclosure will occur are clearly specified, in my view the disclosure of such information authorised by the new sections will not be unlawful. Further, the authorised disclosures will not be arbitrary as they are directed at specified purposes, relate only to relevant persons, and are reasonable and proportionate. The disclosure of certain information is necessary at times to perform duties, such as for the administration of the corrections legislation or enforcement of court or tribunal orders. Additionally, the disclosure of information may also be necessary in other specified circumstances such as where it will prevent a serious and imminent threat to life or where information is provided to the Ombudsman for the purpose of allowing him to properly carry out his investigative functions. For these reasons, I do not consider that the new sections 104ZY and 104ZZ limit the right to privacy.

Clause 49 inserts a new section 11A into the Parole Orders (Transfer) Act 1983, which provides that, for the purpose of making a determination or exercising a discretion under the act, the minister may provide any such documents or information (including personal information) to any government agencies or other persons that may be directly affected by that person's presence in the state or territory in which the parole order is, or is proposed to be, registered. The new section 11A(2) provides that the section does not authorise the disclosure of information about a person to whom a parole order relates unless the person has given consent to, or has requested the registration of, the parole order under the act and has not withdrawn that consent. Given that the disclosure of personal information under this section will only occur in clearly specified and limited circumstances where the relevant person has consented to his or her parole order being registered, the disclosure will not be unlawful or arbitrary. Consequently, the new section 11A does not limit the right to privacy.

Alcohol and drug testing and the right to privacy and protection against medical treatment without consent

Section 10 of the charter act provides that a person must not be subjected to medical treatment without his or her full, free and informed consent.

Clause 32 inserts a new section 99A of the act, which provides for new powers to direct offenders subject to

correctional orders to submit to alcohol and drug testing. The secretary may direct an offender to submit to tests if the secretary considers it necessary to do so for the management, good order or security of a location or for the safety and welfare of offenders at a location, or in order for an offender to perform unpaid community work at a location. The secretary can only exercise this power if she believes on reasonable grounds that the offender is under the influence of alcohol, a drug of dependence or a poison.

Section 104 of the act provides that an offender is subject to the secretary's directions while the offender is at a location, taking part in a community corrections program or is being transferred from one location to another, from a location to a place where a community corrections program is conducted, or from that place to a location, and that an offender who disobeys a direction given by the secretary under this section is guilty of an offence. The offence has a penalty attached of 5 penalty units.

Compelling an offender to submit to alcohol or drug tests engages an offender's right to privacy in section 13(a) of the charter act. Privacy covers the physical and moral integrity of a person, and includes the freedom from compulsory blood, breath or urine tests. As the tests will not be unlawful or arbitrary, I do not consider that the right to privacy is limited by the new section 99A. This is because the power to direct an offender to undergo testing can only be exercised if the secretary has reasonable grounds to believe an offender is under the influence of alcohol, a drug of dependence or a poison.

If the testing is capable of constituting medical treatment, which may be the case if an offender was subjected to a blood test, the new section 99A may limit an offender's right not to be subject to medical treatment without consent under section 10 of the charter act.

The power to direct offenders to submit to drug and alcohol testing at a location will be for the legitimate purpose of either ensuring that an offender has the ability to perform unpaid community work or to ensure the good order of a location and to protect the safety and welfare of other offenders, staff and the community. Offenders may only be directed to submit to testing when the secretary believes on reasonable grounds that the relevant offender is under the influence of alcohol, drugs or poisons. Therefore, any potential limitation to an offender's right not to be subject to medical treatment is proportionate and reasonable, given the risk that the relevant offender being directed to be subject to such testing is under the influence. In my view, there are no less restrictive means available to meet the objectives of ensuring the good order of a location and protecting the safety and welfare of other offenders, staff and the community.

Search and seizures and the right to privacy and right to 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.

Clause 33 of the bill inserts new subsection 100(1A), which provides for new search powers of offenders subject to correctional orders. This subsection provides that a regional manager may order a community corrections officer to search and examine an offender subject to a correctional order at a place that the offender is required to attend for educational, recreation or for any other purpose by a correctional order or part 9 of the act.

Clause 34 of the bill amends subsection 101(1) of the act to extend the existing powers of a community corrections officer under the act to seize items in the course of searches, so that a community corrections officer may seize anything found in a place that the offender is required to attend for educational, recreation or for any other purpose.

These clauses enable the search of offenders and the potential seizure of items, and therefore engage the right to privacy and right to property. However, in my view, given that the circumstances in which searches are conducted and property may be seized are carefully set out in the bill and a range of safeguards and protections are provided for, neither right is limited.

The new subsection 100(1A) provides that the regional manager may only order a search of an offender if they believe that the search is necessary for the security or good order of the place or the offenders at the place. New section 100(1B) provides for certain procedural safeguards before the regional manager may order the search to be conducted. For example, the regional manager or community corrections officer must inform the offender of the authority to order the search and the reason for the search in the particular case, provide the person with an opportunity to respond to queries as to possession of any article or substance which may jeopardise the good order or security of the place and requests to produce any such article. The regional manager must also record the offender's responses.

New section 100(1C) also provides that a regional manager must ensure, to the extent practicable, that a search is conducted in the presence of a witness. That provision also ensures that the search is conducted in the least restrictive means possible, by requiring that the regional manager ensure, to the extent practicable, that a search is conducted in a private place or area that provides reasonable privacy, as expeditiously as possible to minimise the impact on the person's dignity and self-respect, and by a person of the same sex. New section 100(1D) requires the regional manager to establish and maintain a register of searches. This register provides an important means of accountability by providing a record of the searches conducted.

Clause 33 also inserts new subsection 100(7), which clarifies that searches conducted under new subsection 100(1A), as well as existing search powers under section 100(1), are limited to garment searches, pat-down searches and scanning searches.

In respect of the seizure powers, amended subsection 101(1) limits seizure in the carrying out of searches under new subsection 100(1A), and existing section 100(1), to items found which the community corrections officer believes on reasonable grounds jeopardises or is likely to jeopardise the security or good order of the community corrections centre or a place that the offender is required to attend for educational, recreation or for any other purpose, or the safety of persons in the centre or that place. Sections 101(2) and (3) already require that a community corrections officer who seizes items found must immediately inform the regional manager, and the regional manager must deal with the seized item in accordance with the regulations.

Due to these safeguards, I consider that any interference with an offender's rights to privacy or property authorised by these clauses is lawful and not arbitrary, and therefore that neither the right to privacy nor the right to property is limited.

Conclusion

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

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

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

Introduction

This bill will amend the Corrections Act 1986 to implement a range of reforms to the delivery of correctional services by strengthening the governance framework underpinning the prison and community corrections systems. This bill implements recommendations from the Ombudsman Victoria 2012 report into the death of Carl Williams and the Sentencing Advisory Council's report on the Victorian adult parole system.

The bill also implements nationally agreed amendments to the model Parole Orders (Transfer) Act 1983 and makes a number of minor or technical amendments to the Corrections Act.

Ombudsman's report recommendations

The Ombudsman's report contained a recommendation for the attention of government relating to administration of justice permits, currently issued under sections 57 and 57A of the act.

The bill implements recommendation 36 by replacing the current administration of justice permits for these purposes with a new scheme — the police custody transfer order scheme.

The new police custody transfer order scheme will apply in circumstances where permission is sought for a prisoner to be absent from prison to voluntarily provide information to Victoria Police, implementing recommendation 36 of the Ombudsman's report. Under the police custody transfer order scheme established by the bill, Victoria Police will apply to the Supreme Court for a police custody transfer order. Any such order issued by the Supreme Court will have the effect of transferring legal custody of the prisoner to the Chief Commissioner of Police.

A police custody transfer order is not available in circumstances where other legislative provisions that require the delivery of the prisoner to police are available, for example section 464B of the Crimes Act 1958, or a 'gaol order' under regulation 20 of the corrections regulations.

An application for a police custody transfer order must include a copy of assessments conducted by Victoria Police and by the Secretary to the Department of Justice, of the risks to security and good order of the prison, and the safety and welfare of the prisoner and members of the public, before, during and after the making of the order.

The application is to be determined on the papers, and will not be heard in an open court and will not appear on court lists. In the interests of maintaining security, no person (including the prisoner) is able to search the court files that relate to the application.

The Supreme Court is able to make an order authorising absence from prison for the period or periods specified, but not longer than three days, if satisfied that it is reasonable in all the circumstances. In exceptional circumstances such orders can provide for a prisoner's overnight absence from prison.

The effect of the police custody transfer order will be to transfer the legal custody of the prisoner from the secretary to the Chief Commissioner of Police for the period when, in accordance with the order, a member of the police force or a person acting under lawful authority on behalf of the chief commissioner takes physical custody of the prisoner.

The chief commissioner will retain legal custody until the prisoner is returned to prison or to the physical custody of a person acting under lawful authority on behalf of the secretary.

Sentencing Advisory Council report and other matters related to parole

The bill also makes a number of changes designed to improve the operation of the adult parole system.

The Sentencing Advisory Council's report recommended a review of the secrecy and information disclosure provisions of the Corrections Act to determine if legislative change is necessary to allow for the adequate flow of information between the adult parole board, Corrections Victoria and Victoria Police.

In line with that recommendation the bill includes new provisions designed to facilitate appropriate information flow between these authorities.

The bill repeals existing sections 30 and 91 and replaces them with new provisions in what will be new part 9E of the act, authorising the use or disclosure of personal or confidential information by relevant persons to the extent necessary to perform official duties, or as otherwise permitted by the new provisions.

For the purposes of clarity the bill includes a non-exhaustive list of activities that fall within the scope of 'performing official duties', which include the administration of corrections legislation and law enforcement.

The bill also includes provisions clarifying when personal or confidential information can be used or disclosed.

The new provisions are subject to specific prohibitions in other legislation dealing with the use or disclosure of personal or confidential information of offenders or prisoners, and includes additional restrictions on the use or disclosure of highly sensitive information given to the adult parole board.

Given the expanded information-sharing provisions, it is appropriate that the penalty for unauthorised disclosure of personal or confidential information other than in accordance with the new provisions is increased to 120 penalty units. The change to the penalty is commensurate with similar penalties for unauthorised information disclosure in the Police Regulation Act 1958. It is not the intent that this penalty provision should apply in circumstances of honest mistakes that may occur in the execution of official duties. Rather, this practice sends the message that unauthorised disclosure of personal or confidential information to third parties who are not authorised to receive such information is a serious matter carrying an appropriate penalty.

The bill also amends the Corrections Act to strengthen the circumstances in which the adult parole board can revoke parole in circumstances where an offender has committed further offences while on parole.

First, the bill amends section 77(5) of the Corrections Act to remove the current requirement that the prisoner must be sentenced to more than three months imprisonment for the further offence or offences committed during the parole period before triggering the board's power to cancel parole under this section. The result will be that any sentence of imprisonment imposed for offending that occurred during the period of parole will trigger the board's power to cancel parole even after the parole period has expired. A consequential amendment is made to section 76.

Second, the bill amends section 77(5) of the Corrections Act to give the adult parole board the power to cancel parole if the prisoner is sentenced to another prison sentence for an offence or offences committed during, or partly during, the parole period, even though the parole period may have expired.

Section 77(5) is currently interpreted in such a way that the board will only be able to cancel parole after the parole period has expired, where the offending behaviour that led to the further prison sentence occurred entirely during the parole period. Offending behaviour leading to the further prison sentence that may have commenced or continued in part of the parole period, and is therefore not identified as having occurred entirely during the parole period, is not considered to give the board the power to cancel parole under section 77(5).

This situation will arise in circumstances where the prosecution relies on evidence of a number of incidents of criminal activity over a period of time (for example, drug trafficking), or where it is not possible to identify with certainty the actual dates of the offending behaviour (for example, sex offences against children).

The current wording of section 77(5) creates the odd result of excluding relevant criminal conduct from the board's consideration. The bill rectifies this anomaly by providing that section 77(5) applies whether the offending occurred entirely during the parole period, or the offending commenced, continued or occurred in part during the parole period.

The Sentencing Advisory Council report also recommended inclusion of additional information in the adult parole board's annual report to provide more information about the adult parole system. Specifically the report recommended that the following information be included in the annual report:

the purposes of parole;

the general principles used when making parole decisions;

factors taken into account when making parole decisions; and

the number and results of parole review proceedings.

The bill amends section 72 of the act to implement this recommendation.

Parole Orders (Transfer) Act 1983

The Parole Orders (Transfer) Act 1983 (transfer act) is part of a national scheme for the interstate transfer of parole orders, underpinned by model legislation.

The corrective services ministers conference has agreed that participating states would make agreed amendments to this model legislation. This bill implements the majority of these amendments.

Other improvements

The bill includes a number of other amendments to the Corrections Act, designed to facilitate the operation of the act, enhance the effectiveness of community correction orders, and improve access to justice for victims.

These include:

allowing for the drug and alcohol testing of community-based offenders to support the existing prohibition on the consumption of alcohol or drugs of dependence during attendance at community corrections centres or community work sites;

providing for the search of offenders at community work sites, to manage situations in which offenders are suspected of possessing alcohol, drugs or weapons;

providing for the use of interest earnt on prisoner trust funds for the benefit of victims of crime or their families (where previously the act was silent on how these funds may be used);

requiring the Secretary to the Department of Justice to provide details of name change applications by prisoners to the registrar of births, deaths and marriages (as is currently the requirement for parolees and serious sex offenders);

allowing a victim to be given a copy of an order made under the Serious Sex Offenders (Detention and Supervision) Act 2009 in relation to the perpetrator;

allowing associate judges of the Supreme Court to be appointed as members of the adult parole board; and

updating references to the provisions of the Building Act 1993 to provide that exemptions from public inspection of information relating to the construction and layout of

prisons apply to building work at private as well as public prisons.

A number of other minor or technical amendments to the Corrections Act are also included.

I commend the bill to the house.

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

Debate adjourned until Thursday, 14 February.

ELECTRONIC CONVEYANCING (ADOPTION OF NATIONAL LAW) BILL 2012

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (charter act), I make this statement of compatibility with respect to the Electronic Conveyancing (Adoption of National Law) Bill 2012.

In my opinion, the Electronic Conveyancing (Adoption of National Law) Bill 2012 (the bill), as introduced to the Legislative Council, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill facilitates the creation of a national electronic conveyancing system (NEC system) by applying the Electronic Conveyancing National Law (ECN law), which is contained in the appendix to the Electronic Conveyancing (Adoption of National Law) Bill 2012 (NSW) with the exception of clause 39. The bill will also make it an offence to give false or misleading information, answers or documents to the Victorian registrar of titles in connection with the exercise of the registrar's powers under the ECN law or an instrument under the ECN law (clause 9), makes consequential amendments to the Transfer of Land Act 1958 (Vic) to facilitate the application of the ECN law in Victoria and provide for the future repeal of part IIIA of the Transfer of Land Act 1958 (Vic).

The NEC system will enable documents in electronic format to be lodged under Torrens land title legislation in each state and territory. This removes the inefficiencies for the current paper-based conveyancing systems. Further, the adoption of the ECN law ensures that there is a nationally consistent legislative framework.

The NEC system will act as a 'gateway' for documents to be presented for lodgement with the relevant registrar. The registrars will then deal with the documents presented for lodgement under their respective land titles legislation.

Only registered subscribers (generally lawyers, conveyancers and lenders) will be able to use the NEC system on behalf of their clients or on their own behalf. It is not intended that the NEC system will be used by members of the general public.

The ECN law will make possible the implementation of electronic conveyancing in Australia and will:

(a) authorise the registrar of titles in each jurisdiction (the registrar) to:

  (i) receive electronic registry instruments and other electronic documents by electronic lodgement; and

  (ii) register electronic registry instruments, with the same effect as receiving and registering paper instruments under the jurisdiction's Torrens legislation;

(b) empower the registrar to operate or to authorise one or more persons to operate an electronic lodgement network (ELN) for their jurisdiction;

(c) empower the registrar to set conditions for access to and use of an ELN;

(d) empower the registrar, or his or her delegate, to conduct an examination of compliance with any conditions for access to and use of an ELN;

(e) provide that by entering into an approved form of client authorisation, a transacting party may authorise a subscriber to:

  (i) digitally sign electronic registry instruments and other electronic documents on that transacting party's behalf;

  (ii) lodge electronic registry instruments and other electronic documents with the relevant land registry;

  (iii) authorise any financial settlement involved in the transaction; and

  (iv) do anything else necessary to complete the transaction electronically.

The bill applies the ECN law as a law of Victoria, except for clause 39 of the appendix to the Electronic Conveyancing (Adoption of National Law) Bill 2012 (NSW), which provides for a statutory immunity in favour of the registrar.

Application of non-Victorian law

Clause 4 of the bill declares that the ECN law, being in the appendix to the Electronic Conveyancing National Law Bill 2012 of New South Wales (other than section 39 of that law), applies as a law of this jurisdiction, and applies as if it were an act. Accordingly, section 32 of the charter act will apply to

the ECN law in Victoria, and the human rights impacts of the ECN law are addressed in this statement of compatibility.

Clause 4 applies the ECN law as a law of Victoria as in force from time to time. The NEC system is supported by an intergovernmental agreement for an ECN law. The intergovernmental agreement provides for the establishment of the Australian Registrars National Electronic Conveyancing Council, comprised of the jurisdictions' registrars. Under the intergovernmental agreement, the Australian Registrars National Electronic Conveyancing Council has responsibility for the future amendment of the ECN law. As part of that process Victoria, through its Australian Registrars National Electronic Conveyancing Council representative, the Victorian deputy registrar of titles, will ensure amendments are developed in a manner consistent with the charter act.

Human rights issues

Privacy

Section 13 of the charter act provides that a person has the right not to have his or her privacy unlawfully or arbitrarily interfered with. An interference with privacy will not be unlawful if it is permitted by law that is accessible and precise. An interference with privacy will not be arbitrary if the restrictions it imposes are reasonable, just and proportionate to the end sought.

A primary purpose of the ECN law is to empower one or more persons to operate an ELN for Victoria. Clause 13 of the ECN law provides that an ELN is an electronic system that enables the lodging of registry instruments and other documents in electronic form for the purposes of the land titles legislation. National EC Development Ltd (NECDL) is a company established in January 2010 by the governments of New South Wales, Victoria and Queensland and later Western Australia to create the NEC system. This company is expected to become the first electronic lodgement network operator (ELNO) once the ECN law commences operation.

Personal information, such as names and addresses, mortgages and caveats will be included in documents lodged on the electronic system. While the ELN will not be used by the general public, subscribers and ELNOs will have access to the information in documents lodged on the network, and the general public will have access to the information and documents registered or recorded in the register. Presently in Victoria under the Transfer of Land Act 1958, such information is recorded on the register. Section 114 of that act provides that the register is open to the public and any person may have access to recordings in the register at any time when the office of titles is open to the public. Additionally, Victoria has had a state-based electronic conveyancing system (the ECV system) in operation since August 2006. The system has approximately 440 subscribers who will be migrated to the NEC system.

Given the fact that information of the type which will be recorded in documents lodged on the ELN is already publicly available, there is unlikely to be any expectation of privacy regarding the information included on the electronic system. Additionally, the Transfer of Land Act 1958 and the ECN law both contain provisions which regulate the collection and dissemination of information and documents. For example, clause 23 of the ECN law provides for the creation of participation rules, which may include provisions relating to the certification of documents and the retention of documents. In addition, new section 44Q of the Transfer of Land Act 1958 (clause 13 of the bill) empowers the registrar to amend the register to correct errors and omissions that occur as a result of a malfunction of the ELN. Consequently, the creation of the ELN in the ECN law does not constitute an unlawful or arbitrary interference with the right to privacy.

Clause 13 of the bill inserts a new part IIIB into the Transfer of Land Act 1958. The new section 44R provides that the registrar must, on the application of any person, produce a document in writing recording information contained in a registry instrument that has been lodged for registration under the act. The new section 44S provides that the registrar may produce in electronic form a representation of any registry instrument lodged in the ELN. 'Registry instrument' has the same meaning as 'instrument' under the Transfer of Land Act 1958, other than electronic instruments lodged under the ECV system. The definition includes documents registered or capable of registration under that act and documents in respect of which any recording is to be made in the register. As discussed above, information of the type being produced by the registrar under these new sections is the same as that currently publicly available on the register. For the reasons given above, in my view these new sections also do not limit the 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.

Clause 13 of the bill inserts a new part IIIB into the Transfer of Land Act 1958. The new section 44O provides the registrar with the power to refuse to register a registry instrument in certain circumstances, for example, if the instrument is incomplete, contains errors, is not in the approved form et cetera. In this context, current section 40 of the Transfer of Land Act 1958 provides that instruments are not effectual to create, vary, extinguish or pass any estate or interest or encumbrance in, on or over any land until registered. It is therefore possible that this power to refuse registration could impact upon a person's ability to dispose of his or her property or a person's ability to acquire new property. However, refusing registration of itself does not result in a deprivation of property rights, but rather ensures the integrity of the register where documents are lodged via the ELN. In this respect, the registrar may require the instruments to be lodged in a form other than an electronic communication (see new section 44O(5)). Consequently, in my view, clause 13 does not limit or breach section 20 of the charter act.

More generally, although the ECN law deals with property, in my view it does not engage the right under section 20 of the charter not to be deprived of property otherwise than in accordance with law. The ECN law does not extinguish any property interests.

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

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

protected by the common law. It applies to protect a charged person against the admission in subsequent criminal proceedings of incriminatory material obtained under compulsion, regardless of whether the information was obtained prior to or subsequent to the charge being laid.

Clause 33 of the ECN law provides that the registrar may on receiving a request or complaint from any person or on the registrar's own initiative, conduct an investigation, or compliance examination, under this part. Clause 34 of the ECN law provides that an ELNO or a subscriber must cooperate fully with the person conducting the compliance examination, including complying with any reasonable requirement to furnish specified information or documents or to take specified action for the purposes of the compliance investigation.

Failure to fully cooperate with a person conducting a compliance examination is not an offence under the ECN law. However, if the ELNO or subscriber fails to cooperate without a reasonable excuse, the registrar may take any action that the registrar is authorised to take and that the registrar considers appropriate. Such actions include the suspension or revocation of the approval of a person as an ELNO or the restriction, suspension or termination by the registrar, or the ELNO on direction by the registrar, of a subscriber's or a user's use of the ELN pursuant to the operating requirements and participation rules.

I consider that the requirement in subclause 34(1) that an ELNO or subscriber must cooperate fully with a compliance examination, combined with the actions available to the registrar under subclauses 34(3) and (4) means that clause 34 will operate to compel an individual to cooperate with a compliance examination by furnishing specified information, producing specified documents or taking specified action.

Further, it is possible that the furnishing of specified information, production of specified documents or the taking of specified action could tend to incriminate an individual, thus engaging the right to protection against self-incrimination in sections 25(2)(k) and 24(1) of the charter act.

Subclause 34(5) of the ECN law abrogates the common-law privilege against self-incrimination by providing that it is not a reasonable excuse for a person to fail to give stated information, answer a question or to produce a document that giving the information, answering the question or producing the document might tend to incriminate the person or make the person liable to a penalty.

However, subclause 34(6) of the ECN law provides both direct and derivative use immunity by providing that information, answers and documents provided under clause 34 are not admissible in evidence, including information directly or indirectly derived from the information, answers or documents.

No immunity is available though in relation to two circumstances. Firstly, no immunity is available in relation to certain documents that are required to be kept under the ECN law, the land titles legislation, the operating requirements or the participation rules (subclause 34(7)).

Second, no immunity is available in relation to certain proceedings about the false or misleading nature of anything in the information, answer or document (subclause 34(8)).

The abrogation of privilege in relation to documents of the type referred to in subclause 34(7) and in relation to information, answers and documents of the type referred to in subclause 34(8) limit the right against self-incrimination in the charter act, but for the reasons that follow I consider that the limitation is justified within the meaning of subsection 7(2) of the charter act.

In relation to pre-existing documents of the type to which subclause 34(7) of the ECN law will apply, the protection against self-incrimination is considerably weaker than the protection accorded to oral testimony or to any requirement that a document be brought into existence to comply with a request for information. Here, the documents required to be produced are those that are required to be kept under the ECN law, the Transfer of Land Act 1958 in Victoria, the operating requirements and the participation rules.

The requirements will affect persons who are voluntarily choosing to be part of the regulatory scheme established by the ECN law (and thus accepting the requirement under the scheme to hold certain documents), and the duty to provide these documents is consistent with the reasonable expectations of persons operating a business within a regulated scheme. Additionally, the requirements will protect consumers, in that they will serve to ensure that ELNs operate as intended and that the operation of such networks is not impaired by acts of misconduct by either subscribers or ELNOs.

To excuse the production of documents where a contravention is suspected will allow persons to circumvent the record-keeping obligations of the bill, and significantly impede a registrar's ability to investigate and enforce compliance of the scheme. I therefore consider that any limitation that may be imposed by clause 34(7) of the ECN law on the right against self-incrimination is reasonably justifiable in accordance with subsection 7(2) of the charter act. Additionally, I note that oral testimony or information derived from oral testimony that is not false or misleading cannot be used as evidence in criminal proceedings. This reflects the higher level of protection accorded to oral testimony compared to that accorded to pre-existing documents.

Subclause 34(8) of the ECN law provides that the immunities in subclause 34(6) do not apply in relation to proceedings about the false or misleading nature of anything in the information, answer or document, or proceedings in which the false or misleading nature of the information, answer or document is relevant evidence.

In general, false information will generally not be capable of incriminating a person, as a person will generally provide false or misleading information to exculpate himself or herself rather than to incriminate himself or herself. If subclause 34(8) does not require a person to provide incriminating information, answers or documents, then it does not limit the right against self-incrimination in the charter act.

However, it is possible that, by providing a false answer or document, a person may incriminate himself or herself, such as if the act of providing the document itself constitutes evidence of the commission of an offence, or if the denial of relevant knowledge itself is capable of forming evidence of the commission of an offence. An example of this can be found in clause 9 of the bill which provides for the offence of giving false or misleading information, answers or documents

to the registrar under the ECN law or an instrument under the ECN law. The penalty for the offence of giving of false or misleading information, answers or documents is 60 penalty units which is comparable with the penalty attached to other similar offences in Victorian statutes.

In such circumstances, subclause 34(8) could potentially function as a limit on the right against self-incrimination that requires justification under subsection 7(2) of the charter act. The purpose of the provision of both a direct and derivative use immunity in subclause 34(6) of the ECN law is to enable persons to assist the registrar or his or her delegate with compliance examinations by providing information and documents freely and truthfully, without fear of the information being used against them in criminal proceedings or becoming subject to a penalty. This then ensures that the registrar or relevant delegate has access to the information necessary in order to properly monitor ELNs. However, the provision of false or misleading information or documents to the registrar or relevant delegate clearly falls outside of the purpose of the immunity. False or misleading information will not assist the registrar or relevant delegate. A person providing such information or documents is accordingly not entitled to the protection under subclause 34(6).

For these reasons, I am of the opinion that clause 34 of the ECN law is compatible with the right not to be compelled to testify against oneself and the right to a fair trial in sections 25(2)(k) and 24(1) of the charter act.

Right to freedom of movement

Section 12 of the charter act provides that every person lawfully within Victoria has the right to move freely within Victoria.

As discussed above, clause 34 of the ECN law requires a person to cooperate with a compliance examination, which will probably involve the attendance of a person at the offices of the registrar.

This may limit the right to freedom of movement in the charter act, but for the reasons that follow I consider that the limitation is justified within the meaning of subsection 7(2) of the charter act.

Requiring a person to attend the registrar's offices or other location is an important mechanism for the registrar to obtain the information he or she needs to effectively carry out compliance examinations under clause 34 of the ECN law. Persons subject to clause 34 have chosen to engage in a regulated activity for their commercial benefit and will be, or should be, aware that they are obliged to comply with such examinations as a condition of using (or operating) an ELN. Further, requiring such attendance at a compliance examination is only a temporary restriction on movement.

Additionally, where it will be difficult for a person to attend the registrar's offices (such as where the person is located in a regional location), it is envisaged that a location which is mutually convenient to the person and the registrar will be chosen.

For these reasons, I am of the opinion that clause 34 of the ECN law is compatible with the right to freedom of movement.

Conclusion

I consider that the bill is compatible with the charter act because, to the extent that some provisions may limit the rights set out in sections 12, 24 and 25 of the charter act, those limitations are reasonably justifiable.

Hon. David Davis, MLC
Minister for Health
Minister for Ageing

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

I am pleased to introduce this bill which will facilitate the adoption in Victoria of a national scheme for the electronic lodgement and processing of conveyancing transactions.

The bill will apply the Electronic Conveyancing National Law (ECN law) within Victoria and make a number of consequential amendments to other acts, primarily to the Transfer of Land Act 1958, to facilitate the application of the ECN law. The bill also repeals provisions in the Transfer of Land Act that will no longer be required when the Victorian electronic conveyancing system ceases operation.

The object of this national scheme is to promote efficiency throughout Australia in property conveyancing by providing a common legal framework that enables documents to be prepared, lodged and processed in electronic form. It is important to note that the bill does not derogate from the fundamental principles of the Torrens system, such as the indefeasibility of registered interest and the entitlement to indemnity where, for example, a person has suffered a loss because of an amendment to the register.

A world-class land administration system

Victoria has a world-class system for registering and recording interests in freehold land. The processes for recording interests in land impact upon most Victorians at some time in their lives. For many Victorians, buying their home is the biggest purchase they ever make. Each year Land Victoria registers approximately 700 000 land transactions. A component of these transactions includes around $75 billion of private property transacted annually.

The most common example of conveyancing is when one party sells a parcel of land to another but the term also encompasses actions such as taking out a mortgage and placing caveats on land, among other things.

Traditionally, conveyancing in the case of land transfers is accomplished via the physical exchange of documents and cheques between the relevant parties prior to the physical lodgement of the necessary documentation with the State Revenue Office and the offices of Land Victoria, both located in Melbourne. This requires the relevant parties (or their

agents) to be physically present in the same place at the same time. It also requires the physical lodgement of documents in Melbourne. This generally imposes significant additional costs on the parties particularly if one or more of them is from rural Victoria.

National electronic conveyancing

National electronic conveyancing is intended to enable legal practitioners, conveyancers and financial institutions to use electronic online processes to:

prepare electronic instruments creating, transferring and removing estates and interests in land;

settle financial transactions including payment of disbursements including lodging fees and duty; and

electronically lodge instruments with Land Victoria.

The benefits of electronic conveyancing

Electronic conveyancing offers considerable benefits to parties involved in land transactions as it removes the need to physically exchange and lodge documents and cheques thus saving on expenses such as travel time and bank cheques. An independent study estimated that if electronic conveyancing was implemented across Australia, the total savings would be approximately $220 million annually. As Victorian property transactions represent about 27 per cent of transactions anticipated to be conveyed electronically, the annual benefits to banks, solicitors, conveyancers, purchasers, vendors and the state of Victoria are expected to be in the order of $60 million to $70 million.

It is estimated that national electronic conveyancing will offer an average saving of $380 for a typical four-party property transfer settlement, with these savings comprising $60 for each party's bank, plus $130 saving for each vendor and purchaser representative per settlement, broken down as follows:

$42 for paying a settlement agent to attend settlement;

$18 for removal of need for extra bank cheques;

$14 for a courier to collect and deliver documentation; and

$56 in time spent having to organise settlement.

For many years, Land Victoria has been working on making it possible to perform most of the conveyancing process electronically online. Amendments to the Transfer of Land Act 1958 were made in 2004 to facilitate electronic conveyancing and the existing Victorian electronic conveyancing system became available for use in 2007. Since 2007, approximately 16 100 conveyancing transactions have been made electronically using the Victorian electronic conveyancing system, the majority being caveats.

A Council of Australian Governments (COAG) initiative

In 2008 COAG endorsed creating a uniform, Australia-wide regulatory approach to electronic conveyancing. Subsequently, all Australian states and territories except the Australian Capital Territory signed an intergovernmental agreement for uniform legislation regulating electronic conveyancing. Under this agreement, each jurisdiction will enact legislation applying a model law (either via an application bill or via corresponding legislation) to regulate electronic conveyancing. The Australian Registrars National Electronic Conveyancing Council, consisting of the registrar of titles (or equivalent office-holder) from each jurisdiction, has been established to oversee national electronic conveyancing.

The model law

The advantage of each jurisdiction applying a model law to regulate electronic conveyancing is that it will ensure the relevant processes will be largely the same across them all. This will enable the same information technology system to be used for electronic conveyancing across Australia. Users of the electronic conveyancing system will only need to be trained in the use of one system. For example, a conveyancing firm that serves clients in both Victoria and New South Wales could use the same IT system to perform conveyancing transactions in both states. Similarly, financial institutions could adopt uniform Australia-wide practices for their role in the conveyancing process as their staff in each state could use the same system. This uniformity of approach offers conveyancers, law firms and financial institutions that operate nationally significant cost savings.

The model law will be enacted by New South Wales first and the appropriate legislation has already been introduced into the New South Wales Parliament. Over the next year or so, it is anticipated that each of the other jurisdictions will enact legislation to apply the model law either directly or via corresponding legislation.

Features of the model law

The model law that NSW will enact enables the registrar of titles (or equivalent office-holder) in each jurisdiction to authorise the operation of an electronic lodgement network and provides for the making of rules relating to the operation of that network (operating requirements) and participation rules for its use by subscribers. Under the model law the registrar of titles is empowered to process electronic registry instruments and other electronic documents received via an electronic lodgement network and to register electronic registry instruments, with the same effect as lodging and registering paper instruments under the jurisdiction's Torrens legislation.

The model law also provides for the digital signing of electronic documents by subscribers to the electronic lodgement network either in their own right or on behalf of clients. By entering into an approved form of client authorisation, a transacting party may authorise a subscriber to digitally sign electronic registry instruments and other electronic documents on that transacting party's behalf, lodge electronic registry instruments and other electronic documents with the relevant land registry, and authorise any financial settlement involved in the transaction.

In order for the various parties to a conveyancing transaction to be able to rely on a digital signature the model law contains an attribution rule. This rule provides that a subscriber is taken to have signed an electronic document unless the subscriber can prove that the digital signature was not created by the subscriber or one of its employees, agents, officers or contractors acting on its express or implied authority. Additionally, the subscriber would need to prove that the creation of the digital signature did not occur as a result of it breaching the participation rules or being negligent. This does not prevent a subscriber from unsigning — that is, removing — their digital signature prior to settlement and lodgement of a transaction.

The model law also provides that an appeal can be brought against specified decisions of the registrar. The model law also empowers the registrar, or his or her delegate, to conduct a compliance examination of electronic lodgement network operators and subscribers to ensure compliance with the operating requirements and participation rules respectively.

As a national applied law scheme, the model law also contains an extensive interpretation schedule to ensure that its provisions are interpreted consistently across the Australian jurisdictions applying the law.

The national electronic conveyancing system will also enable the financial settlement of electronic conveyancing transactions. However, this aspect of the operation of the system is not provided for in the model law as it is subject to existing regulatory oversight by the Reserve Bank and/or by the Australian Securities and Investments Commission.

In order to maintain consistency, a single set of operating requirements and participation rules for electronic conveyancing is being developed by the Australian Registrars National Electronic Conveyancing Council for use in all jurisdictions.

I wish to reiterate that the model law is only concerned with regulating the mechanism by which electronic conveyancing will be accomplished. The model law will not alter the fundamental structure of the land title system in Victoria. It does not alter the principles of the Torrens system of land administration as applied in Victoria.

The model law was drafted in consultation with officials from each state and territory. There was also extensive consultation with relevant stakeholders (including conveyancers, the legal profession and financial institutions) in drafting the model law. As part of the consultation processes, a draft of the model law together with a commonwealth consultation regulation impact statement was released for public comment in July 2012 and comments received from stakeholders were considered in determining the content of the final version of the model law.

A national electronic conveyancing system

A private company (known as NECDL — National E-Conveyancing Development Ltd) has been established, which will operate an Australia-wide electronic conveyancing system (to be known as PEXA — Property Exchange Australia). Victoria, New South Wales, Queensland and Western Australia established and were initial investors in NECDL and the four major financial institutions (the ANZ Bank, the Commonwealth Bank, the National Australia Bank and the Westpac Bank), have subsequently invested in the company.

Under the framework for electronic conveyancing, persons and organisations buying or selling a house, or performing another conveyancing transaction such as placing a caveat, will still, as now, engage a conveyancer or law firm to handle the transaction for them. Conveyancers, law firms and financial institutions can subscribe to an electronic conveyancing system and perform electronic conveyancing transactions through the system on behalf of their clients. Dealings and related instruments to register changes in land ownership and interests will be prepared and submitted electronically and disbursements and other duties paid electronically. Once all parties to an electronic conveyancing transaction have undertaken their tasks electronically, the electronic conveyancing system will instigate financial settlement and following that submit for lodgement the necessary documentation in electronic format with the relevant land registry (in the case of Victoria, Land Victoria).

Electronic conveyancing system implementation time line

It is anticipated that PEXA will begin processing electronic conveyancing transactions under the new scheme in Victoria during 2013. PEXA is expected to be processing electronic conveyancing transactions for all other Australian states by the end of 2014. It is expected that PEXA will initially process the lodgement of mortgages and discharges of mortgage. Subsequently, PEXA will begin processing the lodgement and settlement of transfers of land, caveats and withdrawals of caveat in addition to mortgages and discharges of mortgage.

The existing paper-based conveyancing process will continue to be available for use in Victoria after the implementation of this legislation. It is expected that, given the cost and time savings electronic conveyancing offers, the vast majority of conveyancing transactions in Victoria will be processed electronically by 2016. However, those members of the Victorian community who wish to continue using the current paper-based conveyancing process may do so. The retention of paper-based conveyancing means that law firms, conveyancers and financial institutions that do not already use electronic conveyancing can transition to electronic conveyancing at their own pace.

The existing Victorian electronic conveyancing system (known as ECV) will cease operation after PEXA begins processing transfers of land, caveats and withdrawals of caveat. Users of ECV will be able to subscribe to PEXA and use PEXA for electronic conveyancing. The costs to ECV users of migrating from ECV to PEXA are expected to be minor.

Conclusion

In conclusion, the Electronic Conveyancing (Adoption of National Law) Bill 2012 will facilitate a more efficient system for the creation, transfer and removal of estates and interests in land that will benefit Victorians. Electronic processes offer many benefits and it is appropriate that these benefits be available to the numerous Victorians who, each year, are involved in property transactions.

I commend the bill to the house.

Debate adjourned for Mr JENNINGS (South Eastern Metropolitan) on motion of Hon. M. P. Pakula.

Debate adjourned until Thursday, 14 February.

COURTS LEGISLATION AMENDMENT (RESERVE JUDICIAL OFFICERS) BILL 2012

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (the charter act), I make this statement of compatibility with respect to the Courts Legislation Amendment (Reserve Judicial Officers) Bill 2012 (bill).

In my opinion, the bill, as introduced to the Legislative Council, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

The bill will amend the Constitution Act 1975, Supreme Court Act 1986, the County Court Act 1958 and the Magistrates' Court Act 1989 to replace the existing acting judicial officer scheme with a new reserve judicial officer scheme. The bill will also make consequential amendments to other legislation, such as the Judicial Remuneration Tribunal Act 1995 and the Judicial Salaries Act 2004. These amendments are relevant to the right to a fair hearing under section 24 of the charter act.

The amendments abolish 'acting' judicial office and establish a system of reserve judicial office. Reserve judges and magistrates will be former judges and magistrates who are under the age of 75 years, and serving interstate and federal judges and interstate magistrates. Reserve magistrates will be able to serve as coroners and Children's Court magistrates.

Reserve judicial officers will be engaged by the Attorney-General to serve in the courts on a short-term as-needs basis. A reserve judicial officer may only exercise powers when engaged. An engagement cannot be revoked.

Reserve judicial officers may be removed from office only by Parliament on the same grounds as judges and magistrates, and may not undertake business and professional activities during an engagement without the approval of the Attorney-General. Reserve judicial officers receive a salary based on those of judges and magistrates and set by legislation.

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

The bill does not limit the right to a fair hearing. By limiting the candidates to reserve judicial office to retired judges and magistrates or serving interstate and federal judges and interstate magistrates, the bill ensures that persons appointed to reserve judicial office are competent.

By providing reserve judicial officers with remuneration that is set by legislation and the same protections from removal from office as other judicial officers, the bill helps ensure their independence in office.

Similarly, restricting the business and professional activities which can be undertaken by an engaged judicial officer helps ensure the impartiality of reserve judicial officers.

The system of acting judges and magistrates established by the Courts Legislation (Judicial Appointments and Other Amendments) Act 2005 replaced the previous system of reserve judges. The 2005 system has been criticised for diminishing judicial independence, particularly because it allowed practising lawyers to be appointed as acting judges and magistrates. This is because of the risk that they will be perceived to be less impartial than other judicial officers and will be dependent on the favour of the Attorney-General of the day if they hope to be appointed as a tenured judicial officer.

This bill addresses the shortcomings in the 2005 scheme and, in the process, enhances the right to a fair hearing enshrined in section 24(1) of the charter act.

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

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

This bill replaces the offices of acting judge and acting magistrate established by the Courts Legislation (Judicial Appointments and Other Amendments) Act 2005 (2005 act) with the new offices of reserve judge and reserve magistrate.

The offices established under the 2005 act were intended to provide greater flexibility in the appointment of acting judges and magistrates to deal with periods of high demand in Victoria's court system. In particular, the 2005 act was intended to make it easier for short-term judicial appointments to be drawn from the ranks of barristers, solicitors, legal academics and interstate judicial officers, as well as from retired judges and magistrates.

However, the 2005 act had the potential to corrode one of the most important safeguards in the Westminster system,

namely the independence and impartiality of the judiciary. In particular, the eligibility of those other than previously tenured judges for appointment as acting judges gave rise to the perception that they could be influenced to bring down decisions favourable to the government of the day in order to secure reappointment.

Consequently the 2005 act was widely criticised. The Supreme Court in particular took a strong and principled stand on the issue, so that no acting judges were ever appointed to the Supreme Court.

The bill before the house has been developed in consultation with the judiciary. It deals with the shortcomings of the 2005 act by ensuring that, in future, only persons who have already held a judicial commission can be appointed to a temporary judicial office in this state.

The bill allows the Governor in Council to appoint a retired judge or magistrate as a reserve judicial officer, but only to the court of which the retired judge or magistrate was a member prior to retirement. The Governor in Council can also appoint serving or retired interstate judges and magistrates as reserve judicial officers to courts of equivalent jurisdiction.

Appointments are for five years or until the reserve judicial officer reaches 75 years of age. Reserve judicial officers can only be removed from office by Parliament, in the same way and on the same grounds as tenured judges and magistrates.

The Attorney-General will engage a reserve judicial officer by giving notice in writing. Depending on the operational needs of the court, reserve judicial officers will undertake their duties on either a full-time or on a sessional basis for the period of time specified in the notice. These notices cannot be revoked or amended.

This bill is an important step in restoring an independent and impartial judiciary as one of the most important safeguards in the Westminster system.

I commend the bill to the house.

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

Debate adjourned until Thursday, 14 February.

CRIMES AMENDMENT (GROSS VIOLENCE OFFENCES) BILL 2012

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

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

In my opinion, the Crimes Amendment (Gross Violence Offences) Bill 2012, as introduced to the Legislative Council, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The main purposes of the bill are to amend the Crimes Act 1958 (Crimes Act) and Sentencing Act 1991 (Sentencing Act) to introduce statutory minimum sentences of imprisonment for gross violence offences, and to revise the definitions of injury and serious injury under the Crimes Act.

Human rights issues

Statutory minimum sentences

Clause 4 of the bill amends the Crimes Act to create two new indictable offences: causing serious injury intentionally in a circumstance of gross violence; and causing serious injury recklessly in a circumstance of gross violence. The bill provides that a circumstance of gross violence exists if the offender:

> plans in advance to engage in an attack either intending to cause serious injury, or otherwise in the circumstances set out in proposed section 15A(2)(a);
>
> causes serious injury in company with two or more other persons;
>
> causes serious injury through participating in a joint criminal enterprise with two or more other persons;
>
> plans to, and uses, an offensive weapon, imitation firearm or firearm to inflict serious injury; or
>
> continues to injure, or causes serious injury to, an incapacitated person.

Clause 9 of the bill amends the Sentencing Act to impose a statutory minimum sentence of imprisonment for the offences of intentionally or recklessly causing serious injury when committed in a circumstance of gross violence. The provision compels a sentencing court to impose a minimum four-year non-parole period. Section 11(3) of the Sentencing Act, which requires a non-parole period fixed by a court to be at least six months less than the term of a sentence, will apply to both offences created by the bill.

Clause 9 also inserts a new section 10A into the Sentencing Act, which outlines an exhaustive list of special reasons for which a judge may depart from the statutory minimum sentence. The special reasons are:

> the offender has, or has undertaken to, provide assistance to the police or the Crown;

the offender was aged between 18 and 20 at the time of the offence and, due to a psychosocial immaturity, has a substantially diminished ability to regulate their behaviour;

the court imposes a hospital security order, or residential treatment order; or

the offender has impaired mental functioning.

In addition, proposed section 10A also permits a court to depart from the statutory minimum sentence if it finds there are 'substantial and compelling circumstances to justify doing so'. In considering such substantial and compelling circumstances, the court must have regard to the intention of Parliament that the statutory minimum sentence is the sentence that should ordinarily apply to the offence, and whether the cumulative impact of the circumstances of the case justify departure from the statutory minimum.

In my view, these amendments are an appropriate response to the community's concerns about the level and impact of violent crime in Victoria. The bill does not limit human rights protected under the charter act because the provisions are strictly limited and directed at high-level offending, and they retain the court's discretion to depart from the statutory minimum where appropriate.

I have considered the following human rights issues raised by the bill:

Protection from cruel, inhuman or degrading punishment (section 10) and right to liberty (section 21)

Section 10 of the charter act relevantly provides that a person must not be punished in a cruel, inhuman or degrading way. Section 21 of the charter act relevantly provides that a person must not be deprived of his or her liberty except on grounds, and in accordance with procedures, established by law.

In my opinion, the statutory minimum sentences introduced by the bill do not limit the protection from cruel, inhuman or degrading punishment, as they do not compel the imposition of a grossly disproportionate sentence.

Statutory minimum sentences are directed at seriously violent assaults involving a high level of harm and culpability. The factors which constitute a 'circumstance of gross violence' are exhaustively listed and focus on the mindset of the offender and their level of premeditation or malicious intent prior to or during the offending. This bill's revision of the definitions of 'injury' and 'serious injury' also limit the application of the statutory minimum sentences to offences which result in severe injuries that are life-threatening or substantial and protracted. Their application is therefore strictly limited and directed to offences at the higher end of the range of wrongdoing.

Moreover, the bill acknowledges the possibility that, in certain cases, there may be factors present which lessen the culpability of an offender, such that they should not be subject to the statutory minimum sentence. In this regard, the bill safeguards against the imposition of a disproportionate sentence by allowing a court to depart from the statutory minimum if it finds that the personal characteristics of the offender and/or the circumstances of the case justify doing so. Once a court finds a special reason, it has full discretion and may impose any sentence it considers appropriate.

For these same reasons, I consider that the bill does not limit section 21 of the charter act, because it does not compel — and indeed, contains safeguards that protect against — the imposition of a sentence of imprisonment that is inappropriate, unjust or disproportionate.

Right to a fair trial (section 24)

Section 24 of the charter act relevantly provides that a person charged with an offence has the right to have the charge decided by an independent and impartial court after a fair hearing.

While the bill prescribes the minimum sentence for the offences of intentionally or recklessly causing serious injury in a circumstance of gross violence, the court has discretion to impose any sentence within the parameters of the minimum and maximum sentences.

Furthermore, as outlined above, the bill's special reasons provisions allow the courts to take account of factors that reduce an offender's culpability to such a degree that the offender should not be subject to the statutory minimum sentence. I also note that the High Court has consistently held that provisions imposing mandatory minimum sentences, which this bill does not do given the special reasons provisions, do not constitute a usurpation of judicial power and, as such, are not constitutionally objectionable.

For these reasons, I consider that the bill does not limit section 24 of the charter act.

Burden of proof for special reasons

Proposed section 10A of the Sentencing Act, which outlines an exhaustive list of special reasons for which a judge may depart from the statutory minimum sentence, imposes a legal burden of proof in respect of the special reasons which apply to offenders with impaired mental functioning, and offenders who are aged between 18 and 20 years of age and who possess a diminished ability to regulate their conduct in comparison with the norm for persons their age.

In my opinion, these provisions do not limit the right to a fair trial under section 24 of the charter act. The matters to be proved by an offender who seeks to rely on either special reasons provision are matters which the offender is in the best position to prove. Conversely, it would be difficult and onerous for the Crown to investigate and disprove these matters beyond reasonable doubt. Furthermore, the legal burden imposed by each provision is comparable to the burden of proof which offenders must meet when seeking to prove mitigating circumstances and, from a practical perspective, they relate to matters which would be raised during the normal course of sentencing submissions for offences under the Crimes Act.

Conclusion

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

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

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

The government committed prior to the election to introduce statutory minimum sentences for offenders who intentionally or recklessly cause serious injury in circumstances of gross violence, and this bill delivers that commitment.

For too long, the law has not done enough to protect innocent Victorians from being victims of horrific, unprovoked attacks that leave terrible lifelong injuries. A young man leaving a football game is king-hit from behind without warning and then kicked in the head repeatedly, suffering permanent brain damage. A student innocently walking home through a railway underpass is bashed by a gang until unconscious, and then left for dead. A promising footballer is choked unconscious in a fast food restaurant before being flung face first to the ground.

Vicious kicking or stomping on the heads of victims has become commonplace, as has the deliberate carrying and use of knives to inflict terrible wounds. These attacks go way beyond spontaneous street brawls. They are part of a culture of extreme violence that threatens to shatter the generally law-abiding and peaceful way of life we have been fortunate to enjoy in Victoria.

This bill sends a clear message that violent attacks such as these will not be tolerated. It will ensure that adult offenders who inflict gross violence will go to jail and will stay in jail for at least four years, unless the court decides that a genuinely special reason applies.

In undertaking this reform, the government sought advice from the Sentencing Advisory Council as to how the reform should best be implemented. The council provided this advice in its report *Statutory Minimum Sentences for Gross Violence Offences*. The government has carefully considered the council's advice and has adopted many of the council's recommendations. On behalf of the government, I thank the council for its thorough and carefully considered work.

The bill creates two new indictable offences in the Crimes Act 1958 of intentionally or recklessly causing serious injury in circumstances of gross violence. In doing so, the bill also gives effect to reforms to the definitions of 'injury' and 'serious injury', not only for the new gross violence offences, but also for all other relevant offences in the Crimes Act.

New gross violence offences

The new gross violence offences are intended to capture a subset of the serious injury offences cases, namely those that involve a particularly high level of harm and culpability. In addition to the usual elements of causing serious injury offences, the prosecution must prove that the offence occurred in one of the listed circumstances of gross violence.

At trial, if the jury is not satisfied that the offence is one of gross violence, it may instead find the accused person guilty of an existing offence of intentionally or recklessly causing serious injury, which does not carry a statutory minimum sentence.

The maximum penalty for each of the new offences mirrors the existing maximum penalties for intentionally or recklessly causing serious injury. Intentionally inflicting gross violence will attract a maximum penalty of 20 years imprisonment, and recklessly inflicting gross violence will attract a maximum penalty of 15 years imprisonment. This ensures the new offences fit within the penalty hierarchy in the Crimes Act, and recognises that there will be some instances of causing serious injury outside of the specified gross violence offences that warrant a similar level of sentence. It is intended that the usual sentencing principles relating to inchoate offences, such as attempt or conspiracy, will continue to apply.

Adult offenders found guilty of either the intentional or reckless gross violence offence will be liable to a term of imprisonment with a non-parole period of at least four years. The difference in gravity between the intentional and reckless offences is reflected in the fact that the court can impose a sentence for the intentional offence with reference to a higher maximum penalty.

New definitions of 'injury' and 'serious injury'

The bill introduces new definitions of 'injury' and 'serious injury' into the Crimes Act to replace the existing definitions in section 15. These definitions will apply to the new gross violence offences and to all other non-fatal offences against the person in the Crimes Act. The definitions derive from work on possible reforms to fatal and non-fatal offences that the Department of Justice has been undertaking for some time.

The Crimes Act currently defines 'serious injury' as including a combination of injuries. This lack of detail has resulted in a very low threshold for offences involving serious injury. The new definition of 'serious injury' will be an injury that endangers life or that is substantial and protracted. The injury need not be permanent to be considered 'serious'. However, it must be more serious than the combination of two relatively minor injuries, such as limited abrasions or bruising, as may currently constitute a serious injury. A broken jaw or a broken leg would constitute a 'serious injury' under the new definition, but two black eyes would not.

Due to the low threshold for the existing serious injury definition, the Sentencing Advisory Council recommended that the new gross violence offences be based on a new definition of 'severe injury', which should be defined as 'long-term serious impairment or loss of a body function, long-term serious disfigurement or loss of a foetus'. The bill does not adopt this approach. In the interests of clarity and simplicity, the bill introduces a single new definition of 'serious injury' which will apply to all non-fatal offences in the Crimes Act. This will avoid multiple overlapping definitions of 'severe injury', 'serious injury' and 'injury'.

Overlapping definitions would make it more difficult for judges to sentence for serious injury offences. Causing serious injury intentionally is punishable by a maximum penalty that is 10 years higher than for causing an injury intentionally. Significant differences in penalty should reflect significant

differences in offences. The definitional changes in this bill will mean that serious injury offences will focus on the more serious end of the spectrum of injuries, reflecting the gravity of the offences and the penalties which apply to those offences.

The current low threshold for serious injury has meant that cases which should be charged as causing injury and heard and determined in the Magistrates Court are instead charged as causing serious injury and heard in the County Court. This creates delay for victims and accused and places unnecessary pressure on the County Court. Providing a new definition of 'serious injury' will clarify the law and enable judges to give much clearer guidance to juries about what constitutes a serious injury. The higher threshold for serious injury will also make it easier for prosecutors to determine the appropriate offence to charge.

The bill will also introduce a new definition of 'injury' to clarify the current definition in section 15 of the Crimes Act. 'Injury' currently includes unconsciousness, hysteria, pain and any substantial impairment of bodily function. The substance of this definition will be retained. However, the definition will be clarified and updated.

'Injury' will be defined as 'physical injury or harm to mental health'. 'Physical injury' will include all physical injuries that are currently included in the definition. However, the definition will make it clear that disfigurement, infection with a disease, substantial pain and any impairment of bodily function may constitute a physical injury. The expression 'harm to mental health' will replace the outdated and limiting reference to 'hysteria' in the definition of 'injury'. The bill defines 'harm to mental health' as 'psychological harm'. This would include psychological disorders such as post-traumatic stress disorder or depression. Reactions such as distress, grief, fear and anger will only constitute harm to mental health if they amount to a psychological disorder. This will reflect the current position under the Crimes Act.

Circumstances of gross violence

The bill lists the circumstances that will be considered circumstances of gross violence for the purposes of the new offences. The prosecution only needs to prove one of these circumstances.

The first circumstance is where the offender has planned in advance to engage in conduct and at the time of planning had, or can be considered to have had, a particular state of mind. This circumstance is intended to capture situations where an offender has planned to beat or threaten someone with violence, and at the time he or she formulated that plan, he or she intended or was reckless about causing serious injury. The circumstance is also intended to capture scenarios where, at the time of planning, a reasonable person would have foreseen the conduct would be likely to result in a serious injury.

The idea of planning in advance is intended to capture premeditation or preplanning, rather than intent formulated only moments in advance of the offending behaviour. It is not intended to capture someone who is pushed in a pub and then turns around and decides to king-hit the other person. That person can be charged with intentionally or recklessly causing serious injury. However, it is intended that planning in advance will capture, for example, someone who is pushed in a nightclub, goes home and decides to retaliate by attacking the other person, and then returns to the nightclub and causes serious injury.

The second and third circumstances of gross violence target group behaviour. Where an offender causes serious injury to a victim in company with two other persons, this will be considered gross violence.

It will also be considered a circumstance of gross violence where an offender causes serious injury pursuant to a joint criminal enterprise with at least two additional persons. This is a different approach from that recommended by the council in its report. The council suggested that this gross violence circumstance should be limited to scenarios where offenders have acted in concert to cause serious injury. At that time, the generally accepted legal principles were that for acting in concert to be established the accused had to have been present when the offence was committed, while for joint criminal enterprise proof of participation was sufficient.

However, the High Court has recently held that acting in concert and joint criminal enterprise are the same form of liability. The implication of this decision is that the prosecution must focus on proving participation in the enterprise rather than presence at the time of the offence. The bill adopts the language of 'joint criminal enterprise' to allow the interpretation of the gross violence offences to mirror any further developments in the common law.

An offence committed pursuant to a joint criminal enterprise is different from scenarios where an offender is liable as an accessory. However, it can sometimes be difficult to determine on the facts of the case whether a person is liable through his or her participation in a joint criminal enterprise or liable because he or she has counselled or procured the offence. In such cases, it will be a matter for the Director of Public Prosecutions to determine on which basis the alleged offender is indicted having regard to the available evidence.

The bill also specifies that a person may be found guilty of a gross violence offence whether or not any other person is prosecuted for or found guilty of the offence. Common-law principles regarding inconsistent verdicts will apply to ensure that injustice does not occur.

The fourth circumstance targets offenders who have planned in advance to have with him or her and use a weapon, and then in fact used that weapon to cause serious injury to a victim. As I have mentioned, the idea of planning in advance is intended to capture premeditation or preplanning, not near-spontaneous action.

The offender's plan to have and use a weapon does not need to involve planning to cause a serious injury. For example, it may be that an offender has planned to have and use a weapon for self-defence purposes. What is important is that the offender planned to have and use a weapon, and then used a weapon to cause a serious injury.

For clarity and consistency, the bill applies the existing definitions in the Crimes Act of 'firearm', 'imitation firearm' and 'offensive weapon' to this gross violence circumstance.

The fifth and sixth circumstances address situations where serious injuries are caused to incapacitated victims. The bill does not define the term 'incapacitation', but leaves it open to the courts to interpret the term by reference to its ordinary and natural meaning, and on a case-by-case basis. On its ordinary meaning, incapacitation may be interpreted to mean anything

from a person being unconscious to a person being conscious but unable to defend himself or herself.

The bill has been framed in such a way as to avoid debates in court over the precise timing of the serious injury. The bill specifies that a situation where the offender caused serious injury to a person while the person is incapacitated will be considered a circumstance of gross violence. This is intended to cover, for example, cases where the victim is in a wheelchair and has been attacked. The bill also specifies that a situation where the offender has continued to cause injury after the victim is incapacitated will be considered a circumstance of gross violence. In this latter scenario, the offender must still have caused a serious injury to the victim at some stage during the attack.

This circumstance does not depend on proof that the offender knew the victim was incapacitated. Many attacks occur where an offender causes a serious injury causing the victim to become incapacitated, and then with no regard to the victim's state, continues to cause injury to the victim. However, the offender may argue the defence of honest and reasonable mistake of fact.

Statutory minimum sentence for gross violence offences

Offenders found guilty of the new gross violence offences will be sentenced in accordance with new provisions in the Sentencing Act 1991 that require a term of imprisonment with a non-parole period of four years to be imposed, unless a special reason exists.

This requirement does not apply to persons who do no more than aid, abet, counsel or procure a gross violence offence. In addition, as the government has previously indicated, juvenile offenders who are found guilty of committing one of the new gross violence offences will not be subject to a statutory minimum sentence under this bill. These offenders will be sentenced under the options available to the Children's Court, or the general sentencing options available in the Sentencing Act.

It is intended that the statutory sentence will operate together with the usual principles of sentencing as set out in the Sentencing Act and at common law. For example, courts will comply with the requirement in section 11(3) and impose a head sentence of at least six months more than the non-parole period.

When sentencing an offender who has committed multiple offences, including a gross violence offence, the court must ensure the total effective sentence includes a non-parole period of at least four years.

Special reasons provisions

The court must impose a term of imprisonment with a non-parole period of at least four years, unless it finds that a special reason exists. The special reasons provisions provide the courts with scope in limited circumstances to consider factors that either substantially reduce the offender's moral culpability or provide a strong public policy reason for imposing a lesser sentence than the statutory minimum.

The special reasons provisions should not be confused with the test of 'exceptional circumstances' that existed previously for courts to consider when imposing suspended sentences for serious offences. Nor should it be confused with the test for courts considering whether to restore a term of imprisonment held in suspense due to a contravention of the suspended sentence. The special reasons provisions in this bill are limited and specific, and are not intended to be interpreted broadly as occurred with the exceptional circumstances test.

If a special reason exists, the court will have full sentencing discretion and may impose any sentencing order available under the Sentencing Act. However, the gross violence offences will be 'serious offences' for the purposes of the Sentencing Act, and so a suspended sentence will not be an option.

The first special reason is that the offender assisted or made an undertaking to assist the Crown or police, as may already occur pursuant to section 5(2AB) of the Sentencing Act 1991. This addresses situations where there is assistance or an undertaking to assist of such significance as to warrant a substantial discount on the sentence that would otherwise apply and justify a non-parole period below the statutory minimum. In its advice, the council recommended the inclusion of this special reason for public policy reasons. At paragraph 4.64 of its advice, the council stated that:

> the reduction in sentence provided to an offender for assisting can be justified on the grounds that it goes towards the proper administration of justice, and secures the conviction of offenders who might otherwise avoid prosecution.

Where an offender fails to fulfil an undertaking to assist, section 291 of the Criminal Procedure Act 2009 will apply. Section 291 allows the Director of Public Prosecutions to appeal against a person's sentence if that person has failed to fulfil an undertaking. On appeal, the offender will be subject to the statutory minimum sentence.

The second special reason relates to young adult offenders aged 18 to 20 at the time of the offence. If the offender can establish, on the balance of probabilities — which will usually require expert evidence — that he or she has a particular psychosocial immaturity that has resulted in him or her having a substantially diminished ability, in comparison with the norm for persons of that age, to regulate his or her behaviour, the court is not bound by the statutory minimum sentence.

This special reason is different from, and should not be confused with, the dual-track criteria whereby the court can sentence an offender aged 18 to 20 to serve time in youth detention. However, if the second special reason applies, the court will then be able to apply the dual-track criteria to the offender concerned.

Both the third and fourth special reasons relate to the mental health of the offender. Under the special reasons provision in the bill, the courts will retain the ability to impose sentencing orders directed to serious offenders who are so mentally ill or suffer from such a significant intellectual disability that they need to be detained in a residential facility. The court does not have to impose the statutory sentence, if it proposes to make, seeks the relevant assessment or report, and then imposes a hospital security order or residential treatment order.

The bill also recognises that some offenders suffer from impaired mental functioning such that they should not be subject to the statutory sentence. However, impaired mental functioning in itself is not enough to exempt the offender from being liable to the statutory sentence. Special reasons

relating to impaired mental functioning are not intended to allow offenders to avoid a statutory minimum sentence through excuses such as claiming they were depressed at the time of the offence.

Rather, the bill requires the offender to prove on the balance of probabilities that at the time of the offence he or she had impaired mental functioning that was causally linked to the offending and substantially reduced his or her culpability.

Alternatively, offenders must prove that they have a mental impairment at the time of sentencing that would result in them being subject to substantially more than the ordinary burden or risks of imprisonment. These principles are drawn from the common law and mirror the existing considerations that courts take into account when dealing with offenders who have a mental illness.

Impaired mention functioning is defined to include mental illness, intellectual disability, acquired brain injury, autism spectrum disorder or a neurological impairment such as dementia.

More broadly, the bill does not affect the existing provisions with respect to fitness to stand trial and the defence of mental impairment in the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997.

The bill also recognises that there may be rare unforeseen circumstances where it would be clearly outside the intention of the Parliament for the offender to be sentenced to a non-parole period of four years or more. Therefore, the bill provides that a court may depart from the statutory minimum sentence if there are 'substantial and compelling circumstances' to justify doing so.

Before it can conclude that such a departure is justified, the court must have regard to Parliament's intention that the sentence that should ordinarily be imposed for the gross violence offences is a jail sentence with a minimum non-parole period of four years; and must be satisfied that the cumulative impact of the relevant circumstances of the case justify a departure from that intention.

Conclusion

This bill delivers one of the government's key sentencing reforms. In future, offenders who inflict gross violence on their victims can expect to go to jail for at least four years unless there is a genuinely special reason why they should not.

This will better protect the community by putting violent offenders behind bars for longer and sending a clear and strong deterrent message to would-be offenders. The reforms in this bill will help achieve a safer and more law-abiding Victoria.

I commend the bill to the house.

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

Debate adjourned until Thursday, 14 February.

HEALTH SERVICES AMENDMENT (HEALTH PURCHASING VICTORIA) BILL 2012

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

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

In my opinion, the Health Services Amendment (Health Purchasing Victoria) Bill 2012, as introduced to the Legislative Council, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The purpose of the bill is to expand the range of health or related services in relation to which Health Purchasing Victoria (HPV) performs functions and exercises powers to include registered community health centres and 11 women's health services. Among other things, this will enable registered community health centres and the women's health services to access common-use contracts facilitated by Health Purchasing Victoria for the supply of goods and services to them.

Human Rights Issues

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

The bill does not engage any human rights protected by the charter act.

2. Consideration of reasonable limitations — section 7(2)

As the bill does not engage any of the human rights protected by the charter act it is unnecessary to consider the application of section 7(2) of the charter act.

Conclusion

I consider the bill is compatible with the Charter of Human Rights and Responsibilities Act 2006 because it does not raise any human rights issues.

Hon. David Davis, MLC
Minister for Health

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

The purpose of the bill is to amend the Health Services Act 1988 to expand the range of health or related services in relation to which Health Purchasing Victoria performs functions and exercises powers to include registered community health centres and women's health services.

Specifically, the amendment will enable registered community health centres and women's health services to access common use contracts facilitated by Health Purchasing Victoria for the supply of goods and services to them.

I would like first to provide the house with some background to this bill. Health Purchasing Victoria was established in 2001 to improve the collective purchasing power of Victorian public health services and hospitals.

Health Purchasing Victoria is an independent statutory authority that works in partnership with public hospitals, health services and business. It manages over 366 individual contracts over a total of 30 contract categories, with a value of approximately $425 million per annum.

Victoria's public hospitals and health services spend more than $1.6 billion (approximately 14 per cent of total hospital expenditure) each year to procure supplies and consumables.

Health Purchasing Victoria contracts cover only 23 per cent of the total $1.6 billion spent on supplies and consumables so there is certainly the potential for it to expand its program.

In May 2011, the Victorian government released the Victorian Health Priorities Framework 2012–2022, which is the blueprint for Victoria's healthcare system for the coming decade.

The 2011 Victorian Auditor-General report, *Procurement Practices in the Health Sector*, released in October 2011, identified shortcomings and inefficiencies in government health procurement. The report recommended Victoria's health services revise their procurement strategies and practices to ensure they are consistently robust and transparent.

Government has directed the health sector (through Health Purchasing Victoria) to explore and implement a broadened scope of collective procurement arrangements to include a wider range of agencies.

Health Purchasing Victoria's strategic plan 2012–17 focuses on six priority areas:

increase the benefits to Victoria's health sector from collective procurement of goods and services;

achieve economies of scale in equipment procurement;

drive measurable end-to-end supply chain efficiencies;

support procurement and probity practice improvement;

improve the integrity and availability of the information used to drive supply chain decisions; and

build capability and capacity.

Community health centres

Registered community health centres are regulated by division 6 of part 3 of the act. Prior to that division being included in the act in 2008, community health centres were defined to be 'registered funded agencies' and therefore fell within the definition of 'health or related service'. This meant that prior to the amendments in 2008, community health centres could access Health Purchasing Victoria facilitated contracts. As a consequence of the 2008 amendments, however, registered community health centres were no longer included in the definition of 'health or related service'. The consequence of community health centres being omitted from the definition of 'health or related service' in 2008 is that Health Purchasing Victoria is not empowered to exercise any of its functions and powers for the benefit of registered community health centres. Therefore, Health Purchasing Victoria is currently not empowered to grant registered community health centres access to its various contracts.

In Victoria, there are 38 registered community health centres, 22 located in metropolitan Melbourne and 16 located in rural Victoria. They range in size from small, at $2.5 million per annum total revenue (excluding capital), up to the largest, at $40 million per annum.

In 2010–11, registered community health centres received a total of $468 million revenue (excluding capital) from a range of sources including the Department of Health, the Department of Human Services, other state government departments, the commonwealth, and client fees.

The bill amends the definition of health or related service in section 3(1) of the Health Services Act 1988 to include registered community health centres and 11 specified women's health services. The amendment will enable registered community health centres and 11 specified women's health services to procure from Health Purchasing Victoria contracts on an opt-in basis. The ability to access HPV contracts under this amendment to the act will also provide registered community health centres and women's health services the opportunity to access Health Purchasing Victoria-facilitated services and receive advice, staff training and consultancy services. Registered community health centres and women's health services will not be bound to comply with policies and directions issued by Health Purchasing Victoria under the Health Services Act 1988. Health Purchasing Victoria is only empowered to require 'public hospitals' to comply with its policies and directions.

Women's health services

There are 11 women's health services which are included in the definition of health or related service by reference to the new schedule 6. The schedule lists each of these services.

Like registered community health centres, they do not fall within the definition of 'health or related service' under the act.

The bill amends the Health Services Act 1988 to empower HPV in respect of the 11 women's health services, in the same way Health Purchasing Victoria is currently empowered in respect of 'health or related services' other than 'public hospitals'. Like registered community health centres, the 11 women's health services will be able to access Health Purchasing Victoria-facilitated contracts with suppliers, receive advice, staff training and consultancy services et cetera, rather than be bound to comply with policies and directions issued by Health Purchasing Victoria under the Health Services Act 1988.

I commend the bill to the house.

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

Debate adjourned until Thursday, 14 February.

ADJOURNMENT

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

That the house do now adjourn.

Water: Korumburra supply

Mr LENDERS (Southern Metropolitan) — The matter I raise on the adjournment tonight is for the attention of the Deputy Premier. It relates to the town of Korumburra in his electorate, which has gone onto stage 1 water restrictions. I am deliberately raising this matter regarding water with the Deputy Premier in his capacity as the Minister for Regional and Rural Development, rather than the Minister for Water.

If you go through the history of Korumburra and its water shortage, you will see the South Gippsland Water corporation, which covers much of South Gippsland, has in its water plan a $21 million request for infrastructure to link South Gippsland Water to the desalination plant. This request is in that plan to ensure that Korumburra and a series of towns in the South Gippsland Water area have security of water supply. This is a critical issue for these towns. Korumburra is not just a town of 4000 people but is also a town with a lot of industry, and it has a very erratic and unreliable water supply system, primarily because the catchments in the area are quite small. Therefore while many other places can rely on their catchments for water, Korumburra cannot.

When the desalination plant was built, an arrangement made at the outset was that West Gippsland Water, South Gippsland Water, Westernport Water and Melbourne Water would have access to the desalination plant to give security of water supply. What we are now seeing is that Korumburra has gone onto stage 1 water restrictions. Looking at water plan 3, we can see that South Gippsland Water has in its plan a provision for a pipe to connect it to the desalination plant. We know that for the capital works to be done, the matter would need to cross the desk of the Minister for Water. We also know of the rational thought processes of the Minister for Water, who has said one of his key performance indicators is to never order water from the desalination plant.

I am seeking the intervention of the Deputy Premier in his capacity as Minister for Regional and Rural Development and as the member for Gippsland South in the Assembly to take over the processing of any application for a $21 million pipe from the desalination plant to Korumburra or the other towns serviced by South Gippsland Water to ensure that there is a decent governance process, a fair process of assessment and that the decision making is not cloaked in the raw politics of a minister who wishes to avoid using the desalination plant. I ask the Minister for Regional and Rural Development to step in — —

Hon. G. K. Rich-Phillips — On a point of order, Acting President, Mr Lenders has raised a matter for the attention of the Deputy Premier. Throughout the course of Mr Lenders's contribution he has made it very clear that the matter he seeks to raise is within the portfolio responsibility of the Minister for Water, with respect to the connection of Korumburra to the desalination plant. Members are entitled to raise matters for ministers when those matters relate to a minister's portfolio responsibilities. Mr Lenders has made it quite clear that this matter relates to the portfolio responsibilities of the Minister for Water, and I suggest that it is inappropriate and out of order for Mr Lenders to raise it for the attention of the Deputy Premier.

Mr LENDERS — Firstly, the clock did not stop when the minister raised his point of order. On the point of order, Acting President, as I said in my introductory remarks, I have no confidence in the rational ability of this minister. Therefore I have asked the Minister for Regional and Rural Development, who has a $1 billion Regional Development Fund, to intervene to ensure that this decision is taken on its merit. The matter I have raised is that I have asked for the Minister for Regional and Rural Development to intervene in this particular infrastructure project.

Hon. G. K. Rich-Phillips — Further on the point of order, Acting President, the issue of Mr Lenders's confidence in a minister or lack thereof is not relevant to whether Mr Lenders can direct a matter to the Deputy Premier. The matter clearly falls within the portfolio of the Minister for Water. If Mr Lenders

wishes to raise this matter, it should be to that minister and not to an alternative minister.

Mr LENDERS — Further on the point of order, Acting President, when the President and numerous acting presidents have been in the chair, I have on many occasions raised matters for the attention of the Premier when I have not had confidence that an individual minister will take the matter seriously. The President has not ruled me out. I could use as an example a time when the Leader of the Government in this house has not responded to a matter I have raised. I have probably raised half a dozen matters for the Premier when, on my judgement, I have not had confidence in an individual minister. I think it is hardly a radical precedent to raise this matter with the Deputy Premier in his capacity as Minister for Regional and Rural Development.

Mrs Peulich — On the point of order, Acting President, the reason this matter should be ruled out of order is precisely on the grounds of the latest comments made by Mr Lenders. He mentioned that on previous occasions other measures were taken before he raised a matter for the attention of the Premier because he was concerned about the management of business and ministerial responsibility rather than management of the portfolio. In this instance Mr Lenders has not followed the same route. He cannot just pick and choose with whom he raises matters of ministerial responsibility, and I suggest you rule the matter out of order.

Hon. M. P. Pakula — Further on the point of order, Acting President, members of this government have consistently made the point that Mr Ryan, as Minister for Regional and Rural Development, has a broad brief in regard to matters in regional Victoria. It could be argued that almost everything that Mr Ryan does as Minister for Regional and Rural Development could fall within the purview of another minister, whether it be development, transport or any other kind of infrastructure. I put it to you, Acting President, that if the matter is in regional Victoria, then it is quite appropriate for a member to refer the construction of an infrastructure project in regional Victoria to the Minister for Regional and Rural Development. If not, my question is: what is the Minister for Regional and Rural Development responsible for? Where do his responsibilities begin and end?

The ACTING PRESIDENT (**Ms Crozier**) — Order! I thank members who have contributed to the issue raised. I take on the point that the substance of the adjournment matter raised by Mr Lenders is a responsibility of the Minister for Water. I will leave it up to the minister responsible to see whether he will pass it on to the minister who is responsible for water, Minister Walsh, or to the Minister for Regional and Rural Development. Mr Lenders, to continue. He has 25 seconds remaining.

Mr LENDERS — In conclusion, seeing that the matter is being referred to the Minister for Water, the action I seek from the Minister for Water is that he act rationally, consider the issue on its merits and not let the matter be prejudiced by the key performance indicators he personally announced to Department of Sustainability and Environment staff to never turn on the desalination plant.

Building industry: dispute resolution

Mr BARBER (Northern Metropolitan) — My matter is for the attention of the Minister for Planning, Mr Guy, and relates to his responsibilities for the regulation of the building industry, which he understands very well. A man named Abid Rahman contacted my office in the last couple of weeks after many months of patient attempts to resolve a serious building issue. He advised me that after following the appropriate complaints resolution process in good faith — initiated with Consumer Affairs Victoria but then moved on to the areas under Mr Guy's purview — his matter has now been sitting with the Building Commission since 10 December 2012, as well as with the Building Practitioners Board.

Before those referrals, he spent at least six months trying to resolve the issue himself and another six months going through the complaints and dispute resolution processes. He personally has some significant health issues, and there are various other circumstances, not to mention the cost of sitting on a mortgage on a house that he cannot actually occupy, so the last thing he needs is more delay. The issue is causing a lot of hardship for him. He has a family and difficulties with his rental accommodation. I would like to know whether the minister will intervene as part of his overall program of reforming these building regulation bodies to ensure that this matter is expedited. It seems to have been outstanding for a very long period of time, even by the standards of these bodies, which we all know have acted in a way that is totally inadequate over the last decade.

Dairy industry: government support

Mr RAMSAY (Western Victoria) — It is going to be very clear what my matter is about and to whom it is directed — namely, the Minister for Agriculture and Food Security, the Honourable Peter Walsh. There is no doubt that many industries and small businesses, particularly those whose main business is in exports,

are impacted upon by both global and domestic factors, whether it be the high Australian dollar or the impact of input costs, with energy costs, for which the carbon tax is largely responsible.

The dairy industry is particularly vulnerable to these pressures, and with the impact of the high dollar, high input costs and the low farmgate price for milk, many in the industry are facing significant challenges. These challenges are further exasperated by the equity in their businesses, both in land and cows, eroding over time. This was made clear two weeks ago at a meeting of 600 people at Noorat in my electorate of Western Victoria Region and at another meeting with dairy farmers at Terang, attended by Minister Walsh, Dr Napthine, the Minister for Ports, my parliamentary colleagues David Koch and David O'Brien and me.

The dairy industry is not alone in facing low prices for its produce and high input costs, but, as the minister confirmed it is an essential industry not only producing food for the nation, but also financial prosperity for the state, with about $8 billion generated for the Victorian economy. The concern I have is that we have an industry that is important to Victoria seeking help, but it is one which is vulnerable to the antics of groups like Katter's Australia Party which make promises and popularist noises and give hope but cannot deliver.

Many of the issues facing the dairy industry are out of the control of governments, even where they might assist, but Minister Walsh has already indicated the government will speak to financiers to confirm the government's commitment to the industry. I have been advised that Senator Barnaby Joyce and the federal Minister for Agriculture, Fisheries and Forestry, Joe Ludwig, will be meeting dairy farmers in the south-west over the next few weeks to discuss a range of trade issues. I seek advice and confirmation from the minister as to whether he will be able to engage with the federal minister to discuss how a bipartisan government approach can support this very important rural industry.

School Focused Youth Service: future

Ms MIKAKOS (Northern Metropolitan) — My matter this evening is for the Minister for Education. I am extremely concerned that the Baillieu government has decided to abolish the School Focused Youth Service at the end of this financial year. In particular I am concerned about the impact this may have on vulnerable children and young people. During adolescence young people go through a multitude of changes, and while most transition through this period well, there are a number of factors that could lead to a young person being vulnerable and at risk of disengaging with education or experiencing homelessness, substance abuse or even suicide.

I understand that this important service was established by the Kennett government back in 1997 in response to a recommendation of the Suicide Prevention Task Force, and it is currently funded by the Department of Education and Early Childhood Development to work across government and also Catholic and independent schools. In 2010–11 nearly 50 000 children participated in projects brokered by this program.

The Baillieu government has confirmed that the service will cease at the end of June this year, even though a consultant's report it commissioned said such a move would be premature. I have a number of providers of this program in my electorate, including Berry Street Victoria, Merri Community Health Services, Nillumbik Community Health Service, Kildonan UnitingCare and Dianella Community Health.

I note that in its youth statement entitled *Engage, Involve, Create* the government expressed a vision that all young Victorians experience healthy, active and fulfilling lives have the opportunity to engage in education, employment and training and be involved in their communities. If the government were serious about these sentiments, it would not be moving to scrap this program. I call on the minister to reverse this decision and continue funding this important service. This is just another short-sighted and heartless cut by the Baillieu government, which is ignoring the needs of our young people.

Planning: urban green spaces

Mr O'DONOHUE (Eastern Victoria) — I raise a matter for the attention of the Minister for Planning. The minister has articulated in this place many times his vision for Fishermans Bend and for higher density development in Melbourne's CBD and the broader central city area not just for commercial office space but also for residential accommodation and the creation of new communities within the broader CBD area.

In that context I have been contacted by a constituent, Mr Joost Bakker, regarding some of the work he has done to provide green spaces in urban areas, in particular in the CBD. He has created such green spaces in other cities around Australia. He is currently working on a project in the Melbourne CBD to create a green space on a city rooftop, which could accommodate the growing of food, amongst other things. It is an innovative, exciting possibility that could add to the

livability of the new and growing communities in our CBD and broader central city areas.

The action I seek from the minister is that he meet with Mr Bakker to learn more about his exciting proposals. Given the minister's enthusiasm for urban renewal in and around the Melbourne CBD, it would be an excellent opportunity for him to learn more about this proposal and concept from Mr Bakker.

Western Treatment Plant: employment policy

Hon. M. P. PAKULA (Western Metropolitan) — The matter I raise is for the Minister for Water, and it concerns a protest that is occurring at the Werribee sewage treatment farm, where a group of about 20 tradesmen, who are predominantly unemployed as a result of the slowdown in the construction sector, are protesting against the fact that City West Water and in particular its contractor Briagolong Engineering are employing people on section 457 visas to do what is effectively the work of regulation tradespersons.

As members of this house well know, the concept behind section 457 visas is primarily to allow the introduction of temporary migrant labour where there are particular skill shortages. As Mr Elsbury would well know, in Melbourne's west, and in particular in Werribee, there is certainly no shortage of skilled workers; there is in fact a shortage of jobs and a skills abundance. In such circumstances it is difficult to understand why an organisation such as Briagolong Engineering, which has been contracted by City West Water to do this work, would need to engage section 457 visa workers to do the kinds of jobs that are being carried out at the Werribee sewage treatment farm.

Mr Elsbury interjected.

Hon. M. P. PAKULA — I hear interjections from Mr Elsbury. I am not sure what he is saying — whether he is supporting the use of section 457 visas — but there are a number of local tradespeople who are suffering under the current construction industry slowdown and are desperate for work in that area who could be meaningfully engaged on this project.

I note that the chairman of City West Water is Mr Stockdale, the current federal president of the Liberal Party, former industrial barrister and former state Treasurer, who might have engaged in antiworker practices in the past. I note also that City West Water spokespeople have declined to comment on the protest, saying the water company did not dictate to the contractor who it should employ. If Mr Stockdale will not intervene and City West Water will not intervene, I ask the minister if he could undertake an investigation into why Briagolong Engineering and City West Water are engaging workers in this way rather than making use of the skilled labourers who reside in the western suburbs.

Hospitals: funding

Mr JENNINGS (South Eastern Metropolitan) — My adjournment matter this evening is for the Minister for Health.

Mr Lenders — Where is the minister? He promised to be here every day.

Mr JENNINGS — I look forward to seeing the minister at the earliest opportunity. In fact I looked forward to seeing him during a lengthy debate this afternoon that did not actually transpire. I thought there was going to be ample opportunity for him, me and other members of the chamber to discuss the current maladies that affect the health system in Victoria, the major problems confronted by Victorian patients in getting access to hospital care and the problems experienced by staff within those hospitals in providing the care that is so urgently needed by Victorian patients.

The crisis of care that is evident at the moment has been brewing for quite some time in Victoria. The opposition has on a number of occasions in the last two years drawn attention to the fact that resource allocation to the Victorian hospital system has been reducing at a time when demand continues to grow. The opposition has drawn attention to the $616 million taken out of the health portfolio by the Baillieu government in its forward estimates process in the last two budgets, and opposition members have been drawing to the attention of the Victorian community the consequential deterioration in the performance of our hospitals and their ability to respond to the needs of Victorian patients.

In the last reporting period there were 46 131 people on the elective surgery waiting list in Victoria. That was as at June last year, well and truly prior to what the Victorian government relies on in terms of defending its own position by drawing attention to the reduction of federal funding in the last few months. The crisis was evident in the last reporting period. The contracts that were written under the last Victorian budget should have been shared with the Victorian people, but up until this point in time they have not been shared by the government with the Victorian people.

Pursuant to section 65ZFA of the Health Services Act 1988, I am formally requesting copies of all signed statements of priority and any and all variations of statements of priority for all Victorian health services that have signed these statements for the 2012–13 year. I require these documents to be provided to me as soon as is practicable upon the minister's receipt of this request. I will transmit this letter formally requesting those, and the Minister for Health is obliged to respond to the Assistant Treasurer, who is at the table.

Public transport: Ringwood station precinct

Mr LEANE (Eastern Metropolitan) — My adjournment matter is directed to the Minister for Public Transport and concerns his government's commitment to fund the Ringwood station precinct. I call on the minister to fund the redevelopment of the precinct in the upcoming budget. The government committed to upgrade the station precinct and not just the railway station.

The previous government committed $38 million to complete the Ringwood bus interchange, which is attached to the Ringwood railway station, which would marry up with Eastland where we were going to do similar types of work. Therefore that part of Maroondah Highway through Ringwood would look quite good. To be brutally honest, that part of Ringwood does not look good at all at the moment; it looks very tired.

The action I seek from the minister is that he ensure that the government fulfils its commitment and properly funds the project so that the bus interchange, the railway station and surrounding areas are redeveloped as per the commitment.

Rainbow Riders: funding

Ms TIERNEY (Western Victoria) — My adjournment matter is for the Minister for Community Services and relates to an organisation called Rainbow Riders, which is based in Connewarre in my electorate. Rainbow Riders is a not-for-profit organisation established in 2001 which assists young people, in particular those who live with disadvantage. It was created by Ross and Dee Clancy, who both have a background in youth work.

Rainbow Riders uses the power of the farm environment and horse therapy to enhance the lives of many disadvantaged youth in the Geelong region. Young people attending Rainbow Riders can come from a diverse range of disadvantage, including those with autism spectrum disorder, intellectual disability and a range of mental illnesses, such as depression and anxiety. Currently 80 young people regularly access the services of Rainbow Riders. Through Rainbow Riders young members of our community are given the opportunity to learn about horses in the farm environment in order to improve their physical and emotional wellbeing. Of course that includes benefits of increased self-esteem and confidence, building social skills and stronger family and peer relationships, amongst others.

Recently Rainbow Riders has come under increased financial stress after the death of a major benefactor late last year, as well as the inability to secure grant assistance. This has caused the organisation to close its doors temporarily to reassess the program. This has resulted in an element of despair in the community, with one parent of a child who attends Rainbow Riders being quoted in the local media yesterday as saying:

> I'd have to say of all the therapy programs we looked at for our kids, Rainbow Riders offered the program with the most scope; it is the broadest therapy program I have ever come across, in Sydney before we moved and here in Victoria …
>
> I have nothing but respect for the staff at Rainbow Riders.

It is clear that this organisation is excellent and is highly valued in our community. As recently as this afternoon there have been phone calls to my office indicating that the situation is desperate. The action I require is that the minister urgently meet with representatives of Rainbow Riders to discuss government financial support for this very important organisation.

Responses

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — Mr Lenders raised a matter with respect to security of water supply for the Korumburra community. I am sure the Korumburra community is pleased that after 11 years Mr Lenders is showing an interest in the security of their water supply. Those on this side of the house have every confidence in the Minister for Water and in him discharging his responsibilities under the Water Act 1989 in overseeing the water industry. I will pass that matter on to the Minister for Water.

Mr Barber raised a matter for the Minister for Planning in respect of the minister's oversight of the building industry. He raised the issue of a constituent of his, Mr Rahman, who is having a dispute with a builder he has engaged and seeks ministerial intervention with respect to that matter. I will pass that matter on to the Minister for Planning and request that Mr Barber provide the relevant documentation so that I can pass that on.

Mr Ramsay raised a matter for the Minister for Agriculture and Food Security with respect to the dairy industry, and particularly the dairy industry in the south-west. I know that the minister has been actively engaged with the dairy industry in the south-west of Victoria, as have others, including Mr O'Brien. I will pass that matter on to the minister.

Ms Mikakos raised a matter for the attention of the Minister for Education, and I will pass that on.

Mr O'Donohue raised a matter for the Minister for Planning with respect to the Fishermans Bend development and green spaces. I will pass that on to the Minister for Planning.

Mr Pakula also raised a matter for the Minister for Water with respect to City West Water's activities at the Werribee sewerage farm. I will pass that matter on to the Minister for Water.

Mr Jennings raised a matter for the Minister for Health with respect to statements of priority for health services. I will refer that matter to the Minister for Health.

Mr Leane raised a matter for the Minister for Public Transport with respect to the Ringwood railway station precinct. I will pass that on to the minister.

Ms Tierney raised a matter for the Minister for Community Services with respect to Rainbow Riders. I will pass that matter on to the Minister for Community Services.

I have written adjournment responses to six matters.

The ACTING PRESIDENT (**Ms Crozier**) — The house stands adjourned.

House adjourned 4.54 p.m. until Tuesday, 19 February.