PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SEVENTH PARLIAMENT

FIRST SESSION

Thursday, 13 March 2014

(Extract from book 3)

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By authority of the Victorian Government Printer

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The Honourable ALEX CHERNOV, AC, QC

The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

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(from 22 April 2013)

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

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

Legislative Council standing committees

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

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

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

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

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

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

 # Participating member

Joint committees

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

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

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

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

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

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

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

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

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

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

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

Heads of parliamentary departments

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

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

Parliamentary Services — Secretary: Mr P. Lochert

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FIFTY-SEVENTH PARLIAMENT — FIRST SESSION

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The Hon. P. R. HALL

Deputy Leader of The Nationals:
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Barber, Mr Gregory John	Northern Metropolitan	Greens	Lovell, Hon. Wendy Ann	Northern Victoria	LP
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Coote, Mrs Andrea	Southern Metropolitan	LP	Mikakos, Ms Jenny	Northern Metropolitan	ALP
Crozier, Ms Georgina Mary	Southern Metropolitan	LP	Millar, Mrs Amanda Louise [5]	Northern Victoria	LP
Dalla-Riva, Hon. Richard Alex Gordon	Eastern Metropolitan	LP	O'Brien, Mr David Roland Joseph	Western Victoria	Nats
Darveniza, Ms Kaye Mary	Northern Victoria	ALP	O'Donohue, Mr Edward John	Eastern Victoria	LP
Davis, Hon. David McLean	Southern Metropolitan	LP	Ondarchie, Mr Craig Philip	Northern Metropolitan	LP
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Guy, Hon. Matthew Jason	Northern Metropolitan	LP	Rich-Phillips, Hon. Gordon Kenneth	South Eastern Metropolitan	LP
Hall, Hon. Peter Ronald	Eastern Victoria	Nats	Ronalds, Mr Andrew Mark [6]	Eastern Victoria	LP
Hartland, Ms Colleen Mildred	Western Metropolitan	Greens	Scheffer, Mr Johan Emiel	Eastern Victoria	ALP
Jennings, Mr Gavin Wayne	South Eastern Metropolitan	ALP	Somyurek, Mr Adem	South Eastern Metropolitan	ALP
Koch, Mr David Frank	Western Victoria	LP	Tarlamis, Mr Lee Reginald	South Eastern Metropolitan	ALP
Kronberg, Mrs Janice Susan	Eastern Metropolitan	LP	Tee, Mr Brian Lennox	Eastern Metropolitan	ALP
Leane, Mr Shaun Leo	Eastern Metropolitan	ALP	Tierney, Ms Gayle Anne	Western Victoria	ALP
			Viney, Mr Matthew Shaw	Eastern Victoria	ALP

[1] Resigned 3 February 2014
[2] Resigned 26 March 2013
[3] Appointed 8 May 2013
[4] Resigned 1 July 2013
[5] Appointed 21 August 2013
[6] Appointed 5 February 2014

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THURSDAY, 13 MARCH 2014

Thursday, 13 March 2014

The PRESIDENT (Hon. B. N. Atkinson) took the chair at 9.32 a.m. and read the prayer.

PAPERS

Laid on table by Acting Clerk:

Budget Sector — 2013–14 Mid-Year Financial Report, incorporating Quarterly Financial Report No. 2, for the period ended 31 December 2013.

BUSINESS OF THE HOUSE

Adjournment

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

That the Council, at its rising, adjourn until Tuesday, 25 March 2014.

Motion agreed to.

MEMBERS STATEMENTS

Child protection

Ms MIKAKOS (Northern Metropolitan) — Yesterday the *Herald Sun* revealed the shocking reality that children aged as young as 12 years in our child protection system are being organised into trafficked sex rings for paedophiles. The Minister for Community Services is directly responsible for these children; she is responsible for their welfare and for keeping them safe. It is a disgrace that this is occurring, and her response was a disgrace.

Her comments on ABC Radio yesterday morning that community sector organisations are well equipped to provide residential services 'very effectively' goes against everything the sector is calling for. The Centre for Excellence in Child and Family Welfare issued a media release yesterday calling on the government to immediately increase the level of supervision and support in residential care by ensuring that at least two staff members are on duty at any one time.

These concerns were echoed by Bernie Geary, the principal commissioner with the Commission for Children and Young People, in an article in today's *Herald Sun* in which he said:

If a child doesn't come home, and no-one goes looking for them, that's wrong.

Today's *Herald Sun* also reveals a further litany of abuse of children in child protection, children missing who have absconded, bungled cases and inexcusable delays. The quarterly Department of Human Services document referred to in the *Herald Sun* article states that the department is failing to meet its targets in allocating child protection cases, almost one-third of non-emergency cases of suspected child abuse are going uninvestigated for more than two weeks, junior caseworkers are regularly going without supervision, and almost 15 per cent of child protection workers have quit in the last six months of last year. It also shows that on two occasions criminal checks of kinship carers were not done. The minister needs to acknowledge that the system is in crisis.

Australian Breastfeeding Association

Hon. W. A. LOVELL (Minister for Housing) — I congratulate the Australian Breastfeeding Association (ABA) on its recent 50th anniversary. This is a Victorian success story. Originally known as the Nursing Mothers Association, from its beginning 50 years ago the ABA has transformed from a small resource library and advisory service to being a service that helps more than 80 000 mothers each year. Volunteers are at the centre of this organisation and are the key to its ongoing success in helping women gain the information and support they need at an important time in their lives and the lives of their children.

Matthew Dellavedova

Hon. W. A. LOVELL — It was an honour for me recently to attend the Bendigo Sports Star of the Year awards and present the big award to a worthy winner. Matthew Dellavedova, a 23-year-old National Basketball Association player, took out the title ahead of other Bendigo champions such as Geelong captain Joel Selwood. Matthew was unable to attend the event because he is busy with the Cleveland Cavaliers, but his proud parents accepted the award on his behalf. I congratulate Matthew and all others who were honoured at the awards.

Bayside College

Hon. W. A. LOVELL — Also recently I was thrilled to return to my old high school in Altona East to officially open its revamped campus. As a foundation student of Paisley High School, it was wonderful for me to see the new facilities now available to the senior students at the Paisley campus of Bayside College. The $9.6 million upgrade provides a new library, science labs, a performing arts wing and a student cafe. There is also a special study area for the year 12 students in their vital final year of secondary education. I was pleased to tour the school with campus principal, Milan Matejin,

who was also a foundation student at Paisley. It was also wonderful to have Mr Finn and Mr Elsbury, both members for Western Metropolitan Region, in attendance, as well as Ms Pennicuik, a member for Southern Metropolitan Region, to see the results of this project. My father was the first school council president for Paisley High School, and Ms Pennicuik's father was the second school council president, so it was a very special event.

National Ride2School Day

Ms DARVENIZA (Northern Victoria) — Next Wednesday, 19 March, marks the eighth National Ride2School Day, on which more than 250 000 Australian students will ride, walk, scoot or skate to school, many of them doing it for the first time.

National Ride2School Day is about celebrating active travel within the school day and encouraging those who have not started to give it a go. Riding to school is a great way to get fit and stay healthy, and it contributes to the 60 minutes of daily physical activity that is recommended for all students. Studies have found that students arrive alert, more attentive and ready to learn following a walk, ride or scoot to school.

Physical activity is one of the most important factors in disease prevention in Australia, and over the past 40 years the number of children who are physically active every day has dropped significantly. In the 1970s, 8 out of 10 students rode or walked to school; today the national average is only 2 out of 10. It is hard to believe it has dropped so significantly and to such a level in such a short time. It is always fun to be involved in National Ride2School Day, and I encourage all students to give it a go next week.

Liberal Party

Mr BARBER (Northern Metropolitan) — It is not my job to help out Liberal Party members by giving them political advice, but as we all know the strength of our democracy depends on having a multitude of different parties in a strong contest of ideas, and it seems to me that government members have not been able to develop an original thought in the time they have been in government. The one they are well known for is the east–west toll road, which is a completely unoriginal thought that has been given the raspberry by the vast majority of Victorian voters.

Every time I look at the government benches I see the small-l liberals fading away and being replaced before my very eyes with hardliners. Whether they find themselves in government or in opposition after 29 November, it is incumbent on them to generate some new ideas for the challenges we face. This state has an impending climate change crisis. We have the problems of obesity and modern diseases, and we have a transport system that is grinding to a halt and becoming increasingly expensive. If the Liberals do not get a clue soon, they will leave only the Greens to appeal to the small-l liberal voter.

The PRESIDENT — Order! I am a bit concerned that was a veiled attack on me, being a small-l liberal and obese!

Bay West proposal

Mr FINN (Western Metropolitan) — I am often intrigued by Labor's proposals, but no more so than by Labor's proposal for Bay West, as it calls it, down near Point Wilson. Apart from impacting the local wetlands and the need for major blasting and dredging, the prospect of more traffic in the west is something Labor clearly does not care about. Given Labor's opposition to the east–west link, I have to ask the question: where would all the extra heavy traffic go from Point Wilson? The answer is clear: down the West Gate Freeway. We all know the West Gate Freeway and the West Gate Bridge are already at capacity. As we speak they would still be chock-a-block — —

Hon. D. M. Davis — More trucks in the west!

Mr FINN — More trucks in the west — indeed, Mr Davis. If Labor gets its way, people in the west will have to leave the night before to get to work, and that is not too much of an exaggeration.

Labor has shown yet again that it could not care less about people in Melbourne's west. It might be helpful if some of them actually lived out there and travelled down the West Gate Freeway and across the West Gate Bridge. They may then have some understanding of the difficulties and frustrations that people in the western suburbs face on a daily basis. Labor does not care about Melbourne's west; it is time for the people to return the favour.

Cultural Diversity Week

Mr TARLAMIS (South Eastern Metropolitan) — It gives me great pleasure to speak about the 2014 Cultural Diversity Week, which runs from 15 to 23 March. Victoria boasts a proud multicultural history, and Cultural Diversity Week is a calendar event much loved by all Victorians. As a state we have welcomed diversity in our population — diversity in cultures, backgrounds, languages and religions — and become richer for it.

A snapshot of the region I have the honour of representing would mimic the diversity we see across the whole state. In fact the 2011 Australian census of population and housing reported that Victoria lived up to the maxim of being one of the most culturally diverse populations in the world. Of the 5.35 million Victorians, 26.2 per cent were born overseas, in over 200 countries; 46.8 per cent were either born overseas or had at least one parent who was born overseas; 23.1 per cent spoke one of 260 languages other than English at home; and 3.62 million followed 130 different faiths. Cultural Diversity Week allows us to celebrate this melting pot of cultures, and it allows us to share and participate in our diverse communities.

As part of the festivities we observe Harmony Day on 21 March. This is a day of reflection and cultural respect for all those who call themselves Australians, whether they be the traditional owners of this land or those who have come to these shores to make Australia their home.

Cultural Diversity Week is an annual opportunity for us to reflect on our proud multicultural heritage as well as our commitment to uphold the ideals and everyday practice of respect and inclusion of cultural, linguistic and religious diversity in our society.

Men's health

Mr RAMSAY (Western Victoria) — Two weeks ago I attended a men's health night at Cape Clear in western Victoria. Cape Clear has a population of about 15, but this meeting was attended by over 140 men and 65 women — for a men's health night. This shows the degree of interest and concern in relation to particularly prostate cancer in men. This was a no-holds-barred account of the importance of testing for prostate and colon cancer regularly.

I congratulate Sue and Frank Miller. They were able to tell their stories about Frank, who developed prostate cancer, and the challenges that faced both Sue and Frank through the remedial sessions. This night was a warts-and-all account. Prostate cancer is the most prevalent cancer for men. It is more prevalent than breast cancer, with over 3235 deaths recorded in 2010, but sadly it only receives a quarter of the research dollars of other cancers.

I am reminded of the very brave battle that Donna Bauer, the member for Carrum in the Assembly, is fighting at the moment and of the challenges she is facing. Her simple message to me was that all men and women should make sure they have regular health checks. This is made more clear by the fact that prostate cancer is the leading new cancer diagnosis in Victoria. In 2009 there were over 5609 cases.

Yarraville West Primary School

Mr MELHEM (Western Metropolitan) — Last week I had the opportunity to visit Yarraville West Primary School and meet some of great teachers and amazing kids at the school. Yarraville West Primary School has served the schooling needs of the community for over 110 years. The school has a student population of 730, and the students come from diverse cultural, ethnic and socioeconomic backgrounds.

During my visit I discussed with the students at their assembly National Ride2School Day, which will be held on Wednesday, 19 March. This will mark the eighth National Ride2School Day. Over 250 000 Australian students will ride, walk, scoot or skate to school. This is a great way to get fit and healthy and travel actively to school and in doing so get your recommended daily dose of physical activity. Keeping students active and fit helps them arrive awake, alert and ready to concentrate. I encourage all students, their parents and teachers to take part in Australia's largest celebration of active travel and see how much fun and how easy riding or walking to school can be. At the conclusion of the presentation on National Ride2School Day it was great to see the students actively participating in the discussion. I applaud the enthusiasm and interest they showed during question time. Well done to the kids at Yarraville West Primary School.

Hon. Peter Hall

Mr O'BRIEN (Western Victoria) — On 25 October 1988 a younger but no less energetic Peter Hall entered the Legislative Council as a newly elected member for Gippsland Province and gave his inaugural speech. He is announcing his retirement from Parliament today. This is a great loss to the Parliament. Peter has been of great service not only to The Nationals, whom he has served as minister and leader, but to the coalition and indeed — I think I can speak for all members of this Parliament — as a parliamentarian in the true sense of the word.

It was with great passion that he entered the game of Australian Rules football. He played for Carlton, which is well known. What is not as well known, certainly in the Parliament, is his great success as a champion and premiership coach at Traralgon and then in his last year at Morwell. Peter was also a teacher and educator. In both roles he taught and trained a young Russell Northe, now the member for Morwell in the Assembly,

to become a footballer and a parliamentarian. He has left a great legacy there.

Education is Peter's passion, which is evident from his maiden speech where he said:

> Access to higher education for country students is a real concern … As the National Party spokesman for post-secondary education, I shall be closely monitoring this situation —

and doing what he can. That he has done. I urge members to read the article recently published in the *Age*. I commend Peter Hall on his service and mentorship to all of us. Good luck in his new career and his new life as a skilled accordion player of some note and also as a wood craftsman.

CORRECTIONS AMENDMENT (FURTHER PAROLE REFORM) BILL 2014

Statement of compatibility

Hon. E. J. O'DONOHUE (Minister for Corrections) 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 (Further Parole Reform) Bill 2014 (the bill).

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

Overview of bill

The purposes of the bill are to amend the Corrections Act 1986 (the act) to:

provide a two-tier process for the granting of parole to a prisoner in respect of a sexual offence or serious violent offence;

provide that, subject to certain exceptions, if a prisoner has had his or her parole cancelled and is convicted of an offence while on parole, the adult parole board is not able to make a parole order granting parole to the prisoner again for a particular period of time following cancellation; and

make amendments to certain provisions of the act relating to the procedures of adult parole board (the board) meetings.

Human rights issues

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

The right to liberty, the right to be presumed innocent and the right not to be punished more than once

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

Clause 8 of the bill inserts a new subsection 77(6A) into the act, to provide that if a prisoner is sentenced to another prison sentence while on parole, the prisoner's parole is taken to have been cancelled on the sentence being imposed. New subsection 77(6A) makes clear that a person cannot practically be on parole while imprisoned.

Clauses 7 and 9 of the bill place restrictions on the granting of parole in certain circumstances and as such potentially decrease the likelihood of particular prisoners being granted parole.

Clause 7 of the bill will insert a new section 74AAB into the act, to establish the serious violent offender or sexual offender parole division (the SVOSO division) of the board. An order releasing a prisoner on parole under section 74 of the act in respect of a sexual offence or serious violent offence may only be made by the SVOSO division following a recommendation that parole be granted being made by another division of the board and consideration by the SVOSO division of that recommendation. The SVOSO division may refuse to make an order that a prisoner be released on parole despite receiving a recommendation that this should occur.

Clause 9 of the bill will insert new subsections 78(2) to (4) in the act. New subsections 78(2) and (3) provide that if a prisoner's parole has or is taken to have been cancelled under section 77 of the act, and the prisoner is convicted of an offence punishable by imprisonment that was committed during the parole period, the board must not make a further parole order unless the prisoner has served a further term of imprisonment equal to half of the parole period at the time parole was cancelled or, in the case of a prisoner sentenced to be imprisoned for the term of his or her natural life, three years. New subsection 78(4) provides that the board may make a further parole order before the time referred to in new subsection (3) if satisfied that circumstances exist which justify doing so.

The special considerations and processes for the granting of parole for prisoners imprisoned for sexual offences or serious violent offences under new section 74AAB will be likely to reduce the opportunity for such prisoners to be granted parole. Further, where parole has been cancelled due to a prisoner committing an offence while on parole and subsequently being convicted of an offence punishable by imprisonment, that prisoner cannot be further released on parole for a particular period of time under new subsection 78(3), unless exceptions apply under new subsection 78(4). Clauses 7 and 9

of the bill reflect the serious nature of sexual and serious violent offences, as well as serious reoffending while on parole, and provide an additional safeguard in order to protect the community from reoffending by offenders.

For the reasons discussed in the statement of compatibility for the Justice Legislation Amendment (Cancellation of Parole and Other Matters) Bill 2013, I do not consider that clauses 7 and 9 of the bill limit the right to liberty. Nor do they limit the right to be presumed innocent in section 25(1) and the right not to be punished more than once in section 26 of the charter act for the reasons specified in that statement.

Edward O'Donohue, MLC
Minister for Corrections

Second reading

Hon. E. J. O'DONOHUE (Minister for Corrections) — I move:

That the bill be now read a second time.

The purpose of the Corrections Amendment (Further Parole Reform) Bill 2014 is to amend the Corrections Act 1986 to implement further legislative reforms arising from measures identified in the review of the parole system in Victoria, undertaken by former High Court judge Ian Callinan, AC.

The bill will amend the Corrections Act to identify a category of serious violent or sexual offender for whom a two-tier approach to the granting of parole will apply. This reform responds to measure 5 of the review.

The bill will amend the act to provide that, if parole is or has been cancelled and the prisoner is convicted of a further offence punishable by imprisonment committed during the parole period, the adult parole board is not able make a parole order granting parole to the prisoner again until at least half of the prisoner's remaining parole period (at the time parole was cancelled) has elapsed. This reform responds to measure 3 of the review.

The bill also makes additional parole-related amendments to clarify provisions dealing with the procedure and process of board meetings.

Two-tier consideration for parole

The bill identifies a category of prisoner for whom a two-tier approach to the granting of parole will apply. This category will apply to prisoners who are serving a sentence of imprisonment for a conviction for a sexual offence or serious violent offence as defined in section 77(9) of the Corrections Act.

The two-tier approach to the granting of parole in the case of such offenders is achieved by creating a new serious violent offender or sexual offender parole (SVOSO) division of the adult parole board (the board).

This division consists of the chairperson of the board, together with at least one full-time member or one part-time member, and any other members the chairperson may select from time to time.

This will ensure the chairperson of the board is involved in the decision to grant parole to sex offenders and serious violent offenders.

Only the SVOSO division can grant parole to this category of prisoner.

The SVOSO division can only grant parole to this category of prisoner after receiving a recommendation from another division of the board that parole be granted.

The SVOSO division can refuse to grant parole to the prisoner even though another division of the board recommended the prisoner be granted parole.

The chairperson and the members of the SVOSO division reviewing the recommendation of the other division of the board must not have been members of the division that made the recommendation in favour of parole.

Further grant of parole if convicted of further offending

The bill provides that if parole is or has been cancelled and a prisoner has been returned to prison, and the prisoner is convicted of further offending that occurred during the period they were on parole, the board is not able make a parole order granting parole to the prisoner again until at least half of the prisoner's remaining parole period (at the time parole was cancelled) has elapsed, unless the board is satisfied that circumstances exist which justify doing so.

An exception to the general rule is where a prisoner is serving a life sentence. In this case a minimum period of three years must be served before the adult parole board may make a further parole order.

Other amendments

The bill makes amendments to clarify the operation of some sections of the Corrections Act dealing with the mechanics of board meetings.

The bill clarifies that a division of the board consists of at least three members (to account for meetings when more than three members are present), and ensures that

the procedural requirements set out in section 66 of the act also apply to meetings of divisions of the board.

In recent years, this state has witnessed a series of events that have caused distress to all Victorians, not least the families directly affected by those events. The coalition government rightly set about the huge task of reforming Victoria's parole system, including commissioning a review by former High Court judge Ian Callinan, AC. This bill includes the last of the measures arising out of that review requiring legislative action.

I commend the bill to the house.

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

Debate adjourned until Thursday, 27 March.

DRUGS, POISONS AND CONTROLLED SUBSTANCES (POPPY CULTIVATION AND PROCESSING) AMENDMENT BILL 2013

Second reading

Debate resumed from 20 February; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Ms PULFORD (Western Victoria) — The Drugs, Poisons and Controlled Substances (Poppy Cultivation and Processing) Amendment Bill 2013 provides for the creation of a licensing framework for the commercial cultivation and processing of poppies for therapeutic and research purposes. Alkaloid poppies enable the manufacture and usage of opiates. These have incredible benefits for patients experiencing pain. Indeed the global demand for legal opiates is increasing at a dramatic rate as new markets emerge with greater numbers of people able to avail themselves of the wonders of modern pain management and medication.

This legislation was introduced into the other place by the Minister for Agriculture and Food Security, Mr Walsh, and there are aspects of this new framework, which the Labor Party is pleased to support, that will be the responsibility of that minister and others whose responsibilities sit within the Department of Health. The Department of Environment and Primary Industries will be responsible for the administrative and enforcement framework, and the Department of Health will be responsible for the manufacture and extraction of opiates.

The bill outlines the way in which a licensing scheme would work. It is important to note that there have been trials under way for some time in Victoria — 18 trials in 6 locations — which have had varied results. Product from these growing trials across Victoria will need to be analysed to provide the growers and the purchasers of the poppies — that is, the pharmaceutical companies — with decisions to make about where in Victoria the best poppy growing sites are. There are many variables that can impact on the quality of the product, and therefore its viability as a crop, its strength and its purity, which are obviously very important considerations in the growing of poppies for the manufacture of opiates.

Three companies have been permitted by the Department of Environment and Primary Industries to undertake very small-scale research trials, and they are GlaxoSmithKline, Tasmanian Alkaloids and TPI Enterprises. This legislation is the next step in enabling Victoria to develop a poppy industry.

At present the poppy industry in Australia exists only in Tasmania, and Tasmania is one of the world's largest producers of poppies. There are, appropriately, very tight local, state, national and international controls around the sale, manufacture and distribution of opiates and narcotic materials, and Tasmania has enjoyed great economic benefits from being in a position to support this industry. The poppy processing industry in Tasmania is estimated to generate in the order of $100 million per annum.

The parliamentary library has produced a research paper for members, and I urge members to look at it. That research indicates that the farmgate return to growers has been between $70 million and $90 million in recent years and that the industry employs about 1000 people. It is a significant industry for employment in Tasmania, and it is an industry that is growing at a rate that is greater than Tasmania has the capacity to sustain. Tasmanians may be offended by that sentiment, but Victoria has the capacity to support the growth of poppy cultivation, and I suggest and the government does too, in a way that Tasmania cannot.

Trials have commenced and this legislation provides for appropriate licensing arrangements to enable this industry to be established in Victoria. At the moment production is undertaken by GlaxoSmithKline at its site in Port Fairy, a workplace that I have had the opportunity to visit. It is an incredibly sophisticated manufacturing operation. I hope the passage of this legislation will lead to the creation of new jobs in manufacturing, as well as, obviously, provide

significant benefits for farmers who are in a position to take advantage of this development.

There was a media report in my local paper, the Ballarat *Courier*, about a local man managing a trial on his family property. It talks about the benefits for that family of diversifying what has traditionally been their farming crop. It describes the need for farmers to be able to diversify. This legislation represents an opportunity for a number of farmers to benefit from the development of a new industry in Victoria. That article also quotes Steve Morris, the general manager of GlaxoSmithKline, who indicated that it would be the company's intention to commercialise this trial within five years. Trials take time, seasons need to come and go, and assessments need to be made about the best locations to grow crops. This industry has great potential to create and grow jobs in Victoria, which is something the Labor Party has a strong and proud record of doing.

Labor is very pleased to support the introduction to Victoria of a new industry and of a new crop in agriculture, one which presents opportunities for jobs growth in manufacturing. The opposition is comfortable with the arrangements around the licensing scheme. I should also put on the record that opposition members appreciate the briefings that we received from both people in the industry and departmental representatives on how this will work. We are all about regional jobs and we are confident that this will be a good thing for Victoria. I commend the bill to the house.

Mr RAMSAY (Western Victoria) — It gives me pleasure to speak on the Drugs, Poisons and Controlled Substances (Poppy Cultivation and Processing) Amendment Bill 2013. In doing that, I commend the Minister for Agriculture and Food Security, Peter Walsh, on bringing forward this bill. One of the first meetings I had as a new member of Parliament for Western Victoria Region was with a delegation of land-holders who wished to provide trial sites for potentially growing poppies in Victoria. Given that we already had a processing facility in Port Fairy and that many of my friends in Tasmania were growing poppies under a licensing arrangement, it made sense to me that we should also avail Victorian producers of that opportunity.

I have been closely involved with the Department of Environment and Primary Industries (DEPI) in relation to those growers who were assigned to do some research at the trial sites that were indicated by the previous speaker, and I take an interest in the results of the research at those trial sites. It gives me some sense of satisfaction that today, after three years as a local member supporting, encouraging and advocating for full-scale commercial growing of poppies in Victoria, we will vote on this bill. It is pleasing that the opposition is also supporting the bill.

The bill opens up a whole lot of opportunities for regional Victoria, which I will go through in some detail. To put the bill in context, it provides for the establishment of a licensing framework to authorise the cultivation of alkaloid poppies and processing of poppy straw for commercial and research purposes. The bill sets out a compliance and enforcement framework to oversee the licit cultivation of alkaloid poppies and the processing and transport of poppy straw.

The bill also allows for suitable persons to apply for or renew a licence of up to three years to cultivate poppies for commercial purposes or for a licence or renewal of a licence of up to one year to process harvested poppy straw. On that aspect, the bill provides that the secretary of the department must not issue a licence if an applicant or an associate of the applicant has committed a serious offence in the last 10 years. An associate of an applicant includes a spouse, partner, parent, sibling or child over the age of 18. A serious offence means an indictable offence involving dishonesty, fraud, drugs or assault.

New section 69NB, inserted by clause 4, is necessary to mitigate the risk of alkaloid poppies being accessed for criminal purposes, including in circumstances where the licence-holder is not a party to or directly involved in any potential criminal activity. Relatives of a licence-holder can exert particular influence over that licence-holder and may have access to information not publicly available about poppy cultivation and processing activities. A relative of an applicant who has been convicted of a relevant serious offence may pose a potential risk to the security of alkaloid poppies or poppy straw. The scheme exempts licence-holders from what otherwise is a very serious offence, being the commercial-scale cultivation of narcotic plants, and therefore it is essential for applicants and their associates to be fit and proper persons. These provisions are similar to existing sections in the Drugs, Poisons and Controlled Substances Act 1981 relating to the cultivation of low-tetrahydrocannabinol (THC) cannabis.

In the low-THC scheme the definition of 'serious offence' does not include indictable offences involving assault, but does extend to offences involving dishonesty, fraud or cultivation or trafficking in a drug

of dependence where the maximum penalty exceeds three months imprisonment.

While not stated in the Tasmanian legislation — and I might add that it is under review at the moment — there is a process in Tasmania where the names of all interested parties of an applicant need to be provided to the Tasmanian government, and these interested parties may be checked for previous court convictions, particularly in respect of drug-related matters. To the extent to which this provision may limit an applicant's right against arbitrary interference in family, it is considered that any such limitation be reasonable and demonstrably justified under section 7(2) of the Charter of Human Rights and Responsibilities Act 2006. So there are restrictions in relation to those who are applying for a licence, particularly in relation to their history.

Applications for a licence to cultivate poppies or poppy straw must be accompanied by evidence to the satisfaction of the secretary of DEPI that the applicant is a fit and proper person to be given a licence and evidence of the commercial or research activity they wish to undertake. I have identified some conditions under which those licences would be approved. The amendments provide for matters which the secretary of DEPI must consider when determining whether the applicant and their associates are fit and proper persons for the purpose of being issued a new licence. The secretary must consult the Chief Commissioner of Police when considering whether to issue or refuse a licence. The chief commissioner may oppose an application on various grounds, including on the basis of protected information. Applicants may appeal against the decision made by the secretary of DEPI not to issue or renew a licence at the Victorian Civil and Administrative Tribunal. Private hearing provisions are provided in the amendments if the decision to refuse to issue or renew a licence is based on protected information.

This bill also allows for the creation of an alkaloid poppy register which facilitates the recording, reporting and administration of the framework by DEPI. The register is confidential and only accessible to authorised staff and Victoria Police. Cultivation of poppies can only take place if a valid contract between a licensed grower and a licensed processor is registered in the alkaloid poppy register by DEPI. The bill provides the secretary of DEPI with powers to authorise inspectors to carry out activities to determine compliance with licences by licence-holders and others involved in the industry. General powers of inspectors include the ability to enter and inspect licensees properties, inspect and sample plant and soil material, intercept and examine machinery used in the harvest and transport of poppy straw, and require the provision of licensee documentation.

Commercial poppy cultivation for therapeutic purposes is currently confined to Tasmania on the basis of a 1971 ministerial exchange of letters between the commonwealth, states and territories. In that context there are significant restrictions in place and conditions for those who wish to grow poppies in Victoria, much of which is based on Tasmanian legislation and the Tasmanian experience in relation to the security of growing poppies. It is pleasing to see that, as I said, Victorian producers will now have that opportunity, assuming this bill is passed today.

As many members would be aware, for the past 40 years Tasmania has been the largest producer of opium alkaloid poppies for the pharmaceutical industry. In recognition of a growing and ageing population, more is being done to support health and longevity. To this end the bill will amend the Drugs, Poisons and Controlled Substances Act 1981 to allow for the commercial-scale cultivation of alkaloid poppies in Victoria for therapeutic and research uses. The creation of a new industry in the cultivation of poppies will bring benefits to farmers, the agricultural sector and transport within regional Victoria. In Tasmania the Poppy Advisory and Control Board in 2012 reported an industry gross value of around $100 million, with farm gate returns of between $70 million and $90 million in recent years. Further, in 2009 it was estimated that poppy cultivation supplies approximately 1000 jobs in Tasmania. If Victoria could share in that success it would be a huge boost to employment and the economy.

However, the cultivation of alkaloid poppies requires strict controls and processes. I have gone through the detail of that at some length. To this end, the Drugs, Poisons and Controlled Substances (Poppy Cultivation and Processing) Amendment Bill 2013 provides that applicants for grower and processing licences must be deemed fit and proper, and I have covered that requirement off.

The bill will also exclude any extraction of opiates other than for the purpose of chemical analysis. Victoria already has a regulatory framework under the principal act for the manufacture and extraction of opiates, and that framework will continue to be administered and enforced by the Department of Health. Further, the bill will ensure that cultivation is compliant with the requirements of processors and that

crops are not grown in excess. Requirements and limits, including contractual arrangements between a licensed grower and a licensed processor, will need to be registered with the department. The establishment and maintenance of a register will include details of all the individuals involved in the industry: the growers, the processing sites and the contracts.

In 2013 the Victorian Department of Health approved small-scale research trials of alkaloid poppies. These were conducted by GlaxoSmithKline, Tasmanian Alkaloids and TPI Enterprises in Victoria. The purpose of the trials was for cultivation only. They were spread across 13 sites within the state to help scientists work out which areas and what growing conditions would be most suitable to grow poppies. Once the crop was grown, harvested and analysed, the plant matter was destroyed.

Whilst the cultivation of alkaloid poppies has been primarily done in Tasmania, the medicinal alkaloids are extracted from the poppies at the GlaxoSmithKline factory in Port Fairy, in my electorate of Western Victoria Region. The company uses the extract from the poppy straw in pharmaceuticals such as thebaine, codeine and morphine, which are all vital ingredients in many pain-relieving medicines and are used in a range of pharmacy and prescription medicines worldwide. It makes sense for Victoria to be the new location for the poppy industry considering its climate similarities with that of Tasmania and the GlaxoSmithKline processing plant in Port Fairy.

This bill builds on the commitment of the coalition government to support job growth and build a stronger economy. The creation of a poppy industry will complement the investments already made by the coalition government in regional Victoria, including most recently the commitment of $22 million to support SPC Ardmona and $100 million for the Goulburn Valley. The benefits this bill will provide to regional Victoria are extensive, and on that basis I commend the bill to the house.

Ms HARTLAND (Western Metropolitan) — As both the previous speakers have outlined a great deal of the technical detail of the bill, I will not go over that again. While the bill is highly technical, it is straightforward. If we are going to have a poppy industry in Victoria, we want to know that it will be well regulated and that the people who are operating it are fair, reasonable and trustworthy. As Mr Ramsay and Ms Pulford have outlined, it is an extremely good thing that this will create regional jobs and build diversity by giving farmers another crop to grow.

The Greens will obviously be supporting the bill. As I said, while it is highly technical bill, it is a necessary bill. It is good to see that all those regulations will be put in place right at the outset of this new industry to make sure that it operates well and is well protected.

Ms CROZIER (Southern Metropolitan) — I am pleased to rise and speak on the Drugs, Poisons and Controlled Substances (Poppy Cultivation and Processing) Amendment Bill 2013. I listened intently to the contribution of my colleague Mr Ramsay, who described the history of the poppy industry very well. I was also interested to read about that history in the research brief produced by the parliamentary library. It was interesting to look at how this industry evolved and how Tasmania has built a successful poppy industry.

I too would like to commend the Minister for Agriculture and Food Security, Mr Walsh, for further supporting regional industry and bringing to this state new industries with the potential to develop new export markets. As Mr Ramsay highlighted, a great deal of work has been done in the preparation of this bill in relation to regulation and licensing, the penalties that can be applied should regulations be breached and determining who should have inspection and enforcement rights.

It is a very good industry for rural Victoria. I know many people in Tasmania have benefited from this industry. As I said, it is a new industry for Victoria. With an ageing and growing population there is a demand for opioids, and morphine and codeine are a significant part of the pain relief provided to many patients on a regular basis. That is exactly what the poppy industry is for. It is about extracting those alkaloids that produce codeine and morphine. They are highly addictive drugs so the industry is highly regulated, and that needs to continue, but the drugs are very important for our health industry.

The fact that companies such as GlaxoSmithKline are situated in regional areas like Port Fairy is a good indication of this government's support for jobs in regional industries. I again commend the Minister for Agriculture and Food Security for his thorough work on this legislation. The trials conducted by the Department of Environment and Primary Industries have been very thorough and well regulated and they have been very well supported.

I am not going to add too much more to what has been already highlighted about this bill and to what other speakers have said other than to say that this is another example of the Victorian government highlighting

opportunities for Victorians. Whether it be in industry, in export markets or in supporting regional jobs and growth within those areas, this government understands how important the agricultural industry is. It understands the complexities involved in the regulation of such crops and what needs to be done.

The government also understands the export opportunities. We have seen that time and again with the trade missions to Asia, China and the Middle East promoting our food and fibre products to those markets. They have had much success and have brought in billions of dollars worth of income to Victoria. Mr Walsh has been on many of those trade missions, and I commend him for his leadership, for building those relationships and identifying opportunities. Importantly, I commend him for the work he has undertaken in identifying a new industry and implementing the very necessary regulation and licensing aspects involved in the legislation. I commend the work he has done in the department and commend the bill to the house.

Ms DARVENIZA (Northern Victoria) — I am pleased to make a contribution to the debate on the Drugs, Poisons and Controlled Substances (Poppy Cultivation and Processing) Amendment Bill 2013. The bill amends the Drugs, Poisons and Controlled Substances Act 1981 by inserting new parts into the act and allows for the commercial-scale cultivation of alkaloid poppies in Victoria for therapeutic and research purposes. Labor recognises the potential for this new industry in Victoria and therefore is not opposed to the bill which will allow for the commercial growing of poppies in Victoria for both therapeutic and research purposes subject to very strict regulations.

Labor has always been committed to driving any opportunity to create more jobs and investment, particularly investment opportunities in rural and regional Victoria. In the past when we were in government we were involved in assisting local communities to address new challenges and to take advantage of those opportunities when they arose, and this is definitely a new opportunity for Victoria.

Tasmania, as has already been pointed out, is the world's largest producer of opiate alkaloids for the pharmaceutical market. It produces about 50 per cent of the world's concentrated poppy straw for morphine and related opiates from merely 10.7 per cent of the production area. GlaxoSmithKline, for example, currently ships poppy straw from Tasmania to its Victorian processing plant in Port Fairy to produce morphine, codeine and thebaine.

Ms Crozier talked a little in her contribution about the therapeutic uses and the highly addictive qualities of morphine, and most of us are aware that morphine is a very powerful analgesic. It is a narcotic, and like other opiates it acts directly on the central nervous system to relieve pain. It does not come without side effects; as with all pharmaceuticals it can create a range of side effects. It is also highly addictive and dependency can develop quite quickly. Morphine is medically prescribed for the relief of moderate and severe pain and is found in a range of different preparations.

Codeine, which can be found in most household drug cupboards and is well known to all of us, is the most widely used and naturally occurring narcotic in medical treatment in the world. Therefore there is a very high and ever-increasing demand for it, particularly as we have an ageing population. One of the things we know about the use of morphine rather than codeine is that it is a particularly good drug for use by elderly people who might be taking a range of other medications because they have a number of different medical complications. It is pain relief that works well when combined with other medications and is not often contraindicated for other medications.

Codeine is medically prescribed for the relief of moderate pain and is also quite a strong cough suppressant and can be found in a range of syrups and cough prevention and suppression medications as well as being available mostly in tablet form. Thebaine is a minor constituent of opium. It is controlled under international law, but it is not used therapeutically.

There are two reasons for the industry looking to expand to commercial scale here in Victoria: firstly, as I have already said, the increase in demand for the therapeutic uses of the medications that are derived from the opium poppy, and secondly, the seasonal risks that are now associated with growing opium poppies in Tasmania. It is a very high-value crop and has the potential to create a $100 million industry for our state within a decade, so it is a considerable economic investment for the state which will create jobs as well as enhancing the economic wellbeing of rural and regional Victoria. Field trials are currently under way and the locations of future cultivation areas will be determined by the yield attained during those trials as well as by local factors such as seasonal variations and water security.

The bill provides for the establishment and maintenance of a register which will include details of all individuals involved in the industry and list growing and processing sites as well as providing details of

contracts. The register will be confidential, but limited access will be given to authorised persons and inspectors as well as members of the Victoria Police.

Licences will be subject to various terms and conditions and limitations and restrictions, including some relating to the variety of poppy to be cultivated; security and surveillance measures that will be put in place; and keeping records. There is also provision for the notification of the Department of Environment and Primary Industries of changes to ownership and management of the business of the applicant; the disposal of the harvest material and the crops; and the requirement for inspections, supervision and surveillance by inspectors.

Security is important, and I note the excellent information that has been provided by the Parliamentary Library on just how important security is. The opium poppy is a potentially dangerous crop, and community safety is particularly important. That is why the regulation and safeguards within the industry are so important.

There are two main security concerns. Firstly, there is a concern that unauthorised individuals may steal the poppies for personal drug use or experimentation, which can result in toxic substances being produced and consumed. There have been a number of deaths in Tasmania as a result of this activity, so we need to be very mindful of that. Secondly, there is a risk that poppies might be stolen by organised crime groups and used in the illegal drug trade. The establishment of the register and the licensing processes address those security issues.

Mr Ramsay outlined the powers that are given to the Secretary of the Department of Environment and Primary Industries and the authorisation of qualified persons as inspectors, and in terms of the bill covered in some detail what constitutes a 'suitable person' to be involved in the production and growing of the poppies.

As Ms Hartland pointed out, the bill is fairly straightforward and the opposition is not opposing it. Provided that regulations and restrictions are put in place so that it is a highly regulated industry, it should be a worthwhile investment opportunity for rural and regional Victoria.

Mrs MILLAR (Northern Victoria) — I am pleased to make a contribution to debate on the Drugs, Poisons and Controlled Substances (Poppy Cultivation and Processing) Amendment Bill 2013. I have taken the opportunity to attend briefings in relation to this bill, and I am aware of the huge amount of work that has gone into investigating and facilitating this new agricultural opportunity for Victoria. I pay tribute, as I have often done in this place, to some excellent work done on this bill by the excellent staff of the Department of Environment and Primary Industry.

The bill provides for the commercial-scale cultivation of alkaloid poppies in Victoria, which will offer to rural and regional Victoria further enhanced potential to grow its economy, create more Victorian jobs and grow the enormous potential of Victoria's agricultural sector. This is another example of what this government is doing to deliver real economic growth and jobs to rural and regional Victoria. This industry has the potential to grow to a net benefit of $100 million within the first 10 years of operation, with the value of the crop being estimated at between $20 million and $30 million.

Payments are made to growers based on the weight and percentage yield of alkaloid in the crop. As has been discussed at length by other speakers, alkaloid poppies are grown commercially to extract valuable pain-relieving medicines for the health industry. This is viewed as an emerging growth industry, particularly in the Asian markets.

Currently Tasmania is the only state in Australia where poppies are legally commercially grown. Tasmania is the world's largest producer of opium alkaloids for the health industry, with approximately 800 licensed growers being contracted by producers to grow a specific quantity each season. Approximately 30 000 hectares are currently under cultivation in Tasmania. Due to Tasmania's share of the market and biosecurity, climate and other risks, the pharmaceutical industry has been keen to diversify and establish new growth areas. These concerns were borne out during the 2013 growing season in Tasmania when unusually wet conditions resulted in a crop reduction in the vicinity of 30 per cent.

Victoria's climate and rich soils are ideal for this crop, and no doubt many members will be aware of poppies growing as weeds in various parts of the state. A number of small trials are currently being conducted in Victoria, and this will further establish evidence of the suitability of this crop for Victorian conditions.

This bill provides for the establishment of a licensing framework to authorise the cultivation of alkaloid poppies and the transportation and processing of poppy straw for both commercial and research purposes. Because of the nature and history of this crop, which other speakers have detailed — and I have certainly been asked questions in relation to the security aspects

of this endeavour, particularly at field days and agricultural shows in northern Victoria — there are a number of safeguards contained in the bill, which was drafted after consultation with the Chief Commissioner of Police.

Cultivation can only take place if a valid licence is issued by the Department of Environment and Primary Industries (DEPI), and the granting of licences will be subject to the person or the persons who operate the business being assessed as being fit and proper to do so. In practice this means those who have been convicted of committing serious offences in the last 10 years or those who are associates of those who have been convicted of committing serious offences in the last 10 years will be unable to obtain licences.

In my view this is appropriate and provides some safeguards for the safe operation of this industry. These safeguards give confidence to the Victorian public that strict controls will be in place to ensure that only those issued with licences and those with valid contracts with licensed processors to grow poppies will be able to grow the crop. It is also good to know that the opposition is comfortable with the licensing provisions and safeguards, as was noted by Ms Pulford.

There are three stages involved in producing opiates from alkaloid poppies: the cultivation and harvest of alkaloid poppies; processing, being the preparation and treatment of the poppy straw; and manufacture, being the refining of the poppy straw to extract the opiate. My understanding is that this third stage in particular is a highly complex and technical process. Compliance at all stages of the process will be monitored by DEPI, with the secretary of the department having the ability to authorise inspectors to determine compliance at each of the stages.

I congratulate the Minister for Agriculture and Food Security, Peter Walsh, the department secretary, Adam Fennessy, and the staff of DEPI, who have put an enormous amount of work into initiating this bill and the framework to set up this industry in Victoria, which will expand the potential of our agricultural industry and also increase jobs for Victorians. The benefits for Victoria are extensive. I commend the bill to the house.

Mr EIDEH (Western Metropolitan) — I rise to make a brief contribution to the debate on the Drugs, Poisons and Controlled Substances (Poppy Cultivation and Processing) Amendment Bill 2013, which we on this side of the house will not oppose. This bill will amend the current Drugs, Poisons and Controlled Substances Act 1981 to introduce licensing for the commercial cultivation and processing of alkaloid poppies, also known as opium poppies, within the state of Victoria for research and therapeutic purposes. The poppy originated in the Middle East thousands of years ago, and currently there are 250 species of poppies in the world. The sap from the opium poppy — papaver somniferum — creates the strong pain-relieving drug opium, which following passage of this bill will be cultivated and produced in Victoria.

Currently Tasmania is the only Australian state that legally cultivates and produces alkaloid poppies for the pharmaceutical market. Tasmania produces roughly 50 per cent of the world's concentrated poppy straw for morphine and related opiates. This production has contributed significantly not only to the Tasmanian economy but also to patients who require these medications to live out the rest of their lives comfortably in palliative care.

This bill provides wonderful opportunities for our state — namely, for the Victorian economy, the agriculture sector and regional Victoria. However, one of the most significant opportunities this bill creates is employment opportunities for skilled workers from across the state and for people living in the communities where farming and manufacture will take place. Victorian Labor has made it clear that its priority for Victoria is ensuring that employment is sustained and continuously created. We on this side of the house fully support anything that will create employment.

This licensing framework will also provide Victorian researchers with an opportunity to gain a deeper understanding of the opium poppy and build a foundation for groundbreaking research in the future. Currently the legal manufacturing of alkaloid poppies occurs only in Spain, Turkey, France and India. This legislation will ensure that the poppies and opium produced in Victoria will have access to a global market. I commend the bill to the house and wish it a speedy passage.

Mrs COOTE (Southern Metropolitan) — It gives me enormous pleasure to speak on the Drugs, Poisons and Controlled Substances (Poppy Cultivation and Processing) Amendment Bill 2013. Others before me have outlined the bill in great detail. At the outset I note that, unlike most bills amending the Drugs, Poisons and Controlled Substances Act 1981 which are of a health nature, this bill is economic in nature and relates to an important and growing agricultural crop that will help direct Victoria's future.

This is quite an extensive bill, at 77 pages, but in essence it provides for the commercial-scale cultivation of alkaloid poppies in Victoria for therapeutic and research purposes. The reason the bill is so extensive is that it establishes a new agricultural industry. Also, because the use of alkaloid poppies in the pharmaceutical industry is for narcotic purposes, this bill must be comprehensive to ensure the new industry is regulated correctly. We have heard from a number of speakers who have gone into great detail about this point and explained how the Department of Environment and Primary Industries has done such an extraordinarily thorough job in bringing this bill to the Parliament.

Every year as I stand in the darkness at dawn at the Shrine of Remembrance on Remembrance Day and listen to the poem about the poppies in Flanders field it crosses my mind that the poppies that we wear in November remind us of peaceful times — of an armistice and a time of hope and future for the whole world. But equally, not the same poppies but poppies nonetheless have been in the wrong hands and used by the wrong people for the wrong purposes throughout parts of Afghanistan, Thailand and the Golden Triangle. Generations of young Australians and young people across the entire world have been badly affected by heroin, the drug made from opium poppies. In fact it has ruined and destroyed lives.

This is a contentious bill. The larger population does not quite understand how the use of poppies can be therapeutic. For some time there has been therapeutic poppy production in Tasmania, as we have heard. It is important to understand that now with modern technology poppies can be used for the best of purposes. That is what this bill is about. This bill is about making certain that as much control as possible is exercised and careful consideration is given at every level so that when the results of poppy production go out into the community all conditions are covered.

This will establish a new industry in the agricultural sector in Victoria. Alkaloid poppies are used in the production of legal opioids, such as morphine, codeine and thebaine, and other opioids produced by the pharmaceutical sector for use as prescription and over-the-counter medication. These are the legal products of alkaloid poppies; however, opiates such as heroin are illegal in most parts of the world and they are used illegally. We think of areas where there has been misuse, and we properly recall that one of the highest value crops for the Taliban government in Afghanistan was alkaloid poppy cultivation and the production and export of heroin to the developed world.

This has been one of the world's major problems: how do we give these areas some economic opportunity that is not dependent on an illegal substance? The Golden Triangle in South-East Asia, which includes Burma, Vietnam, Laos and Thailand, also produces a large amount of the illegal poppy trade resulting in the production of heroin. For this reason the cultivation of alkaloid poppies is strictly regulated at international, national and state levels.

At present, with the exception of trial farms, the only legal alkaloid poppy farms in Australia are in Tasmania. These crops produce about 50 per cent of the world's concentrated poppy straw which is used to make morphine and other pharmaceutical opioids. The Tasmanian government estimates that this industry contributes $100 million a year to the economy and employs approximately 1000 people. Some of the Tasmanian crop of concentrated poppy straw is processed in Port Fairy in Victoria. Globally other alkaloid poppy producers include Turkey, France, Spain and India, and of these, Tasmanian producers are among the most efficient.

Victoria can now begin growing these poppies, developing the pharmaceutical products as value-added and exporting them around the world. The pharmaceutical industry has already undertaken trials around the state to ascertain the best climatic conditions and soils in Victoria for growing these poppies. As I said, it is imperative that proper precautions are taken. We are dealing with what can be and, as we have seen internationally, is a very dangerous product.

In his second-reading speech the minister noted that the intensive manner of harvesting poppy straw and processing it into opiates has proven unattractive to organised crime. I go back to the statement by Ms Darveniza when she said that these crops could be taken over by organised crime. This industry is unattractive to organised crime because of the nature of the processing, but steps to regulate it are important to prevent unattractive elements from entering the market. It is important that we put in place proper regulations to make quite certain that criminal elements do not enter this market.

This matter is addressed predominantly in clause 4 of the bill, which deals with licences to cultivate and process the poppies. The new section 69NB inserted by clause 4 is headed:

> Matters to be considered in determining a fit and proper person.

This is very important. It outlines the purpose for this as being, as I said earlier:

> For the purpose of preventing criminal activity in the cultivation of alkaloid poppies and the processing of poppy straw …

Specifically, it sets out that the secretary must be satisfied that:

> (a) the applicant or any associate of the applicant has not been found guilty in respect of a serious offence (whether in or outside Victoria) during the 10 years preceding the date of making the application …
>
> (b) the applicant and each associate of the applicant is a suitable person to be concerned in or associated with the cultivation of alkaloid poppies or the processing of poppy straw …
>
> (c) the applicant's property or premises will be suitable for the cultivation of alkaloid poppies or the processing of poppy straw, as the case requires, in relation to location, facilities and proposed security arrangements …

We can see from this that the bill goes to great lengths to prevent the involvement of criminal elements in poppy cultivation and production. In conclusion, this bill will establish an exciting new agricultural industry in Victoria.

We in this place today are celebrating the very long career of a person from rural Victoria, the Minister for Higher Education and Skills, Peter Hall. Agriculture has been very much at the heart of his entire political career. I would like to take the opportunity while speaking on this this bill to congratulate Mr Hall on an extraordinarily successful career. He is well loved by his constituents in rural Victoria. He has been a huge part of the coalition and has carried a lot of weight in his portfolios. I know that there will be students in our TAFEs at the moment who will go on to fabulous careers thanks to the work Mr Hall has done. I congratulate him on a successful career. As someone said this morning, it is very rare that someone leaves this place with their reputation enhanced. His certainly will be, and we will certainly miss his great speeches and contributions to this place. We will all be missing Minister Hall very much in the next parliament.

This bill will have a direct and positive impact on the Victorian economy. It takes seriously the possibility of criminals becoming involved in this industry and takes steps to protect against this. I commend the bill to the house.

Mr O'BRIEN (Western Victoria) — I too wish to briefly rise to lend my support to this bill, being the Drugs, Poisons and Controlled Substances (Poppy Cultivation and Processing) Amendment Bill 2013. I can pick up much of the wonderful contribution made by Mrs Coote both on the bill and on the slightly divergent but nevertheless relevant contribution she made recognising the contribution of Mr Hall to agriculture and training. The bill itself is an important bill because, as Mrs Coote has outlined, it will allow for the commercial-scale cultivation of alkaloid poppies for therapeutic and research purposes, establish in key elements a fully licensed framework for poppy growers and processors, and create an effective compliance and enforcement framework to oversee the industry.

I also wish to join my colleagues in acknowledging the work of Mr Walsh, the Minister for Agriculture and Food Security, his department and the other departments that have carefully worked with the industry and relevant growers. We have certainly facilitated the careful consideration of this legislation and this industry. For example, in July 2013 an article in the Warrnambool *Standard* quoted comments from me where I acknowledged the existence of the GlaxoSmithKline (GSK) plant in Port Fairy.

In short terms, the merits of this bill in permitting a licensed, controlled and carefully regulated industry in Victoria are best and most simply explained by recognising that whilst the subject matter of the bill deals with a beneficial therapeutic substance, the bill also has concerns in relation to illicit narcotic activities. In a regulatory sense we have existing processing plants in Victoria, and the Port Fairy GSK plant is obviously an important part of that. It has been established for some time. We also have the poppies that are legally and successfully grown in Tasmania.

The industry wishes to diversify into Victoria. When you have the industry already existing, essentially, in a processing sense in Port Fairy and in a growing sense in Tasmania there is no valid reason it should not be considered. Obviously the communities where the poppies are grown and the wider Victorian community need to be carefully consulted, and Minister Walsh has undertaken that process together with the companies and the relevant farmers, particularly those at trial sites, as well as with the relevant councils and other interested persons to ensure that this bill can now come before the house.

As has been said in the second-reading speech, this is a significant opportunity for regional Victorian growers to diversify. Even if, for example, they wish to be potato growers or other high-yield crop growers in a suitable climate, this gives them another string to their bow when negotiating with suppliers. It is about the

food and fibre security Minister Walsh and Minister Hall promote. I could refer to, for example, the Grow Your Food and Fibre initiative, which was co-hosted at Parliament House by the Minister for Agriculture and Food Security, Peter Walsh, and the Minister for Higher Education and Skills, Peter Hall.

That significant initiative — including the inquiries, findings and reference to the importance of growing education pathways — again demonstrates that in a modern agricultural industry we need to consider different and in some instances highly technical forms of farming to add to the existing, more traditional forms of farming to allow for that diversity, to allow for security and to allow for farmers to be in the best position to continue their important farming operations and return more cash through the farmgate.

The initiatives where young people will be given pathways into the industry are another testament to the outstanding legacy of Peter Hall, both as a parliamentarian and as a minister. A lot could be said. If I could say it in a few words in addition to my 90-second statement, I will leave you with these words: your mother is proud, as we all are. Not only will Mr Hall leave this place with his reputation enhanced but he has without a doubt enhanced the reputation of the Parliament.

Returning to the bill, finally, I would also like to pick up another issue the minister took action on which gives an example of the way science and agriculture can work together in this important area of pharmaceuticals. That was an important presentation the minister hosted, together with the Labor Party representative — I think it was Daniel Andrews, the member for Mulgrave in the Assembly — and the Monash alumni graduates. It was coordinated by an ex-staffer of the minister, Damien Farrell, who recognised the opportunities that come from research on pharmaceuticals through Monash University and which can then be applied to crops, such as poppies, which are the subject of this bill.

I would also like to acknowledge, by way of example, the significant jobs opportunities that this bill provides for the processors and the security it can give those operators in GSK. One of the operators I have spoken to is someone I know because I played football with him. Matthew Shields is an excellent centre half-forward and a worker at GlaxoSmithKline. GSK has certainly been quietly hoping that this legislation would come before the house because it assists in shoring up the plant at Port Fairy to have enough diversified supply between Victoria and Tasmania.

As Mrs Coote outlined, there are concerns about narcotic use. As has been said, this is one of the most highly regulated, if not the most highly regulated, areas of agriculture. Certainly Victorian farmers can be regarded as farmers who would be eligible to meet the fit and proper person test, but strict and serious criteria have been outlined in clause 4 of the bill. It inserts new section 69NB into the principal act, which, in summary, provides that applicants for the licences must be deemed fit and proper by the Secretary of the Department of Environment and Primary Industries before a licence can be issued. Applicants and associates who, for example, have been found guilty of a serious offence within the 10 years preceding the application will not be issued with a licence, and licensed applicants will be required to demonstrate that their property or premises are suitable for the activities authorised under the licence. The key test for suitability of premises will be governed by security and community safety concerns.

Again the communities will be and have been involved in extensive consultation. This is a significant reform and an additional string to the farmer's bow. It will support the right to farm and it will support our agricultural food security, and I note that it has the support of the house. With those words I commend the ministers for their work and I commend the bill to the house.

Hon. P. R. HALL (Minister for Higher Education and Skills) — I want to thank those who spoke on the bill for their support: Ms Pulford, Mr Ramsay, Ms Hartland, Ms Crozier, Ms Darveniza, Mrs Millar, Mr Eideh, Mrs Coote and Mr O'Brien — quite an extensive list. I would also like to thank those who took the creative opportunity to somehow relate this bill to my presence in the chamber today and for their personal and very kind words.

Motion agreed to.

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

Third reading

Motion agreed to.

Read third time.

TRAVEL AGENTS REPEAL BILL 2013

Second reading

Debate resumed from 20 February; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Mr TARLAMIS (South Eastern Metropolitan) — I rise to make a contribution to the debate on the Travel Agents Repeal Bill 2013. This is an important bill to consider, as it relates to the travel industry and the form in which consumer protection rights should exist in this state. I would like to begin by stating for the record that the Labor Party will be opposing this unfair bill. In its haste to honour a commitment to cut red tape and remove regulatory burdens, the government has removed consumer protections and completely got the balance wrong. In doing so it is abandoning hard-won rights for consumers and undermining protections including, but not limited to, protections for some of the most vulnerable in our community. The bill raises many issues that relate to members of my constituency, as well as the broader community, who travel to visit family and friends overseas or to visit their country of origin, as well as for holidays and a variety of other purposes. These pursuits are necessary and make for a valuable contribution to the wellbeing of many Victorians.

The purpose of the bill, as outlined in clause 1, is to repeal the Travel Agents Act 1986, to provide, for a limited period, for the continued operation of the compensation scheme under the act and to make amendments to the Australian Consumer Law and Fair Trading Act 2012 and the Business Licensing Authority Act 1998 consequent on the repeal of the Travel Agents Act 1986. This bill applies an agreement reached in December 2012 between a majority of state and commonwealth ministers for consumer affairs to implement a travel industry transition plan to abolish the National Co-operative Scheme for the Uniform Regulation of Travel Agents, known as the national scheme, thereby removing from 1 July 2014 the requirement for travel agents to be licensed and closing the Travel Compensation Fund (TCF).

The national reforms have four phases. Firstly, from 1 July 2013 travel agents have not been required to lodge annual financial returns to the TCF. Secondly, travel agent legislation will be repealed by 30 June 2014. Thirdly, a voluntary industry accreditation scheme will be introduced. Fourthly, the TCF will be closed by mid-to-late 2015 and final payments of any consumer claims will be made by 30 June 2015. These reforms are part of a major overhaul of the national travel industry designed to modernise the regulatory framework surrounding the sector.

One of the key changes will see the Travel Compensation Fund come to an end. The TCF was established by the federal Labor government, which saw the need for an independent body to monitor the financial stability of travel agents and provide compensation for consumers who have suffered financial loss because through insolvency or bankruptcy travel agents have not been able to pay the travel service provider engaged by the consumer. This was a smart idea that has served the public and the industry well for nearly two decades. It is worth noting that Western Australia and South Australia did not support the abolition of the TCF but have both signed a variation to the trust deed of the TCF.

Those opposite will argue that the Travel Agents Act 1986 and in turn the TCF have failed to keep up with present-day industry circumstances, as more and more members of the public opt to make their own travel arrangements independently of travel agents and directly with travel services providers via online sites. As such, consumers are dealing directly with travel suppliers and bypassing travel agents to do so. In light of this fundamental change in the sector, it is understandable that travel agents are interested in removing regulatory requirements which may be restraining their ability to conduct business in a more straightforward manner. In fact it has been argued that, unlike other retail services industries, since 1986 the travel industry has been burdened with a disproportionate financial and regulatory environment, notwithstanding the relative stability of the sector. But it is the job of responsible government to weigh the different interests and reach an outcome that is suitable for service providers and their commercial interests, as well as to put in place proper protections for consumers and the broader community — something which this bill fails to do.

The most recent annual report published by the compensation fund shows that the biggest travel agents collapse since 2001 was experienced in 2012. The year 2001 marked the collapse of Ansett and Traveland, which had wide repercussions for consumers and travel agents. In July 2012 both Kumuka Worldwide and Classic International Cruises collapsed, resulting in compensation for consumers totalling $1.9 million and $2.84 million respectively. In Victoria there were a total of 296 claimants in 2012 and 137 claimants in 2011. Overall the fund has paid out more than $60 million in compensation to consumers. In my own region Frankston Travel Pty Ltd, which belongs to Jetset Travel Frankston, collapsed in 2011. The claims paid

out to consumers for that particular incident totalled $6881. These instances show that although the sector may be stable, there are real examples where consumers have been affected and that have required consumer protection mechanisms to come into play.

It is worth mentioning other independent bodies that disagree with the raft of changes proposed in this bill. CHOICE, as many members will know, is the premier consumer advocacy group and is known as the people's watchdog. It has been in operation since 1959 and was founded by Ruby Hutchison, a Labor member of the Legislative Council in Western Australia, who worked tirelessly to make CHOICE the transparent and independent organisation that it is today. CHOICE has been involved in the local travel industry and has undertaken various consumer satisfaction surveys and reviews in relation to many travel products and services, making them well placed to comment on the adequacy of consumer protection levels in any changes made to the travel industry.

As part of the consultation process CHOICE made a submission to the draft national travel industry transition plan in October 2012. In its recommendations CHOICE did not support the abolition of the TCF. It argued that this would lead to a significant consumer detriment. Instead of the TCF the industry plan advocated the use of the chargeback system to protect those consumers who purchase travel services with a credit card. Already there is a problem with this system of consumer protection. Although many consumers use credit cards to pay for travel services and related products, there are still many who do not. Let us not assume that every consumer is in possession of a credit card and let us not assume that those who do possess a credit card are in a position to use it for these purposes. In fact just under $9 billion in travel-related transactions are made without the use of credit cards.

As we go about the business of representing our constituents we are obligated to represent them all and to stand up for the less fortunate and hardworking people who should continue to have the protections afforded to them under the current scheme. I know in my area many people do not have credit cards because they come from certain cultures where it is not the practice or because they have found themselves financially vulnerable. Are we saying that these people, who work hard to save for a vacation or to visit family and friends overseas, do not need or deserve proper consumer protections because they have not paid with a credit card? I think not. For those who do pay for travel products and services by credit card, there is still an overreliance on chargeback for consumer protection. Not all credit card companies offer this service and many credit card users are not informed that this service even exists. It seems odd that the travel sector would rely on a consumer protection service that is not available to all and that is not on the radar of most consumers.

Finally on this point, I take issue with the government advocating a chargeback system which is fundamentally a debt service provided by a financial institution at a high cost. It is highly irresponsible for a government to be reliant on such a service to provide consumers with protection.

As part of the implementation time line for the transition plan it is proposed that a voluntary industry accreditation scheme take the place of the TCF. In particular, the consultation draft mentions the International Air Transport Association (IATA), which is an international trade body representing over 240 airlines. The draft proposes that IATA serves as a voluntary industry accreditation scheme for the local travel industry since it requires agents to show financial solvency through yearly financial assessments in order to maintain their IATA accreditation. This is meant to take the place of the TCF. The difficulty with this proposal is that IATA is a business-to-business scheme and does not actively deal with consumer protection rights or have any direct consumer representative bodies in its organisation. Without the TCF, consumer protection in the travel industry will be eroded.

I take this opportunity to remind members opposite that the purpose of the travel industry transition plan proposed by the Council of Australian Governments Legislative and Governance Forum on Consumer Affairs was never to strip consumers of their rights. In fact on 3 June 2011 ministers for consumer affairs from all states, including the then Victorian Minister for Consumer Affairs, announced in a joint statement that changes to the regulatory framework should be done in a way that 'maintains appropriate levels of consumer protection'.

It is understood and accepted that the regulatory framework surrounding the travel sector needs to be modernised. However, the removal of the TCF is not necessary to achieve this aim and in fact its abolition will lead to weaker protection for consumers. Labor believes that the Victorian government has engaged in a cynical cash grab, with Victoria's quarter share of any remaining accumulated funds in the TCF being absorbed into consolidated revenue, despite the fact that it is essentially consumers money. The government has been unwilling to commit to fund improved consumer protection with the remaining accumulated funds in the TCF. It is important to point out that the government

has actually cut the consumer affairs budget since it was elected. Labor tried to come to an agreement with the government to ensure consumer protection was maintained, but these approaches made in good faith were met with a stone wall.

In conclusion, with this bill the Victorian government has thrown the baby out with the bath water and is putting at risk important consumer protections. It has failed to explain why a mandatory accreditation scheme would not have provided better protection for consumers; it has failed to explain where it will direct people for compensation next time a travel company fails, recognising that one-third of travel expenditure is still done through agents, often for very expensive holidays; it has failed to explain how small consumers would be able to finance complex insolvency actions against professional indemnity insurers under the Australian Consumer Law. It has not explained why the TCF should have been closed down ahead of the industry's accreditation scheme proving its worth to consumers and it has not explained why there is no need for an independent consumer complaints scheme.

Those opposite would do well to join with those on this side of the house in opposing this bill — that is, if they are truly committed to properly representing their constituents and ensuring that their rights are properly protected as consumers.

Ms HARTLAND (Western Metropolitan) — I will be speaking only very briefly on this bill. Mr Tarlamis has exactly outlined the concerns that the Greens have with this bill. In the minister's second-reading speech I was interested to read that one of the reasons this bill was felt necessary was that the travel industry had changed quite dramatically and the Travel Compensation Fund was no longer needed. I acknowledge that the travel industry has changed dramatically in the last 20 years, especially with the advent of online bookings which enable you to book a substantial part of your holiday online. However, I have used the same travel agent for over 20 years, because often I need quite complicated travel arrangements to be made for me.

I know that a very large proportion of the client base of my agent is in an older age group. They are people who are taking the once-in-a-lifetime holiday. They are the people who are going home to visit people as they get older. They are the people who need consumer protection. To take access to the fund away from that group of people is an irresponsible act on the part of the government. We need to leave it in place so that those people will be protected. They are the reasons the Greens will also not be supporting this bill.

In this modern age we have to figure that out because there is a segment of the community that will use the internet and never need this fund, but there is still a segment of the travelling community that needs the fund. It is on that basis that the Greens will not be voting for this bill.

Mr ELSBURY (Western Metropolitan) — It is my pleasure to speak in favour of the Travel Agents Repeal Bill 2013. I believe that once legislation has been overtaken by other laws or once technology has surpassed the initial purpose of legislation we should do everything we can to reduce red tape. We should reduce the burden on industry where we can when other laws are already in place to provide consumer protections and when the industry works in a changing environment.

As has been pointed out by my parliamentary colleague Ms Hartland, people can book their travel arrangements online, and that happens every day, whether it be through a domestic or international travel company. People are able to make choices about which company they use to make their travel arrangements. Like Ms Hartland, when I have complex travel arrangements, I go to a travel agent. When I am doing much more simple travel, I do it myself. I hop on the Qantas website and book the flight, or I go to Jetstar and book the flight. I trundle up to Sydney for my meetings and then fly back, which is pretty easy stuff.

When the principal legislation, the Travel Agents Act 1986, was brought in the internet was not around. We would have been lucky if we had an Atari 2600 during that era and were playing River Raid or something like that. It was a very different time and the internet was a very long way off becoming something in the public domain. Once a piece of legislation has done its time, sometimes it is best to just let it go into the annals of history and allow people to get on with their business.

Just to show how much times have changed, the Travel Agents Act 1986 is better known as the TAA, and there must have been some levity among travel agents in calling something the TAA when that acronym also stood for a domestic airline, Trans Australia Airlines, operating at that time. Trans Australia Airlines became Australian Airlines and is now part of Qantas. Jetstar came into operation after that. As we can see, there has been a lot of change and a lot of different technologies have come into play in the travel market. Companies rise and fall. I do not think anyone would ever have imagined Webjet or ZUJI or the many other travel sites that are available now.

Being able to book a hotel room online — and the Greens would know about using that sort of technology because they get enough money out of one of those companies — is something that was never considered back in 1986 because the technology did not exist. We had to rely on our travel agents using their networks — and making phone calls in many instances — to make the bookings for us. It could take some days or even weeks before you found out from your travel agent what was going on. Nowadays it can take about an hour if you have a complex travel plan to make, and it will be done almost instantaneously with flights, rental cars and transfers booked — the whole shebang. It is really quite amazing what they can do.

We should be doing everything we can to allow travel agents to get on with their business. That is why this bill removes the requirement for travel agents to be members of the Travel Compensation Fund (TCF). The bill contains certain measures to allow the functions of the TCF to continue until its termination date of either 31 December 2015 or as soon after 30 June 2015 as it takes for its obligations of care to be fulfilled and for the trust to be wound up. The dissolving of the TCF recognises the protection consumers have under Australian Consumer Law and the use of credit card chargebacks. Certainly you can make purchases these days and if they are not fulfilled, you can always block the transaction through your bank. If you have any issues with a company, no matter which company it is or what business it is in, you can use consumer law for recourse in the matter you have with that company, whether it is a travel agent or not.

Mr Tarlamis mentioned something I have in my notes, and that is that some will claim this is an erosion of consumer rights and protection, but the bill reflects the legal realities of subsequent consumer laws which have overtaken this particular piece of legislation. The TAA has been overtaken by other consumer laws across the country and certainly in this state. Now that we have a national consumer law, it has taken that responsibility away from the states and people are allowed to make claims through that law.

It also seems rather odd that we have one sector within the travel industry upon which we have placed this impost. When we get down to it, any element of a holiday can cause people discomfort when they are travelling either for business or pleasure. The thing is that we do not put the TCF on hotels, resorts, theme parks, tour groups, bus lines, rail companies, rental car companies and extreme adventure companies as we should if we were to be fair or if we wanted to regulate everything as those opposite do. They want to make us into some sort of mini Europe where everything is regulated and has a measure.

I am getting the thumbs up from Mr Scheffer. He is just emphasising the point I was trying to make — that is, that those opposite wish to regulate everything and make us very uncompetitive. They want to have government of every aspect of our lives. That is something we should be raging against. We should have the freedom to be able to make decisions ourselves and to go about our daily lives without the government getting too involved in everything we do.

In any case, on other elements or aspects of travel we do not place the particular impost that we do on travel agents. I do not quite understand how we can correlate what we do when on the one hand we stand up for consumer rights and then we say, 'You'll be all right with all the other stuff that goes on because it's not often that a budget airline goes bust'. We have had Compass and Compass mark 2, and not so long ago we had problems with Tigerair because of its failure to adhere to some regulation, but it has since recovered. If we place an impost on one sector, why are we not placing it on others? I suggest that we do not need an impost on any sector.

The impost has not stopped companies going under or people having problems when seeking recompense when a company collapses. Kumuka Worldwide was a local travel agent company. During the global financial crisis and subsequent issues, its parent company decided that it needed to rein in spending and the Australian company was basically given the boot. The impost did not exactly help. There were issues because the parent company was an overseas company. Our jurisdiction does not go beyond the boundaries of our state and the federal government's laws do not apply beyond the boundaries of the nation state of Australia. I do not understand why we would put such an impost on our local companies and not expect the same thing of overseas companies that are operating in Australia.

The bill abolishes the need for travel agents to be licensed by the Business Licensing Authority. That is another impost being taken off businesses and the need for more paperwork being taken away. As I have mentioned, the bill has been introduced because of changes in technology and the fact that other legislation has overtaken the original intent of the Travel Agents Act.

With those few words, I commend this bill to the house. It is an important bill because once again it reduces the paperwork that is currently sitting on the table in the middle of the chamber. The government is taking out

one piece of legislation from those volumes. I am sure there are many more acts in those volumes that we could see an end to. The could be put through a shredder at some stage in the not-too-distant future. The clerks are looking at me a bit quizzically. Members should not get me wrong. There is some good stuff in amongst those volumes, but we need to weed out some of the legislation that has done its time and needs to be confined to the annals of history. With that, I commend the bill to the house so that this piece of legislation is confined to the annals of history.

House divided on motion:

Ayes, 19

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

Noes, 17

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

Pairs

Koch, Mr	Jennings, Mr
Kronberg, Mrs	Viney, Mr

Motion agreed to.

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

Third reading

Motion agreed to.

Read third time.

SMALL BUSINESS COMMISSIONER AMENDMENT BILL 2013

Second reading

Debate resumed from 20 February; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Mr MELHEM (Western Metropolitan) — I rise to speak on the Small Business Commissioner Amendment Bill 2013. This is a very important issue that. Small business plays an irreplaceable role in this state. I will provide a brief overview of the proposed amendments that the opposition supports.

Clause 5(3) of the bill adds the words 'or commercial dealings', confirming that the commissioner would have the jurisdiction to facilitate the resolution of disputes between government and small business. The bill also provides for the issuing of certificates by the commissioner, detailing either that mediation was undertaken successfully by the parties or that there was a complete absence of mediation. These certificates are for the purposes of the Victorian Civil and Administrative Tribunal (VCAT), so parties to a dispute can provide them to the tribunal to confirm that they have undertaken mediation. As I have seen in other jurisdictions, when mediators issue certificates they tend to be very helpful. In fact they could encourage parties to look for resolution because conciliators — or in this instance the commissioner — may express a view about how the conciliation or mediation has occurred. It is a good tool to use, and it could provide good guidance for VCAT. It is an important improvement to the current legislation.

The bill provides the Office of the Victorian Small Business Commissioner with the power to name businesses in its annual report. The purpose underlying this change is to give the commissioner some teeth when it comes to encouraging parties to a dispute to come to a resolution. Decisions to name a small business are not subject to independent review; the opposition was advised upon inquiry that the only way to seek an independent review is via judicial review under the Administrative Law Act 1978, and legal professionals and policy-makers alike will be well aware of the time and costliness of that process. That will fly in the face of the purpose of the commissioner, which is to reduce the costs which disputes impose on small business. In the interests of encouraging small business, the opposition will therefore flag that an agreeable amendment would be to institute an independent review process outside the Administrative Law Act. Of course I am not flagging that that will be

tabled today; there is no plan to put any amendment today.

The bill will also feature an opt-out clause which gives the commissioner the opportunity to refuse to investigate a complaint in certain limited circumstances. As it stands, the commissioner must investigate every complaint brought to it. The period 2012–13 saw the largest increase in the number of complaints, with an increase of 10.8 per cent to 1673. Limiting the circumstances in which the commissioner might refuse to investigate is a sensible decision, and in the event of refusal the commissioner may direct the party to an alternative avenue. The bill provides the commissioner with the power to request information from government agencies, as well as seek legal opinion from VCAT in relation to the probable outcome of a prospective case brought before it.

The bill quantifies a lot of what the commissioner already does in practice. For example, while the Small Business Commissioner Act 2003, as it stands, allows for the resolution of disputes through mediation by the commissioner, in reality the commissioner uses dispute resolution mechanisms outside mediation. Obviously the bill is a good step forward. The opposition supports the role that the small business commissioner plays in the Victorian economy. Indeed it was the Bracks Labor government which established the then Office of the Small Business Commissioner in 2003. The core purpose of the commissioner, as made clear in section 1 of the principal act, is:

> … to enhance a competitive and fair operating environment for small business in Victoria.

The commissioner plays a crucial role in supporting the role of small business in the state.

However, the opposition is concerned that the amendments in the bill do not go far enough. Since Labor legislated the small business commissioner into existence there has been an opportunity to observe any shortcomings in the role of the commissioner, their powers and their ability to encourage small business in Victoria. To this end it is troubling that the commissioner remains without the power to institute independent inquiries into the effect of government policy on small businesses in Victoria. As it stands the commissioner may only undertake such inquiries upon the direction of the responsible minister as per section 5(2)(h) of the principal act.

Government decisions and policy — for example, the government's recent decision not to stand up for manufacturing in Victoria and its failure to reach out to the car manufacturing industry — play a crucial role in encouraging small business in the state. Those decisions have flow-on effects for small business. Some small businesses supply those industries, others rely on the products of manufacturing and providing their own products or services. The effects are real. These businesses are small by their very nature, so they are unable to withstand shocks which many medium to large enterprises would be able to absorb.

Government members will say, 'Never fear!'. As the government lacks inspiration and imagination, it may be able to look to New South Wales, a fellow conservative government which has recently introduced its own Small Business Commissioner Act 2013. Section 14(1)(g) of that act provides that the New South Wales commissioner is to advise the minister either at the commissioner's own initiative or at the request of the minister on any matter affecting small businesses or that is relevant to the commissioner's objectives or functions.

The passage of this amendment bill will allow small business to be heard in this state and make the commissioner truly independent. The amendments will ensure that small business — the oil which flows through the engine that is the Victorian economy — will prosper and grow. Notwithstanding some reservations, the opposition commends the bill to the house.

Mr ONDARCHIE (Northern Metropolitan) — I rise to speak on the Small Business Commissioner Amendment Bill 2013. From the outset I say that I, my party and this coalition government love small businesses. We are here to support them all the time.

Mr Lenders interjected.

Mr ONDARCHIE — The interjection from the former Treasurer is interesting in itself. If he wants to talk about economic fundamentals, I am happy to debate him all day long. My response to his interjection is, 'Bring it on!' — let us stack up our credentials.

The Office of the Small Business Commissioner was established with bipartisan support in 2003, a little over 10 years ago. It was an Australian first. The office has received and resolved over 11 000 applications for assistance in a decade of change, reducing the business disruption associated with disputes. Its success is reflected in the fact that New South Wales, South Australia, Western Australia and the commonwealth all subsequently established their own small business commissioners based on the Victorian model. The inaugural Australian small business commissioner, Mark Brennan, commenced his role in January last

year. Prior to that he served for a number of years as Victoria's first small business commissioner.

Given the 10 years of experience in Victoria, it is now timely to consider the functions and the powers of the Victorian small business commissioner (VSBC) and how they might be expanded and updated as appropriate. A public consultation paper about the functions and powers of the Victorian small business commissioner was released for comment in early 2013. Support was expressed for clarifying and extending the commissioner's powers and functions in a number of ways, the first being providing the commissioner with greater flexibility to investigate complaints.

The bill extends the VSBC's jurisdiction to investigate complaints and resolve disputes. Currently the jurisdiction applies to complaints about unfair market practices; the bill extends this to also and more broadly include commercial dealings. Sometimes a party to a dispute questions the VSBC's authority to mediate a dispute on the ground that their conduct was not unfair or did not specifically involve market practices. Such arguments can prevent small to medium businesses from benefiting from the dispute resolution services that are offered. The term 'commercial dealings' is intended to be broader ranging in its application.

The second way that the government is looking to extend the powers and functions is through alternative dispute resolution. The small business commissioner currently focuses on the VSBC's use of mediation to resolve disputes. The bill explicitly extends the functions of the VSBC to include other forms of alternative dispute resolution, commonly known as ADR. This will allow the VSBC to use the array of dispute resolution methods that are available to deal with disputes. Use of the broader term 'alternative dispute resolution' will also be more realistic as it covers services already offered by the commissioner under other acts as well as potential future services such as preliminary assistance, conciliation, independent neutral evaluation, assisted negotiation, facilitated meetings, arbitration and so forth. The amendments will also update the commissioner's act to ensure that that office can offer a full range of dispute resolution services. This is consistent with the full range of ADR functions available under the Retail Leases Act 2003 and the Owner Drivers and Forestry Contractors Act 2005**.**

The bill will provide for new powers to resolve small business complaints about public sector agencies. This bill vests new powers in the Victorian small business commissioner to assist small and medium enterprise businesses in their disputes with government agencies. In the past, if a complaint was made about a government department or a local council the commissioner had very limited jurisdiction to intervene or to assist a small business as state and local government bodies have been able to claim that they are not a public entity. This bill enables the commissioner to receive and investigate complaints about every level of the public sector with a view to resolving the matter. This means that where a government department or a local council is the subject of a complaint it will have a statutory obligation to attend to the matter and participate in resolution of the dispute.

The Productivity Commission's report titled *Regulator Engagement with Small Business* found that at all levels of government, including local government, the facilitation of ADR services should be promoted. This bill provides for that. This initiative is not about expanding government intervention. Rather, it is about government clarifying its own obligations to help small business to resolve disputes. This is a government that supports small business.

The bill also provides for the issuing of certificates for alternative dispute resolution. The VSBC will be able to issue certificates attesting that ADR has failed or is unlikely to resolve the dispute. It is necessary to document this because the issuing of certificates is an advantage to the parties if they need to prove or validate that they have made reasonable endeavours to resolve the dispute. In turn, it is also recognised that the courts and tribunals increasingly expect the parties to disputes to take steps to resolve the matter informally before taking legal action. This might help to get the issue solved at the front end.

There are consequences of the reporting of certificates because the bill also enables the VSBC to publish the names of businesses and government organisations that have unreasonably failed to participate in ADR. This will be done each year when the VSBC submits its annual report. The rationale for this amendment is that it will in particular encourage government agencies and larger businesses to attend to small business complaints; they have to be taken seriously. Both government and larger businesses will have stronger obligations to be seen to be attending to small business complaints. If a business or a government agency considers it has been unfairly or unreasonably singled out there is an opportunity to make a submission to the VSBC prior to publication, giving reasons why it should not be named.

The bill provides for new reporting powers because this bill also vests powers in the commissioner's role to

publish any other adverse information about the outcomes of an investigation of a small business complaint. Previously, the commissioner did not have express powers to publish adverse reports. This power gives the commissioner the ability to publicly shine a light on unfair market practices. Some provisos apply to the broader reporting powers. For example, the subject of a reported complaint must be afforded procedural fairness, the relevant information must be accurate and it must be in the public interest.

The bill also provides statutory immunity for the performance of the ADR function by the VSBC and mediators in the office provided it is undertaken reasonably and in good faith. An immunity that implies the dispute resolution function has a number of advantages. It maintains an effective business model in the office of the VSBC by deterring undesirable and unnecessary litigation. We have talked about that already this week. Also, at present different forms of immunity apply across a number of different acts for which the commissioner is responsible. I know Mr Finn agrees with this.

Mr Finn — I do.

Mr ONDARCHIE — The bill removes the inconsistency and confusion associated with this situation. Mr Finn nods in agreement because he is a very big supporter of small business, particularly in the western suburbs, where he is a great advocate. I am certain he will tell us more about that today.

It should be acknowledged that the statutory immunity for the dispute resolution function will not remove a person's legal right. If a party to a mediated dispute is not happy with the outcome, that party has not lost anything. They may seek recourse to a court or a tribunal to finalise the matter. The immunity is drafted so that it has very narrow application. This is intentional and aims to discourage lacklustre performance at a less than reasonable standard. It is also intended that the immunity should not apply to cases where there may have been fraud or mischief. The bill also makes some minor miscellaneous amendments which I know other speakers have covered today.

This government is an active supporter of small business because small business is an essential part of the Victorian economy. There are nearly 530 000 actively trading small businesses in Victoria supplying 47 per cent of private sector jobs. Around 28 per cent of those small businesses are located in regional and rural Victoria. This government has achieved a number of things in helping small business already since coming to government in 2010. Examples include reversing clearway laws which were introduced without assessing the impact on small businesses — implemented. The halving of liquor licence fees for 10 000 small businesses — implemented. It ended the Easter Sunday trading confusion by ensuring that all Victorian businesses are able to trade on Easter Sunday — implemented. The Energy Saver Incentive scheme was extended to small business in addition to households, making energy efficiency more affordable for small business operators — implemented. Flexible public holiday laws have been restored, allowing regional Victorians the option of public holiday arrangements that recognise events of local significance, in lieu of Melbourne Cup Day — implemented. Through Consumer Affairs Victoria a new small business infoline has been established to ensure that small businesses have information about their rights and free assistance to resolve consumer disputes — implemented.

This is the government of business. It supports the generation of opportunities in the private sector. This bill demonstrates the coalition government's commitment to small business and driving Victoria's economy.

Small business is crucial to the health of the Victorian economy. I was lucky enough to launch the Marysville 'Wish You Were Here' campaign in December last year with my good friend and colleague Amanda Millar, a member for Northern Victoria Region and a great supporter of the Marysville area, as I know is Minister Lovell. I attended the launch with Amanda Millar and the fire services commissioner, Craig Lapsley. Marysville bore a fair part of the brunt of the tragic Black Saturday bushfires in 2009 and with that came a huge hit to its economy, with many small businesses doing it tough.

Marysville is a wonderful place and a great place to visit. I encourage Victorians to use some time on the weekends or during their free time to pop up to the mountain and have a look at the great things happening in Marysville. It is time to support those small businesses and get behind them. This bill provides that businesses such as those in Marysville will be able to rebuild without interference from outside people. At some point in my career I have been in small business and have supported small business throughout my career, and here is an opportunity for all sides of politics to stand up today and say, 'We support small business'. Everyone should follow the lead of the Napthine coalition government in supporting small business.

It is interesting that Labor members had seven years from the introduction of the Office of the Victorian Small Business Commissioner to make the changes they are suggesting we should now make. Opposition members had a chance to do so when they were in government, but they did not do it. Once again the Victorian coalition government is righting what needs to be righted. I commend the bill to the house.

Ms PENNICUIK (Southern Metropolitan) — The Greens will support the Small Business Commissioner Amendment Bill 2013, which amends the functions and powers of the Office of the Victorian Small Business Commissioner (VSBC) so that its jurisdiction covers more broadly commercial disputes rather than just unfair market practices.

The bill clarifies that the commissioner does not need to first consider whether a particular market practice or a threshold standard of unfairness has been engaged in before investigating a complaint or resolving a dispute, and provides a corresponding discretion to refuse to deal with complaints if they are deemed to be vexatious or trivial or if the commissioner reasonably considers the dispute is unlikely to be resolved or another agency is better suited to deal with it. At the moment, the act is unclear about the commissioner's role with regard to the resolution of disputes between businesses and government agencies, so the bill aims to provide expressly that the commissioner has the jurisdiction to assist small businesses in resolving their disputes with both state and local government agencies.

The bill confers powers on the commissioner to publish information relating to disputes in certain circumstances. The commissioner will be able to issue certificates verifying that alternative dispute resolution has taken place so that there is a public record of it. He or she will be able to foster greater cooperation by providing for the commissioner to name each year in the annual report businesses and government agencies that have failed to make reasonable endeavours to participate in alternative dispute resolution on the basis of the issued certificate. Before the commissioner publishes such a certificate, the parties to the dispute will have the opportunity to make written submissions to the commissioner explaining their reasons for not participating. This provision will open the operations of the commissioner to more public scrutiny and give members of the public better knowledge about how the commissioner operates in the interests of small businesses.

The bill also provides the commissioner with the ability to seek an advisory opinion from the Victorian Civil and Administrative Tribunal (VCAT) if complex matters of law are raised by a dispute under any of the acts under which the commissioner operates. An advisory opinion can be sought from a presiding member of VCAT as to how a legal dispute would be likely to be resolved should it go to the tribunal. The bill also provides the Office of the Victorian Small Business Commissioner and its mediators with statutory immunity from liability provided they perform their legislative functions reasonably and in good faith.

As other speakers have said, the Office of the Victorian Small Business Commissioner has celebrated its 10th birthday, and in a little over a month it will be 11 years old, and it was the first such office established by any state in Australia. Currently the majority of the applications submitted to the office of the small business commissioner are matters under the Retail Leases Act 2003, with the majority of disputes relating to payment of outstanding moneys by tenants; the value of rent, outgoings and expenses; repairs and maintenance; return of security deposits; and lease options and renewals. It is not surprising that these are the types of disputes that would occur under that particular act.

The commissioner attempts to resolve disputes in the most cost-effective and expedient manner possible to ease legal burdens on both parties, which is part of its raison d'être. There is a small fee for service for dispute resolution through mediation. It costs $195 per day for a half-day session for disputes involving the Retail Leases Act and the Small Business Commissioner Act, and $95 per half-day session for disputes involving the Owner Drivers and Forestry Contractors Act disputes. Parties can bring their own legal practitioners, but they would have to cover those costs themselves. There is no cost to parties to use the VSBC's email or phone information services, or where a dispute is resolved prior to mediation by officer engagement with the parties.

For disputes under the Retail Leases Act 2003 or the Owner Drivers and Forestry Contractors Act 2005, if the commissioner is unable to reach a satisfactory mediation the matter can be referred by either party to VCAT for a determination to be made. For this to occur with retail list disputes the commissioner must certify that dispute resolution has been attempted and has failed, as per section 87 of the Retail Leases Act. Staff in my office have also contacted the Australian Retailers Association, which is supportive of the bill.

There is another matter I wish to raise in this debate, which goes to an issue I raised almost a year ago in Parliament by way of an adjournment matter in May last year. I refer to the issue of Bob and Dianne Heller,

an elderly couple who incurred large legal fees and lost their small business, and eventually their home, after they challenged being locked out of their business premises without notice by their landlord in 1998.

If the Office of the Victorian Small Business Commissioner had been in place at the time, perhaps it may have been able to assist Bob and Dianne Heller. As I mentioned at the time, it is a complex case that raises public interest issues regarding the rights of retail tenants, as well as the personal circumstances of the Hellers in this case.

Briefly, while Mr and Mrs Heller were successful in the Supreme Court and the Court of Appeal in their original case against their landlord, subsequent litigation involving a damages claim was unsuccessful in the same courts. The damages claim was pursued with the encouragement of the then Attorney-General, Mr Rob Hulls, and the Small Business Commissioner to avoid the government having to amend the existing legislation, and therefore was undertaken by the Hellers in the public interest as well as in their own interest. Following the unsuccessful damages claim, the Hellers sought special leave to appeal to the High Court, but in 2005 the government introduced a bill to amend section 146 of the Property Law Act 1958 while the Hellers' application to the High Court was still pending.

The government appeared to be of the view that it could not wait to legislate to overcome the effect of the second Court of Appeal judgement, which left tenants without protection where a landlord claimed to have accepted common-law repudiation of a lease. The government would have been aware that this would mean the Hellers' application for special leave to appeal would not succeed, so they were basically hung out to dry.

I requested that the Premier speak to the Minister for Innovation, Services and Small Business regarding the need to amend the act, and also for the Premier to consider an ex gratia payment for the Hellers in these special circumstances. I pointed out that it would not open the floodgates because it was a unique and special case involving this particular couple and their problems.

After all this time I have had a letter from Mr Ondarchie on behalf of the Premier. The Premier had written to me once or twice before, saying that members of the government were still considering the matter and that the government was not intending to do anything, but the matter has been referred to the Attorney-General. I take this opportunity to raise this issue again, and I urge the Attorney-General to look closely at this issue, the public interest matters that it raises and the particular personal circumstances of the Hellers which the government has in its power to do something about.

Business interrupted pursuant to standing orders.

QUESTIONS WITHOUT NOTICE

Kindergartens

Ms MIKAKOS (Northern Metropolitan) — My question is to the Minister for Children and Early Childhood Development, and I ask: what plans does the minister have to lift kindergarten attendance rates in those communities where children may be enrolled but subsequently fail to attend during the year?

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — I thank the member for her question and the opportunity to talk about kindergarten participation rates, which are at 98.2 per cent — the highest rates we have seen in Victoria's history and in fact well ahead of what they were under Labor. I know, as the member pointed out, there is a difference between participation rates and attendance rates, and this government is working hard with communities and with the sector to ensure that those children who are enrolled in kindergarten are attending kindergarten.

Supplementary question

Ms MIKAKOS (Northern Metropolitan) — As the minister well knows, attendance and registration are two different matters. There are some particularly disadvantaged communities where it is well known that families might enrol their child at the start of the year and then that child fails to attend, so I ask: will the minister publicly release any analysis her department has undertaken of kindergarten attendance across various local government areas and particularly, if they are identified, any reasons for this failure to attend kindergarten throughout the year?

Hon. W. A. LOVELL (Minister for Children and Early Childhood Development) — As I said, this government is working with communities to ensure that children are attending kindergarten. We have the strongest record on early childhood education of any government in Victoria's history. We are committed to ensuring that every child gets access to a high-quality early childhood education. We have invested more than $106 million — the largest investment ever — in children's infrastructure to make sure that there is a place available for every child in Victoria. We have record attendance rates — —

Ms Mikakos — On a point of order, President, my question did not in any way relate to infrastructure spending, which is largely federal money as we all know. It related specifically to kindergarten attendance, and I asked the minister if there had been a departmental analysis, whether she would be prepared to release that departmental analysis.

The PRESIDENT — Order! A point of order is not an opportunity to ask a further question. The point of order is whether or not the minister is responding to the member's supplementary question. Ms Mikakos might not be happy with the minister's answer, but the minister is responding to her question. A point of order is certainly not an opportunity to put further information on the record and ask a further question of the minister.

Hon. W. A. LOVELL — As I was saying, we have record investment in infrastructure and the highest participation rates. We have more than 95 per cent of children attending 15-hour programs. We are leading the way in Australia on the quality of programs that are being delivered in kindergartens throughout the nation. This government has a strong record. We are committed to early childhood education, and we are committed to giving children the best start in life. I know those on the opposite side of the chamber are ashamed of their record.

Ms Mikakos — On a point of order, President, I ask the minister to withdraw that last comment. It was unparliamentary. She is making all sorts of assertions that she knows are not the case.

Hon. D. M. Davis — On the point of order, President, it is not out of order for someone to reflect on a whole party or class of people in that way. The member may be sensitive about her record, and maybe she should be ashamed of it, but the fact that the minister has suggested the member is ashamed in that way is not unparliamentary in any way.

The PRESIDENT — Order! There is no point of order.

Mobile dialysis unit

Mr ELSBURY (Western Metropolitan) — My question is to the Minister for Health, the Honourable David Davis. Can the minister inform the house of any community and government partnership initiatives to support Victorians with kidney disease?

Hon. D. M. DAVIS (Minister for Health) — I thank the member for his question and for his interest in kidney health. Given the growing prevalence in Australia of people with kidney disease, particularly those requiring dialysis, the government has worked with a number of key groups to set up new partnerships. I announce today the Big Red Kidney Bus initiative, which we understand to be a world first. It is an initiative that will provide dialysis in a very proximate way so that it can be accessed by people on holidays and in other locations. The Big Red Kidney Bus will provide dialysis access for community members. Nearly 2000 Victorians currently need dialysis in public facilities, and around 720 patients currently receive dialysis at home.

The initiative came from Vince Tripodi from Traralgon, who suggested to Kidney Health Australia in 2011 that a kidney bus be developed as a way of delivering dialysis to communities, and I think the example is a good one. This is a partnership initiative driven by goodwill, and I thank particularly Monash Health for its advocacy in this area. I thank Professor Peter Kerr in particular and Anne Wilson from Kidney Health Australia for the work they have done in bringing the Big Red Kidney Bus to fruition.

This is a wonderful initiative, and I know it will benefit many Victorians. The idea of taking dialysis to communities in this way is a good one, and the preparedness of the government and Monash Health in particular to trial this is important. I pay tribute to the support of the association, and I pay tribute to the work of Monash Health in this area. Today — World Kidney Day — is the first day for the Bid Red Kidney Bus.

Community housing

Ms MIKAKOS (Northern Metropolitan) — My question is to the Minister for Housing. I refer the minister to the midyear financial report tabled today, and I ask: can the minister explain why there has been a decrease of $23.1 million in the value of land held for community housing?

Hon. W. A. LOVELL (Minister for Housing) — I would have to take advice from my department on that particular measure. I believe that measure, because it is community housing, would also include housing associations.

Supplementary question

Ms MIKAKOS (Northern Metropolitan) — It is disappointing that the minister is not aware of the details on page 4 of today's midyear financial report, but I ask: can the minister explain this decrease given that land transfer duty, on page 34 of that report, has increased by over 25 per cent?

Hon. W. A. LOVELL (Minister for Housing) — As I said, that is a measure for community housing, so it includes housing associations. As I said in my substantive answer, I would need to take advice on that from the department.

Public housing

Ms CROZIER (Southern Metropolitan) — My question is also to the Minister for Housing, Ms Lovell, and I ask: can the minister update the house on efforts to improve housing outcomes for low-income and disadvantaged Victorians?

Hon. W. A. LOVELL (Minister for Housing) — I thank the member for her question and her ongoing interest in those less fortunate than us who need the assistance of community and public housing. Over the last couple of weeks I have presided over two very special events in Victoria.

The first of those was in Wangaratta, where I joined the member for Murray Valley in the Assembly, Tim McCurdy, and members of the Teller family of Harlea Properties for the official opening of 45 affordable homes for people aged over 55. This is a really special story. This private company bought a retirement village that had gone into receivership and wanted to provide 45 of those properties for low-income families. The company formed an innovative partnership with Common Equity Housing and the Victorian government to ensure that people who were on the waiting list for public housing had access to those properties.

Meeting the tenants who are fortunate enough to have gained access to the properties the Teller family has made available was really rewarding. It was fantastic to see business, the government and a housing association working together to provide great outcomes. I congratulate Daniel Teller of Harlea Properties and his family on their initiative.

In Bendigo last week I was able to break ground for a new housing development called the Sidney Myer Haven project. This is a $6 million development that is being made possible through a partnership with the Victorian government. The government provided $4 million; the Myer family, through the Yugilbar Foundation and the Sidney Myer Fund, has provided $1.4 million; and Bendigo for Homeless Youth has provided $100 000. The remainder of the funding has been made available through the Community Foundation for Central Bendigo and Haven Home Safe. I joined Baillieu Myer and representatives from Haven Home Safe to break ground on this fantastic new, innovative project that will provide 23 one and two-bedroom units to homeless people in Bendigo. The development of Sidney Myer Haven demonstrates the coalition government's commitment to breaking the cycle of homelessness, protecting vulnerable Victorians and building a better Victoria.

Homelessness national partnership

Ms MIKAKOS (Northern Metropolitan) — My question is again to the Minister for Housing. I refer to her public comments expressing concern about the federal government's budget deliberations in relation to ongoing funding for housing provision, and I ask: has the minister since been reassured that there will be a new national affordable housing agreement?

Hon. W. A. LOVELL (Minister for Housing) — I thank the member very much. I note that this is question time by the media, because over the last week I have made numerous comments in the media about the national partnership on homelessness. The federal budget will come down in May, and it will contain information about the future of that partnership. If the member had read the media reports this week, she would have seen that there were comments from the Prime Minister that indicated a very positive outcome for that partnership, but the media reports also said that the announcements will be made in the federal budget.

We have been working with the federal Minister for Housing and Homelessness to get an earlier announcement of that funding. We will continue to work with the federal government to ensure that the national partnership continues to fund homelessness services in Victoria.

Supplementary question

Ms MIKAKOS (Northern Metropolitan) — It sounds as if the minister is hoping there might be money in the federal budget, but like all of us, she will be waiting to find out whether that will be the case. If there is an unsuccessful outcome, there will be a shortage of funding, so I ask the minister: is the sale of public housing from the Carlton and Williamstown estates being considered as part of the Victorian government's response to the new federal funding arrangements?

Hon. W. A. Lovell — They are not linked in any way.

The PRESIDENT — Order! No, and that is my concern. I hear the comments from the minister saying

that the two matters are not linked. As a supplementary question it is a fair jump from the overall agreement to highlighting the sale of a particular project. Is Ms Mikakos able to rephrase her question in some way?

Ms MIKAKOS — I may be able to assist you, President. If the federal government is not forthcoming with the required funds under the national affordable housing agreement, the minister may have contingency plans including asset sales, so the supplementary question relates to what those contingency plans may be.

The PRESIDENT — Order! I would be happier if Ms Mikakos asked the minister whether she has contingency plans if the scheme does not proceed. I would be happier about that than to bring in the specific case of a development or a particular facility, because I think that is a stretch. If Ms Mikakos were to ask about contingency plans in the event that the commonwealth funding agreement does not continue, that would be a valid supplementary question.

Ms MIKAKOS — Thank you for your guidance, as always, President. My supplementary question to the minister is: in light of the fact that there is this uncertainty from her federal colleagues, has the minister developed contingency plans that involve the sale of public housing properties?

Hon. W. A. LOVELL (Minister for Housing) — I thank the member for her question, particularly the extra bit that she put on the end, because I have never, ever heard of a plan to sell properties as a contingency plan to fund homelessness services, but obviously the Labor Party has talked about this. Perhaps this is part of its contingency plan and the policy it will take to the state election.

Mr Lenders — On a point of order, President, the minister was asked a question on government administration. I am putting it to you that she is now debating the matter by speculating on what an opposition may be doing. I ask you to bring her back to the question.

Hon. D. M. Davis — On the point of order, President, the member sought to make a linkage. This was clearly not a matter in the minister's mind or even in the minister's plans. She is simply reflecting the fact that this suggestion came from the opposition and may well reflect its secret policies. It is entirely in order, given that the suggestion has come entirely and alone from the opposition, for the minister to speculate that this may be a secret opposition plan.

The PRESIDENT — Order! There is a difficulty in that the question posed was speculative, and therefore the minister has embarked on a speculative answer. Nonetheless, I uphold the point of order in the sense that the speculative answer is debating at this point, so if the minister could come back to — —

Hon. W. A. LOVELL — I have finished.

The PRESIDENT — Thank you.

Internet connectivity

Mr ONDARCHIE (Northern Metropolitan) — My question is for the Honourable Gordon Rich-Phillips in his capacity as Minister for Technology.

Mr Jennings — Isn't he your friend?

Mr ONDARCHIE — He is also my good friend and colleague, just to allay any concerns across the chamber. Could the minister update the house on any government initiatives to boost connectivity in the central business district of Melbourne?

Hon. G. K. RICH-PHILLIPS (Minister for Technology) — I thank my good friend Mr Ondarchie for his question and for his interest in the issue of connectivity. In the 21st century internet connectivity is seen as an important piece of infrastructure and an important utility for the Victorian community, in the same way that access to electricity and water were seen as important utilities in the 20th century. The Victorian government is committed to growing Victoria's economy, growing the services sector and growing the knowledge economy. One of the key ways to do that is by providing for good public internet access infrastructure.

Yesterday I was delighted to join the Premier and the Lord Mayor for the release of an expression-of-interest process to commence a pilot program for the rollout of free public wi-fi in the Melbourne CBD. This is an important initiative by this government to provide for public access infrastructure in the Melbourne CBD. We are seeking through this expression-of-interest process to have private sector telecommunication providers partner with the Victorian government and the City of Melbourne to rollout wi-fi hot spots throughout the CBD as an initial pilot and to test models to ensure that that infrastructure can be provided on an ongoing basis, free of charge to the user. The Victorian government and the City of Melbourne bring to this process a range of government infrastructure and installed physical infrastructure within the CBD, part of which can be provided through this expression-of-interest process as

we work with the marketplace to develop sustainable public wi-fi provision throughout Melbourne.

This is the first of a number of new projects under the Victorian government's whole-of-government ICT strategy. When we put the strategy in place last year we recognised that the way in which the committee engages with government is changing and the way in which the community engages with business is changing. Mobility is now one of the key ways in which the community engages with business and government. Putting in place a public wi-fi program is an important way of meeting community expectations around engagement.

We are also running this program as a pilot. This arises from previous experiences within the Victorian government which led to the development of our whole-of-government strategy and which recognised that piloting programs on a scalable basis is the best way to manage risk and ensure that we get the best outcome in contracting with the private sector.

The expression-of-interest process is open until 17 April. We look forward to some strong responses from the private sector as to competitive, commercial models for the provision of free public wi-fi to the Victorian community in the Melbourne CBD. We look forward to that pilot being up and running by the end of the 2014 calendar year, and we look forward to delivering similar initiatives elsewhere in Victoria as the government sets about continuing our program of building a better Victoria.

Homelessness national partnership

Ms MIKAKOS (Northern Metropolitan) — I refer my question to the Minister for Housing. I refer the minister to her comments on the capacity of the Victorian government to continue to provide support to people experiencing homelessness. I ask: what steps has the minister taken to ensure that the commonwealth renews the funding Victoria receives under the national partnership agreement on homelessness?

Hon. W. A. LOVELL (Minister for Housing) — In respect of this particular national partnership I put on record my disappointment with the former Labor government. This national partnership expired last year. The national partnership initially came out of a 2007 federal Labor election commitment to reduce homelessness. When the partnership expired last year, Labor had an opportunity to lock in its agenda, but it did not offer a long-term funding agreement to the states. Despite all states heavily lobbying Labor for that long-term funding agreement, it only offered a 12-month stopgap measure. That is why we are in this position now, awaiting a further decision from a federal government.

We all understand that in the first year of a new government there are processes to go through with the first budget, including the commission of audit. We also know that the cupboard has been left bare for this new federal government.

Hon. D. M. Davis — Irresponsible financial management.

Hon. W. A. LOVELL — Yes, absolutely irresponsible financial management. The new government is going through the budget with a fine-toothed comb. I have been talking with the minister. There is a whole-of-government strategy around a number of expiring national partnerships, and we look forward to continuing to work with this federal government to ensure that Victoria gets its share of the funding.

Supplementary question

Ms MIKAKOS (Northern Metropolitan) — What contingency plans has the minister put in place to ensure that any reduction in commonwealth funding for homelessness programs do not leave the most vulnerable members of our community at greater risk?

The PRESIDENT — Order! I am at a loss to understand the difference in this supplementary question from Ms Mikakos's supplementary question on the previous question.

Ms Mikakos — On a point of order, President, this relates specifically to a national partnership agreement on homelessness. The previous question was about the national affordable housing agreement. These are two different issues. I am asking the minister if she has put in place contingency plans if she is not to receive further funding under the national partnership agreement on homelessness.

The PRESIDENT — Order! I will allow the minister to determine whether or not she wishes to answer, because I do not understand the difference between the two supplementary questions. Does the minister wish to comment?

Hon. W. A. Lovell — There is no difference between the two supplementary questions. She asked about the same agreement. She did not ask about a different agreement; she asked about the same agreement.

The PRESIDENT — Order! My position is that I think the supplementary questions were virtually the same. That might be my fault because I gave Ms Mikakos the opportunity to reword the previous one, so in part I might be complicit in this problem. Nonetheless, I think that they are the same. The minister is advising me that they are the same subject matter. Therefore I would rule the supplementary question out of order on this occasion.

Ms Mikakos — On the point of order, President, with your indulgence, the minister has responded to this whilst seated. If that is her position, she should stand and take a point of order and put that on the record, if that is her answer in relation to this, because they were in fact two different issues.

The PRESIDENT — Order! It has been recorded, whether the minister was on her feet or not. The minister was offering some advice to me. Perhaps she ought to have been on her feet, but nonetheless the supplementary question, I am advised, referred to the same matter. That was my perspective from my inadequate knowledge of the situation. Therefore I rule the supplementary question out of order on this occasion. In doing so I acknowledge for the record that the minister believes the question went to the same matter of the previous supplementary question.

I note there is an invasion of Nationals MPs in the gallery today. It seems we have a lot of visitors today; they are indeed welcome.

Armstrong Creek

Mr O'BRIEN (Western Victoria) — I rise on this auspicious occasion to ask a question of my friend and colleague the Honourable Matthew Guy in his capacity as Minister for Planning. It is subject matter that is of great interest to me and my colleague Mr Koch, who is unwell today, and also Mr Ramsay. I ask: can the minister inform the house what action the coalition government has taken to provide new services for the fast-growing Armstrong Creek growth corridor?

Hon. M. J. GUY (Minister for Planning) — This is an auspicious day, not just for the President and the invasion of The Nationals I see in the gallery but for our colleague Mr Peter Hall, who has been a very fierce advocate for regional Victoria. No doubt we will hear a bit more about that fairly soon.

We want to talk about the Armstrong Creek growth corridor. As Mr O'Brien said, this government in particular has confidence in Geelong. I place on record the work of Mr O'Brien, Mr Koch, Mr Ramsay and Andrew Katos, the member for South Barwon in the Assembly, and of course acknowledge the mayor, Darryn Lyons — and his 'Giddy Up' slogan — for the work he has done for Geelong and for getting Geelong back on the map.

Mr Barber — What's he done?

Hon. M. J. GUY — A lot more than you, Mr Barber, that is for sure. He is getting Geelong back on the map as a city whose best days are certainly ahead of it, not behind it. Unlike Mr Barber, he does not believe people should live in humpies either.

It is all happening in Geelong. Some might say to Geelong, 'Come on down', because this government recently injected $7.7 million into the Armstrong Creek growth area for a brand-new neighbourhood health and community centre and a new community sports pavilion. The Napthine government is investing — some might call it a cash jackpot — in Geelong's Armstrong Creek growth corridor. This government's $7 million commitment to the neighbourhood health and community centre is one that will provide, as Ms Lovell knows, a great number of services for those who are moving into what is one of the fastest growing regional areas in Australia, and that should not be underestimated.

More to the point, this government is putting in place infrastructure before and while people are arriving in this growth corridor. That contrasts with the actions of our opponents, who waited and waited for infrastructure that never arrived and simply allowed suburbs to grow without any level of support for residents. That is not the focus of this government. Mr O'Brien knows this, Mr Koch and Mr Ramsay know this, Mr Katos certainly knows this and, again, Giddy Up, the mayor, certainly knows this. This government believes that Geelong has its best days ahead of it, not behind it, and so does the entire state of Victoria. This announcement of $7 million, nearly $8 million, will be a huge boost to the Armstrong Creek growth corridor. It is part of this government's building a better Victoria and, importantly, a better Geelong.

The PRESIDENT — Order! I indicate that in future I am not too keen to hear references to 'Giddy Up, the mayor'. While I understand that the mayor of Geelong is known by that name, it seems to me that that is a popular reference that might be made by the media or by people in the community who know him. In this place we should refer to him by his proper title and name, which I am sure is how he would be referred to in council meetings at the City of Greater Geelong. I cannot envisage a councillor sitting up and saying,

'Your Worship Giddy Up', so I ask that members bear that in mind going forward.

Apprentices and trainees

Ms PENNICUIK (Southern Metropolitan) — My question is for the Minister for Higher Education and Skills, Mr Peter Hall, and I take the opportunity to extend my best wishes to Mr Hall on the occasion of his retirement today. The Auditor-General's report on apprenticeship and traineeship completion tabled yesterday found that the Department of Education and Early Childhood Development does not currently systematically monitor the number of individuals commencing or completing apprenticeships and traineeships, nor does it monitor progress against lead indicators to identify emerging trends in completion rates. It is also clear that the data used for the report is not up to date. What measures is the government putting in place to rectify this unacceptable situation?

Hon. P. R. HALL (Minister for Higher Education and Skills) — I thank Ms Pennicuik for her question. I would have been disappointed if a question had not been directed to me at the last opportunity for those on the other side of the house to do so. In respect of this issue, I was tempted to have a standard response to all questions asked of me today — that is, 'I will take it on notice and get back to you on the next day of meeting' — but, in fairness to Ms Pennicuik, I will attempt to answer the question.

This is a matter that has been sought to be addressed over a number of years. Australia has an issue with completion rates of apprenticeships and traineeships, and I know it has been the subject of discussion in ministerial councils. Nevertheless, the Auditor-General's report, which was accepted in full, and the three recommendations to my department and a fourth recommendation in part will be implemented. I have asked my department to undertake some work to better identify ways in which we can work with the Victorian Registration and Qualifications Authority, the regulator, to address the very problem that Ms Pennicuik raises. We accept that there is some work to be done, as per the Auditor-General's report.

Supplementary question

Ms PENNICUIK (Southern Metropolitan) — As the minister has confirmed, there is a problem with the data and with completion rates as well. The data for the completion and commencement rates of apprenticeships and traineeships goes only up to 2008 in terms of completion rates and only up to 2012 in terms of commencement rates. The comment made at the briefing yesterday was that it is not difficult for computer systems to make this data available more often and closer to real time — as in quarterly or monthly. Specifically, I ask: is the department moving to do that so that emerging trends can be better identified and the available data is not just historical data, as it basically is at the moment?

Hon. P. R. HALL (Minister for Higher Education and Skills) — The data collection process is live — that is, it is a continuing process. If you want to measure when apprentices start and when they complete their traineeships, most apprenticeships being of four years duration, it is only now that those who started in 2009 can actually be counted as completed. I think that is the reason the Auditor-General's department had data only up to 2008 or 2009. But there are issues there, and I am more than happy to explore those. As I have said to my department, we need to work to make sure that the recommendations, including those regarding data collection, are addressed.

Training subsidies

Mr DRUM (Northern Victoria) — I never thought I would say this — and I ask for the forgiveness of the house immediately — but my question is to my good friend and colleague Mr Peter Ronald Hall. Can the minister confirm that it is a fact that the number of students receiving government-subsidised training in 2013 would fill the MCG five times over?

Hon. P. R. HALL (Minister for Higher Education and Skills) — I am not sure if Mr Drum is finished yet or if he has a supplementary question up his sleeve, but I did not think he would let the opportunity go past to try to sideswipe me in some way or another and surprise me with a question of that nature. I did not expect that he would actually deliver the question I thought he was going to deliver. But the answer to his question is yes — and I await with interest to hear whether there is a supplementary.

VALEDICTORY STATEMENTS

Hon. Peter Hall

Hon. P. R. HALL (Minister for Higher Education and Skills) (*By leave*) — I appreciate the courtesy extended to me by members to make some reflections on life past, the past 25 years in particular. It is somewhat ironic that in March 2003 I was one of 19 members of the Legislative Council who opposed the major legislative reform of this house proposed by the Labor government at that time. I say 'ironic' because I am using one of the provisions of that

legislation which I opposed to effect the decision I have made in the last couple of weeks, that being to align my resignation from Parliament with a preannounced cabinet reshuffle by the Premier of Victoria. Some of the headlines in today's papers have said, 'MP quitting nine months early', and people are asking me whether that is true. It is sort of true technically, but it warrants further explanation.

The explanation is thus: as members who have closely followed commentary by the government will know, the Premier indicated some time ago that his desire is to take forward to the people of Victoria at the next election a cabinet of ministers who will be ongoing and who will contest the next election. As such, those who chose to announce that they will not be contesting the next election were asked to stand aside.

First of all, I want to say that there are implications to that. As I have already indicated that I will not be seeking re-election, I will be one of those who will be asked to stand aside. To make it absolutely categorically plain for all those in this room and elsewhere: I support that position. If I were the Premier of the day, I too would be looking for an ongoing team to take forward because, after all, we present ourselves to the people of Victoria as that for an election and the people of Victoria deserve to know who they might expect to be their ministers thereafter. I absolutely support the Premier and the government in that decision.

As the Premier announced a time frame for the reshuffle of probably during March, there is not much time left for it to take place, and therefore I expect that this will be my last sitting day, given that I have also made the decision to use the changed provisions of the Constitution Act 1975 to align my resignation from Parliament with the timing of the cabinet reshuffle. My reason for doing that is that it gives my successor an opportunity to occupy the benches in here and learn what Parliament is all about, and it also gives the people of Eastern Victoria Region the opportunity to learn more about a person they will be considering for election at the next election. Anyway, those two events coincide, so yes, I am leaving potentially earlier, almost nine months earlier, than I could have, but I think it is a decision that will benefit both the people of Victoria and me.

I want to say a few words, but I am determined that this will not be a eulogy, nor will it be a long narrative. While I am not renowned for taking points of order, if somebody later by leave seeks to extend their dialogue to one of lengthy proportions, I might take a point of order and call them back to what my intentions are. I am also reminded at this point in time of the words of a former leader of my party, Peter Ross-Edwards, a man I admired greatly, who usually said that, 'If you have got something to say and you cannot say it within 10 minutes, then it is probably something that is not worth saying at all'. Let us see if we can keep our contributions short during this debate. Having made that decision — —

Mrs Peulich interjected.

Hon. P. R. HALL — I know that, but I had to give that preamble. At least I get a bit of licence in this instance, Mrs Peulich.

Having made those comments, people are typically asking me about some of the more memorable moments or the highlights of the time I have served in this Parliament. There have been many, and it is pretty hard to isolate one above another. They include one moment this week which was quite memorable: the moment Parliament was shut down and the gallery was cleared. That is something I had not seen to that extent over the time I have spent as a member of Parliament. There have been many memorable moments, but beyond that the whole point about working here and the thing you keep most in your memory is the wonderful people you have worked with in the Parliament and in your electorate — people who have worked for you and people with whom you have shared debate. The memories will be more about the people than of the moment when I leave this place. To that extent, I am not going to have the time capacity to talk about or name all those I would like to personally thank. I have tried to do that outside this forum, and I will continue to do so.

As a group we need to thank the people who support us in Parliament, like the attendants, the Hansard staff, the librarians, the catering staff, the maintenance staff, the security people, our electorate staff, our ministerial staff and even the clerks. While they get a bit cranky at times, the clerks are generally very good people who assist us greatly at times, and we thank them. I made a promise to several groups of people that I would not tell any tales, did I not, Matthew? I will not tell any tales about that group of people because they do not have a right of reply; others in the chamber do. But the promise not to tell any tales about them has a bit of self-interest to it because there is no doubt that people around this chamber and around Parliament House tend to know more about us than we know about them. I am sure their tales are far juicier than anything we could describe about ourselves, so there is a bit of self-interest in refraining from telling tales.

In terms of memorable moments, lots of things have occupied me during the course of my time here, including seeing punches being thrown in this chamber between members. I have seen sittings extended beyond 24 hours, which became a real problem when we had already moved a motion to consider something on the next day of meeting — is the next day of meeting when we click over past midnight, or is it a break between sitting sessions? That caused some anxiety.

I have seen plenty of members evicted over time. I have heard some terrible debates in this chamber, but I have also heard some memorable ones. I have seen Parliament House evacuated on a number of occasions, at least once when a member had burnt their toast. I have seen protesters in their many thousands line up out the front of Parliament. But I have also seen some really good times too, such as the celebration of the 150th anniversary of Parliament. The four regional sittings of this Parliament have been absolute features.

We have also seen some really memorable debates, and we should reflect on those as an example of how we can operate. Some of those include the changes to the adoption act. Dying with dignity was a debate that had very strong and polarised views expressed by some people, but the way the debate was conducted, I might add, in both houses was something that we can be proud of and was a very good example. Even more recently, there was the debate following the Family and Community Development Committee's institutional child abuse inquiry, which was led by Georgie Crozier with Andrea Coote and David O'Brien from this chamber and others. Those sorts of outcomes and those sorts of debates are some of the really good things that we should be proud of in that regard. There have been many memorable events, too many to recount in any further detail, and overwhelmingly those memorable events have been very positive occasions.

I reflect briefly on some of the changes over 25 years in the way that this house functions and operates. When I first came here, the sitting times were different. Wednesday mornings were always taken up with parliamentary committee meetings. Can members imagine now that we could go back to doing that on Wednesday mornings? I think the meetings were from 9 o'clock until 11 o'clock. It was much more convenient for members of Parliament to have our parliamentary commitments compacted into three days of the week rather than extending them to four or sometimes five days a week.

When I walked in here as a young fellow of 36 years of age, I saw the President, the clerks and even the two chamber attendants adorned with bow ties, breeches and buckled shoes — that was the attire of the day. In those days, the acknowledgement of distinguished visitors in the gallery was by way of a courteous nod and a smile. There was no applause; it was certainly frowned upon. That has changed significantly, as has the nature of interjections. Once interjections were predominantly demonstrating wit or fun whereas now interjections are often a barrage to try in a rather disorderly fashion to drown out the person speaking.

In my perception the speeches too have changed over the years. I might add that I am not saying all these are good or bad changes; I am not reflecting on them. I can recall that when I came in here speeches were far shorter, they were self-researched, they were responsive, they were often innovative and they were delivered with a sense of performance and pride. Mr Jennings is one of the modern-day people. When he stands to deliver a speech he always does so with some theatrical presence, one that seeks to impress. I suggest that the sense of performance might be something we all ought to have a go at one day by really putting our heart and soul into our speeches.

Some of the good speakers that I have had occasion to listen to were people like the late Bruce Chamberlain. I can recall him one day making a speech on the budget and being innovative in describing encounters with the budget and measures of the day in the everyday life of young Johnny, the subject of a fairytale narrative. Throughout the course of the day, from the moment Johnny woke up in the morning until he went to bed, he encountered a whole lot of measures introduced by the terrible government of that day. Those budget measures impacted on his life. Bruce spoke in a very innovative and creative way. I remember Robert Lawson describing the economic disasters of the then Cain and Kirner governments as the skies over Spring Street being blackened by the flock of chickens coming home to roost. Phrases such as that stick in my mind as memories of speeches made by people who put a bit of heart and soul, wit and good humour into the speeches that they made.

I make comment about those changes purely for the reason that these houses, the Legislative Council and Legislative Assembly, are really the showcase of the Victorian Parliament. AFL footballers are very strong role models for young boys and girls in the community who adopt their behaviour. Equally the people of Victoria see their members of Parliament as occupying the highest elected positions, and I expect they would, at least in some ways, reflect our behaviour. If we expect respect, tolerance, understanding, good behaviour and observance of the law out there in our

communities, we should be the first to set an example. We can hardly expect standards to be observed if we do not observe them ourselves. Reflection on that from time to time would be timely.

I know I am being a bit indulgent, but I will always remember some very sage advice given by my first leader of The Nationals, Peter Ross-Edwards. Over my time of playing football in the 1970s I suppose I had been used to being bowled over by some pretty strong and rugged blokes in the Essendon Football Club and others, but I had never been hit as hard as I was by a comment from Peter Ross-Edwards. I had made some outlandish comments in a closed party room meeting upstairs in this building where ego had probably got the better of me. He came to me afterwards and said, 'I'm going to say only one thing to you. I'm not going to dwell on it. This is my advice to you; think about it. Your mother would not have been proud of you today'. I will not say what I thought, but it really bowled me over and made me reflect that it is not a bad measure to evaluate your actions by what your mother might think of them. I suppose there have been a lot of times in my life since then when I have held back a bit and thought, 'Well, what would my mum think about me if I take this course of action?'. I suggest it is not a bad barometer for any of us to use in evaluating what we intend to do and to put that ruler across to measure it in the first place.

We are as good in our role as MPs as the support we get from those around us. It is certainly the people in Parliament, in our parties and the people who serve us well in our electorate offices and our ministerial offices who really support us and help to make us what we are. Rather than the many hundreds of people I have come across who have provided me with invaluable support, I want to mention three females in my life who have given me that support.

The first two are women, and the first of those is my wife, Kay. We all realise that the lot of a spouse of a member of Parliament is not always pleasant. They seem to get the rough end of it all, especially when we get home at 2 o'clock in the morning, as most of us did after Tuesday night, to somebody who has been waiting for 4 hours for us to get home. The nature of our very public life subsumes a lot of their role and their personality, and in some cases they become the invisible partner of an MP. Therefore what they put up with in both the actual role and the perception of it are things that we ought to be aware of at least and we should acknowledge that that is a burden that they bear for us. I thank Kay for her support.

I have an electorate officer who has served almost as long as I have. Trish Elliott joined me three months into my 25-year-plus career and she taught me much about the job. Having worked with Peter Nixon and Peter McGauran before coming to work with me, she told me what to do from day one — and I have never dared to disobey her ever since. She has been a wonderful support. She will also be retiring and deservedly so.

The third female I want to talk about is Molly. Some of you will know Molly, the chocolate labrador dog that brings me back to earth every night and every morning. Molly takes me for a walk every morning and I take her for a walk every night, as long as it is before midnight. She did not get a walk on Tuesday night — thanks, guys. No matter how late you are or how tough the day has been, she is always there, with her tail wagging, waiting to bring you back to earth. For her you are not an MP or a minister; you are just a pet owner. I thank those three. As I said, there are many others I could thank but time prevents me from doing so.

I conclude by saying: thank you all for your friendship and the cooperative nature with which we have always been able to work in this chamber. I think that is a hallmark of the Legislative Council and something that we should treasure. I also want to thank my colleagues in The Nationals, some of whom are here today in their various roles. I thank particularly those with whom I have had the privilege to serve in the Legislative Council, including Ken Wright, David Evans, Bill Baxter, Roger Hallam, Ron Best, Barry Bishop, Jeanette Powell, Damian Drum and David O'Brien. It has been a really good crew and they have been a great group of people to work with. I am also very privileged to have served under three extremely good leaders of The Nationals, which is a minimum number compared with some of the other parties which have had a more frequent changeover of leaders. They were the late Peter Ross-Edwards, who was a great man; Pat McNamara for many years; and Peter Ryan, who provides great leadership for our party. I thank them for their support.

President, I thank you, too, for your guidance from the chair. It is a really difficult job. I was deputy chair for four years during the time that I have served, so I know how difficult it is. You do a great job as chair and there is no better person for me to handball the title of Father of the House to. I get rid of that today. I hand it over to you, President, and I am sure that you will lead and direct this house very well from the chair.

As I said, I am not renowned for taking points of order. Nor am I renowned for speaking for an inordinate length of time. Today has been a bit of an exception. I

thank you for your indulgence, but I particularly thank everybody in the Parliament for their support and the opportunity to serve the people of Victoria as I have always tried to. If you applaud as I sit down, I will call a point of order because I do not think that is appropriate. Observance of silence and a nod will be sufficient for me. Thank you.

Honourable members applauded.

Hon. D. M. DAVIS (Minister for Health) (*By leave*) — I want to make a few comments about my friend and colleague Peter Hall — a great parliamentarian, a great individual and someone who has been a huge contributor to this house. The characteristic that comes through most fully is his decency, not just on our side of politics but on the community level and on the other side of politics too. Peter came into the house in 1988, and that is a long time ago. It was a different world in many respects back in 1988. When I came into the house in 1996 he had already been here for two terms. I can very clearly put on record what I learnt from Peter Hall, and it is a great deal. He is a great teacher. He puts ideas in your head in a clear and subtle way that enables you to perform much better. I think many in this house would say the same thing.

He has lived through periods of opposition, government, opposition again and again government, and very few can say that they have had that sweep of history and seen different governments and different times in opposition. It is interesting to reflect on that. Yesterday, as I was reflecting on a time that would encapsulate this, I remembered sitting in this chamber late in the 1990s. I do not remember the exact date. It was late at night. I was sitting with the then Leader of the Government, Mark Birrell, and we were discussing people, as you occasionally do late at night in this place. We settled on 'Hally' as the most talented one to come forward next. I think the truth is that if we had been re-elected in 1999, Peter would have been a minister, because Roger Hallam was retiring. Peter would have been a fantastic minister through that period. That was not to be; but it is sufficient that when we looked across the chamber and thought about different people, Peter's great skill, his moderation, his decency and his capacity were the things that came to the fore. I also want to acknowledge his part in the lead-up to the 2010 election. It was a very small team of people doing many different things, and a broader group of the parliamentary party doing other things as well. It is important to mark Peter's contribution to that process and his guidance at this point.

On a personal level, I want to record my thanks. I could not have had greater support as leader than I have had from Peter Hall. His wisdom and good sense have come through on many occasions. I acknowledge his commitment to protecting the forms of the house and our democracy, his making sure that we understand the limits and boundaries that are so important in protecting our very valuable democratic institutions. I believe Peter is somebody who can put on record his strong commitment in that way. He is very much a parliamentarian, in every good sense of that word.

Peter has had his health scares and challenges, and I can only imagine the difficulties that he faced, with the support of his wife, Kay. He soldiered on and did a magnificent job through that period, and he has made enormous contributions beyond. The challenges of being in public life, as he has outlined, are enormous, and in the period from 1988 onwards he has done such a magnificent job. The wisdom and good sense that he has brought to the chamber are things that we can all learn from.

Mr LENDERS (Southern Metropolitan) (*By leave*) — I would firstly like to strongly endorse the comments made by Mr David Davis, other than possibly the one about the lead-up to 2010. In terms of encapsulating Peter Hall, in many ways his opening comments today say so much. There was a piece of legislation he opposed — he probably still does oppose it — but he has the grace to say there was a portion of it that he took advantage of, and he acknowledges it. We do not often do that in this house — reach out and acknowledge that sometimes virtue is not all on one side. It is a dose of reality, and that is something that Peter has shown consistently throughout. Peter has been a rock. I mentioned to Peter yesterday that his party has gone from Country Party to National Party, National Country Party to National Party, Vic Nats to The Nationals, but Peter has remained solid. In those 25 years he has been consistent in this place in the things he stands for.

I took the liberty this morning — and I wish I had done it several years ago — of reading Peter Hall's inaugural speech. One of the tests he set himself was to get a very fast train through Gippsland. He is not Robinson Crusoe in that aim, and one day we will get a very fast train down the east coast. I wish I had read his comments on water from the Thomson Dam five or six years ago; they would have been very useful. I almost asked him in question time today whether the minister representing the Minister for Water stood by the statements of Mr Peter Hall in his inaugural speech about what we should do with Thomson Dam water, but I did not.

For 11 and a bit years I have worked with Peter Hall. He has been leader of the National Party and The

Nationals for 13 years in this house. Mr Davis has touched on his attributes: qualities like being honourable, courteous, and succinct. Those things are important in the parliamentarian that Mr Davis spoke about. We can all learn from that. Whether it be in his answers in question time or those in the committee stage of a bill, there is always courtesy. Having been on both sides of debate in the committee stage, I know it is often very easy — particularly when you have the numbers behind you — not to treat it with courtesy, but he has been courteous at every juncture. That does not mean your political opponents are going to let you off the hook if you do something crazy politically, but it goes a long way to building the institution and to building goodwill. It is a great testament to the man.

It has been interesting watching him in action in this place, in committee stages, in second-reading debates on bills and during the debate over constitutional reform. I also had the pleasure of attending a public meeting with him on the constitutional reforms. I think it was in Heyfield, but it might have been in Maffra — it was somewhere deep in Gippsland. It was interesting to see Peter Hall in his own environment, with his own people, as it is interesting to see him here; he works incredibly well in both environments.

It is interesting that as such a mild-mannered man he has been part of some epic battles in his political life. He went through the 1988, 2002 and 2006 election campaigns, all occasions where the slings and arrows were coming from both the Labor Party and the Liberal Party — and Gippsland has had some fairly virulent coalition battles — and he survived them all. He has great insight into how this house runs, its procedures, how people tick and how they work. We heard evidence of that in his speech today, so I will not go over that.

Peter Hall will certainly be missed when he leaves this place, and I say that genuinely. He may not have served in this place as long as Bill Baxter or the US congressman who just announced a few weeks ago that he will not be running again after 59 years — he has not made that record — but I do not think any member in this chamber is likely to get to those 25-year records again. They are a thing of the past. Peter Hall has added value right through that period.

The final comment I will make on Peter Hall is that in his 9294 days in this house — some of us are counting — he has been thrown out once, for calling somebody a name. It says it all: if the hanging offence for Peter Hall that led to him getting thrown out of the house is to call me 'John', that says a lot for a man of courtesy and respect for traditions — and perhaps, President, your predecessor erred on that occasion.

The PRESIDENT — And you thought I was tough!

Mr BARBER (Northern Metropolitan) *(By leave)* — I will take Mr Hall's advice and try to keep it brief because I now understand that you can do a lot worse than take the advice, on trust, of Mr Hall when it comes to how you act and proceed in this place.

When we three Greens arrived here in 2006, we thought we were creating some kind of political precedent as a small party of survivors arriving in this Parliament, but as we took our seats in the peanut gallery here we discovered that sitting in front of us were two people representing the entire front bench of a political party known as The Nationals — Mr Hall and Mr Drum. Mr Hall turned around — I hope I am not going to embarrass him; I think at this juncture he is beyond any kind of political embarrassment — and said to me, and I will remember it forever, 'We're going to have a lot in common, The Nationals and the Greens, not just because we are small parties in the Parliament but on policy as well'. I thought, 'Wow! Is this guy for real or what?'. Of course he was absolutely for real.

I sat there over the first few days and weeks, and the months and years that followed, watching him make these kinds of moves in Parliament on procedure, on amendments and in relation to the forms of the Parliament and the very policies we are dealing with, and sometimes I was not even sure if he was letting his own party in on what he was doing, let alone his later beloved Liberal colleagues when The Nationals entered into a coalition with the Liberal Party.

Mr Hall's long career of achievement in public service does not necessarily require a long speech to do it justice, but I want to explain to members why my Greens colleagues Sue and Colleen and I have found him to be an individual of such integrity. If he does not quite wear his heart on his sleeve, he is very far from having locked it in a safe and forgotten that he had it. His kindness and the way he puts his personal beliefs into what he does might be seen by some as a sign of weakness in politics, but he has very much proved that it is in fact a source of strength. It is for that reason that I can say on behalf of my Greens colleagues that we have greatly valued, even cherished, working with Mr Hall in this place, whether we were working with him or against him.

Mr DRUM (Northern Victoria) *(By leave)* — I am honoured to have the opportunity to say a few words about Peter Hall before he leaves this house. It is an opportunity for all of us to say thank you and certainly an opportunity for me, on behalf of Mr O'Brien and myself, to thank him personally for his leadership — the quiet one-on-ones in which he has passed on many

of his lessons so that we may not have to feel the brunt of the mistakes that we would otherwise have ploughed headlong into.

In a profession where most people are waiting for their turn to talk, Mr Hall is an example of someone who is a great listener. Peter is a fine example of why God gave us two ears and one mouth; he exhibits the concept that they should be used in that ratio. His speech today was very much along those lines as well. Behind the scenes Peter Hall has an amazing ability to keep his mouth shut, to be a great listener and to bring together different ideas from different speakers. He is a great strategist who can take parts of arguments from contrary views, meld them together and have everybody walk out of a meeting feeling as though they have had a win. It is a special gift, and The Nationals are very lucky to have had that quiet and subtle type of leadership in our midst for many years.

Peter is also a great example of the adage that you reap what you sow and the respect afforded to him this afternoon is given purely because he treats everybody with such respect in the first place, so it is no great surprise that people are beholden to him for the way he has treated them.

Peter has an amazingly strong moral compass that he lives by. He has a very open mind and there is no doubt that he sees the person far sooner than he sees the politician. His views of people on both sides of the chamber are totally irrelevant to their politics. They are based solely on how each individual in this place goes about their work for their respective parties.

Twenty-five years is a long time to be in Parliament, and therefore it would be easy to see yourself as a custodian: as a custodian of Gippsland, of The Nationals and of the Victorian Parliament. When it is all over in a couple of days Peter will rest calmly knowing that he has left each of those three precincts in a better place than he found them. Again that is something that we would all like to be able to say. Gippsland is certainly all the better for having had Peter as a member for Eastern Victoria Region. The Nationals will be forever indebted to him for his efforts in the past and into the future. The Victorian Parliament, and specifically this chamber, will be all the better for having had Peter as a member. That is something we would all aspire to, and I am not quite sure how many of us believe that when we hang up our hat that is going to be the case.

There is one funny story I like to tell. Peter looks after himself and he is in good shape and that is because quite often in previous parliaments when every vote was not quite as crucial as it is in this Parliament he used to go for runs. He would run quite hard and come back with not a lot of time to quickly shower, get dressed and make sure he was available. He turned up one day and was surprised to find that his pants were missing. He was worried that the bells were going to ring and he would be needed in the chamber to cast his vote and he came into the office shared by Barry Bishop, a former member for North Western Province, and me, ranting and raving and looking for his pants. He thought he knew what had happened to them but could not find them. It was funny because they were hanging on the door behind him as he was going crook and going nuts. I have a vision scarred on my mind of 'Hally' demanding that we give him back his pants.

Peter is a great friend and mentor, and on behalf of The Nationals I would like to say that it is great to see so many of our colleagues in the chamber. I thank Peter for his contribution to this house and I wish him good health. As a member of the Victorian Parliament he has helped many thousands of Victorians and they are now better off than they otherwise would have been — and by the way, Peter's mum would be very proud of him.

The PRESIDENT — Order! I will be brief because much has already been said. Peter Hall is the sort of person who would not want a lot said about him because he has approached the work he has done on behalf of the people of Victoria with great humility as well as with great talent. I think the only blemish in Peter's entire career record is those games he played with Carlton.

He came into this place and from the outset has been an outstanding contributor. His work not only in his own party but also within the coalition and in this place has been exemplary. He has set a very high standard for the rest of us to follow, and whilst I think I falter on many occasions — —

Mr Drum — He is not dead!

The PRESIDENT — Order! That is one of the good things about this process; you actually get a preview of what might happen in a few years time.

I have told Peter privately that he and Bill Baxter, a former member for North Eastern Province, are two of the people that I learnt a great deal from. He has guided much of my career and I am very sad and disappointed to lose him today in the sense of his leaving Parliament at this time, early. He is a loss to the Parliament, and I congratulate him on a fantastic career.

Honourable members applauded.

Sitting suspended 1.13 p.m. until 2.23 p.m.

SMALL BUSINESS COMMISSIONER AMENDMENT BILL 2013

Second reading

Debate resumed.

Mr FINN (Western Metropolitan) — It gives me a great deal of pleasure to rise to support the Small Business Commissioner Amendment Bill 2013. I can only endorse the words of my friend and colleague Mr Ondarchie, who said at the beginning of his address to the house that there is one thing that brings us together as Liberals — and indeed conservatives, whether we be Liberals or Nationals on this side of the house — and that is our love of and support for small business. There is no doubt in my mind that small business is the skeleton of the economy, because without it the economy would fall to pieces; there would be nothing there holding it together at all. We see that time and again.

As somebody who owned and operated a small business for a period of time, I know just how tough it is to run a small business. I also know the risks that small business people take. I can look at small business from the point of view of someone who is being paid every fortnight and who can make plans based on that — and there are a lot of people around who make such plans on a similar basis — but small business operators are often in the position of not knowing exactly when they are going to be paid. They often do not know exactly when a cheque is coming or when money will appear in the bank — —

Mr O'Brien — Or if it will.

Mr FINN — Or, as Mr O'Brien points out, if it will appear in the bank. To most people I think that would be a pretty fearful proposition. I suppose there is a romantic notion of small business whereby some people think, 'You are your own boss. You can do whatever you like. You can take the day off or head overseas'. That is not so at all. The reality is that in a small business — particularly if you have a very small business — if you do not do something yourself, it does not get done. Quite often that means working six or seven days a week. The prospect of taking a day off as the owner-operator of a small business would never be contemplated.

I had visions of long lunches and taking days off and all that sort of thing before I ran my own business, and I discovered that nothing could be further from the truth. Let me assure you, Acting President Melhem — and this might come as a bit of a surprise to those very few members of the opposition who are in the house at the moment — that the Labor Party is living up to its reputation for caring about small business. Its members are elsewhere, and that is not surprising.

Mr Leane — It's because you're speaking.

Mr FINN — I think that is very unkind of Mr Leane. He knows how sensitive I am, and I could be offended if he is not very careful.

I want to point out to the house that the word 'hero' is often bandied around. This weekend football begins again in Melbourne, and I am particularly looking forward to seeing Richmond give the Gold Coast a good flogging on Saturday night. The word hero will get a good run in the papers come Sunday and Monday, and probably on Saturday as well, although I would suggest that heroism and Collingwood do not go together. It will be more on Sunday and Monday that the word hero will be bandied about, but we are only talking about footballers.

The real heroes of the Australian economy and of our way of life are those people who put themselves out there to create wealth and employment, who quite often put themselves out on a limb — on the edge. I know what it is like to ring the bank to see if the money has arrived so that you can pay bills that have stacked up and so you can pay some other small business person, and on it goes. The real heroes in this country are small business operators, and without them we would be in huge trouble. We would be in more strife than the early settlers; there are no two ways about that. I salute small business operators the length and breadth of this nation, and I thank them for their sacrifice. My belief is they deserve the rewards that come their way.

Nothing frustrates me more than governments, whether they be of the socialist kind or on our side of the fence, which see small business as a milking cow and an opportunity to extract money and spend it elsewhere, because small business operators deserve to keep the money they earn. We all do, but particularly small business operators because of the huge risk that is involved. There is no doubt in my mind that these people are the economic powerhouse of our nation. I pay tribute to them and thank them for the contribution they continue to make.

That is why I must express my sadness at the attitude of the ALP and the Greens, who seem to have an extraordinary hostility towards business, and particularly small business. I can only assume it is because small business means people are able to stand on their own two feet. It means people who show

entrepreneurship are independent and strong and can think for themselves, and that is not something the Labor Party or the Greens ever encourage.

Mr Ondarchie — The antibusiness coalition.

Mr FINN — Mr Ondarchie has hit the nail on the head, as he so often does. Labor and the Greens are the antibusiness coalition in this country. It is obviously sadder when they are in government, but it is sad even when in they are in opposition and they express views that are detrimental to business, particularly as a result of being dictated to by militant trade unions.

It is a source of constant amazement to me that the unions in this country do not understand that without business, particularly small business, there would be no jobs for their members. It seems to me a pretty obvious statement of fact that if there were no businesses offering employment, union members — dwindling in numbers as they are — would not have jobs. Yet over an extended period in certain industries we have seen unions seemingly going out of their way to push businesses to the wall. Sadly, we have seen that even this year, as early in the year as it is. It is irresponsible and ludicrous, and it does nobody any good at all, businesspeople, unionists or whomever they may be, to extend that view. I hope that one day you, Acting President Melhem, might play some role in ensuring that those union leaders show a degree of responsibility in ensuring that their members continue in employment because the businesses are continuing.

It is ludicrous and amazes me that the first thing that happens when a business declares it is in economic trouble — that it is running out of money and might go broke — is that the unions call a strike. Can somebody explain to me how going on strike makes a business more profitable? How can going on strike make a business a more viable proposition? How can going on strike in that circumstance protect the jobs of the people who work for that business? We have to remember one thing, and that is — —

Mr O'Brien interjected.

Mr FINN — It is cutting off your nose to spite your face, Mr O'Brien, but we must remember one thing, and it might answer the question I pose. The answer of course is that the union leaders calling the shots do not lose their jobs. They keep their salaries, their cars and their credit cards. They are happy. Sometimes they get rewarded with a job in Parliament. They know that, if they stay in the union movement long enough, they will be superannuated out to a nice cushy job in a Parliament somewhere, which is something we have seen often. It is incentivisation, as I think John Howard referred to it some years ago, but it is most certainly not good for small business.

I hope the attitude of some of our friends in the union movement might improve, that we might see a degree of common sense involved and that we might see them realising that a cooperative attitude between employer and employee is good for both of them. In a lot of instances we do not see that, which is unfortunate, and I hope it changes. The antibusiness coalition, as Mr Ondarchie has so aptly described it, is alive and well, whether it be in this Parliament, in the other house or in Canberra — wherever it may be.

It is encouraging to know there will be two fewer antibusiness coalition governments after this weekend. I am looking forward to Saturday night not just because of the flogging Richmond will give the Gold Coast but also because a couple of Labor governments will bite the dust, and that is good for small business. I cannot think of anything more supportive and productive for small business than to remove a Labor government, and to lose two in one day is like winning Tatts. I am sure it is something every small business operator in Tasmania and South Australia is looking forward to, and I wish them well.

Mr O'Brien — The flock of chickens is proverbially coming home to roost.

Mr FINN — The flock of chickens is certainly coming home to roost, and they are currently flying over Bass Strait. There is a joke I could tell about South Australians and Tasmanians, but I probably should not at this time.

The Small Business Commissioner Amendment Bill 2013 will, when enacted, if passed by this Parliament — and I sincerely hope that will happen soon — —

Mr Leane — As soon as you sit down.

Mr FINN — It will happen very soon then, Mr Leane, because I am rapidly coming to the end of my remarks. This bill will provide a means by which small business has an efficient resolution of commercial disputes. That has to be a good thing because, whilst small business generally and business overall want government to get out of their way, butt out of their lives and allow them to continue their work and continue to create the jobs that members opposite get so excited about, dispute resolution is obviously something many of them need a hand with. This bill will provide that hand and improve the support government offers small business in this state.

Mr O'Brien interjected.

Mr FINN — Scotty Turner was good at dispute resolution. I remember him back in 1995 in the second quarter of the first semifinal at the MCG. He had a very effective form of dispute resolution at that time, but that is by the bye. I support the bill and urge members to give it a speedy passage.

Motion agreed to.

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

Third reading

Motion agreed to.

Read third time.

LEGAL PROFESSION UNIFORM LAW APPLICATION BILL 2013

Second reading

Debate resumed from 20 February; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Ms MIKAKOS (Northern Metropolitan) — I rise to make a contribution to the debate on the Legal Profession Uniform Law Application Bill 2013, and I indicate to the house that the opposition will not be opposing this bill. I note also that this bill is as thick as a brick. I have not weighed it, but it is quite a substantial bill as it relates to all areas regulating the legal profession. I disclose that I was formerly employed as a lawyer and was previously a member of the legal profession.

Mr Finn interjected.

Ms MIKAKOS — I thoroughly enjoyed working for major law firms in this country, Mr Finn, representing government, large publicly listed corporations and small businesses, along with mums and dads and families.

Mr Finn interjected.

Ms MIKAKOS — Despite Mr Finn's assertion, many of us in the opposition have had direct experience of working with and supporting businesses in this state.

This bill is part of a move to harmonise the rules governing the legal profession across all Australian jurisdictions. However, it is disappointing that to date only New South Wales has enacted the uniform law. This bill aims to bring the legal profession in Victoria into a regulatory arrangement which matches the regulatory arrangement in New South Wales. Together New South Wales and Victoria are home to approximately three-quarters of all legal practitioners in Australia and the vast majority of law firms, so this will be a significant change for the legal profession.

It is disappointing that other states have not signed up to the uniform law, particularly given that the Victorian Labor government was leading the way towards a national agreement. It is disappointing that the Napthine government has not been able to get its coalition colleagues in other states to sign up to a truly national scheme as was originally envisaged. Queensland dropped out of the national scheme in 2012, and the Napthine government has not succeeded in getting any states back on board. Achieving consensus between the states on this type of legislation is important, so it is disappointing that in its three and a half years in office the Victorian coalition government has not progressed further towards building a consensus and that at this point only two states will be parties to this uniform law.

By way of background, I note that creating a uniform legal profession across Australia is something that has been examined for some time. I take this opportunity to pay tribute to former Attorney-General Rob Hulls, who led the way in championing a uniform national legal profession. In a media release issued on 12 March 2009 Mr Hulls proposed a national regulator for the legal profession to simplify rules across jurisdictions and reduce regulatory costs for law firms. If lower regulatory costs for law firms were achieved, the expectation would be that ultimately consumers would benefit from that and they would get more accessible and more affordable legal representation.

The uniform law is based closely on the 2004 model laws and covers the following areas: prohibition on unqualified practice; admission to the legal profession; legal practice, including business structures, licensing and registration of foreign lawyers; trust money and accounts; legal costs and disclosure requirements; professional indemnity insurance; fidelity cover; dispute resolution, discipline and complaints; and external intervention in law practices for supervision, management or receivership.

The bill also establishes three new bodies. Firstly, the Legal Services Council will be a five-person body responsible for subordinate rules. Secondly, an Admissions Committee will be responsible for admissions to practice and other functions relating to admission policy. This committee will consist of judicial members, nominees from professional associations and academic institutions, and a nominee

of the Standing Committee of Attorneys-General. Thirdly, the bill will establish a commissioner for uniform legal services regulation, who will be responsible for overseeing professional discipline and dispute resolution.

The bill will also exclude the functions of the aforementioned bodies from numerous oversight acts, including the Freedom of Information Act 1982 and the Ombudsman Act 1976 as well as the Charter of Human Rights and Responsibilities. We on this side of the house are concerned about this aspect of this bill. This is yet another example of the Napthine government's consistent opposition to openness and accountability. It is a disappointment that these bodies will be excluded from these important pieces of legislation, particularly given that they are bodies that relate to the legal profession. You would have thought that the legal profession more than any other should be subject to the Charter of Human Rights and Responsibilities and those other important oversight acts of Parliament.

The government has not made Victorians aware of how much this scheme will cost, and we know that the Law Institute of Victoria has said it lacks the funds to help contribute to these reforms. So far we have heard from the government that the scheme will be paid for out of the Public Purpose Fund, which leads to the question of what will happen to Legal Aid Victoria and other organisations that already rely on this fund. We all know that legal aid in this state is already in the middle of a funding crisis, and the decision of the government to pay for its scheme by accessing funds from the same fund that supports legal aid is no doubt going to make things even worse.

The court system in this state has been stretched to breaking point by the Napthine government's so-called tough-on-crime agenda. We are seeing Victorian prisons being overcrowded and, in particular, the courts being clogged. It is proving more difficult to get people who have been charged — prisoners — to the courts. We are seeing the judiciary award costs against the government because of that, and the lack of legal aid representation is causing problems in this regard as well. This is going to be exacerbated further if the government dips deeper into the legal aid budget, as it probably will, to help fund this new regulatory scheme.

The bill enshrines in legislation the role of professional associations in developing rules and policies. It will see the merger of the Board of Examiners and the Council of Legal Education into a single body called the Victorian Legal Admissions Board.

The bill also makes changes relating to the area of costs disclosure, professional discipline and dispute resolution. In respect of costs disputes and disclosure, I point out that the current bill has been drafted in a short time frame and without consulting consumers of legal services. In particular on this side of the house we would have preferred to see legal costs addressed more seriously in this bill. I know from my experience, having worked as a legal practitioner, that costs are a very common source of complaints made against the legal profession, and the government should really put the rights of legal consumers higher on its priority list. It is disappointing that under this bill the legal services commissioner, for example, will be able to make binding rulings on costs disputes, leaving consumers without recourse if they feel badly done by. In addition, I understand that under this bill the threshold amounts for costs disclosure will be left to the profession to decide. We believe that costs disclosure requirements are important for the protection of consumer interests. Disappointingly this bill leaves it to the legal profession itself to change as it sees fit in the future.

The bill provides that lawyers be required to satisfy themselves that clients have understood the context of disclosure agreements by making reasonable inquiries. Differing amounts of detail would be required depending on whether the overall costs are below a lower threshold, above a higher threshold or in between. These thresholds are set at $750 and $3000 respectively, but both can be adjusted by the Legal Services Council. It is disappointing that the costs provisions in this bill have been rushed through without proper consultation, and it demonstrates yet again that the Napthine government does not have its focus on looking out for the interests of Victorian consumers, in this case Victorian legal consumers.

The changes in respect of professional discipline and dispute resolution relate to making changes to ensure that these are resolved in a timely and efficient manner, with the legal services commissioner being given the power to make binding determinations in consumer matters and disputes where disputed costs are up to $100 000.

Having said that, despite the very lengthy nature of this bill and the fact that it is a considerable tome, I will conclude my contribution by saying that the Labor opposition supports a national uniform legal profession. Unfortunately we see this as being a long way off at the moment, with only two states signing up to this uniform law at present. This bill creates uniformity between Victoria and New South Wales, which is one step forward; however, it is a long way off from creating a truly national scheme. I note that the concerns I have

raised in respect of cost disputes are an important issue that I hope the government will reflect on and address at some point in the future, because I know that the legal profession also is not served by having its clients go off and complain to the various bodies. I know that causes the profession a great deal of inconvenience, but the rights of consumers are very important, and if the Victorian public is to have faith and confidence in the legal profession in this state, it is important that these provisions are done in a way that represents an even playing field. I do not believe that balance has been struck as the law has been framed at the moment.

Ms PENNICUIK (Southern Metropolitan) — The Legal Profession Uniform Law Application Bill 2013 is a huge bill; it is some 561 pages long. It is the result of a national process via the Council of Australian Governments and the Standing Committee of Attorneys-General going way back — 10 years — to 2004. Even though my electorate officer with responsibility for assisting me with bills from the Attorney-General's department does a fantastic job of going through bills, when presented with a bill of this size and complexity in the Parliament it really is too big for us to be able to go through all of the provisions in detail, so to a certain extent — and I have said this before in relation to similar bills that have been presented to us that are the result of a national process and are very large and complex bills — we take it in good faith that every clause and every provision will achieve what it is designed to do and is worded in that particular way.

As Ms Mikakos has already mentioned, this uniform legislation will be adopted in New South Wales and Victoria but not the other states as far as we know — certainly not at the moment. But that will of course cover the majority of legal practitioners in the country as the majority of legal firms are based in Victoria and New South Wales. Indeed the new national legal services board and the national legal services commissioner will be located in New South Wales. I am sure that some aspects of the legislation will need tweaking as it is implemented and that amendments to the scheme will come before the Parliament.

The national law creates new national bodies, including, as mentioned, the national legal services board and the national legal services commissioner, to oversee the regulation of the legal profession along with the state and territory Supreme courts and to develop uniform national rules. The national legal services board, being the Legal Services Council, will be a five-person body with responsibility for making subordinate uniform rules under the scheme. The criteria for membership of the Legal Services Council does not stipulate that candidates are required to be lawyers, but it is expected that those selected by the law council are likely to be so. The uniform rules that can be made by the Legal Services Council will include those pertaining to trust account management and reporting, licensing, complaints handling, external intervention and reservation of legal work. It will also be able to make guidelines and directions about the performance of state-based regulatory authorities.

The Legal Services Council will also be developing details of a standard costs disclosure form and guidelines for lawyers in charging only reasonable legal costs. Legal practices will be required to take all reasonable steps to satisfy themselves that their clients have understood and given consent to the proposed course of action for the conduct of the matter and the proposed costs. I know Ms Mikakos raised the question of whether this bill goes far enough in addressing the issue of costs, which is often an area of some dispute between legal practitioners and their clients. I suppose it remains to be seen whether that is the case. I will mention that a bit further on in my contribution with regard to the issue of consumer input and ongoing consumer involvement in this scheme.

The Legal Services Council will be supported by a separate Admissions Committee, which will have responsibility for admissions rules and other functions related to admissions policy. Its membership will include judicial members, nominees of the professional associations and academic institutions, and a nominee of the standing committee. The commissioner for uniform legal services regulation will be responsible for overseeing how the professional discipline and dispute resolution provisions of the uniform law are being implemented in the participating jurisdictions.

Currently in Victoria the legal services board regulates the profession. It comprises a chairperson, three elected practitioner members and three lay members. The chairperson and lay members of the board are nominated by the Attorney-General and appointed by the Governor in Council. The Victorian Legal Services Board will remain. The legal services commissioner in Victoria is responsible for the receipt, investigation and resolution of complaints about legal practitioners, including the settlement of disputes between practitioners and their clients. Where a complaint raises issues about a legal practitioner's professional conduct, the legal services commissioner will investigate the complaint, and in more serious cases he can initiate disciplinary proceedings. Where the complaint is about the costs charged by a legal practitioner or it is alleged that the legal practitioner's actions caused a financial

loss, the legal services commissioner will attempt to resolve the dispute.

The powers of the legal services commissioner in Victoria under the bill include the power to make binding determinations in resolution of consumer matters, including the power to make compensation orders of up to $25 000. The commissioner will also have expanded jurisdiction to deal with costs disputes in matters where the costs in dispute are up to $100 000. The commissioner's jurisdiction will provide an inexpensive alternative to a formal costs assessment. It is to be noted, however, that there are many cases in which legal costs can be higher than $100 000 — not just commercial cases but sometimes family law matters — so it is not clear why there is this cap on what the commissioner can look into.

Under the bill the existing Board of Examiners and Council of Legal Education will be merged into a single Victorian Legal Admissions Board which will assess applications for admission to the profession in Victoria and accredit law courses and practical legal training providers. The Victorian Legal Admissions Board will comprise five members and will be chaired by the Chief Justice of Victoria or his or her nominee. The remaining members will be a retired judge, a nominee of the Law Institute of Victoria, a nominee of the Victorian Bar and a nominee of the Attorney-General. As I said, I will talk in a little while about consumer input and consumer involvement. It might be useful for the Attorney-General to consider making that particular nominee a consumer advocate or a representative of consumer interests.

The Victorian Legal Services Board will continue to administer the Public Purpose Fund and to make grants and payments to a range of funded entities, including Victoria Legal Aid, the Victorian commissioner, the Victorian Civil and Administrative Tribunal (VCAT) and the Victorian Law Reform Commission. The board will also be required to pay an amount determined annually by the Attorney-General to meet the Victorian contribution to the funding of the new uniform scheme.

Ms Mikakos raised some issues relating to funding. It seems pretty clear that more funding will be required from the government to ensure the smooth operation and introduction of this scheme in a way that does not impinge on the funding of the Victorian law associations — Victoria Legal Aid, VCAT or the Victorian Law Reform Commission, particularly legal aid, which we already know is suffering from a severe funding crisis. In public discussions heads of jurisdictions have raised their concerns about the inadequacy of Victoria Legal Aid. They have also raised publicly their concerns with regard to overcrowding in prisons and police cells and how that is impacting on the appearance or non-appearance of people in the courts when they need to be there, therefore disrupting the smooth operation of the courts.

The Victorian Equal Opportunity and Human Rights Commission wrote to the Scrutiny of Acts and Regulations Committee regarding clause 6 of the bill, which exempts the bill from the Charter of Human Rights and Responsibilities Act 2006. Normally that would not be of great concern to us; however, it is still of some concern. As we have noted, with national uniform legislation the exemption is not necessarily designed to impinge on people's human rights, although to some extent this bill does engage human rights under the charter. The issue is more that this is template legislation to be applied in other states and territories — or at least in New South Wales at the moment. Therefore the exemption is required so that it can apply evenly across all states and territories.

Some issues that have been raised include that the bill is too complicated. The former New South Wales legal services commissioner has proposed that it be more principles-based legislation and only prescriptive where it really needs to be.

Mr Leane — Acting President, I direct your attention to the state of the house.

Quorum formed.

Ms PENNICUIK — As I was saying, the former New South Wales legal services commissioner, Steve Mark, has described the bill as being too complicated and said that it should be more principles-based. He made the comment that if it is too prescriptive, lawyers will look for loopholes. He may have a point there. Certainly he has been reported as saying that the bill was intended to have about 250 pages, but instead it has 560 pages. It must be said, however, that the current New South Wales legal commissioner, Jim Milne, said he believed the new uniform scheme was a positive step and gave state commissioners new powers to resolve disputes, which would benefit consumers.

The issue of consumer input into the development of the legislation and ongoing involvement in its application has also been raised with us, particularly by consumer advocate Mr Chris Snow, who was a former client of the now defunct Adelaide law firm Magarey Farlam. Magarey Farlam became defunct when it was found that some of the practitioners had siphoned up to $4.5 million from the trust account. Mr Snow sent us quite a lot of detailed information and put some points

to us as to how he sees the issues with the scheme. He has suggested scrapping solicitors trust accounts, which is understandable given that he was a former client of that firm, although he did not actually lose money through the misappropriation of funds. He says the accounts prevent clients from being able to protect their assets and suggests that those funds should be held in a more central location, rather than being vulnerable to misappropriation by employees or partners of legal firms.

Mr Snow also wants to scrap the Solicitors Guarantee Fund, a fund that was established by the Law Institute of Victoria in 1948 with the principal aim of providing a means to compensate clients of solicitors whose funds were misappropriated. It has provided an essential public service and expanded into a complex structure with wider aims than fidelity compensation and with considerable implications for professional ethics and financing. It receives a levy from each practising solicitor, and the moderate amounts of interest earnt on investments and on the deposits of clients funds in solicitors trust accounts are used for compensation and other purposes.

He would like to see a single statutory industry-wide trust account that is fully insured. He says this system operates well in France and is currently being established by the Bar Council in the United Kingdom. Not everybody agrees with the issues put forward by Mr Snow. Staff in my office have had lengthy conversations with him, and I think he raises very valid concerns which need to be taken into account. He and others feel that they have not been taken into account. For example, he is critical of the delegation model, making the point that it could be too slow. However, I do not agree with him; I think the national scheme will set the framework and make sure that everybody is complying with it. The practical implementation of it will be done at the state level. I tend to think that is the best model in this case.

Mr Snow's main point is really about the lack of consumer input into the development of the uniform law and the structures that have been set up, and a lack of any consumer representation on the Legal Services Board or any of the other structures that have been set up under this scheme, which is why the Attorney-General's nominee could be a consumer advocate. He also points to the UK model, which is dominated by laypersons, the principle being that the legal profession should not be regulating itself. That is a fair principle to raise in the context of the scheme that is being set up.

In Victoria we have consumer advocate groups such as the Consumer Action Law Centre and CHOICE. Those groups could be a valuable source of advice. It could be useful, as we progress with this scheme, for them to be involved in areas where the operation of the scheme is or is not working to the benefit of consumers. Certainly consumers of legal services need to be protected from misappropriation or malpractice at the hands of members of the legal profession. With those comments, I advise that the Greens will support the legislation.

Mr O'BRIEN (Western Victoria) — It is with great pleasure that I rise to make a contribution — indeed the only contribution from the government to debate on this bill, short of any reply that may be necessary from the minister. As a government backbencher I am very proud and honoured to present the Legal Profession Uniform Law Application Bill 2013 to the chamber on behalf of the government. As other speakers have commented, it is a large bill, and that may well cause some people — like Mr Finn, I know — to be concerned initially at the bill's size because of red tape issues. In the attempt to achieve the desired uniform legislation we need to look at the levels of red tape not only in Victorian statutes but also in the statutes of other states. What uniformity of legislation is endeavouring to achieve is a greater harmonisation across the country for the practitioners and, most importantly, for the businesses, including the small business consumers.

I shall respond briefly again to a rather trite point made by Ms Mikakos that because not everyone has signed up to a national law — and this is a uniform law, not a national law — somehow that is a problem. Approximately three-quarters of the Australian practitioners presently registered and regulated are in Victoria and New South Wales, the two states that have signed up to create this uniform legislation, which will be hosted in Victoria and administered in New South Wales.

We commend the Attorney-General of Victoria and his counterpart in New South Wales, Greg Smith, for agreeing to and signing the Intergovernmental Agreement on the Legal Profession Uniform Framework on 6 December 2013. This scheme will create within those two states — which, as I said, house approximately three-quarters of Australian lawyers and not all, but a lot of Australia's legal work — a uniform piece of legislation with the carriage of this bill through this chamber and in New South Wales. A great deal of work has occurred by many departmental and ministerial advisers, and this process commenced formally under the administration of former Attorney-General Rob Hulls, as has been noted by

Ms Mikakos. I think she called him the champion of the desire to get co-regulatory uniform legislation.

I point to a slightly earlier time when another champion, who is a champion of this house — the legendary Peter Hall, whom we listened to today — in a debate in this house in 2007 had these words to say in relation to the need for uniform legislation when dealing with amendments to the Legal Profession Act 2004:

> The first comment I want to make is that from The Nationals' point of view it makes eminent sense when we have professions like the legal profession to have national uniformity and reciprocal rights, if you like to use that term, across state boundaries. That statement applies not only if you are a lawyer but also if you are a builder or a plumber or a teacher or a student. It makes sense to be able to move from one state to another with little disruption to the profession you practise or the education you are receiving.

That is the objective that Mr Hall championed in May 2007. Many more words could be said about him as a person, but we will leave those relevant words on this bill as they stand.

There was another event this week that also pointed out in a general sense the potential dangers of the desire for uniform regulation and some of the dangers that can occur in the implementation of uniform regulation. That was evident in relation to the health profession in a committee of which I was a member, the Legal and Social Issues Committee, superbly chaired by Georgie Crozier, with the participation of many other members in this house. Amanda Millar made a very valuable contribution to the committee and is a great asset to this house as another legal practitioner of fine renown, as is her husband, Rohan Millar, who was a contemporary of mine at the Victorian Bar. With those individual contributions that were made in relation to the AHPRA (Australian Health Practitioner Regulation Agency) inquiry, as it is being called, one saw the dangers of co-regulatory models or national uniform laws.

There is a recommendation now before the house and before the government to move the uniform regulation that is currently in operation to a co-regulatory model, which is the model of co-regulation that Ms Pennicuik touched on. She said it was the way to go in relation to the legal profession, and is the way that the two Attorneys-General and the states are heading. It is a system of co-regulation where the tensions of federalism are best played out — namely, on the one hand a desire to have uniform laws so that people and businesses dealing with those laws can have certainty as to admission requirements and the way the legal profession will regulate or be regulated, while on the other hand providing flexibility by allowing localised admissions and state regulatory systems to continue in this co-regulatory model.

As the minister said in the second-reading speech, it is the aim of the bill:

> … to simplify and standardise regulatory obligations, cutting red tape for law firms,

and therefore their consumers —

> especially those operating across jurisdictions, while still providing for a significant degree of local involvement in the performance of regulatory functions. The principles of co-regulation, with involvement for the profession in critical areas of regulatory responsibility, are preserved, while consumers of legal services will also benefit from greater consistency of experience across jurisdictions and from improvements to key regulatory requirements.

That is the aim of this bill, and I compliment those involved on the detailed work that has been undertaken.

Again picking up a statement made by Mr Hall, which reflects many other statements by advocates, that the best advocacy is the advocacy that is brief, I will not take the house through each clause of the bill, but I will try to respond to a couple of the issues that have been raised by other speakers.

One of the issues raised by Ms Mikakos related to the exemption that will be in the act — and I know that the exemption will be pleasing to some members — which reflects the decision of the government to override the Charter of Human Rights and Responsibilities Act in relation to the scheme. Ms Mikakos suggested that that was reflective somewhat of a desire on the part of the government for a lack of transparency. Nothing could be further from the truth. As has been well explained and was picked up by Ms Pennicuik in her contribution, as this will be a uniform law and will be substantive Victorian legislation, there is a need to exempt this act from the operation of the charter, as it is called, so that in fact it can be applied and interpreted in a consistent manner across the states of Victoria and New South Wales and hopefully across the other Australian jurisdictions if they come on board, as is the phrase often used, and move to this co-regulatory model. Most of those other jurisdictions, as I understand the current situation, do not have a charter of human rights. There are very intricate legal debates about the current interpretation of the powers of the charter which I will not go to here.

I urge members to read another excellent report prepared by a committee on which I serve, the Scrutiny of Acts and Regulations Committee (SARC), which then was chaired by none other than Mr Edward O'Donohue, now the Minister for Corrections and

Minister for Crime Prevention, amongst other things. SARC looked at many of these issues and made some significant recommendations and I would say predictions that in fact have been played out in the subsequent interpretations of the charter in cases such as Momcilovic, which are moving to a more, shall we say, minimalist position. Whatever the interpretations, whilst there is a charter in Victoria and not in New South Wales, for the very sound reason of uniformity on this occasion it is a matter on which I am in agreement with Ms Pennicuik — again, picking up Mr Hall's desire that we seek out agreement among members whenever we can. I urge Ms Mikakos to reconsider some of her ill-informed comments on the particular decision that has been taken on this bill.

Other important aspects of the bill that have been touched on in the second-reading speech were mentioned by Ms Mikakos. I agree with her comments on professional discipline, discipline regulation and the charging of only reasonable legal costs. The legislation sets up important regimes. Professional discipline and dispute resolution will be an important feature of the uniform law and its complaint-handling and disciplinary framework require that there be efficient and low-cost delivery of dispute resolution outcomes. The uniform law provides new powers for the local regulatory authority administering complaints handling, which for Victoria will be the legal services commissioner, to make binding determinations in relation to consumer matters, including the power to make compensation orders of up to $25 000. Other features are well set out in the detail of the voluminous bill. For the sake of brevity, I refer members to the excellent explanatory memorandum which also sets out these matters.

Turning to the issue of reasonable legal costs, I know that the issue of legal costs and their proportionality and reasonableness is a matter of particular concern to Mr Finn. In many of his speeches he has spoken about the need for a justice system, not a legal system. One of the most significant reforms, made under part 4.3, is the express requirement that a law practice should charge no more than fair and reasonable legal costs. Placing this obligation on law practices will better protect consumers, as even in cases where consumers do not have the ability to judge what is a fair and reasonable price for law services, law practices will be obliged to ensure that they do not take advantage of the information asymmetry between lawyers and clients.

The provision requires a law practice, in charging legal costs, to charge costs that are no more than fair and reasonable in all the circumstances. Again, those provisions are well set out in the bill. The current cost disclosure arrangements in a sense perhaps prescribe too many non-relevant matters or red tape, as it is called, in relation to the factors that are pertinent to these issues. Under the uniform law the list will be much shorter, but law practices will be required to take all reasonable steps to satisfy themselves that their client has understood and is giving consent to the proposed course of action for the conduct of the matter and the costs. Again, those obligations that affect law practices are well set out in the bill.

The next issue that Ms Mikakos touched on and to which I should respond was the suggestion that the funding for the cost of administering the bill ought to be a matter on which to draw criticism of the government. To the contrary, as has been set out in an article in the *Australian* of 22 November 2013, the movement to a national scheme in fact allows greater access to what is probably needed in the contribution to the legal system, particularly legal aid — that is, a greater contribution from the federal government. In relation to legal aid, the Victorian government has for a long time been calling for the federal government to move to a position that used to apply, where the ratios of funding between the state and federal governments were close to 50-50. Those calls were made when we were under the regime of the federal Labor government, and the government continues to make those calls now.

The government is pleased with the headline of the *Australian* article, 'National scheme finds cash'. The article sets out some of the funding arrangements that have been agreed between New South Wales and Victoria and which have in fact reduced the projected cost of the scheme from around $3.4 million to $1.19 million per annum. It is amazing that when you are able to cut some red tape you can save money to do many of the other important things that governments desire to do with hard-earnt taxpayers dollars. Under the intergovernmental agreement, each jurisdiction's share of the cost will be equal to its share of the overall number of licensed legal practitioners across both jurisdictions, equating to around 38.5 per cent, or $460 000 per annum, for Victoria. As has been said and well explained, the Victorian government's contribution will be sourced from the Public Purpose Fund, administered by the Legal Services Board. It is intended that the amount will be offset by savings made by the Legal Service Board and the commissioner in spending on the regulation, facilitated through the transition to the scheme.

I am glad that the Minister for Corrections, who is also the Minister for Crime Prevention, is in the house because another point that Ms Mikakos sought to make was that the government's tough-on-crime approach

has resulted in greater costs to the profession. That is wrong, but it is entirely reflective of the previous government's approach to crime and to issues of community safety more generally. This government, as has been said many times, makes no apology at all for its so-called tough-on-crime approach. Government members would not use the words 'tough on crime'; we would use the words 'truth in sentencing'. But if the government's approach is to be contrasted with the previous government's soft-on-crime approach, so be it that we use Ms Mikakos's words.

What the government has sought to achieve — and I commend the Attorney-General and the entire government for this — is a reinstallation in the community of respect for law and order and for the institutions of justice. These things will not happen overnight. The first thing that will happen, as we have seen in the family violence area, will be greater detection of crime and greater reporting of crime as people begin to have greater faith in legal institutions. It is a credit to this Parliament and to this government that the Minister for Crime Prevention, who is also the Minister for Corrections, has continued to administer his parole reforms. Even more significant reforms have been announced this week, and we have had some significant legislation passed through this house.

I am reminded this week of a previous chair of the Adult Parole Board of Victoria who continues to be an avid practitioner of the law, and that is former Justice Frank Vincent. I was honoured to be part of the Family and Community Development Committee which was advised by Frank Vincent and Dr Claire Quin, as she then was, in relation to the inquiry into institutional child abuse, chaired by Georgie Crozier. We thank Mr Vincent — or Frank, as he likes to be called rather than 'Judge', as he could be called — for his service to Victoria in his time as a judge, as chair of the parole board and with that committee. That is an example of the wide-ranging aspects of legal practice that will be regulated and supported by this bill. I also take the opportunity to commend Dr Claire Quin — now the Honourable Claire Quin — on her appointment as a judge of the County Court.

In relation to the reforms that this government has made, including this bill, we are proud to stand on our record. We will compare it with Labor's record in relation to the administration of justice any time and any place. This is an important piece of legislation. It will be important to implement it in a cooperative manner. I encourage all practitioners to become familiar with the detail of its terms because it will regulate them. The legal profession also has a high level of self-regulation in its ethical code and other codes of practice.

I would like to take this final opportunity to thank my many mentors, both within the legal profession and without, who have provided ethical advice, legal advice and other important co-training, which occurs particularly at the Victorian Bar. I would also like to mention the more recent mentorship I continue to be provided with by Peter Hall. With those words, I commend this bill to the house. I look forward to its speedy passage. Mr O'Donohue may respond to some particular matters that the Greens have raised.

Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation) — I thank the Labor opposition and the Greens for their support for this important legislation. I thank Mr O'Brien for his contribution on behalf of the government, Ms Pennicuik for her contribution and Ms Mikakos for her contribution on behalf of the Labor Party. Noting the support of the opposition parties, I must make a couple of comments in relation to the comments Ms Mikakos and Ms Pennicuik made about this government's approach to law and order and community safety.

Today we have seen the release of Australian Bureau of Statistics data that shows that Victoria has the lowest incarceration rate of any mainland state, so let us give context to the issues we are talking about. Ms Mikakos and Ms Pennicuik spoke about the prison capacity challenges. This government has made no secret of the fact that there are prison capacity challenges. Indeed the principal reason there are prison capacity challenges is that from procurement to delivery a new prison takes a long time. As I have advised the house before, the Auditor-General found in a 2012 report that on three separate occasions, in three separate budget cycles, the previous government was told to commit to a new prison to deal with the growing prisoner population. On three separate occasions the previous government said no. If Labor had committed to that project, a new prison would either have opened already or would be opening in the near future. This government has committed to the infrastructure that Labor should have committed to with the new Ravenhall prison project.

As I have said, it takes time to deliver such complex infrastructure. There are security issues et cetera. In the interim this government has undertaken a significant expansion of the existing prison network. We have seen nearly 1000 beds delivered since we came to government, with approximately 2600 in the pipeline for the future. We are adding additional capacity. In addition to the system we inherited, we have had challenges associated with parole, and this government

has tackled the serious challenge of reforming the parole system that we inherited from the previous government. We are all too familiar with the tragedies that have happened in Victoria as a result of crimes committed by people on parole.

The changes we have made have seen the more than 1800 people on parole in recent years fall to below 1300. That has added hundreds of additional people to the prison system. But when it comes to matters of community safety, when it comes to the choice between releasing criminals into the community on parole or managing the pressures of the prison system, this government has chosen to manage the capacity pressures of the prison system. We are managing those pressures and we are delivering additional capacity to the prison system.

Mr Jennings, on behalf of the opposition, spoke on 6 January of aligning supply and demand pressures. To quote the transcript of his press conference, he said that clearly Labor, if it were elected, would have to work urgently to try to align the supply and demand pressures. When asked whether that could mean winding back sentencing changes, he said that these issues needed to be reviewed, they needed to be kept in balance in terms of the expectation of the community for fair sentencing and what that means for the capacity of the system.

I take it that Mr Jennings is saying that there are capacity challenges in the prison system because of the former government's underinvestment in the prison and corrections system and as a consequence sentencing options and the justice system will need to be examined to take pressure from the prison system; in other words, because of his government's incompetence and failure to manage and invest in the corrections system appropriately, it would manage demand pressures by potentially reviewing sentencing reform. That may be the opposition's perspective, but this government will manage the demand pressures that flow to the prison system from the reform of the parole system and the reform of sentencing, because it believes those reforms are very important for community safety. The actions of the coalition stand in stark contrast to those remarks from Mr Jennings.

I am pleased that this week we have been able to introduce legislation to deliver the final legislative changes flowing from the Callinan review that the government commissioned last year. Attached to that is $84.1 million of funding to fundamentally transform the parole system in Victoria and deliver on the recommendations made by Mr Callinan. I make these comments in response to both Ms Pennicuik and Ms Mikakos.

My final observation on this matter is that many members of the opposition have a view on the corrections system, including the shadow Minister for Corrections, the member for Lyndhurst in the Assembly, who has now been the shadow minister for nearly three months. However, on the advice I have received the shadow minister has not bothered yet to visit a prison. I extend an invitation to Mr Pakula to visit a prison in Victoria, and I suggest that the first prison he might want to visit is the Ararat prison to see the work that is being done on the site to bring Labor's botched and bungled project back on track to deliver additional capacity to the prison system. Indeed I invite Mr Pakula to visit a number of prisons across Victoria so that he can gain a firsthand appreciation of the construction activity that is taking place across our prison network, which is delivering the additional capacity in the correctional system that Labor should have but failed to deliver, providing jobs in regional areas and helping to build a safer Victoria. I thank members for their contributions on the bill.

Motion agreed to.

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

Third reading

Motion agreed to.

Read third time.

FENCES AMENDMENT BILL 2014

Second reading

Debate resumed from 19 February; motion of Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation).

Mr SCHEFFER (Eastern Victoria) — The amendments to the Fencing Act 1968 are derived from a couple of reviews of the legislation and a public consultation process and make constructive improvements that will benefit landowners. The opposition will not oppose the bill. It is well known — and the Attorney-General's second-reading speech mentions the fact — that resolving fencing disputes takes up a huge amount of energy and time for landowners and dispute-settling bodies. It has been noted that fencing disputes are often as much a symptom of an underlying pre-existing animosity

between neighbours that erupts in the form of a dispute over fences as they are the cause of intense feelings.

Legislation intended to clarify rights and the resolution of disputes relating to fences is as old as the practice of dividing land, and various versions of fencing laws in this state go back to 1828. The thinking that informed the Fences Act 1968 was that the act should aim to provide only a code or guide for neighbours who could not amicably come to agreement about erecting fences to divide land. The thinking underpinning the Fences Act was that the courts should only be involved where the parties are unable to settle their dispute themselves and that courts should have a reasonably free hand in formulating appropriate orders to resolve a matter.

The second-reading speech indicates that the current legislation has several weaknesses, such as the fact that it contains little guidance for working out how a landowner should approach his or her neighbour about repairing a fence or erecting a new fence and who pays for what. While these issues seem commonsensical, they are not always dealt with properly, so animosity and misunderstandings can occur at the very beginning of such a process. The current act also separates the process for erecting fences from the process for repairing fences, and this places the burden of unnecessary complexity on landowners.

There is not much in the current legislation to help owners sort out exactly where fences should be put or the process for resolving disputes when they arise. Remedying these weaknesses in the legislation will make processing issues relating to fences a lot easier for many people. It will save them time and money because they will not have to seek and pay for advice or dispute resolution.

To tackle these issues the bill ensures that the owners of abutting land pay equally for a fence. This does not apply to an occupier such as a tenant unless the occupier derives some benefit from the repair, alteration or construction of the fence that adds a value to the occupancy exceeding the rental arrangements. The bill sorts out what a sufficient dividing fence is by setting down some of the factors that need to be taken into account when neighbours are coming to an agreement and setting out how to resolve the situation of who pays where one neighbour prefers a fence of a different type. The neighbour whose preference costs more pays the difference, and that makes sense.

In relation to providing guidance on how to approach the neighbour to get the conversation with the person next door started, the bill says that the owner who wants to make the change should, even if they have come to an amicable arrangement with their neighbour, put the proposal and the details of the fencing works in writing. If one owner cannot find the owner of the adjacent land or the other owner does not respond to approaches, the notifying owner can go ahead and later recover the costs through the Magistrates Court.

If after all these steps have been followed a dispute continues and it concerns both the boundary line and the proposed fence, part 4 of the bill provides that the Magistrates Court can make a determination on a range of matters concerning fences, including boundaries, whether a fence should be erected at all, the type of fence that can be put up, who can undertake its construction and who is liable to contribute toward the cost and how, as well as matters relating to time lines.

This bill makes a number of useful amendments to the Fences Act 1968 that clarify the allocation of responsibility for homeowners and occupiers of land and will go some way in assisting landowners who wish to either alter or erect a fence, with straightforward strategies on how to approach and negotiate with their neighbours to avoid initial misunderstandings. But of course the evidence suggests that matters relating to fences will continue to have the potential to precipitate disputes, and I guess no amount of legislation will bring about total harmony.

Mr O'BRIEN (Western Victoria) — It is with great pleasure that I rise to make a brief contribution to debate on the Fences Amendment Bill 2014. I note that there are a number of other government members who wish to speak, and in my self-regulating capacity as Government Whip I will give them the opportunity to have more time. I am sure they will appreciate that. Given that I have made a number of contributions, I will endeavour to stick to that plan.

This bill has been some time in coming. The former parliamentary Law Reform Committee reviewed the Fences Act 1968 in 1998 and most practitioners would agree that this was sorely needed. There has been a very simple dispute resolution procedure in the Magistrates Court under the Fences Act, but that has caused some confusion in the sense that there is a proliferation of legal opinions as to what may be the true position under a number of complex areas of law that can arise.

I am familiar with some of them as I was involved in a particularly complex case in 2007 by the name of *Beech v. Building Appeals Board* which looked at many of the complex fencing easement-related issues that can arise in, say, a party wall situation. I will not go into them now but I can say that this bill will go a long way towards providing greater certainty. It provides an

important means of recognition and will assist in the resolution of many issues that have troubled neighbours and perhaps sometimes led them into disputes on issues where the amount of money in question is not large but have cost a lot of money to resolve because they are legally complex. As Mr Finn would agree, that is good for lawyers but not so good for the system. This bill will provide certainty. It will provide reforms to that area that will ensure that the objective of good fences making good neighbours is achieved.

The legislation provides that where adjoining owners are both required to contribute to the cost of a dividing fence they will generally be required to contribute equally, but criteria will be set out to determine what sort of fence would be considered sufficient, based on factors such as any existing fence, the type of fence usual in the neighbourhood and the purposes for which the neighbours are using their land. This has often been the subject of disputes. Also, determining where a fence should be located often results in extensive amounts of money being spent in these disputes.

In his contribution on this bill Mr Scheffer referred to legislation from 1828. I take the opportunity in a practical sense to thank the many neighbours our family has had over its 150-odd years of farming history because our farms contain fences of many different types and ages including stone walls, which were partially demolished by my father and then completely demolished at later stages.

Most fences are made of post and wire but most recently there has been a significant Victorian achievement by Mr Trevor Krause with his patented strainer/stay combination that is going gangbusters not only in Victoria but also in America. I urge members who are interested to do some research into this innovative Victorian technology that not only in Victoria but also in America is evidence of the principle that good fences make good neighbours.

Recently I had an opportunity to turn part of my property into a sheep-friendly property that keeps the sheep in, which was not necessarily the condition I found it in. There is a mob of sheep that have tested the fence out and they will be off to market on Sunday. That will teach them a lesson but it will also enable my neighbours to be happy that I have met my obligations to keep my sheep in.

This is an important piece of legislation because when disputes occur they can be very complex, as has been mentioned. The background to the bill has been provided in the second-reading speech. Importantly the bill also provides for a shift in liability from the occupier to the owner, which reflects the thinking that owners are often in a better position to provide the funds for fencing. It will provide greater powers for the Magistrates Court and clarify its jurisdiction to hear and determine adverse possession claims which arise in the context of fencing matters.

Some disputes about where a fence is located can be very difficult to resolve and are best resolved in a singular form, which the bill provides for. It will also maintain the existing position in relation to fencing Crown land in relation to those who occupy land adjacent to Crown land.

I will again pick up the imprimatur of Mr Hall as I conclude this contribution — that is, there is an importance in all of us mending our fences. The essence of Mr Hall's valedictory speech today was that we should all inject a little bit of ourselves into a speech, which I have done.

Honourable members interjecting.

Mr O'BRIEN — I also seek to take a greater message across this political divide, to Mr Leane and Ms Hartland — —

Honourable members interjecting.

Mr O'BRIEN — Mr Elasmar is a fine parliamentarian who perhaps also seeks to follow the role of Mr Hall in seeking to mend bridges and build or repair fences where he can. I do not want to embarrass Mr Elasmar by complimenting him too much — we might have him be less parliamentary — but he knows what I am talking about.

Members of the coalition encourage all members of our community to look forward to mending and repairing our fences so that even Mr Hall's dog, Molly, who we heard about today, can be well fenced in into the future. With those words, I commend the bill to the house.

The ACTING PRESIDENT (**Mr Ramsay**) — Order! I had a sense of deja vu then, because when Mr O'Brien was the lead speaker on a bill and Mr Finn was sitting where he is and I was sitting in this chair as acting president, I asked Mr O'Brien to come back to the bill, to which he took some offence. I was not going to do it again.

Mr Leane — A fence!

The ACTING PRESIDENT (**Mr Ramsay**) — Order! We could play on puns all afternoon.

Ms HARTLAND (Western Metropolitan) — I will be extraordinarily brief in my contribution to the debate on the Fences Amendment Bill 2014. We all have great stories about fences and various neighbourhood disputes. As I understand it, at neighbourhood mediation centres fences are often the subject of the most irritating disputes that can occur between neighbours. This bill is very straightforward in that it clarifies a number of points, and I think it will help greatly in resolving all such disputes. For those reasons the Greens will be supporting the bill.

Mrs MILLAR (Northern Victoria) — I am pleased to have the opportunity to speak on the Fences Amendment Bill 2014, which contains a range of new provisions to facilitate fairer dealings between neighbours in the often heated area of fencing disputes. During the break I had the very great pleasure of meeting and spending time with members of the Bendigo Spirit women's basketball team, who have been visiting the house today in recognition of their great victory over the weekend, having won the Women's National Basketball League championship for the second consecutive year. I again congratulate Bendigo Spirit on their fantastic win, which was a great event for Bendigo at a very exciting time for that great Victorian city.

During the break some of the team's members asked me what members of the Council would be discussing in the house this afternoon, and I told them about this bill. The fact that neighbours regularly get into disputes over fences got a bit of a laugh from the Bendigo Spirit team, and this subject can indeed seem trivial. However, as Ms Hartland just reflected, one of the most common disputes that arises between people is the issue of fences. I myself have fabulous relationships with all of our neighbours at Mount Macedon, but I never take them for granted as I am aware of many instances where neighbours have literally come to blows over what are seen to be trivial matters concerning fences or trees which overhang those fences. Few of the members in this place would not have had constituents visit them, sometimes for very lengthy meetings, and show a great deal of anxiety and concern over these types of issues.

This bill builds on work of the parliamentary Law Reform Committee (LRC) in 1998, which reviewed the Fences Act 1968. A further review was conducted in 2011. The bill includes a number of key provisions to address such matters as an expanded range of orders in relation to fencing works; clear definitions of 'fence' and 'dividing fence', largely as recommended by the LRC; provisions that deem particular categories of occupiers and owners corporations to be owners for the purposes of fencing obligations; and exemptions of municipal councils and others that own or manage land for the purposes of a public park or a public reserve.

The bill contains definitions of 'fencing works' and 'subsidiary works' that include all matters recommended by the committee; the concept of a sufficient dividing fence, and a principle that owners are liable to contribute to a sufficient dividing fence in equal proportions, with an owner paying any extra if they require a greater standard of fence; contribution proportions between owners and long-term tenants; the placing of rails and framing; a provision that a fencing notice must be in writing and contain particular information which may give rise to a legally binding fencing notice agreement; a requirement that notice about fencing works be given even when no contribution from the adjoining owner is sought; and clarification that the Magistrates Court may determine adverse possession claims arising in the context of fencing disputes.

To touch further on a number of these, in terms of initiating fencing works the bill allows for fencing works to proceed if an owner cannot be located for the purposes of giving notice or if fencing work needs to be undertaken urgently. For me, an example occurred during the recent fires which affected the Macedon Ranges, specifically Darraweit Guim. I was contacted by an landowner whose property had been severely affected during the fires, which had led to the destruction of much of the property's fencing. This is a very serious issue in the context of bushfires, as many in this house would know. In this particular instance the neighbouring property had an overseas owner who was unable to be contacted. This caused great distress to the property owner who had lost fencing and wanted to repurchase stock but could not ensure that any costs would be met by the absentee landowner.

This bill will address this type of situation by ensuring that the owner who undertook the fencing works can, by filing a complaint and seeking an order in the Magistrates Court, recover contributions from the adjoining owner who was unable to be contacted or did not respond. This is a very important provision in terms of addressing these types of situations, which can be extremely distressing for property owners who are unable to contact owners — in some instances these are overseas owners of properties — and is a major issue in the context of rural and regional Victoria. The bill also provides for the facilitation of an agreement between disputing parties, which of course is the primary aim of dispute resolution. This provision gives neighbours the chance to state their views and, if no agreement can be reached, to engage a qualified surveyor to define a common boundary.

The bill clarifies the powers of the Magistrates Court to hear and determine fencing disputes where neighbours are unable to reach agreement. The court may make a range of orders in respect of fencing, including the line on which fencing works are to be carried out; whether a dividing fence is required; the nature of the fencing works to be carried out; contributions to be made; and that any party cease an activity that is unreasonably damaging a dividing fence. These provisions will enable the courts to make determinations to assist with resolving what are very common forms of disputes in all of our communities.

The bill acts to repeal a number of outdated provisions which are either irrelevant or now covered by other legislative provisions. In an ideal world we may not need this bill but, as we know, our world is not ideal. As other speakers have reflected, these types of disputes are very common and cause a great deal of anxiety to many people in the community.

This bill is very welcome in terms of clarifying some longstanding doubts in relation to fencing provisions which have existed since the Fencing Act was written in 1968. For those reasons I very much welcome the provisions contained in this bill. I have no doubt that they will make a significant contribution to the Victorian community. I commend the bill to the house.

Mr ELASMAR (Northern Metropolitan) — I rise with pleasure to contribute to the debate on the Fences Amendment Bill 2014. For many decades residential fencing disputes have been the bane of local councils. Backyard feuds have gone on for years over who should pay for the repairs or construction of adjoining property line fences, so it is timely for a legislative process to be put in place to avoid the possibility of these petty, though sometimes bitter, neighbourhood brawls.

The bill provides an update to the Fences Act 1968 and establishes a more equitable process that is able to be understood by builders and residents alike. It contains a range of mechanisms aimed at facilitating fairer dealings between neighbours over shared dividing fences and encouraging the resolution of fencing disputes.

In 1998 the parliamentary Law Reform Committee reviewed the Fences Act 1968 and made a number of recommendations relating to the transparency of fencing processes, setting out guidelines concerning the obligations of all parties to a fencing dispute. In 2011 a consultation process was established to allow participation and input from interested parties. This was deemed necessary because builders were unclear as to their legal requirements and obligations. Disputes often became unresolvable because one party wanted to erect more than a standard fence on their property.

The bill sets out definitively who pays what and how payments should be adjusted accordingly. While the bill provides advice and guidance about fencing works for those who wish to use it, it also incorporates flexibility for parties to enter agreements about fencing works outside of the act without being required to give notice or follow the time limits and processes set out in the act.

In 2012–13, 6611 fencing inquiries were made to the Dispute Settlement Centre of Victoria. Although the sums of money in contention were relatively minor, they still had the capacity to incite hostility, anger and deep resentment. Now owners may apply to track down a property owner using local council rates records, and that is a good thing. My parliamentary colleague Mr Scheffer has already indicated to the house that we will not oppose the bill.

Mr RAMSAY (Western Victoria) — It gives me great pleasure to speak in the debate on the Fences Amendment Bill 2014.

Mr Finn — An unexpected pleasure.

Mr RAMSAY — That is true, Mr Finn. It is an unexpected pleasure, but a pleasure nevertheless, given my role of managing a large property on behalf of my family. We have many kilometres of fencing on boundaries with neighbouring properties. It has taken quite a lot of negotiation, discussion and goodwill between neighbours to come to an arrangement whereby their responsibilities are clear in relation to the management and replacement of fences as needed.

The Fences Amendment Bill 2014 contains a range of measures to facilitate fairer dealings between neighbours over shared dividing fences and to encourage the resolution of fencing disputes. I have had some experience of this recently with the building of a new house. I was introduced to a new neighbour, and the first discussions we had were about the replacement of an old paling fence with a new fence. We referred to the Local Government Act 1989 in relation to the requirements of neighbours in respect of their responsibilities for the initial agreement for a new fence and its dimensions and then agreed to mediate regarding the costings and price estimates from different contractors.

In speaking on this bill I have considerable experience with large acreage fencing. Mr O'Brien spoke earlier about dry-stone walls, and I too have had stone fences

on neighbouring boundaries that have created quite a lot of goodwill in relation to an agreed position on the replacement of those fences.

This bill builds on the work of the parliamentary Law Reform Committee, as has been said, which in 1998 reviewed the Fences Act 1968. The committee's report made a number of recommendations to make fencing processes more comprehensive and transparent and to give parties clearer guidance about their obligations, and that is important. The Fences Act contains little guidance on how to initiate and seek contributions for fencing works, the types of fences to be built, the placement of fences or the resolution of fencing disputes. In addition it has been more than 40 years since the Fences Act came into operation, and aspects of it require modernisation.

While the bill provides guidance about fencing works for those who wish to use it, it retains flexibility for parties to enter into agreements about fencing work outside the act without being required to give notice or follow the time limits and processes set out in the act. As I said at the outset, it is important that neighbours come to an agreed position in relation to their adjoining fences, the responsibilities of each owner in relation to the type of work to be done and getting appropriate quotes, pricing estimates and ultimately an agreed position on cost. That negotiation and discussion can happen outside the act, and I encourage people where possible not to use the legislation as a means of settlement in relation to fencing.

The current Fences Act does not contain any guidance on the process. However, the bill allows fencing works to proceed if an owner cannot be located for the purpose of giving notice or if fencing works need to be undertaken urgently. Fencing works may also be undertaken without the agreement of the adjoining owner if they are given notice but do not respond within 30 days. If fencing works are undertaken in circumstances where an adjoining owner cannot be located or did not respond to a fencing notice, the owner who undertook the fencing works may, by filing a complaint and seeking a magistrate's order, recover contributions from the adjoining owner who could not be located or did not respond.

The bill provides for a process to resolve a dispute over common boundary when it relates to a fencing matter. It gives owners an opportunity to state their views about the location of the common boundary, negotiate about it and, if they do not agree, engage a licensed surveyor to define the common boundary. If an owner seeks an order in the Magistrates Court, the 30-day period set out in new section 17 can be suspended until the boundary dispute process is complete.

The bill repeals part III of the Fences Act, which deals with vermin-proof fencing. This part contains historical provisions that are no longer used, as there are now other enactments that provide for the management of pest animals in rural areas. As Mr O'Brien would know, in our Western District country there is a considerably large amount of rock fencing that was made not by prisoners, as history would suggest, but by soldier settlers who learnt the art of building dry-stone walls. They put netting into the second and third layers of rock and dug it into the ground by about half a metre to stop rabbits from moving from one property to the other. To this day you can drive through the countryside and see remnants of the netting that was embedded within the rock walls and the ground to stop the rabbits moving from one area to another.

The amendments made by this bill provide much-needed clarity for neighbours to undertake or contribute to fencing works. The bill establishes clear, streamlined processes for circumstances in which agreement about fencing works is not possible. Most importantly, it provides a basis for neighbours to negotiate and agree about fencing works and aims to reduce the likelihood of neighbourhood disputes arising.

There are a couple of key issues I want to discuss in relation to this bill. As a background to what initiated the bill, the government noticed that fencing disputes were increasing and represented the largest number of inquiries to the Dispute Settlement Centre of Victoria. Additionally, it has been more than 40 years since the Fences Act 1968 came into operation and aspects of it require modernising, as I mentioned before. The bill seeks to facilitate fairer dealings between neighbours in respect of dividing fences and to provide greater guidance. As I have mentioned, the existing Fences Act 1968 only requires a fencing notice to be given in respect of construction or repair where a contribution is being sought. This means that an owner who plans to repair or construct a dividing fence but does not want any contribution from the adjoining owner may act unilaterally. The owner is not required to tell the owner of an adjoining property they are undertaking the works or to seek that owner's agreement.

At the risk of starting to duplicate what I have already said — —

Mrs Coote interjected.

Mr RAMSAY — Thank you, Mrs Coote. I know you are the next speaker, and I know you will be pleased to carry on that discussion in relation to — —

Mr Finn — Rabbits.

Mr RAMSAY — Ferals, and the wonderful assets through western Victoria, where there is a large number of remnants of stone wall fences, which was a real art form. I am pleased to say the agricultural college that I attended, Glenormiston — which sadly now seems to be at a crossroads as to what its future use will be — provided tertiary education on dry-stone walling, which is an art that should be carried forward.

I am digressing. This is a sensible bill. Hopefully the owners of adjoining fences will be able to reach an agreed position without referring to the new act or having the act imposed on their discussions and negotiations in relation to an agreed settlement. On that basis, I commend the bill to the house.

Mrs COOTE (Southern Metropolitan) — It gives me an enormous amount of pleasure to be the final speaker today on the Fences Amendment Bill 2014. I would like to commend Mr Ramsay for his contribution. His discussion of dry-stone walls through western Victoria was particularly interesting. They are indeed a wonderful feature of that area.

It is very interesting to be debating this bill, because those of us who live in metropolitan Melbourne understand how contentious and difficult the issue of fences can be. The minister's second-reading speech stated that the number of disputes raised with the Dispute Settlement Centre of Victoria in 2012–13 regarding fencing was 6611, which is an enormous number.

As the other speakers have said, this bill is a result of a review of the Fences Act 1968 undertaken by the Victorian parliamentary Law Reform Committee in 1998. That review provided a number of recommendations which lay dormant under the Labor Party for a decade until the act was again reviewed by the Napthine coalition government, and we now have this bill in the chamber today. As part of that process the coalition government released a discussion paper and commenced public consultation. Following the public consultation and discussion, this bill was drafted.

I would like to bring to the chamber's notice a booklet released by the Victoria Law Foundation titled *Neighbours, the Law and You*. On pages 14 to 18 the document discusses fences. The document deals with trees, noise, burning off and a whole range of things, but the largest part of it concerns fences. There is a very handy table in the publication which shows who does what and who is responsible for what as far as adjoining fences are concerned. I will read out a few of them. These are the exceptions to the general rule.

According to the document, if you want a more expensive fence built, you should pay the extra amount. If you are a tenant with a lease that has less than three years to run on it, your landlord should pay your half share of the cost. If you are a tenant with a lease that has three or more years to run on it, you will have to contribute to the cost of the fence. If the fence will divide farming and residential properties, farmers only have to pay half of the cost of a fence that suits their needs, which is usually an agricultural fence. The document says you may make urgent repairs to a fence and you can generally get back some of the cost of the repairs from your neighbour. However, if you have built a fence without consulting your neighbour, you must pay the entire cost of the fence. People who have adjoining fences probably would not even think about a lot of these issues until a fence fell down or there was some demarcation problem; therefore it is very important that we have this legislation to clarify these areas.

Clause 6(1) of the bill sets out the standards for determining whether a dividing fence is sufficient. The clause lists the following standards to which regard must be had:

(a) the existing dividing fence (if any);

(b) the purposes for which the owners of the adjoining lands use or intend the lands to be used;

(c) the reasonable privacy concerns of the owners of the adjoining lands;

(d) the types of dividing fences used in the locality;

(e) any policy or code relating to dividing fences adopted by the municipal council of the area in which the adjoining lands are situated;

(f) any relevant planning instruments …

(g) any relevant building laws …

(h) the existence of any agreements or covenants that are relevant to the adjoining lands;

and any duty of an owner to control pest animals. It is very clear.

The bill talks about damage to or the destruction of dividing fences. It talks about owners and tenants. As I have pointed out already, in that little booklet there is some confusion about who pays what if there is a tenant. The bill outlines that the owner of the land is responsible for paying for fencing works, with an

exception outlined in new section 10. New section 10 provides that long-term tenants contribute to the cost of fencing. Tenants with leases of an unexpired term of more than five years may be required to pay for some of the costs of a sufficient dividing fence. However, there are exceptions, such as with leases covered by the Residential Tenancies Act 1997, leases covered by the Retail Leases Act 2003 or leases that specifically provide for contributions to fencing works.

This is not a simple issue; fencing is quite complex. As I have said, many problems between neighbours are caused over fences. Members may recall or may have read about some of the many controversies and legal issues in my electorate, particularly around the area of Toorak.

Mr O'Brien — Fences make good neighbours.

Mrs COOTE — As Mr O'Brien says, 'Fences make good neighbours'. In the Toorak area fences do not always make good neighbours.

However, in conclusion, this bill makes improvements to the way in which fencing disputes are managed. As a major contributor to neighbourhood disputes it is important that fencing disputes are handled well, and this bill is important in creating a more efficient way of handling fencing disputes. I commend this bill to the house.

Motion agreed to.

Read second time.

Ordered to be read third time next day.

EDUCATION AND TRAINING REFORM AMENDMENT (REGISTRATION OF EARLY CHILDHOOD TEACHERS AND VICTORIAN INSTITUTE OF TEACHING) BILL 2014

Introduction and first reading

Received from Assembly.

Read first time for Hon. W. A. LOVELL (Minister for Housing) on motion of Hon. G. K. Rich-Phillips; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Hon. W. A. LOVELL (Minister for Housing), Hon. G. K. Rich-Phillips tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (the 'charter act'), I make this statement of compatibility with respect to the Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Bill 2014.

In my opinion, the Education and Training Reform Amendment (Registration of Early Childhood Teachers and Victorian Institute of Teaching) Bill 2014 (the 'bill'), as introduced to the Legislative Council, is compatible with the human rights as set out in the charter act. I base my opinion on the reasons outlined in this statement.

Overview

The bill amends the Education and Training Reform Act 2006 (the 'act') to establish a register of disciplinary action taken by the Victorian Institute of Teaching (the 'institute') in relation to teachers, consolidate the institute's powers to undertake checks of the police records of teachers, outline requirements for the registration of persons engaged in the provision of early childhood education services, and to clarify the power of the institute to publish determinations of formal hearings.

Human rights issues

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

Right to privacy

Section 13(a) of the charter act provides that a person has the right not to have his or her privacy unlawfully or arbitrarily interfered with. Several clauses of the bill permit the institute to access, publish and broadcast information that may be private or otherwise confidential.

Police record checks and information gathering powers

Clause 5 of the bill amends section 2.6.7 of the act to provide that an application for registration as a teacher must provide consent for the institute to conduct a national criminal history check, and specified information concerning the identity of the applicant, including any criminal record they may have, for the purposes of the national criminal history check. The application must also authorise the institute to conduct a state police record check in connection with the consideration of the application and, if registration is granted, from time to time during the period for which the registration remains in force. Clauses 7 to 9 amend the act in a similar manner, establishing equivalent requirements for the provision of authorisations and information for national criminal history and state police record checks in respect of applications for permission to teach under section 2.6.13 of the act, and renewal of registration to teach under section 2.6.18 of the act. The bill provides that the institute must conduct a national criminal history check, and may conduct a state police record check, when considering an application for registration to teach, registration as an early childhood teacher, renewal of registration, or permission to teach.

Clause 47 of the bill inserts a new division 3A into part 2.6 of the act, which sets out the requirements for registration as an early childhood teacher. An application for registration as an early childhood teacher must authorise and provide specified information necessary for the conduct of a national criminal history check, and must authorise the conduct of a state police

record check in connection with the consideration of the application and, if registration is granted, from time to time thereafter while the registration remains in force. The institute may require an applicant to provide further information or material in respect of their application, including information about criminal records, any current or previous right to teach in another jurisdiction, any refusal or cancellation of employment or the right to teach, and any refusal to register the applicant or cancellation of their registration to carry out a profession. An applicant for registration as an early childhood teacher must also provide any references or reports necessary to determine their suitability to teach, submit to any medical or psychiatric examination the institute considers appropriate, and must provide any results or reports of an examination requested by the institute.

Clauses 57 and 61 of the bill extend the institute's current information gathering powers under sections 2.6.23 and 2.6.26A of the act to employers of persons registered as early childhood teachers. These clauses provide that the institute may request the employer of an early childhood teacher to disclose knowledge of whether the teacher has undergone a criminal record check, and details of the teacher's name, registration number and date of birth. Additionally, clause 6 of the bill enables the institute to conduct a state police record check on a registered teacher (whether a school teacher or early childhood teacher) at any time during the period of that teacher's registration. This will enable the institute to obtain up-to-date information about a teacher's criminal record and take action if required. For example, the VIT is required by section 2.6.29 of the act to cancel the registration of a teacher who is convicted or found guilty of a sexual offence.

Clause 12 of the bill substitutes sections 2.6.22A and 2.6.23 of the act, both of which concern criminal history checks of registered teachers. The bill requires the institute to conduct a national criminal history check for every registered teacher at least every five years, and empowers the institute to conduct a national criminal history check of a teacher at any other time if it is satisfied that circumstances warrant the conduct of a check. In the case of a registered teacher for whom a national criminal history check has never been conducted, the institute must conduct such a check as soon as is reasonably practicable. A registered teacher must provide consent, and such information relating to their identity, required for the purposes of such national criminal history checks. A registered teacher must also, upon request, provide the institute with information about any criminal records relating to the teacher. The institute may suspend the registration of a teacher who fails to comply with these requirements without reasonable excuse. Clause 35 of the bill extends these provisions to also apply to registered early childhood teachers by amending the definition of registered teacher to include an early childhood teacher.

Clauses 56 and 57 of the bill amend sections 2.6.22A(4) and 2.6.23 of the act to apply to dual-registered teachers and require both registrations to be suspended for failure to comply with the requirements of those sections.

The information-gathering powers in clauses 5, 6, 7, 8, 9, 45 and 47 of the bill are a direct consequence of persons applying for registration as a teacher or early childhood teacher, renewal of registration or permission to teach. As such, any expectation of privacy is minimal. In any event, to the extent that the clauses of the bill may involve the disclosure of private information, I believe that any interference is lawful and not arbitrary.

The circumstances in which an applicant or registered teacher is required to provide information are clearly set out in the legislation. Further, the institute's powers to require police record checks are directly linked to the stated purposes of the relevant provisions, and are necessary to allow the institute to make informed decisions about an applicant's eligibility, fitness and suitability to teach. This serves the public interest by ensuring that teachers are appropriately qualified, honest and of good repute and standing.

Register of disciplinary action

Part 3 of the bill amends the act to create a register of disciplinary action (the 'register') to be maintained by the institute in respect of current and formerly registered teachers. The institute must make an up-to-date copy of the register available for inspection at the institute's offices, and may publish all or part of the register in any manner it considers fit.

Pursuant to clause 28 of the bill, the types of disciplinary action to be recorded on the register include the suspension, cancellation or disqualification of a teacher's registration, the imposition of limitations or restrictions on registration, the issuing of a caution or reprimand, and the disqualification from teaching or cessation of registration or cessation of permission to teach following conviction for a sexual offence. The register must list the details of disciplinary action imposed, including the date it took effect and the date on which it will cease to have effect, the teacher's name at the time the disciplinary action took effect and any subsequent name changes, and the teacher's current and/or former registration numbers.

Not all information disclosed in the register will be of a private nature. Nevertheless, to the extent that the publication of information is in such a manner which engages the right to privacy, I believe that any interference is lawful and not arbitrary.

The types of disciplinary action and particulars to be published on the register are clearly set out in clause 28 of the bill. Publication of this information by the institute is necessary to inform the public about the performance and conduct history of teachers, and to ensure the proper regulation of the teaching profession and the maintenance of high teaching standards. Particulars are only recorded on the register once the entire disciplinary process, including any appeal proceedings, are concluded (see new section 2.6.54F). The provisions of the bill also ensure that personal information will be removed from the register where its publication is no longer necessary to achieve these purposes. Accordingly, particulars are only to remain on the register for five years, or in the case of disciplinary action which has effect for more than five years, for the period of the disciplinary action (see new section 2.6.54G).

Moreover, the bill protects against the capricious, unjust or unreasonable publication of private information in several ways. Pursuant to clause 25 of the bill, a formal hearing panel may determine that it is not appropriate or in the public interest for any particulars of the hearing, including any determination made by the panel, are recorded in the register. In doing so, the panel must consider the relevant circumstances. The formal hearing panel will have the benefit of hearing the matter, including any submissions the teacher may wish to make concerning publication of information on the register.

Further, pursuant to clause 22 of the bill, for voluntary disciplinary action involving a suspension or the imposition of a condition on registration or permission to teach, the institute may determine that it is not appropriate or in the public interest for those particulars of disciplinary action to be recorded on the register. In doing so, the institute must consider the circumstances of the matter.

On the application of a registered teacher or a former teacher, the institute may decide that particulars are not to be published on the register, or if published, are to be removed, if it considers it necessary to avoid endangering the physical safety of the teacher and there is no overriding public interest in favour of publication. For less serious disciplinary action involving a caution or reprimand, the institute may on its own initiative decide to remove particulars from the register (see generally, clause 28 inserting new section 2.6.54E).

Publication of formal hearing panel determinations

Clause 26 provides that the institute may publish the whole or part of the findings, reasons or a determination of a formal hearing panel in any manner it thinks fit, provided that doing so does not contravene the provisions of the act governing the conduct, findings and determinations of a formal hearing (sections 2.6.45 and 2.6.46 of the act).

Formal hearing panel proceedings are generally open to the public, and not all information disclosed in a determination of a formal hearing panel will be of a private nature. Nevertheless, to the extent that a teacher may have a reasonable expectation of privacy over certain information in a formal hearing panel determination, any interference with the right to privacy will be neither unlawful nor arbitrary.

The publication of formal hearing panel determinations promotes the integrity and accountability of the regulatory process, and ensures that other teachers, schools and the public are made aware of the standards of conduct and competence expected of the teaching profession. It also facilitates the fair and accurate reporting of the determinations of formal hearing panels. To this end, the starting point of open hearings and publishing determinations enhances the rights in the charter act to fair and public hearings (s 24) and to freedom of expression (s 15).

Moreover, by giving formal hearing panels powers to make non-publication orders where necessary, the bill protects against the broadcast of private information in circumstances that are capricious, unjust or unreasonable. In relation to the conduct of a formal hearing, the panel may make non-publication orders to prevent the teacher from being identified prior to the making of the final determination. In addition, the panel may prohibit the publication or broadcast of any evidence given or the content of any document produced prior to or after the making of its final determination. In both cases, the test for non-publication is one of necessity, to avoid prejudicing the administration of justice, or for any other reason in the interests of justice (see clause 24 and new section 2.6.45(f) and (g)). Further, clause 25 of the bill amends the act to empower a formal hearing panel to order that information that might enable the identification of a teacher who is the subject of a determination must not be published or broadcast, if the panel considers it necessary to do so to avoid prejudicing the administration of justice, or for any other reason in the interests of justice. Clause 27 of the bill introduces new section 2.6.52(2) which prohibits the publication or broadcast of any report of a formal hearing in contravention of such an order.

In making these decisions, the panel will be able to consider and balance competing considerations, including the purpose of formal hearings, the conditions necessary for a fair hearing, the benefits of open justice, and the rights and interests of the individual teacher and/or any witnesses. The institute must inform a teacher of the formal hearing panel's power to make non-publication orders in relation to the identity of the teacher or a witness (see clause 23), and the teacher may therefore make submissions in support of a non-publication order during the hearing.

I note that the publication of formal hearing panel determinations does not limit the privacy rights of a complainant to a disciplinary matter. Indeed, the bill strengthens the protection of the privacy rights of complainants by amending s 2.6.45(c) of the act to prohibit the panel from publishing any information that might enable the complainant to be identified.

Medical treatment without consent

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

Clause 47 provides that an applicant for registration as an early childhood teacher must submit to any tests, or any medical or psychiatric examination, that the institute considers appropriate, and must provide any results or reports of the test or examination to the institute.

The nature of the examinations and tests conducted pursuant to this clause will not, in most cases, involve any procedures which could constitute medical treatment. Further, such examinations and tests will not limit the right in section 10(c), as they will only take place where consent has been provided. While there is a consequence for failing to submit to a test or examination, in that a person will not be registered as an early childhood teacher, this does not mean that a person submitting to an examination was coerced to do so. The effect of clause 47 is consistent with current powers relating to registered teachers. Consequently, I consider that the bill does not limit the right in section 10(c).

The Hon. Peter Hall
Minister responsible for the Teaching Profession

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

This bill proposes amendments to the Education and Training Reform Act 2006 to provide for the registration of early childhood teachers, establish a register of disciplinary action, clarify provisions relating to police checks and publication of

disciplinary proceedings, and alter the way that members are appointed to the council of the Victorian Institute of Teaching.

Turning firstly to the registration of early childhood teachers.

The state government is committed to high-quality early childhood education.

For some years now, international research has supported the positive impact of high-quality early childhood education on a child's later school achievement. The role of formal education programs delivered by qualified early childhood teachers is crucial to a child's social, emotional and cognitive development.

The Melbourne Institute of Applied Economic and Social Research has recently completed research linking longitudinal study of Australian children data with year 3 NAPLAN results. Their research shows that children who participated in a preschool program delivered by a qualified early childhood teacher in the year before school, recorded higher numeracy, reading and spelling scores in their year 3 NAPLAN tests.

This study confirms what we have long known — that education begins well before children arrive at the school door to start their prep year. It also confirms the crucial role of early childhood teachers in delivering high-quality early childhood education that builds foundations for successful lifelong learning.

The bill brings our qualified early childhood teachers under the regulatory scope of the Victorian Institute of Teaching, recognising them as qualified teaching professionals and thereby acknowledging their vital role in educating our children.

Registration of early childhood teachers is consistent with government's objectives for the regulation of professionals in Victoria; that is to provide greater focus on lifting the quality and standards of the profession and better protections for parents and children.

In whatever setting their educational programs are provided, services employing early childhood teachers to deliver kindergarten programs and meet required teacher numbers for qualified staff will now be required to employ early childhood teachers registered by the institute. Like other professionals such as school teachers, nurses, architects, and solicitors, only educators registered by the institute as early childhood teachers will be able to call themselves 'early childhood teachers'. The Education and Care Services National Law introduced the term 'educator' to apply to all qualified staff in early childhood services; however, early childhood teachers will be differentiated from other educators by their registration status.

The amendments proposed in this bill have taken account of other regulatory arrangements under the national law and Children's Services Act 1996. In particular, the institute will use the list of early childhood teaching qualifications approved by the Australian Children's Education and Care Quality Authority (ACECQA) to determine whether an early childhood teacher meets the qualification requirements for registration.

The Education and Care Services National Regulations also provide for specific limited circumstances in which an early childhood service may be granted an exemption or waiver from the need to employ a fully qualified early childhood teacher. To ensure consistency with these provisions, educators employed in services which have been granted an exemption or waiver will not be required to be registered, but will instead apply for a temporary approval to teach through the Department of Education and Early Childhood Development.

In terms of suitability, early childhood teachers are currently required to have either a satisfactory working-with-children check or a satisfactory national police records check. Under the registration scheme established by the bill, like teachers in school settings, one of the conditions of registration is that a teacher has a satisfactory national criminal history check undertaken through the institute (and that this check is repeated at least every five years).

These changes provide a uniform platform for employment where, for criminal history checks and qualification requirements, an employer needs only to check the institute register of early childhood teachers to confirm whether a potential employee is suitable to teach.

The disciplinary functions of the institute will apply to early childhood teachers. The institute currently investigates cases of misconduct, serious misconduct and serious incompetence in relation to teachers, and may impose sanctions on a teacher. While this will mean that employers may refer to the institute a matter of concern relating to an early childhood teacher's fitness to teach, the employer's responsibility to manage the performance of their teachers will continue alongside the institute's powers to determine whether a teacher continues to meet the requirements for registration.

Teacher registration is renewed annually, subject to the teacher meeting the professional practice requirements and paying the registration renewal fee. Early childhood teachers, like their colleagues in schools, will complete 20 hours of professional development per year and attest that other professional practice requirements have been met. This renewal process provides assurance to employers, parents and the community that teachers are maintaining currency of practice and continuing to develop throughout their careers.

Registration of early childhood teachers by the Victorian Institute of Teaching acknowledges the status of early childhood teachers as members of the teaching profession in Victoria and ensures consistency in the regulation of teachers in the early childhood and school sectors by a single regulatory authority.

Both early childhood teachers and teachers in school settings will now be subject to a register of disciplinary action.

The RODA established by the bill will be a public register that lists, by name, teachers who have been the subject of formal hearings undertaken by the institute (or who have entered into voluntary agreements under division 9A). The RODA will more effectively inform people who engage teachers, including members of the public engaging teachers as private tutors for their children, of disciplinary action imposed by a formal hearing panel or disciplinary action required by legislation to be imposed on people charged with or convicted of sexual offences.

The RODA will be published on the VIT website.

The institute does publish details of cases heard by formal hearing panels on its website. However, the RODA will collate this information into a more accessible form and formalise the type of information recorded, and the length of time it will remain listed.

The institute's disciplinary processes provide assurance that teachers in Victoria continue to meet the community's high expectations of practice and conduct. The publication by the institute of determinations and some details of its formal hearing panels has both a public protection and a public accountability function.

Information will be recorded on the RODA for five years or for the period during which the disciplinary action is in effect (whichever is longer). This means that a cancellation of registration would remain on the RODA indefinitely, unless the person successfully reapplied for registration.

In addition to formalising publication of disciplinary outcomes through the RODA, the bill will also make a number of other amendments to part 2.6 of the Education and Training Reform Act to further improve the operation of the Victorian Institute of Teaching.

The bill clarifies the process for teachers to obtain their national criminal history check through the institute. It makes it clear that teachers must not only pay the relevant fees but also provide their consent and the identification needed for the checks to take place.

It is because of the national police history check undertaken by the institute that teachers are exempt from the requirement to obtain a working-with-children check before taking up employment in a school or early childhood service. The national check undertaken by the institute is an equivalent check to that undertaken under the working-with-children provisions. Appropriately then, should a teacher not consent to the check (or fail to provide any of the relevant information or the fee), their registration will be suspended until the check has taken place.

Further, under the provisions of the Children, Youth and Families Act 2005, schoolteachers, along with some other professionals such as registered medical practitioners and nurses, are mandatory reporters of suspected child abuse and neglect. The bill extends this requirement to early childhood teachers, and by doing so, addresses an aspect of recommendation 44 from the Protecting Victoria's Vulnerable Children Inquiry which prescribes the progressive gazetting of the professions listed under section 182(1)(f)–(k) of the Children, Youth and Families Act 2005 to expand the mandatory reporting scheme to those professions that are yet to be mandated.

The mandatory reporting requirement will mean that where, during the course of their employment, an early childhood teacher forms the belief on reasonable grounds that a child is in need of protection they must report that belief to the relevant authority.

These amendments strengthen the safeguards already in place to protect our children and young people and provide added assurance that early childhood teachers are being held to standards of conduct that are in line with public expectations.

The Victorian Institute of Teaching's governing body, the VIT council, was initially established as a body comprising 20 people, who represented various interests in the school education sector. A key principle in the composition of the council was that the majority of members should be registered teachers, and that the chairperson of the council should also be a registered teacher. The review of the institute by Frank King and Associates in 2007 recommended:

> a council membership of no more than 12 people;
>
> modifying the process for appointment to the council to occur via ministerial nomination to the Governor in Council; and
>
> that appointment of individuals to council be based on the skills and experience required to direct the strategic direction and operations of the institute.

The King report (March 2008) recommended further that there be no explicit organisational or positional representational requirement for council membership.

Amendments to the Education and Training Reform Act 2006 in 2010 reduced the number of council membership from 20 to 12. This has enabled the VIT council to operate more efficiently and to play a more strategic role in the work of the institute. It is now appropriate to legislate to implement the other recommendation of the King report and provide for council composition that is consistent with modern regulatory practice.

The bill maintains the requirement for 12 council members, of whom the majority must be registered teachers. However, the bill alters the appointment process so that 11 members will be appointed via ministerial nomination to the Governor in Council. The 12th member of council will be the Secretary to the Department of Education and Early Childhood Development, or the secretary's nominee.

Under the new model established by the bill, there will be no elected members to council and no explicit organisational or positional representation on council.

In determining who to nominate, the minister will ensure that nominees have the requisite skills needed for the institute to exercise its statutory functions, including some who have experience in law, management, finance or corporate governance. The minister must also consider persons for nomination who are registered teachers, employers of registered teachers, educators of registered teachers and parents of children in schools or early childhood services.

The bill preserves the key principles of council membership; that is, that a majority of members of council, as well as the chairperson, will continue to be registered teachers.

The changes to the VIT council under this bill will complete the vision outlined in the King report for an institute council equipped with the skills and experience to meet the challenges of the current and future educational environment.

I commend the bill to the house.

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

Debate adjourned until Thursday, 20 March.

ENVIRONMENT PROTECTION AND SUSTAINABILITY VICTORIA AMENDMENT BILL 2014

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (the 'charter act'), I make this statement of compatibility with respect to the Environment Protection and Sustainability Victoria Amendment Bill 2014.

In my opinion, the Environment Protection and Sustainability Victoria Amendment Bill 2014 (the bill), as introduced to the Legislative Council, is compatible with the human rights as set out in the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill makes the legislative changes required to facilitate implementation of Getting Full Value — The Victorian Waste and Resource Recovery Policy. Specifically, the bill will:

give legislative effect to the Victorian government response to the recommendations of the *Report of the Ministerial Advisory Committee on Waste and Resource Recovery Governance Reform*; and

provide for annual indexation of the municipal and industrial landfill levy from 1 July 2015.

The bill also gives effect to the government's decision to discontinue the environment and resource efficiency plans program and amends the Environment Protection Act 1970 to further reduce red tape and streamline Environment Protection Authority administrative processes.

Human rights issues

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

There are no charter act rights relevant to the bill.

The 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:

The Environment Protection and Sustainability Victoria Amendment Bill delivers the legislative changes needed to implement several Victorian government decisions.

The majority of the amendments support implementation of Getting Full Value — The Victorian Waste and Resource Recovery Policy. In particular, the bill will give effect to the *Victorian Government Response to the Report of the Ministerial Advisory Committee on Waste and Resource Recovery Governance Reform*. The bill will also provide for annual indexation of the municipal and industrial landfill levy in line with Getting Full Value commitments.

The Victorian government's decision to discontinue the environment and resource efficiency plans program will be given effect by the bill. This will reduce the regulatory burden on Victorian businesses, making Victoria a better and more competitive place to do business.

The bill also includes further amendments to the Environment Protection Act 1970 to reduce red tape and streamline Environment Protection Authority administrative processes.

Implementing Getting Full Value

I will firstly talk about the amendments that support the implementation of Getting Full Value.

Getting Full Value sets a 30-year vision for an integrated, statewide waste and resource recovery system. The policy will enable Victoria to get the best value it can from our waste resources. It signals a significant shift in the way waste resources are managed and will provide environmental and economic benefits for Victoria. Getting Full Value, as introduced by this government, addresses the significant shortcomings of the waste and resource recovery system identified by the Victorian Auditor-General.

Implementation of this policy is a commitment of *Securing Victoria's Economy — Planning. Building. Delivering* and of *Environmental Partnerships.*

The current institutional and governance arrangements for the waste management sector are complex due to multiple changes over many years. They do not optimally facilitate the movement of waste materials from waste generators to end products and the system does not make the best use of infrastructure, transport, land use and national markets.

Getting Full Value identified the need for new institutional and governance arrangements to help unlock the potential of Victoria's waste and resource recovery system. It stated that the government would appoint an independent and expert ministerial advisory committee to advise on optimal

institutional and governance arrangements to implement Getting Full Value.

The ministerial advisory committee delivered its report to me on 31 May 2013.

I would like to thank the committee's chair, Ms Lydia Wilson, and members Mr Mike Ritchie and Mr Simon Corden, for their work. In preparing its report, the committee undertook extensive consultation with the waste management industry, local government, waste management groups, Sustainability Victoria and the Environment Protection Authority. Consultation on the reforms revealed a strong desire for change, particularly from regional groups.

On 8 August 2013, I released the Victorian government's response to the ministerial advisory committee's report. The government response accepted most of the recommendations of the report, and recognised that some legislative amendments were required to achieve key committee recommendations. This bill will deliver these legislative changes.

The institutional and governance changes that the bill will implement provide a sound platform for delivery of the Victorian government's waste policy objectives as outlined in Getting Full Value. These changes will allow the full benefits of economies of scale to be realised, particularly for regional communities.

The amendments will improve clarity and certainty for investment in Victoria's waste and resource recovery industry. They will ensure more efficient and effective use of government resources through strengthened regional institutions, and through streamlined waste and resource recovery planning and procurement processes.

Four main areas are covered by the amendments:

- strengthened regional waste management and resource recovery service provision;
- integrated waste and resource recovery infrastructure planning;
- improved state agency focus and coordination; and
- improved administration of the Sustainability Fund and landfill levy.

Strengthened regional service provision

The bill will facilitate strengthened regional waste and resource recovery services by replacing the existing 12 regional waste management groups with 6 new waste and resource recovery groups, and through modernising their governance arrangements. The changes provide for economies of scale and better use of group resources for service planning and delivery. Fewer regions will create greater opportunities for market-based solutions for waste and resource recovery infrastructure and services.

The reforms will improve regional services by reducing administrative, or back office, tasks for waste and resource recovery groups, freeing up resources for more on-the-ground, front-line, delivery.

The bill will provide the new waste and resource recovery groups with an increased role in facilitating joint procurement of waste infrastructure and waste and resource recovery services by local governments. The government encourages more joint procurement between local governments to minimise costs through economies of scale, while achieving environmental objectives and waste management goals.

The waste planning role of waste and resource recovery groups will be expanded to cover all waste streams, including construction and demolition and commercial and industrial waste. This is consistent with statewide waste management strategies being developed by Sustainability Victoria.

The bill ensures that the new regional waste and resource recovery groups will not be successors in law to the current regional waste management groups. This will provide the new waste and resource recovery groups with a clean slate to undertake their statutory objectives.

The new institutional arrangements for the waste sector will result in:

- the current Calder, Mildura and Central Murray regional waste management groups being replaced by a new Loddon Mallee Waste and Resource Recovery Group;
- the current Barwon and South West regional waste management groups being replaced by a new Barwon South West Waste and Resource Recovery Group;
- the current Highlands, Grampians and Desert Fringe regional waste management groups being replaced by a new Grampians Central West Waste and Resource Recovery Group;
- the Metropolitan Waste Management Group's region being expanded to include the Mornington Peninsula Shire Council municipal district and being renamed the Metropolitan Waste and Resource Recovery Group;
- no change to the boundaries of the North East, Gippsland and Goulburn Valley regions but new waste and resource recovery groups will be established for these three regions.

The new groupings reflect waste flows, transport links and communities of interest, with each group including at least one major regional centre. However, this does not mean that the head office of the new waste and resource recovery groups will be located in a regional centre. To support an appropriate spread of services across the regions, I expect head offices to be strategically located within each region.

The bill provides for a strengthened board structure for regional waste and resource recovery groups that enables local government representation alongside skill-based directors. The new model mirrors the successful board structure of the Metropolitan Waste Management Group: each board consists of eight directors, with four nominated collectively by the local councils within the region and four skills-based directors appointed by myself as the responsible minister.

This new board model will change the current arrangement where each member council has a board member. The bill therefore provides for the establishment of a waste forum for each region which will provide a fair and transparent process for nominating local council representatives. Local councils will be able to design locally suitable solutions for electing their representatives through their forum.

Integrated waste and resource recovery infrastructure planning

A key task of the new waste and resource recovery groups will be to undertake infrastructure planning, under a new Victorian waste and resource recovery infrastructure planning framework established in the bill. The new planning framework will link statewide, metropolitan and regional planning and provide for better links to land use planning.

The bill sets out the components of this planning framework. These will include a Statewide Waste and Resource Recovery Infrastructure Plan or, as I will refer to it — the state waste plan — as well as regional waste and resource recovery implementation plans, or regional waste plans. The planning framework will enable a coordinated and integrated statewide approach to waste infrastructure planning, across all waste streams, supported by regional and local input and implementation.

The state waste plan will build on the recent infrastructure planning work undertaken by Sustainability Victoria. It will have a 30-year horizon and will provide the strategic direction for the management of waste and resource recovery infrastructure across Victoria. The state waste plan will provide the basis for regional planning processes by documenting long-term trends in waste generation, population and waste infrastructure at a statewide scale.

The state waste plan will not identify the specific location of new waste and resource recovery infrastructure. This will be the job of waste and resource recovery groups in preparing regional waste plans. The regional waste plans will focus on how the infrastructure needs of each region across Victoria will be implemented over a 10-year timeframe in line with the state waste plan.

An innovative component of the new planning framework is the statutory integration phase. Waste and resource recovery groups and Sustainability Victoria will be required to work together to ensure integration of regional waste plans and the state waste plan. This will ensure that these plans are appropriately coordinated, tiered and integrated.

The regional waste plan will be required to be referred to the Environment Protection Authority for comment on the infrastructure schedule during the integration phase. This will ensure that new infrastructure is sited to meet environment protection standards, thereby protecting public health and amenity.

The first metropolitan regional waste plan will build on the recent infrastructure planning work undertaken by the Metropolitan Waste Management Group.

Improved state agency focus and coordination

The government will ensure that a coordinated and consistent approach is taken for all waste management activities across government agencies. These reforms build on the significant work over the past two years to implement the government's review of Sustainability Victoria, refocusing much of its work on waste and resource recovery. The bill will amend the Sustainability Victoria Act 2005 to change the composition of the Sustainability Victoria board. The changes will strengthen the board's waste industry and waste management knowledge and experience, particularly at a local government level, to enable Sustainability Victoria to have increased capacity to deliver on the new approach to waste management.

Under the new arrangements, Sustainability Victoria will be the lead agency for facilitating waste and resource recovery market development initiatives such as product stewardship, accreditation, sponsorship of trials and research and development. The bill also provides for the new waste and resource recovery groups to be responsible for integrating regional and local knowledge into statewide market development strategies.

Sustainability Victoria will lead the development of a statewide community and business education strategy for waste and resource recovery that will cascade to regional and local levels, in collaboration with local government, waste and resource recovery groups and the Environment Protection Authority. This will avoid duplication of effort and allow programs to be tailored to local needs, which will be an important function of the new waste and resource recovery groups.

Improved administration of the Sustainability Fund and landfill levy

The bill transfers responsibility for administering the Sustainability Fund from Sustainability Victoria to the Department of Environment and Primary Industries. This will provide a clear separation of financial management of the fund from Sustainability Victoria given that it may benefit from the fund, thereby removing any perceived conflict of interest.

The bill will streamline the administration of, and reporting on, the landfill levy by providing an improved mechanism for distributing landfill levy revenue. Instead of the distribution of landfill levy revenue occurring from the Environment Protection Fund held by the Environment Protection Authority, revenue will be transferred to a Department of Environment and Primary Industries account for distribution. Similarly, the Sustainability Fund will be held directly by the department instead of being located within the Environment Protection Fund.

The bill provides for landfill levy distributions to occur, in the future, via ministerial determination instead of through regulations. This will ensure that agencies can be informed of their distributions from the landfill levy in a more timely manner instead of waiting until regulations are made.

Given the changed roles for Sustainability Victoria and the Department of Environment and Primary Industries and to streamline the current overly complicated arrangements, the Sustainability Fund Advisory Panel will be abolished.

Annual indexation of the landfill levy

As announced in Getting Full Value, the Victorian government has committed to not change the landfill levy rate for 10 years, allowing only for annual adjustments at the Treasurer's rate. The bill will provide for annual indexation of the landfill levy to maintain the value of the levy in real terms.

This commitment is critical to support business certainty and confidence in resource recovery markets, providing the market conditions to encourage investment in resource recovery infrastructure and services.

Discontinuation of the environment and resource efficiency plans program

I will now turn to the other amendments in the bill.

The Victorian government's decision to discontinue the environment and resource efficiency plans program will be given effect by this bill.

The decision to discontinue this program followed a review that found that it could place unnecessary compliance burdens on businesses due to duplication with current commonwealth government programs.

More than 250 Victorian businesses will no longer have compliance and reporting obligations under the environment and resource efficiency plans program.

Amendments to reduce red tape and streamline Environment Protection Authority administrative processes

The bill includes further amendments to reduce red tape without reducing environmental standards, by:

providing the Environment Protection Authority with greater flexibility in granting works approval exemptions where there are no adverse environmental impacts; and

allowing waste transport permits to be issued for up to five years.

The bill also improves the ability of the Environment Protection Authority to administer the Environment Protection Act 1970 by:

removing the effectively redundant requirement for businesses dealing with prescribed industrial waste from the need to submit annual returns to the Environment Protection Authority;

including an express power to amend clean-up notices to avoid the current, cumbersome process of having to revoke and reissue clean-up notices to give effect to an amendment; and

including a new offence for breach of a reporting requirement of a clean-up notice, to enable infringement notices to be issued for minor administrative breaches.

Transition to the new arrangements

The Victorian government acknowledges the significance of the reforms to the waste management agencies and the impact on those affected. The government is working closely with local governments, waste management groups, their staff and stakeholders to manage the transition process with the involvement of affected parties. I have appreciated the positive approach that the waste management group boards and staff have taken to implementing the reforms and thank them for their already significant contribution.

The government has committed to ensure best efforts are made to find roles for existing staff. Despite the new waste and resource recovery groups not being the successors in law to the current regional waste management groups, staff will be transferred to the new waste and resource recovery group corresponding to their current region. This reflects the government's ongoing commitment to maintaining front-line staff and service delivery in rural and regional Victoria.

In closing, I reiterate that the changes to the institutional and governance arrangements for the waste management sector represent a signature environmental and economic initiative for Victoria.

I commend the bill to the house.

Debate adjourned on motion of Mr MELHEM (Western Metropolitan).

Debate adjourned until Thursday, 20 March.

GAME MANAGEMENT AUTHORITY BILL 2013

Introduction and first reading

Received from Assembly.

Read first time for Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation) on motion of Hon. G. K. Rich-Phillips; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation), 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 Game Management Authority Bill 2013.

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

Overview

The main purposes of the bill are to establish the Game Management Authority (the authority); amend the Wildlife Act 1975 to enable the authority to perform and exercise relevant functions and powers under that act; and to make consequential and miscellaneous amendments to that act, the Conservation, Forests and Lands Act 1987 and other acts.

Human rights issues

Right to privacy

Section 13(a) of the charter act provides that a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. An interference with privacy will not be unlawful provided it is permitted by law, is certain and is appropriately circumscribed. Section 13(b) further provides that a person has the right not to have his or her reputation unlawfully attacked.

The right to privacy is relevant to various provisions in the bill which either require or permit the disclosure of personal information which may otherwise be considered private.

However, in my opinion none of these provisions limit the right to privacy, as they do not constitute interferences which are either unlawful or arbitrary.

Clause 14 of the bill requires appointed members of the authority to declare any pecuniary interests in matters that are under consideration by the authority, except if the member is engaged in game hunting or game or wildlife management and the relevant pecuniary interest is no greater than that of any other person so engaged. Under clause 11 of the bill, the minister may remove a member from office if the member fails to comply with clause 14. Requiring appointed members to disclose details of relevant pecuniary interests is an important and appropriate means of avoiding potential conflicts of interest that could undermine the integrity of the authority and its operations. The obligation is clear and confined and serves a legitimate purpose; I therefore consider clause 14 to be compatible with the right to privacy.

Clause 16 of the bill applies strict confidentiality requirements to members, officers, employees and authorised officers with respect to information about the affairs of others obtained in the exercise of their duties or powers. Clause 16(2) sets out some limited circumstances in which persons are permitted to divulge such information. These circumstances include disclosure that is: considered reasonably necessary for or in connection with the administration of the bill, or to assist in the exercise of a power or performance of a duty or function under the bill; for the purpose of legal proceedings; pursuant to an order of a court or tribunal; to the extent reasonably required for other law enforcement purposes; or with the written authority of the secretary. In my view, these categories of permitted disclosure are clear, appropriate and sufficiently circumscribed so as to be compatible with the right to privacy.

Part IX of the Wildlife Act 1975 currently empowers the secretary to authorise 'controlled operations', being operations conducted by law enforcement officers for the purpose of obtaining evidence that may lead to the prosecution of persons for relevant offences. The bill amends various provisions of part IX so that the authority may also authorise controlled operations. Clause 55 of the bill inserts a new subsection 74B(3) into the Wildlife Act 1975, which sets out the required form and content of an authority for a controlled operation granted by the authority. As well as including information such as the identity of the officers to be involved in the operation, the nature and details of conduct to be engaged in and so forth, an authority must identify (to the extent known) any suspect to be implicated by the operation. A 'suspect' is defined in section 71 of the Wildlife Act 1975 to include a person reasonably suspected of having committed or being likely to have committed (or committing or likely to be committing) a relevant offence. To the extent that the inclusion of information as to the identity of a suspect may interfere with the privacy or reputation of that person, I consider any such interference to be neither unlawful nor arbitrary. It is necessary to disclose details of suspects in order for controlled operations to be appropriately targeted. Strict confidential obligations apply to information obtained by individuals in the course of exercising functions and powers under the bill and other relevant acts. Further, clause 64 provides that annual reports detailing the operations of law enforcement officers, to be prepared by the Victorian Inspectorate (based on information provided to it by the authority as required by clause 63) must not disclose any information that may identify suspects. In my view, any interference with privacy or reputation is therefore lawful and not arbitrary.

Clause 63 of the bill inserts a new section 74OA into the Wildlife Act 1975, requiring the authority to submit annual reports to the Victorian Inspectorate in relation to its authorised operations. To the extent that these reports may contain personal information, in my view any interference with privacy is lawful and not arbitrary. It is necessary that the Victorian Inspectorate, as the key oversight body in Victoria's integrity system, is provided with fulsome information about the operations of relevant statutory bodies. Appropriate confidentiality requirements apply to the Victorian Inspectorate with respect to personal information provided to it.

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.

The right to property is relevant to, but not limited by, various clauses in the bill.

Clauses 37 and 42 of the bill insert new sections 25BA and 28D(1A) into the Wildlife Act 1975, which provide that the authority may suspend a wildlife licence or authorisation it has given in relation to wildlife or game, in certain circumstances. New subsections 25BA(3) and 28D(4) then respectively provide that where a licence or authorisation is so suspended, the custody, care and management of any specified birds or game held under that licence or authorisation must be dealt with in accordance with the directions of the authority.

Clauses 40 and 44 insert new sections 25DA and 28F(1A) into the Wildlife Act 1975, which provide that the authority may cancel a wildlife licence or authorisation, in certain circumstances. New subsections 25DA(6) and 25F(6) respectively provide that where a licence or authorisation is so cancelled, any specified birds or game held under that licence or authorisation must be disposed of in accordance with the directions of the authority.

To the extent that these provisions may result in the disposal of or effective loss of control over property in accordance with the directions of the authority, any consequential deprivation of property is lawful and therefore compatible with section 20 of the charter act. The circumstances in which specified birds or game may be dealt with in this manner are clear and precise, with holders of relevant licences and authorisations to be given an opportunity to make submissions (to which the authority must have regard). In circumstances where suspension or cancellation has been considered appropriate, it is proper that persons be prevented from or at least confined with respect to the extent to which they may continue to own or deal with the birds or game acquired under the relevant licence or authorisation.

Right to be presumed innocent

Section 25(1) of the charter act provides that a person charged with a criminal offence has the right to be presumed innocent until proven guilty in accordance with the law. Generally, the burden is on the prosecution to prove all the elements of the offence.

Various clauses in the bill provide that in proceedings under the bill or a relevant act, a certificate of the authority or other form of evidence asserting a certain fact is, in the absence of evidence to the contrary, proof of that fact. For example, clause 51 makes such provision in respect of evidence as to the holder of, the conditions attached to, and the premises that relate to a particular licence, authorisation or permit; and clause 71 makes such a provision in respect of evidence that the secretary or the authority was satisfied of the certain facts in order to grant an authority. Clause 25 of the bill applies various sections of the Conservation, Forests and Lands Act 1987, which contain similar such provisions.

By requiring a person to provide evidence to the contrary of the asserted fact, these clauses impose an evidential onus on accused persons in relevant offence proceedings, thus displacing to some extent the onus on the prosecution.

Courts in other jurisdictions have generally taken the approach that an evidential onus on an accused does not limit the presumption of innocence. Further, it is appropriate that a defendant point to evidence to suggest that evidence such as certificates and statements under the seal of the authority, and certified copies of instruments, are incorrect, and it is both reasonable and in the interests of efficiency to rely on such documents in the absence of evidence to suggest otherwise. Consequently, even if these clauses are considered to limit the right to be presumed innocent through imposing an evidential onus upon defendants, they would be reasonable and justified under s 7(2) of the charter act.

The Hon. Peter Hall, MLC
Minister for Higher Education and Skills
Minister responsible for the Teaching Profession

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

I am pleased today to introduce legislation that delivers on the Victorian coalition government's commitment to improve the effectiveness of game management and promote responsibility in game hunting in this state.

Members of the house will recognise that hunting, and in particular recreational game hunting, is an important part of Victoria's cultural heritage, particularly in rural and regional Victoria. Generations of Victorian families have passed down the traditions and methods of hunting, often as part of broader experiences of camping and the great outdoors.

Importantly, Victoria's approach to the sustainable use of wildlife populations, including recreational game hunting, is consistent with contemporary conservation management principles. It is also consistent with international conservation treaties and conventions.

Today there are more than 43 000 game licence holders in Victoria, and the game hunting industry is estimated to generate around $100 million of direct and indirect economic activity for Victoria annually. This includes jobs in a range of industries and the flow-on effects of people travelling to regional areas where game hunting is permitted.

Of course there are many more hunters involved in pest management activities — contributing to the state's biosecurity efforts, and the conservation of Victoria's wildlife habitats.

I have been heartened by the success of our wild dog and fox bounties. The response from hunters has been tremendous, and it illustrates the valuable role hunters can play in an integrated approach to pest management.

With the growth in the popularity of game hunting, as well as the opportunity to enhance the contribution of hunters to game and pest management outcomes, it is the right time for government to provide a clearer strategic direction for the future.

That is why, in October this year, I announced the development of a hunting and game management action plan to support and guide the long-term growth of the industry, and improve access to sustainably managed game resources.

Like the coalition government's timber industry action plan, which has driven significant reform and improved outcomes for Victoria's native timber industry, I am committed to ensuring action is taken to enhance legislative, regulatory, institutional and service delivery outcomes for hunting and game management in Victoria.

Of course, this cannot be achieved by government alone. A partnership approach — across government agencies, hunting organisations, and business — will be crucial for the success of the action plan.

I thank all stakeholders who participated in workshops during October and November on the action plan, led by the Honourable Roger Hallam, chair of the Victorian Hunting Advisory Committee (HAC).

The HAC will provide me with a draft of the action plan in early 2014 for consideration by government.

The second component of providing a clearer strategic direction for the future is the establishment of the Game Management Authority.

You may recall that as part of the 2013–14 state budget the coalition government announced an additional allocation of $8.2 million over four years to establish and operate a new Game Management Authority. This means that a total of $17.6 million will be spent on game management in Victoria over the next four years.

This bill gives effect to that commitment by providing the legislative basis for a new, independent statutory authority to regulate game hunting and improve game management outcomes in Victoria — the Game Management Authority (GMA).

The new GMA will incorporate the functions currently undertaken by Game Victoria in the Department of Environment and Primary Industries.

But this is not just a machinery-of-government change.

This is about providing transparent and accountable governance to drive improved performance — more effective compliance and enforcement of game hunting, and more collaborative approaches to game management.

I turn now to the details of the bill.

The bill includes the usual provisions to underpin a statutory authority's basic operations — these provisions are broadly consistent with other Victorian statutory authorities, including Dairy Food Safety Victoria, Prime Safe and Sustainability Victoria.

The bill outlines the objectives, functions and powers of the GMA.

The GMA will be — first and foremost — a regulator. It will perform all the compliance, investigative and disciplinary functions related to game hunting in Victoria.

Efficient and effective regulatory activities will be critical success factors for the new Authority. Good regulatory practice is essential to underpin confidence and facilitate growth in the industry.

Consistent with good regulatory practice, I have ensured that the functions of the GMA do not conflict with each other — a good regulator cannot both regulate and promote the industry. As such, the GMA will promote sustainability and responsibility in game hunting, however, it will not have an explicit role in promoting the industry.

On behalf of government, I will retain responsibility for the development of statewide strategic policy for game management. The GMA will play a vital role in monitoring, conducting research and analysing the environmental, social, cultural and economic impacts of game hunting.

The GMA will also work with public land managers to improve the management of public land and facilities on public land where hunting is permitted. By working together through meaningful and constructive arrangements, outcomes can be improved for all public land users, including hunters.

The GMA will also develop operational plans and procedures that address:

the sustainable harvest of game species;

the humane treatment of species that are hunted and used in game hunting;

minimising the negative impact on non-game wildlife including protected and threatened wildlife; and the

conservation of wildlife habitats.

The GMA will also influence game management outcomes through making recommendations to relevant ministers on:

game hunting and game management;

control of pest animals;

declaration of public land open and closed to game hunting, open and closed seasons, and bag limits; and

management of public and private land as it relates to game and their habitat.

These are important roles for the GMA, and although it will not be the lead agency in respect of these matters, I anticipate that recommendations and advice from the authority will be influential in improving game management outcomes in Victoria.

The bill establishes a skills-based board to oversee the strategic direction of the authority. Membership of the board will consist of no less than five and no more than nine members, including a chairperson and deputy chairperson.

The bill requires that the board has an appropriate mix of skills, knowledge and experience to assist the authority to operate in a robust regulatory environment. I will seek to ensure that collectively members have expertise in a number of areas, including legal practice, finance, wildlife biology or ecology, animal welfare and game, and wildlife management.

The bill provides that the CEO of the GMA will be appointed by the chairperson. To ensure the transparency of this process, the bill requires that the terms and conditions of appointment are to be approved by me on the recommendation of the board.

The chairperson will also be the employer of all staff of the authority — staff, including the CEO, will be VPS staff but independent of DEPI. Staff from Game Victoria will be transferred to the GMA with no associated job losses.

The CEO will be responsible to the board for the day-to-day management of the authority.

The bill requires that the GMA provide me with an annual report, including a financial statement and any information relating to its objectives and functions. I am also able to provide directions to the GMA, and these must be published in the annual report.

For transparency and accountability, the annual report of the GMA will be tabled in Parliament.

The bill also requires the GMA to prepare an annual business plan which sets out its objectives and priorities for the next three financial years, including its financial projections for that period and its budget for the next financial year.

The bill also contains enforcement provisions which allow the GMA to appoint authorised officers to exercise powers and perform functions and duties for relevant laws. This is consistent with current authorisations of officers.

The bill also includes a range of provisions and consequential amendments to transfer legislative accountabilities and associated decision-making responsibilities to the GMA. These provisions and consequential amendments only transfer functions that are required by the GMA to perform Game Victoria's current compliance and enforcement functions. All other functions remain with the secretary of DEPI.

To complement the good practice governance arrangements contained in the bill, I will also provide three key administrative tools to support the efficient and effective operation of the Game Management Authority. These are:

(a) an operating model for the incoming board which reflect best practice regulatory principles;

(b) a statement of expectation between myself and the GMA; and

(c) a memorandum of understanding/service level agreement between the authority and key partner agencies, including DEPI, Victoria Police and Parks Victoria.

I am pleased to provide this bill as a key part of a clearer strategic direction for the future of hunting and game management in Victoria.

I commend the bill to the house.

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

Debate adjourned until Thursday, 20 March.

HEALTH SERVICES AMENDMENT BILL 2014

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 Bill 2014.

In my opinion, the Health Services Amendment Bill 2014, as introduced to the Legislative Council, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The purpose of the bill is to amend the Health Services Act 1988 (the act) to: expand the functions of Health Purchasing Victoria; give trustees and committees of management the power to grant, subject to the approval of the Minister for Health, long-term leases and licences on Crown land with respect to health services; and limit the investment powers of certain registered funded agencies by allowing the standing directions issued by the Minister for Finance under the Financial Management Act 1994 to apply to those registered funded agencies.

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 act because it does not raise any human rights issues.

Hon. David Davis, MP
Minister for Health

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

The Health Services Amendment Bill 2014 is straightforward legislation to improve the administration of Victoria's health system. This bill amends the Health Services Act 1988 to:

broaden the functions of Health Purchasing Victoria;

provide the Minister for Health with power to approve long-term leases and licences with respect to hospital sites; and

to place restrictions on the investment powers of certain registered funded agencies and enable these organisations to comply with the standing directions of the Minister for Finance with respect to investments.

Health Purchasing Victoria

Health Purchasing Victoria is leading procurement reform across Victoria's public health sector. Through improved procurement practices and economies of scale, Health Purchasing Victoria has been able to reduce costs for procured goods and services across the health sector. This is reducing the significant cost pressures within the health system.

Entities which can access Health Purchasing Victoria procurement and purchasing services are limited to those specified in the act. Currently, organisations like Ambulance Victoria, Justice Health, the Victorian Institute of Forensic Mental Health and the Department of Human Services are not permitted by the act to access Health Purchasing Victoria contracts and services.

In 2013, this government enacted changes to the Health Services Act 1988 to enable Health Purchasing Victoria to offer registered community health centres and women's health services the opportunity to procure goods and services through Health Purchasing Victoria contract arrangements. Those amendments enabled these services to leverage off Health Purchasing Victoria's purchasing power.

The amendments proposed by this bill will enable entities that deliver ambulance services, health services in association with correctional services, disability services and residential care services, as well as the Victorian Institute of Forensic Mental Health to benefit from the purchasing power of Health Purchasing Victoria, just as registered community health centres and women's health services are able to now.

This will not restrict the market for the procurement of medical supplies. This is because Health Purchasing Victoria contracts are accessed on an opt-in basis, and many of the contracts have, where appropriate, limited scope. Furthermore, the bill amends section 134O of the principal act to ensure utilisation of Health Purchasing Victoria's services and access to contracts established by Health Purchasing Victoria are specifically authorised, so that such conduct is exempted from the operation of the commonwealth's Competition and Consumer Act 2010.

Thus, these amendments will allow Victoria's health dollar to go further by providing Ambulance Victoria, Justice Health and the Department of Human Services the opportunity to access the benefits of collective purchasing through Health Purchasing Victoria. This will further reduce cost pressures within the health system and will enable expansion of the good practice and robust and transparent procurement processes provided by Health Purchasing Victoria to other parts of the health sector.

Crown land leasing and licensing

Currently the provisions of the Crown Land (Reserves) Act 1978 (CLRA) restrict the period of time licences and leases can be granted for Crown land which is managed under the health portfolio.

These limitations impact upon the procurement of hospital projects through the public-private partnership (PPP) model, as the PPP approach requires leases and licences for longer periods than those set out in the CLRA.

The amendments will allow trustees or committees of management of hospital sites, subject to the approval of the Minister for Health, to grant leases and licences for a period up to 35 years. These extended powers will be limited to Crown land which is managed in the health portfolio, and will only allow the grant of leases or licences for purposes which are consistent with the Crown land reservation. Prior to approving any lease or licence, the Minister for Health will give notice in the *Government Gazette* of the intention to do so, which ensures accountability.

These amendments will reduce additional administrative time and costs in relation to granting long-term leases or licences for hospital PPP projects.

Investment powers of certain registered funded agencies

Finally, the bill amends the current provisions in the Health Services Act 1988 relating to investment powers of registered funded agencies.

The standing directions of the Minister for Finance issued pursuant to section 8 of the Financial Management Act 1994 seek to ensure that Treasury risks are effectively identified, assessed, monitored and managed by public sector agencies, and that the strategies adopted by the public sector agencies are consistent with the overall objectives of the government.

Currently, the act does not restrict the type of investments that can be made by health services, including higher risk investments, such as collateralised debt obligations (investment grade securities backed by a pool of bonds, loans and other assets). These investments are the responsibility of public hospital boards of management. Neither the Minister for Finance nor the departmental secretary can direct public hospitals how to invest.

The recent collapse of non-bank lenders highlights for us all the exposure, particularly by rural and regional investors, of investing in non-bank-issued debentures.

This bill amends section 29 of the act so that it does not limit the application of any standing directions issued by the Minister for Finance under the Financial Management Act 1994, insofar as those directions apply to registered funded agencies subject to the Financial Management Act 1994. This brings the investment powers of Victoria's health services in line with other public sector entities and under the management and expertise of the Treasury Corporation of Victoria and the Victorian Funds Management Corporation. Investments managed by the Treasury Corporation of Victoria and the Victorian Funds Management Corporation are conducted under the supervision of the Department of Treasury and Finance with stringent guidelines regarding exposure to risk.

This minor amendment will improve, through better investment decision making, the long-term financial sustainability of Victoria's health services.

The date for commencement of this bill should be on or before 2 February 2015.

I commend the bill to the house.

Debate adjourned for Mr JENNINGS (South Eastern Metropolitan) on motion of Mr Leane.

Debate adjourned until Thursday, 20 March.

MENTAL HEALTH BILL 2014

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (the 'charter act'), I make this statement of compatibility with respect to the Mental Health Bill 2014 (the bill).

In my opinion, the bill, as introduced in the Legislative Council, is compatible with the human rights as set out in the charter act. I base my opinion on the reasons outlined in this statement.

Overview

Victoria's Mental Health Act 1986 ('MHA') is the oldest mental health law in Australia. The MHA establishes a legislative framework for the provision of mental health treatment. It also authorises and regulates the detention and involuntary treatment of persons with severe mental illness. Stand-alone mental health legislation provides the best means to articulate and protect patients' rights and maximise individual autonomy.

New legislation is needed to promote recovery-oriented practice, to minimise the use and duration of compulsory treatment, to safeguard the rights and dignity of people with mental illness, and to enhance oversight while encouraging innovation and service improvement.

Under the bill patients will be presumed to have capacity to make their own treatment decisions. This presumption can be displaced where patients do not have capacity at the time the treatment decision needs to be made. Mental health services will be required to provide patients with support and information to enable them to make or participate in decisions about their treatment and recovery.

However, whenever the state interferes with the privacy of individuals, appropriate safeguards need to be in place to protect human rights and prevent abuses.

Compulsory assessment and treatment criteria

The bill has separate criteria for:

> Assessment orders and court assessment orders: a person who appears to be mentally ill and needs to be assessed by an authorised psychiatrist to determine if he or she requires compulsory treatment; and
>
> Temporary treatment orders, treatment orders, secure treatment orders and court secure treatment orders: a person who has a mental illness and requires immediate compulsory treatment.

A person may be made subject to an assessment order if he or she appears to have mental illness and all the other assessment criteria apply to the person. Where an assessment order is made, a person may be taken to a designated mental health service for the purposes of being examined and assessed by an authorised psychiatrist.

An authorised psychiatrist may not make the person subject to a temporary treatment order unless the authorised psychiatrist determines that the person has mental illness and all the other treatment criteria apply.

Presumption of capacity

The bill establishes a presumption that all people have capacity to give or refuse to give informed consent in relation to their assessment and treatment. This presumption may be displaced where it is demonstrated that the person does not have capacity to make that decision at the time that the decision needs to be made.

The bill sets out principles for clinicians and others to consider when determining whether a person can make a treatment decision.

Process for becoming a patient

Compulsory patients — part 4 of the bill

A person may only be made subject to an assessment order or temporary treatment order if there is no less restrictive means reasonably available to enable the person to be assessed or treated. This includes whether the person can receive mental health treatment voluntarily. See clauses 5 and 29.

An assessment order can only be made following an examination by a registered medical practitioner or a mental health practitioner who considers that all the criteria for an assessment order apply to the person. A mental health practitioner is a prescribed class of persons employed by a designated mental health service.

A person subject to an assessment order may be taken to a designated mental health service for the purposes of being examined and assessed by an authorised psychiatrist to determine whether the criteria for a temporary treatment order apply to that person.

An authorised psychiatrist may not make the person subject to a temporary treatment order unless the authorised psychiatrist is satisfied that the person has mental illness and all the other treatment criteria apply. A temporary treatment order may only be made for a person who requires immediate treatment to prevent serious harm to himself or herself or another person or to prevent serious deterioration to the person's health. A temporary treatment order has a duration of 28 days unless revoked earlier.

The purpose of a temporary treatment order is to enable a person to be compulsorily treated in either an inpatient or community setting. If an authorised psychiatrist considers the patient requires compulsory treatment beyond 28 days, the authorised psychiatrist must satisfy the Mental Health Tribunal (the tribunal) that the criteria continue to apply to the person and that a treatment order should be made. See clause 52.

The tribunal is an independent statutory body comprising a lawyer, a psychiatrist or registered medical practitioner and a person appointed to represent the views of the community. A patient has the right to attend and to be legally represented at the hearing before the tribunal. See part 8.

If a person pleads guilty or is found guilty of an offence and he or she is not in custody, the person may be made subject to a court assessment order. The purpose of a court assessment order is to enable an authorised psychiatrist to determine whether the criteria for a temporary treatment order or a court secure treatment order apply to the person and to provide advice to the court to enable it to determine the most appropriate sentence. See division 2 of part 5.

A person subject to a court assessment order may not be compulsorily treated unless an authorised psychiatrist is satisfied that urgent treatment is necessary to prevent serious

harm to the person or another person or serious deterioration in the person's health.

Security patients — part 11 of the bill

A court secure treatment order is a sentencing option available to a court where, but for the person's mental illness, the court would have sentenced the person to a term of imprisonment. The duration of the court secure treatment order must not exceed the period of time that the person would have been sentenced to had he or she been sentenced to a term of imprisonment. See division 2 of part 11.

A secure treatment order is where a person becomes so mentally unwell in prison that he or she requires compulsory treatment and must be transferred from prison to a designated mental health service. See division 3 of part 11.

Persons subject to secure treatment orders or court secure treatment orders are security patients.

Security patients may only be detained and treated for their mental illness while the relevant statutory criteria apply. The criteria include the requirement that the person has mental illness and that he or she requires treatment to prevent serious harm to themselves or another person or to prevent serious deterioration in the person's health. There must be no less restrictive means reasonably available to enable the person to receive mental health treatment. If the criteria do not apply, the person must either be transferred to prison to serve the balance of their sentence or released on parole (if eligible).

Orders of fixed duration and tribunal hearings

Compulsory patients

Assessment orders, temporary treatment orders and treatment orders have a fixed maximum duration.

The tribunal may determine to fix the duration of a treatment order for a shorter period if it considers that more frequent tribunal oversight is required in the circumstances.

The authorised psychiatrist must immediately revoke a person's assessment order, temporary treatment order or treatment order where the relevant statutory criteria no longer apply to that person.

A patient may make an application to the tribunal at any time for a revocation of his or her temporary treatment order or treatment order. If the tribunal determines that one or more of the criteria do not apply to the patient, the tribunal must revoke the temporary treatment order or treatment order. There is no limit on the number of applications for revocation that a person may make to the tribunal. A patient may attend the hearing and has a right to be legally represented.

In the case of a community assessment order the fixed maximum duration is 24 hours. In the case of an inpatient assessment order it ends 24 hours after the person is received at a designated mental health service or 72 hours, if the person is not received at a designated mental health service. If the authorised psychiatrist is unable to determine whether all the criteria for a temporary treatment order apply to the person, the authorised psychiatrist may extend the assessment order for 24 hours no more than twice.

A temporary treatment order has a duration of 28 days unless revoked earlier. Within those 28 days the tribunal must hear and determine whether the criteria for a treatment order apply to the patient. If, at the hearing, the tribunal is satisfied that all the treatment criteria apply to the patient it must make a treatment order.

The tribunal will also determine the setting where treatment will be provided. An inpatient treatment order will have a maximum duration of six months and a community treatment order will have a maximum duration of 12 months. The determination of the setting and the duration must be least restrictive in the circumstances.

For a young person under the age of 18 years, a treatment order may only be made for a maximum of three months regardless of whether the young person is receiving treatment as an inpatient or in the community. The determination of the setting and the duration must be least restrictive in the circumstances.

Security patients

The orders to which a security patient may be subject are a court secure treatment order or a secure treatment order.

Within 28 days after a person is received as a security patient at a designated mental health service, the tribunal must conduct a hearing to determine whether the relevant statutory criteria for compulsory treatment apply to the person. If the tribunal is satisfied that all the treatment criteria apply, the tribunal must order that the person remain a security patient.

The tribunal must continue to review the person at least every six months while the person remains a security patient.

If the authorised psychiatrist or the tribunal determines that the relevant statutory criteria no longer apply, the person must be discharged as a security patient and transferred to prison to serve the remainder of his or her sentence or, where appropriate, released on parole.

At any time a security patient may apply to the tribunal to be discharged as a security patient.

Treatment while a person is a patient under the bill — part 5 of the bill

Informed consent must be sought before a course of treatment can be administered to a patient. The bill sets out the requirements for seeking informed consent.

The authorised psychiatrist must make treatment decisions (excluding electroconvulsive treatment and neurosurgery for mental illness) in some circumstances where a patient does not have capacity to give informed consent or has capacity and does not consent.

The provision of treatment must be to prevent serious harm to the person or another person or to prevent serious deterioration to the person's health. The treatment provided must be the least restrictive treatment possible in the circumstances.

There is a list of factors set out in the bill to which the authorised psychiatrist must have regard to when determining the least restrictive treatment.

Tribunal approval of ECT and NMI

The tribunal must hear and determine whether to approve the performance of electroconvulsive treatment (ECT) for patients who do not have capacity to give informed consent to ECT.

The tribunal must also approve the performance of ECT for all people under the age of 18 years ('young persons'), regardless of whether they have capacity to give informed consent to ECT.

Neurosurgery for mental illness (NMI) (formerly psychosurgery) may only be performed where a person has given informed consent and the tribunal determines that the person has capacity to give that informed consent. The tribunal must also be satisfied that the person will benefit from the performance of NMI.

Safeguards during compulsory treatment

The bill will prescribe circumstances where a person with mental illness must be given a statement of rights. For example, a person subject to an order must be given a statement of rights and an explanation of those rights and other information under the bill. See division 1 of part 5.

The bill will also establish the right of a person to nominate another person to receive information and to provide support for the period of time the person is subject to an order. The nominated person will assist the person to exercise his or her rights and represent the person's views and preferences. See division 4 of part 3.

The bill will require that where a patient has a guardian, the guardian will receive information and be consulted about the patient's treatment. Similarly, where a child is less than 16 years of age, a parent will receive information and be consulted about the child's treatment.

The bill will also establish a right to seek a second psychiatric opinion. Where certain categories of patient obtain a second opinion that recommends changes to their treatment, the authorised psychiatrist must have regard to that opinion. The authorised psychiatrist will not be required to change the patient's treatment; however, the patient will be entitled to apply to the chief psychiatrist for a review of their treatment as recommended by the second opinion psychiatrist if the authorised psychiatrist does not change the patient's treatment after the patient obtains the second opinion report. See division 4 of part 5.

The bill enables a person to make an advance statement to record his or her treatment preferences in the event the person becomes unwell and requires treatment. The authorised psychiatrist must have regard to an advance statement when considering the least restrictive treatment for a patient. See division 3 of part 3.

The bill will establish the mental health complaints commissioner ('the commissioner') as an independent entity who may receive and investigate complaints about public mental health services. The commissioner will have broad powers to investigate services, informally resolve disputes, conciliate or otherwise resolve disputes, make recommendations and issue compliance notices for breaches of the proposed legislation. See part 10.

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

The primary rights relevant to the bill are:

Section 8 — recognition and equality before the law;

Section 10(b) — protection from torture and cruel, inhuman or degrading treatment;

Section 10(c) — right not to be subjected to medical treatment without full, free and informed consent;

Section 12 — freedom of movement;

Section 13 — privacy and reputation;

Section 15 — freedom of expression;

Section 21 — liberty and security of the person;

Section 22 — humane treatment when deprived of liberty;

Section 24 — fair hearing;

Section 25(1) — the right to be presumed innocent until proved guilty.

These rights, as they are relevant to the bill, are discussed in more detail below.

I have chosen to deal with the primary charter act rights relevant to the bill by grouping them together when they raise issues that substantially overlap. To the extent that these groups of rights are limited by the provisions of the bill, I consider that in each case the limitations are reasonable and therefore comply with the charter act.

The right not to be subject to medical treatment without consent — section 10(c)
Protection from torture and cruel, inhuman or degrading treatment — section 10(b)
The right to privacy — section 13(a)

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

Section 10(b) of the charter act provides that a person must not be subject to torture and cruel, inhuman or degrading treatment.

Section 13(a) of the charter act recognises a person's right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. In this context I am concerned with privacy in the sense of 'bodily integrity', which involves the right not to have our physical selves interfered with by others without our informed consent. This includes the compulsory administration of medications as well as invasive procedures.

These rights are relevant to the bill as clause 71 authorises the provision of treatment without full, free and informed consent where the person is subject to a temporary treatment order, treatment order, secure treatment order or court secure treatment order.

Part 6 also empowers clinicians to undertake restrictive interventions, which impact on a person's bodily integrity.

The use of restrictive interventions are permitted on a person receiving mental health services at a designated mental health service where it is necessary to prevent serious and imminent harm to the person or another person or to administer necessary medical treatment to a person.

Restrictive interventions include physical restraint, mechanical restraint and seclusion. Restrictive interventions may not be used unless all other less restrictive options have been tried or considered and found unsuitable in the circumstances.

Division 3 of part 15 provides that these interventions may be used to search people for the purpose of safe transport to or from a designated mental health service.

A 'pat-down' search may be used in circumstances where there may be property on the person that presents a danger to the health and safety of any person or that could be used to assist the person to escape.

(a) the nature of the right being limited

Underlying these three rights are the concepts of personal autonomy and human dignity. These rights are not absolute in law and may be subject to reasonable limitations.

(b) the importance of the purpose of the limitation

The purpose of the limitation on the right not to be subject to medical treatment without consent is to ensure that a person suffering from severe mental illness receives necessary treatment at times when he or she does not have the capacity to give full, free and informed consent to treatment or when he or she has capacity but refuses to give consent and needs immediate treatment to prevent serious harm to the person or another person or serious deterioration to the person's health.

The purpose of the limitation on the rights to privacy and protection from degrading treatment is to permit:

> restrictive interventions to enable the safe delivery of mental health services by preventing serious and imminent harm to the person subject to the restrictive intervention or another person;
>
> searches and sedation to enable a person to be safely taken to or from a designated mental health service for treatment. These practices are permitted to be used judiciously to ensure the safety of the person and the safety of others such as ambulance employees and medical staff.

Without these limitations, people may suffer unnecessarily and experience serious harm or deterioration in their mental health or may harm another person. In my opinion, these are pressing and substantial concerns that need to be addressed by the legislation.

(c) the nature and extent of the limitation

The right not to be subject to medical treatment without consent

The following safeguards in the bill are intended to ensure that the extent of the limitation on the right not to be subject to medical treatment without consent is kept to the minimum necessary.

In order to ensure that the range of person who may be subject to treatment without their consent is narrow, parts 4 and 5 of the bill distinguish between persons who have capacity to provide informed consent to treatment and those who do not have capacity or do not give informed consent.

Clause 70 establishes a presumption that all persons have the capacity to give informed consent to treatment regardless of their age or legal status. Clause 68 provides that the presumption may only be displaced by evidence that the person does not have capacity to give informed consent to treatment at the time the decision must be made. Clause 69 also specifies the elements required for seeking informed consent.

The bill restricts the circumstances in which compulsory mental health treatment can be provided when a person is unable or does not give informed consent. Part 4 requires that a person be made subject to a temporary treatment order or treatment order before compulsory treatment can be given. Clauses 45 and 46 provide that a person may not be made subject to a temporary treatment order without first being made subject to an assessment order.

Clauses 38 and 42 permit urgent treatment for a person subject to an assessment order in circumstances where the person consents or a registered medical practitioner employed at a designated mental health service is satisfied that urgent treatment is necessary to prevent serious harm to the person or another person or serious deterioration in the person's health. This limitation is required to prevent the person suffering serious harm or suffering serious deterioration before the authorised psychiatrist is able to complete the assessment and determine whether the criteria for a treatment order apply to the person.

Clauses 5, 71, 72 and 73 provide that an authorised psychiatrist may only provide substitute consent to treatment for a person subject to a temporary treatment order or treatment order in specified circumstances. Substitute consent is only permitted once it is determined that person is either unable to consent or does not give informed consent to the treatment that is necessary to prevent serious harm to the person or another person or serious deterioration in the person's health. Clause 5 sets out that the relevant criteria for the order must apply to the person, including that the immediate treatment is necessary to prevent serious harm to the person or another person or serious deterioration to the person and there is no less restrictive way for the person to be treated.

Clause 71(3) requires the authorised psychiatrist to have regard to a person's treatment preferences, including those in any advance statement, when making treatment decisions. While the authorised psychiatrist is not obligated to follow the treatment preferences of a patient, clause 73 provides that the authorised psychiatrist must inform the patient if the patient's preferences will not be followed and give reasons for departing from the patient's advance statement. Clause 73(2) further provides that the authorised psychiatrist must inform the patient that he or she can request written reasons. If the patient does request written reasons, clause 73(3) requires that the written reasons must be provided to the patient within 10 working days.

Part 5 makes special arrangements for ECT and NMI. The tribunal must approve the performance of ECT on a patient who does not have capacity to give informed consent to the

performance of ECT before it can be performed. The tribunal must also approve the performance of ECT on a person under the age of 18 years ('young person') regardless of whether that young person has the capacity to give informed consent. Where a patient or a young person has capacity to give informed consent and refuses ECT, the tribunal must respect the informed decision and refuse the performance of ECT. This requirement upholds the right to autonomy and bodily integrity rights.

A person must have capacity to give informed consent to NMI and must in fact give informed consent before it can be performed. A person cannot give substitute consent to another person receiving NMI. For example, a guardian cannot give consent for a represented person to receive NMI. This means that NMI cannot be given compulsorily to any person in Victoria. The tribunal will be responsible for determining whether the person has given informed consent and whether the NMI will be of benefit to the person.

The right to privacy and protection from degrading treatment

The following safeguards in the bill are intended to ensure that the extent of the limitations on the right to privacy and protection from degrading treatment is kept to the minimum necessary.

Division 3 of part 15 provides that only an authorised person (defined by the bill as a member of the police force, ambulance paramedic, medical practitioner employed by a designated mental health service, mental health practitioner or member of a prescribed class) may seize or detain a thing found in a search of a person for the purpose of providing safe transport to or from a designated mental health service. A thing may only be seized and detained if it presents a danger to the person or anyone else or could assist the person to escape. In addition, the authorised person must take reasonable steps to return the thing to the person from whom it was seized once the reason for its seizure no longer exists.

Permitting searches in these circumstances is considered reasonable to prevent danger to the health and safety of any person or to prevent a patient's escape. It is intended that these measures are only to be used as part of a regime that includes the safeguards described above.

Part 6 provides that the restrictive interventions may only be used in specified circumstances.

A person may only be kept in seclusion if it is necessary to prevent the person causing imminent and serious harm to the person or another person. Bodily restraint may only be used on a person if it is necessary to prevent imminent and serious harm to the person or to another person or is required to administer treatment or medical treatment to the person. A restrictive intervention may only be used after all other options have been tried or considered and found to be unsuitable. The restrictive intervention must be stopped without delay if the criteria for placing the person in restraint or seclusion no longer apply.

Restrictive interventions may only be authorised by the authorised psychiatrist, or if he or she is not immediately available, a registered medical practitioner or the senior registered nurse on duty.

Clause 350 provides that bodily restraint or sedation must be necessary to enable the person to be safely taken to or from a designated mental health service. The bodily restraint and sedation used must be the least restrictive and intrusive to enable safe transport of the person. All reasonable less restrictive alternatives to take the person must have been tried or have been considered and found unsuitable.

Bodily restraint for the purposes of transport may only be carried out by an authorised person. Sedation may be administered by a registered medical practitioner or a registered nurse or ambulance paramedic at the direction of a registered medical practitioner or if the administration of sedation is in their scope of practice.

These limitations are required in legislation to ensure that designated mental health services have adequate powers to deal with the day-to-day management of mental health services, including the safe transport of people with mental illness. These limitations are also necessary to protect the health and safety of people receiving treatment compulsorily.

(d) the relationship between the limitation and its purpose

The limitation on the right not to be subject to medical treatment without consent is to ensure a person only receives treatment without consent when this is necessary to prevent serious harm to the person or another person or serious deterioration in the person's health.

As outlined above, the bill specifies the circumstances in which the right to privacy is limited and includes safeguards to ensure interference with the right to privacy is not used arbitrarily.

The limitation on the right to protection from degrading treatment is to ensure a person is only made subject to a search, sedation or a bodily restraint to protect the safety of the person who needs treatment, or any other person for example persons accompanying or treating the person or members of the public.

(e) any less restrictive means reasonably available to achieve its purpose

There are no less restrictive means reasonably available to achieve the purpose of the limitation.

If the person is unable to consent to treatment, there is no less restrictive way for them to receive treatment to prevent serious harm or deterioration other than by a substitute decision-making scheme. Empowering the authorised psychiatrist to consent to treatment on such a person's behalf is a protective mechanism to prevent abuses of this vulnerable patient group.

If a patient has the capacity to make a decision but refuses treatment, compulsory treatment is reasonable in circumstances where the person has mental illness and, because of the mental illness, immediate treatment is necessary to prevent serious harm to the person or another person or serious deterioration in the person's health.

Part 6 limits interference with a person's bodily integrity by expressly providing that restrictive interventions may only be used after all reasonable and less restrictive options have been tried or considered and have been found to be unsuitable. The restrictive intervention must cease immediately when the reason for the intervention no longer applies.

If the person cannot be safely detained for treatment or treated without a restrictive intervention, there is no less restrictive way for the person to be treated.

Division 3 of part 15 provides that the use of bodily restraint and sedation for transport purposes may only be used after all reasonable less restrictive alternatives have been tried or considered and deemed unsuitable in the circumstances. When used the restraint or sedation must be administered in the least restrictive and least intrusive manner to enable safe transport.

(f) conclusion

For the reasons outlined above the limitations that the bill places on the right not to be subject to medical treatment without consent, on the right to be protected from degrading treatment and on the right to privacy are reasonable, proportionate and compatible with the charter act.

The right to privacy — section 13(a)
Freedom of expression — section 15

Section 13(a) of the charter act recognises a person's right not to have his or her privacy unlawfully or arbitrarily interfered with. As discussed above, privacy includes bodily integrity, but right to privacy is also relevant to the bill in other ways.

Section 15 of the charter act establishes the right to freedom of expression.

Both of these rights are relevant to the bill as follows.

Division 3 of part 15 provides for powers of entry in order to take a person to a designated mental health service in accordance with other provisions of the bill. The powers include the use of reasonable force to gain entry to premises to apprehend a person for the purposes of taking the person to a designated mental health service.

Division 2 of part 3 provides for restrictions to be placed on an inpatient's right to communicate while at a designated mental health service if the authorised psychiatrist is satisfied that it is necessary to protect the health, safety or wellbeing of the inpatient or another person.

Division 1 of part 15 also provides for the disclosure and collection of health information without the consent of the person to whom the information relates.

In relation to the right to freedom of expression, clause 124 provides for the chief psychiatrist or an authorised officer (being a person appointed by the chief psychiatrist under the bill) to require a person to answer questions and to produce documents that are in the person's possession or control. Clause 254 provides for similar powers for the commissioner.

(a) the nature of the right being limited

The nature of the right to privacy is as stated on page 7.

Underlying the nature of the right to freedom of expression is the basic principle that every person has a right to seek, retrieve and impart ideas and information of all kinds.

The right to freedom of expression is qualified in that it may be subject to lawful restrictions such as those reasonably necessary to protect public health.

(b) the importance of the purpose of the limitation

The purpose of the limitation that permits entry to premises is to enable the timely apprehension of a person to enable them to receive mental health assessment and treatment in prescribed circumstances.

The purpose of the limitation on an inpatient's right to communicate is to protect the health, safety or wellbeing of the inpatient or any other person.

The purpose of the limitation that permits the sharing of health information without consent is to protect the health and safety of persons receiving mental health services and the safety of other people. Information sharing also permits the identification and monitoring of trends in respect of mental health treatment and care over time.

The purpose of the limitation that requires a person employed or engaged by a designated mental health service to answer questions or produce documents is to improve the quality and safety of mental health services and to monitor compliance with the regulatory framework.

These purposes are important and necessary for the effective operation of the bill.

(c) the nature and extent of the limitation

The charter act requires that any interference with a person's privacy must not be 'unlawful'. The scope of any legislative provision that allows an interference with privacy must specify the precise circumstances in which interference may be permitted. Any interference with the right must not be arbitrary and any limitation on privacy must be reasonable in the circumstances.

These clauses do not unreasonably limit the right to privacy. The powers are provided by law and are not arbitrary since they are limited and purposeful.

Clause 353 specifies when the power of entry may be used and how that power is to be exercised. The use of entry powers is restricted to authorised persons. The authorised person must reasonably believe the person to be apprehended may be found at the premises.

The entry power in clause 353 may only be used if a provision in the bill provides for a person to be taken to a designated mental health service. Before entering, the authorised person must give any person at the premises an opportunity to permit entry to the authorised person. Reasonable force may only be used to gain entry where permission is not granted.

Division 2 of part 3 expressly provides that patients have a right to lawful communication and to receive reasonable assistance to exercise this right.

The authorised psychiatrist may restrict an inpatient's communications if he or she is satisfied the measures are necessary to protect the health, safety or wellbeing of any person. It is appropriate to extend the limitation to protect wellbeing because safety may not be an issue where an inpatient is detained but is able to make distressing telephone calls.

The limitation is restricted to communications to or from a designated mental health service including the receipt of

visitors at the designated mental health service. The limitation may only be imposed by the authorised psychiatrist and must be for the minimum time necessary in the circumstances to achieve its purpose and must be reviewed regularly. The authorised psychiatrist must, as soon as practicable, after commencement of the restriction notify the patient, the nominated person, any guardian or parent (if the patient is under 16 years of age) or, in some cases, the secretary of the restriction.

Part 15 provides that health information may only be disclosed or collected in specified circumstances to protect patient privacy. In the absence of consent, health information may be disclosed to the extent reasonably necessary to enable the performance of functions and exercise of powers under the act.

Disclosure is also permitted in other specified circumstances. Disclosure may be authorised by another act or by specific health privacy principles under the Health Records Act 2001. Disclosure of information can occur when required by a mental health service provider to provide health services to the person. Disclosure is also permitted when required by a carer in order for the carer to provide care to a patient. Disclosure 'in general terms' may be made to a friend, family member or carer of the person to whom the health information relates if it is not contrary to any wish expressed by the person about disclosure to these persons.

Health information may be collected by a designated mental health service for the purpose of providing mental health services. The commissioner, the chief psychiatrist, the secretary, the tribunal and the Forensic Leave Panel may collect health information for the purposes of performing functions or exercising their powers under the bill.

The nominated person's scheme in division 4 of part 3 is an additional safeguard to protect a person's privacy. The scheme enables a person to choose another person to receive key information about the person's treatment and to be involved in certain discussions, for example, treatment planning.

The power to require persons to answer questions and produce documents in their possession (contained in clauses 124 and 254) is not an unreasonable limitation on the right to freedom of expression. It is restricted to persons who are employed or engaged by a designated mental health service and the questions must relate to issues that arise from their employment or engagement. The power may only be exercised by the chief psychiatrist or an authorised officer (being a person appointed by the chief psychiatrist under the bill) or the commissioner or an investigator appointed by the commissioner. The power may only be used to carry out the functions of the chief psychiatrist, to improve the quality or safety of mental health services or to monitor compliance. The commissioner may only use this power to carry out his or her functions in order to resolve complaints made against mental health service providers.

Clause 360 expressly provides for protection against self-incrimination, enabling a person to refuse to answer questions or provide information where that would tend to incriminate the person.

(d) the relationship between the limitation and its purpose

Although the bill interferes with privacy, the limitations are rationally and proportionately connected to their purpose.

The entry powers may only be used when a provision of the bill provides for the person to be taken to a designated mental health service. The purpose of the limitation is to ensure the person receives timely access to treatment to prevent serious deterioration in the person's health or serious harm to the person or another person.

Any restriction on the right to communicate only relates to a person while he or she is an inpatient at a designated mental health service and can only be imposed for as long as it is necessary and must be regularly reviewed by the authorised psychiatrist. The limitation can only be exercised to protect the safety and wellbeing of the inpatient and any other person from communications that would cause harm.

In relation to sharing health information, the limitations permitting disclosure and collection are specified in detail. The purpose of the limitations is to protect the health and safety of persons who need treatment by enabling treatment and care decisions to be based on all relevant information. Information sharing also permits the identification and monitoring of trends in respect of mental health treatment and care over time.

Requiring a person to answer questions or produce documents is only permitted to improve the quality and safety of mental health services and monitoring compliance with the bill.

(e) any less restrictive means reasonably available to achieve its purpose

There is no less restrictive means reasonably available to achieve the purposes of the limitations.

(f) conclusion

I consider that the bill does not authorise an unlawful or arbitrary interference with a person's privacy.

For the reasons outlined, the limitations that the bill places on the right to privacy and freedom of expression are reasonable and proportionate and are compatible with the charter act.

The right to liberty and security of person privacy — section 21
Freedom of movement — section 12

Section 21 of the charter act provides that a person has a right to liberty and security. It sets out the minimum rights of individuals who are arrested or detained. By restricting the valid reasons for detention, the charter act aims to minimise the risk of arbitrary or unlawful deprivation of liberty.

Section 12 of the charter act provides that every person lawfully within Victoria has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where to live.

These rights are relevant to the bill because part 4 provides for detention for assessment and compulsory mental health treatment.

These rights are also relevant to the bill because division 2 of part 15 provides for the apprehension of persons in specified circumstances and for bodily restraint and sedation for transport. Refer to the discussion of sections 10(c) and 13(a) of the charter act commencing on page 7 for the issues raised by these limitations.

(a) the nature of the right being limited

The right to liberty and freedom of movement rely on the principle that every person has a right to physical liberty that can only be interfered with in specific circumstances, clearly established by law. These rights are not absolute and may be subject to reasonable limitations.

(b) the importance of the purpose of the limitation

The purpose of the limitation is to ensure that necessary mental health treatment can be provided even if it requires detention of a person or constraints on a person's liberty. This is an important purpose because the treatment is necessary to prevent serious harm to the person or another person or serious deterioration in the person's health.

(c) the nature and extent of the limitation

The limitation is proportionate. The powers to detain and apprehend are not arbitrary. The bill provides that a person can only be detained or apprehended in specified circumstances.

Part 4 provides a person may be detained in a designated mental health service for assessment or compulsory treatment. Assessment or compulsory treatment in the community may also involve some limitation of the person's liberty and freedom of movement because the person may be required to attend for assessment or treatment.

The bill seeks to minimise the duration and extent of the limitations on liberty and freedom of movement. It also includes a number of procedural safeguards that will assist in ensuring that continued detention does not become arbitrary.

All orders made under the bill are of fixed maximum duration. These are maximum periods and the bill provides the order must be immediately revoked by the authorised psychiatrist or the tribunal if the statutory criteria no longer apply to the person.

Clause 60 provides that compulsory patients may apply to the tribunal at any time to revoke the order to which they are subject. Clause 272 and 279 provide that security patients may apply to the tribunal to be discharged as a security patient. If the tribunal is not satisfied that the relevant criteria for the relevant order apply to the person, the tribunal must revoke the order. See clauses 55, 273 and 279. There is no onus on the applicant to satisfy the tribunal that the criteria no longer apply to the person. The onus is on the authorised psychiatrist to satisfy the tribunal that all the criteria apply to the person.

The bill provides for apprehension in three specified circumstances: at clause 352 where a patient is absent without leave; at clause 351 where a person is found by police who appears to have mental illness and who presents risk of serious harm; and at clause 353 where a provision of the bill provides for a person to be taken to a designated mental health service. The bill restricts the use of apprehension powers to authorised persons.

Clause 353 satisfies the requirements of section 21(4) of the charter act by requiring that a person apprehended or detained under the bill must be informed at the time of the reason for the apprehension or detention.

The bill does not make this provision in relation to the apprehension of persons by police because police are required to give reasons when they apprehend any person or in relation to the apprehension of security patients whose apprehension is authorised by court warrant because a copy of the warrant must be provided at the time of execution.

Clause 352 provides that compulsory patients, security patients and interstate compulsory and security patients may be apprehended by an authorised person if they are absent without leave from a designated mental health service.

For patients who are absent without leave, the legal authority for the apprehension arises from the breach of the order to which they are subject. Apprehension seeks to prevent harm to the person or any other person in circumstances where the state of the person's mental health may not be known. Clause 352(4) provides that following apprehension the person is to be taken to the relevant designated mental health service.

Clause 351 provides that the police may apprehend a person who appears to have mental illness if they reasonably believe that the person needs to be apprehended to prevent serious harm to the person or another person. As soon as practicable after apprehension, the police must arrange for the person to be examined by a registered medical practitioner or mental health practitioner who must determine whether to make an assessment order for the person.

The police must immediately release the person if the practitioner who examines the person determines that the criteria for an assessment order do not apply to the person.

Clause 353 also provides that an authorised person may apprehend a person to give effect to any provision that requires the person to be taken to a designated mental health service. The provisions in the bill this refers to are clauses 33, 45(1)(b), 58(4) and 350 and are only for the purpose of assessment against the statutory criteria and/or treatment at the designated mental health service.

(d) the relationship between the limitation and its purpose

The limitation is rationally and proportionately connected to the purpose.

In relation to apprehension, division 3 of part 15 provides that a person may only be apprehended by authorised persons in specified circumstances.

Part 4 provides detention for only as long as the statutory criteria apply, up to a specified maximum duration and for the purpose of preventing serious harm to the person or another person or serious deterioration in the person's health.

(e) any less restrictive means reasonably available to achieve its purpose

There is no less restrictive means reasonably available to achieve the purpose of the limitation.

If a person is unable to consent to assessment or treatment, there is no less restrictive way for them to be assessed or

treated, other than being made subject to an assessment order, a temporary treatment order or a treatment order, which necessarily results in some limitation of their liberty or freedom of movement.

For compulsory patients, the setting for assessment and treatment must also be the one that is least restrictive. Compulsory assessment or treatment may only be provided in a designated mental health service if the assessment or treatment cannot occur in the community.

If a person is unable to consent to being taken to a designated mental health service or to being assessed by a registered medical practitioner or mental health practitioner, there is no less restrictive way for him or her to be taken or assessed, other than being apprehended or assessed in accordance with the bill.

(f) conclusion

For the reasons outlined, the limitations that the bill places on the right to liberty and security and the right to freedom of movement are reasonable, proportionate and compatible with the charter act.

Humane treatment when deprived of liberty — section 22

Section 22 of the charter act provides that all persons deprived of liberty must be treated with humanity and respect for their inherent dignity.

These rights are relevant to the bill because part 4 provides for detention for assessment and compulsory mental health treatment.

These rights are relevant to the bill because division 8 of part 11, division 3 of part 13 and division 3 of part 15 provide for the apprehension of persons in specified circumstances.

These rights are also relevant to the bill when it provides for bodily restriction and sedation of persons. Refer to the discussion of sections 10(c) and 13(a) of the charter act commencing on page 7 for the issues raised by these limitations.

(a) the nature of the right being limited

The purpose of the right is to recognise the particular vulnerability of persons in detention. The right requires the state to treat all persons in detention with humanity and dignity. The right requires that detained persons ought not to be subject to any hardship or constraint other than those resulting from the deprivation of liberty.

However, the right is not absolute and may be subject to reasonable limitations.

(b) the importance of the purpose of the limitation

The purpose of the limitation is to ensure that persons with severe mental illness receive necessary treatment and care while they are detained.

The limitation of the right in the form of compulsory assessment and treatment of persons is central to the purpose of the bill, which is to provide for the treatment and recovery of persons with severe mental illness.

(c) the nature and extent of the limitation

The limitations are proportionate.

The purpose of detaining persons under the bill is to provide for their treatment. The bill requires that all persons subject to a temporary treatment order, treatment order, secure treatment order or court secure treatment order are to receive treatment. The bill includes safeguards that are intended to ensure that the limitations on the right to humane treatment are kept to the minimum necessary.

The objectives and principles in part 2 are applicable to all action taken under the bill and expressly provide for the protection of the rights and the dignity of persons with mental illness.

As already discussed the bill contains a number of safeguards to ensure that persons subject to temporary treatment orders, treatment orders, secure treatment orders or court secure treatment orders are sufficiently protected and treated with humanity at all times.

Part 4 provides that a person subject to a temporary treatment order, treatment order, secure treatment order or court secure treatment order must be informed of his or her rights and provided with a statement of rights.

The bill strengthens the service improvement and monitoring role of the chief psychiatrist. Clause 129 provides that the chief psychiatrist may issue directions to a mental health service provider to improve the quality and safety of the mental health services provided by the mental health service provider generally or to a specified person. Division 2 of part 7 will empower the chief psychiatrist to monitor services, conduct investigations and conduct clinical practice audits.

Part 9 provides that community visitors will also continue to visit designated mental health services and other prescribed premises to ensure the adequacy of facilities and the standard of care.

Division 1 of part 10 establishes the commissioner who has broad powers to informally resolve complaints, investigate complaints, conciliate disputes, make recommendations and issue compliance notices.

(d) the relationship between the limitation and its purpose

The limitation is rationally and proportionately connected to its purpose.

While detained, a patient will only receive mental health treatment without consent when necessary to prevent serious deterioration in the patient's health or serious harm to the patient or another person.

Restrictive interventions may only be used to prevent imminent and serious harm to a person receiving mental health services in a designated mental health service or another person or in the case of bodily restraint being required to administer necessary treatment or medical treatment to the person. The intervention must cease immediately if the reason for using the restrictive intervention is no longer relevant.

(e) any less restrictive means reasonably available to achieve its purpose

If the criteria for compulsory mental health treatment apply in a designated mental health service, there must be no less restrictive means reasonably available to achieve the purpose of providing mental health treatment for a patient.

If the treatment can be provided in the community, the person will no longer be detained, as there is a less restrictive means of achieving this purpose.

Where a prisoner has been transferred to the designated mental health service to receive compulsory treatment as a security patient, there will be no less restrictive means reasonably available to provide mental health treatment for the person. This is because transfers will only occur when voluntary treatment in prison does not address the person's treatment needs. Compulsory treatment is not provided in prisons.

Part 6 provides that a restrictive intervention must only be used when all reasonable and less restrictive options have been tried or considered and found to be unsuitable. In these circumstances there will be no less restrictive means to prevent imminent and serious harm to that detained person or another person (such as another patient or staff) or to administer necessary treatment.

(f) conclusion

For the reasons outlined, the limitations that the bill places on the right to humane treatment are reasonable and proportionate and compatible with the charter act.

I am satisfied that these measures, which are in addition to those that operate under the current act, are sufficient to ensure that all persons deprived of liberty are treated with humanity and with respect for the inherent dignity of the human person.

Fair hearing — section 24

Section 24 of the charter act guarantees all persons the right to a fair and public hearing. It includes the right to have a proceeding decided by a competent, independent and impartial tribunal.

The right to a fair hearing is relevant to the bill because part 8 establishes the tribunal and regulates the appointment of tribunal members.

(a) the nature of the right

The right to a fair hearing is concerned with procedural fairness to ensure the proper administration of justice. This right can only be interfered with in specified circumstances.

Fair hearing

What constitutes a fair hearing will depend on the procedures of the tribunal, the extent to which they protect the rights of the parties and the extent to which they ensure that each party to the proceedings has a reasonable opportunity to present their case under conditions which do not place that party at a substantial disadvantage.

Division 5 of part 8 sets out the procedure of the tribunal. Clause 181 expressly provides that the tribunal is bound by the rules of procedural fairness. Clause 184 provides that a person who is the subject of a proceeding before the tribunal has the right to appear in person and has the right to legal representation. Clause 185 provides that a party may be assisted by an interpreter or another person necessary or desirable to make the hearing intelligible to that party.

Under clause 189 the tribunal has an obligation to provide written notice of a hearing to the parties and any other significant persons such as the parent of a person under the age of 16 years who is the subject of a proceeding. Clause 191(1) places an obligation on the relevant designated mental health service to provide access to any documents relevant to a proceeding at least 48 hours before a hearing. Pursuant to clause 191(2) the authorised psychiatrist may make a non-disclosure application to the tribunal if he or she believes that the material would reasonably cause serious harm to the person or another person. If the tribunal is not satisfied that the material in question would cause serious harm, clause 191(4) provides that the tribunal may refuse the authorised psychiatrist's application for non-disclosure or adjourn the hearing for a period not exceeding five business days.

Clause 195(2) provides that the tribunal must give oral reasons for making a determination at the conclusion of the hearing including an explanation of the determination and any order. Clause 195(4) requires the tribunal to take reasonable steps as soon as practicable to give the person who is the subject of the proceeding and other parties to whom notice was given a copy of the order.

A party to the proceedings may request a statement of reasons under clause 198 for the decision within 20 business days and the tribunal may accept a request for reasons outside this time if special circumstances exist. Under clause 201 a person who was a party to a proceeding before the tribunal may apply to the Victorian Civil and Administrative Tribunal (VCAT) for a review of the tribunal's decision.

Division 6 of part 8 provides for a rules committee to be established to develop rules of practice and procedure and practice notes for the tribunal.

Public hearing

Clause 193(1) provides that hearings before the tribunal are to be closed to the public.

This reflects the sensitive nature of the proceedings. However, under clause 193(3) a person who is the subject of a proceeding before the tribunal may request the hearing or any part of the hearing be heard in public. In addition clause 193(2) the tribunal may order that the hearing or any part of the hearing be open to the public if it is satisfied that it is in the public interest.

Competent, independent and impartial tribunal

Clause 159 provides that the tribunal will comprise members in four categories, legal, psychiatrist, registered medical practitioner and community. The first three categories of membership will require specialist professional qualifications and experience.

For a period of 12 months from the commencement day of the bill, clause 425 provides that on the determination of the president of the tribunal, the tribunal is determined by a legal member and a community member where a psychiatrist

member or a registered medical practitioner member is not available.

The Governor in Council will appoint members on the recommendation of the minister. The tribunal is an independent quasi-judicial tribunal, not subject to the direction or control of the minister or any other entity or body.

The bill provides that determinations of the tribunal are subject to review by the VCAT and clause 197 sets out that a question of law may be referred to the Supreme Court with the consent of the president of the tribunal.

To ensure the impartiality of tribunal members, clause 159(7) expressly prohibits full-time and part-time tribunal members obtaining outside employment without the prior consent of the minister or president (depending on the member's role). Clause 364 also imposes a duty on members to disclose a conflict of interest.

(b) conclusion

For the reasons outlined I am of the opinion that the bill promotes and does not unreasonably limit a person's right to a fair hearing under the charter act.

The right to be presumed innocent until proved guilty — section 25(1)

Section 25(1) of the charter act provides that a person charged with a criminal offence has the right to be presumed innocent until proven guilty according to law. The right is relevant where a statutory provision shifts the burden of proof onto an accused in a criminal proceeding, so that the accused is required to prove matters to establish, or raise evidence to suggest, that he or she is not guilty of an offence.

Clause 358(1) creates an offence for a person to give information or prepare or produce a document that is required under this act that the person believes to be false or misleading. Subsection (2) of this clause provides that it is a defence if the accused can prove that, at the time at which the offence is alleged to have been committed, he or she believed on reasonable grounds that the information, document or statement was true or was not misleading.

Clause 358(2) will place a legal burden of proof on the accused by requiring him or her to prove, on the balance of probabilities, the relevant defence. In doing so, this provision may be considered to limit the right to be presumed innocent.

The purpose of imposing a legal burden of proof on the accused is to allow him or her to avoid liability for breaching clause 358(1) if he or she is able to prove that, at the time at which the offence is alleged to have been committed, he or she believed that the information was true or correct.

In such circumstances, the accused possesses the requisite knowledge to establish the defence, and it is not unduly onerous for him or her to give sufficient evidence to discharge the burden placed upon them. It would be impractical to require the prosecution to bear the burden of proof and therefore it is appropriate that the burden of proof for establishing the defence rests with the accused.

The burden of proof is imposed on the accused in respect of establishing a defence. The prosecution first has to establish the relevant elements of the offence. Additionally, the offence is punishable by way of pecuniary penalty. There is no prospect of imprisonment for the accused.

The imposition of the burden of proof on the accused is directly related to the purpose of enabling the offence in clause 358(1) to operate as an effective deterrent while also providing a suitable defence.

The burden is imposed on the accused to avoid evidentiary problems that may arise, particularly when the relevant facts are within the knowledge of the accused, and which may lead to a loss of convictions.

Although an evidential onus would be less restrictive upon the right to be presumed innocent, it would not be as effective because it could be too easily discharged by the accused. The inclusion of a defence with a legal burden on the accused to prove the matter on the balance of probabilities achieves an appropriate balance of all interests.

To the extent that clause 358(2) may limit the right to be presumed innocent, that limitation is reasonable and demonstrably justified in a free and democratic society.

Clause 204 makes it an offence for a person to fail to comply with a summons to attend the Mental Health Tribunal, without reasonable excuse. In doing so, this provision places an evidential burden on an accused person and may be considered to limit the right to be presumed innocent.

The purpose of imposing an evidential burden on an accused person is to allow him or her to avoid liability for breaching clause 204 if they are able to prove that they had a reasonable excuse.

The evidentiary burden is imposed upon an accused person, as it is the accused person who would have knowledge of the excuse. Clause 204 does not impose a legal burden. This is because after an accused person has adduced evidence to support the existence of an excuse, the prosecution must prove beyond reasonable doubt the absence of the excuse raised.

The offence introduced by clause 204 is punishable by way of a pecuniary penalty. There is no prospect of imprisonment for the defendant. Consequently, this provision does not limit the right to the presumption of innocence.

Recognition and equality before the law — section 8

Section 8 is based on the principle that all persons enjoy legal rights and provides that a person has the right to be protected from discrimination based on the attributes set out in the Equal Opportunity Act 2010. These include discrimination on the basis of a disability, which includes mental illness. This right is relevant to the bill because it provides for compulsory treatment of persons with a mental illness. Mental illness is defined in clause 4(1) of the bill as a medical condition that is characterised by a significant disturbance of thought, mood, perception or memory. This definition is subject to a list of qualifications in clause 4(2).

The purpose of compulsory treatment is a necessary limitation on the right to be protected from discrimination as it ensures that persons suffering from severe mental illness receive necessary treatment.

The bill includes safeguards to ensure that the extent of the limitation on the right is kept to the minimum necessary. A

summary of these safeguards referred to earlier in this statement are summarised below:

- the presumption that all people have capacity to make decisions about their assessment and treatment;
- assessment orders, temporary treatment orders and treatment orders have a fixed maximum duration;
- the establishment of the mental health complaints commissioner;
- a patient's right to seek a second psychiatric opinion and apply to the chief psychiatrist for a review of their treatment;
- the provision and explanation of a statement of rights to a person subject to an order;
- enabling a person to make an advance statement to record his or her treatment preferences in the event they become unwell;
- the right of a person to nominate a person to receive information and provide support for the period of time the person is subject to an order;
- the inclusion of mental health principles in the bill which include the provision for persons under 18 to have their best interests recognised and promoted as a primary consideration;
- provision for where a person has a guardian, for them to receive information and be consulted about the person's treatment.

For the reasons detailed earlier in this statement, there are no less restrictive means reasonably available to provide compulsory treatment to people suffering with severe mental illness. The limitation the bill places on the right to equality are reasonable, proportionate and compatible with the charter act.

Additional rights relevant to the bill

The following additional rights are also relevant to the bill:

- Section 9 — right to life;
- Section 17 — protection of families and children;
- Section 18 — taking part in public life;
- Section 19 — cultural rights;
- Section 20 — property rights;
- Section 25(2)(k) — protection against self-incrimination.

Section 9 provides that a person has the right not to be arbitrarily deprived of life. This right can also impose a positive obligation on the state to protect the lives of persons in its care and to conduct an effective investigation into serious incidents.

The measures contained in the bill are compatible with this right, as they enhance the right to life. The bill provides for compulsory treatment in order to protect the life of a person with a severe mental illness.

Clause 122 also provides for the chief psychiatrist to conduct an investigation into the provision of mental health services by mental health service providers where the health, safety or wellbeing of a person is or was endangered as a result of those services. Clause 228 also provides for a mental health complaints commissioner to investigate complaints relating to mental health service providers. Where the death of a patient occurs, the Coroners Act 2008 provides that the death must be investigated. For this reason, the bill is compatible with the positive obligations imposed on public authorities under section 9 of the charter act.

Section 17 of the charter act provides that families are the fundamental unit in society and are entitled to be protected by society and the state. It also provides that every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child.

The right is relevant to the bill as it affects the welfare of children and young people as consumers of mental health services and as members of families who use such services. The bill provides specific safeguards for children and young people, in relation to their treatment and their role as carers or family of persons with mental illness.

The mental health principles contained in part 2 expressly provide in clause 11(1)(i) that the best interests of children and young persons receiving mental health services are always a primary consideration. Clause 11(1)(j) also provides that children, young persons and other dependents of persons receiving mental health services should have their needs, wellbeing and safety recognised and protected.

Clause 11(1)(l) provides that carers, including children, for persons receiving mental health services are to have their role recognised, respected and supported.

The principles in clause 68(2) provide that the presumption that a person has capacity to give informed consent to a course of treatment will apply irrespective of the person's age.

Clause 57(2) provides treatment orders for children and young persons under the age of 18 years are of shorter duration, with a maximum of three months, although the tribunal will be able to make further orders if the criteria still apply.

As previously advised, ECT may only be performed on a young person under 18 years of age with the approval of the tribunal. Where the tribunal determines that a young person has capacity to consent to ECT, the tribunal may only approve ECT if the young person gives informed consent. Where a young person does not have capacity to consent to ECT, the tribunal must decide whether the ECT is least restrictive in all the circumstances. For the purposes of determining 'least restrictive', the tribunal will consider the young person's views and preferences about the ECT, whether the ECT is likely to remedy the mental illness or lessen the ill effects, and a range of other factors described in the legislation.

For this reason the measures contained in the bill relating to families and children are compatible with the rights contained in section 17 of the charter act.

Section 18 of the charter act provides that a person has the right to participate in public life.

Section 19(1) of the charter act provides that persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy his or her culture, to declare and practise his or her religion and to use his or her language. Section 19(2) provides for the distinct cultural rights of Aboriginal persons, including the right to maintain their kinship ties and to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

These rights are relevant to the bill as, for example, compulsory treatment may interfere with a person's ability to engage in public life, maintain kinship ties or practise their religion.

The bill's mental health principles at clause 11(1)(g) provide for the principle of responsiveness to individual needs. It requires appropriate regard be given to a person's culture, language, communication, age, disability, religion, gender and sexuality.

Clause 11(1)(h) further provides that the distinct culture and identity of Aboriginal persons must be taken into account. These principles reinforce the cultural rights of people with a particular cultural, religious, racial or linguistic background.

Section 20 provides that a person must not be deprived of his or her property other than in accordance with law. The measures contained in the bill are compatible with this right as the bill includes safeguards to ensure interference with a person's property rights is not arbitrary. Clause 356 provides that a thing may only be seized and detained by an authorised person in prescribed circumstances. Where the thing is securely stored by the authorised person all reasonable steps must be taken to return the thing to the person from whom it was seized.

Section 25(2)(k) provides that a person in a criminal proceeding has the right not to be compelled to testify against himself or herself or to confess guilt. The bill is compatible with this right as clause 360 provides for a protection against self-incrimination.

For this reason it is my view that the limitations on these rights are compatible with the charter act.

Hon. David Davis, MP
Minister for Health

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

The Victorian government is putting individuals and families at the centre of mental health services and investing in new ideas to improve the lives of people with mental illness.

Victoria's priorities for mental health reform focus on ensuring people who need mental health treatment and support can access high-quality and responsive care when they need it. People with a mental illness and their families should be able to actively participate in decisions related to their care and have a range of choices about the types of support they need to achieve optimal wellbeing.

Preventing mental illness where possible, providing help early and working with individuals and their families to meet their own recovery goals is central to the government's approach. Together with people with a mental illness, carers, families and services, the Victorian government is building a stronger system in which long-term recovery and support for overall health and wellbeing, social connectedness and economic participation are paramount.

Victoria's Priorities for Mental Health Reform 2013–15 highlights the concrete actions to be taken over the next three years to:

reform Victoria's mental health legislation;

strengthen clinical mental health services;

reform mental health community support services;

connect mental health services with other health and human services;

broaden prevention and promotion activities;

develop a stronger, more capable and sustainable specialist mental health workforce.

Victoria has a diverse and vibrant mental health sector spanning the public, community-managed and private sectors. Yet the way this sector is configured, funded and integrated into the broader health and human services systems needs significant reform, important aspects of which are now under way.

Comprehensive reform of Victoria's mental health legislation is a central element in the coalition government's agenda for mental health.

The government's objective is to deliver new mental health legislation that provides an effective and contemporary legal framework for the assessment, treatment and recovery of Victorians with severe mental illness.

The current Mental Health Act is over a generation old. It is tired, out of date, and needs the major overhaul provided by this bill.

The bill has involved comprehensive policy development over a period of more than five years.

The review of the Mental Health Act 1986 examined recent developments in treatment and care in mental health services and mental health policy at both national and state level, including:

opportunities for people with mental illness to meaningfully participate in decisions about their treatment and recovery;

health and social outcomes;

oversight and complaint mechanisms;

responsiveness to families and carers; and

reforms to mental health services.

An exposure draft for the mental health bill was released at the end of 2010 and attracted a lot of comment. These submissions consistently said that more work was needed to produce a good mental health bill. Consistent with our election commitments, the Victorian government held round table public meetings and targeted consultations in the first half of 2011 to discuss the issues identified in these submissions. These meetings were extremely productive, with the community and government working together to identify practical policy solutions for the future of Victoria's mental health legislation.

I acknowledge that there is a diversity of views among consumers, carers, families, health professionals and the community about some aspects of the policy. As far as possible, the government has sought to reconcile these differences and deliver our key reform objectives.

As a result of this work, in October 2012 the government released *A New Mental Health Act for Victoria — Summary of Proposed Reforms*, which outlined the government's key objectives and policy intentions for reform of the mental health legislation in Victoria. These included the intention to:

embed supported decision making in the law;

promote recovery-oriented practice;

minimise the use and duration of compulsory treatment;

require compulsory treatment to be provided in the least restrictive and least intrusive manner possible;

better facilitate carer and family involvement in treatment and care;

increase safeguards to protect patient rights and dignity; and

encourage public sector clinicians and service providers to engage in continuous service improvement and reforms to the mental health service system.

The government has continued to engage with the community and stakeholders throughout the development and drafting of the bill.

This bill delivers all the government's reform objectives, which respond to the community's expectations for contemporary mental health legislation that promotes supported decision-making partnerships between patients and practitioners and enables public sector clinicians and public mental health service providers to deliver quality mental health services.

The bill establishes a comprehensive, individual-focused legal framework for the compulsory assessment, treatment, support and recovery of persons with mental illness.

The bill repeals and replaces the Mental Health Act 1986. The bill also makes amendments to the Sentencing Act 1991 and consequential amendments to a number of other acts.

Establishing a recovery framework

The government is committed to ensuring an approach that puts the patient at the centre of health care. This bill provides a legislative framework that promotes recovery-oriented practice in the Victorian public mental health service system.

Recovery is often described as a journey rather than an outcome. The term 'recovery' in the mental health context does not necessarily mean that the person no longer has mental illness or is no longer experiencing any symptoms of mental illness. Instead, recovery in mental health encompasses the often fluctuating nature of mental illness where some people will not have a recurrence of illness, others will have some further episodes and some will experience repeated episodes of illness over time.

Recovery is about maximising individual choice, autonomy, opportunity and wellbeing during a person's life and accordingly is a self-defined process that is highly individual.

The role of mental health service providers in recovery is to provide effective support when and where required, within an integrated system that enables people with mental illness to put in place the supports they need to maximise their wellbeing.

Supported decision making

At the very heart of the bill is a supported decision-making model that will enable patients to make or participate in decisions about their assessment, treatment and recovery and to be provided with the support to do so.

A key fundamental change in this bill is that people with mental illness are presumed to have capacity to make decisions about their own care.

People with serious mental illness may have fluctuating capacity to make decisions about treatment. A person with mental illness may not be able to make a decision about a course of treatment at a particular point in time, but may regain capacity to make that decision at another time.

The bill provides that all people are presumed to have capacity to make decisions about their own treatment unless it is established that the person lacks capacity at the time the decision needs to be made. This presumption exists regardless of the person's legal status under the bill.

The bill includes criteria for determining whether a person has capacity to give informed consent and principles to assist clinicians to determine whether a person can consent to treatment at the time the decision needs to be made. All reasonable steps should be taken to ensure that the assessment occurs at a time and in an environment in which the person's capacity can most accurately be assessed.

Where a patient is unable to consent, they must be supported to be involved in the decision-making process to the greatest extent possible.

The bill recognises that a person's capacity to make a decision can be affected by the support available to them. People who may not be able to make a decision alone might be able to make their decision with appropriate support.

The bill requires that mental health service providers provide patients with relevant information and reasonable support to make or participate in decisions about their treatment.

Nominated person

The bill establishes the role of the nominated person. It enables a person to nominate another person to receive information and to provide support in the event that the person becomes unwell and requires compulsory treatment. We anticipate that in most cases the nominated person will be a family member or carer — providing a clear legislative recognition of carers in this legislation.

The role of the nominated person is to help protect the patient's interests. They may assist the patient to exercise their rights and can help represent the patient's views and preferences about their treatment and recovery to members of the treating team. They will be given information and consulted at critical points in planning the patient's treatment and recovery, such as admission and discharge, and will be able to give their views.

It is not intended that the nominated person should act independently of the patient and they are not a substitute decision-maker. The role will be voluntary and the patient and their nominated person will decide together how active and involved the nominated person will be in support of the patient.

Carers

While it is expected that a nominated person will be someone who is significant in the life of the patient, most likely a family member or carer, there will often be other people who are actively involved in their life and provide support and care to the patient. The support of carers is crucial to recovery.

The government supports the important, valuable and often difficult role undertaken by carers. Including specific provisions enabling carers to be involved in the treatment and care of people with mental illness furthers the government's commitment to supporting and facilitating the important role of carers as reflected in the Carers Recognition Act 2012. The bill encourages greater opportunities for partnership between carers, patients and clinicians. It seeks to involve carers in key decisions about assessment, treatment and recovery wherever that is possible. It also allows carers to be given information if they need that information to provide care to a patient.

This bill will promote mental health service providers working closely with patients and carers to identify and meet the specific needs of the carers to support them to undertake their important role. This includes providing information relating to treatment and management options, how to respond to disturbing behaviours, how to access practical assistance and generally assisting carers to effectively support the person with mental illness.

Advance statements

During consultations, consumers expressed frustration about the lack of a formal mechanism in law for them to set out in writing their preferences for future treatment in the event that they become unable to make such decisions.

The bill enables a person to make an advance statement to record their treatment preferences in the event that they become unwell and require compulsory treatment.

Preparation of an advance statement provides an opportunity for people to discuss their views and preferences about treatment with their treating team, their nominated person, family members and carers. It can also be an opportunity to discuss and specify the extent to which the person wants carers involved in their treatment, support and care.

Importantly, advance statements will assist the authorised psychiatrist to understand the patient's treatment preferences and, if the person is unable to make decisions, enable the authorised psychiatrist to make treatment decisions that better align with the patient's preferences.

Advance statements are intended to improve communication, give patients greater control over their treatment when they are subject to compulsory treatment and promote an improved patient experience and recovery.

Second psychiatric opinion

The bill provides a right for patients to seek a second psychiatric opinion about their treatment at any time and, in the case of compulsory and security patients (who are prisoners who require compulsory mental health treatment), whether the criteria for compulsory treatment still apply to the patient.

Second psychiatric opinions are intended to promote self-determination by giving patients information about their treatment and available alternative treatments so that they can make informed contributions to decisions about their treatment.

Advocacy

Separate to the legislation, the government will also fund advocacy and support services for patients as an integral part of the reforms. Advocates will be available to visit mental health service providers or provide telephone advice to assist patients to participate in decisions about their assessment, treatment and recovery.

Advocates will provide information and assist patients to understand and exercise their rights, but they will not provide legal advice or represent patients at Mental Health Tribunal hearings.

Compulsory treatment

The existing safeguards in the current Mental Health Act 1986 are inadequate to ensure that treatment is provided in the least restrictive and least intrusive manner. For example, the current criteria for orders are not effectively targeted and enable a person who 'appears' to have a mental illness to be placed on an involuntary treatment order. The current involuntary treatment orders have an indefinite duration and the substitute decision-making model for providing compulsory treatment is inconsistent with contemporary views about patient participation and recovery.

The bill seeks to promote and enable voluntary assessment and treatment in preference to compulsory assessment and treatment wherever possible.

Where compulsory treatment is required, the bill seeks to minimise its duration and ensure that it is provided in the least restrictive and least intrusive manner possible. The bill does this by introducing specific criteria for compulsory treatment,

treatment orders that operate for a fixed duration, and timely independent oversight by a new Mental Health Tribunal.

The bill specifies the criteria for providing compulsory assessment and treatment. The criteria provide clear guidance to decision-makers, consumers and other stakeholders about when compulsory assessment and treatment are appropriate. The criteria reflect the objectives of the bill and have been designed to ensure that compulsory assessment and treatment are only used when there is no less restrictive means reasonably available to ensure a person receives necessary assessment and treatment.

Safeguards, oversight and service improvement

The power to restrict a person's rights, such as to provide compulsory treatment or to limit a person's freedom of movement, brings with it an obligation to ensure that any restrictions can be justified, are proportionate and include effective oversight and safeguards.

The bill establishes a comprehensive and integrated suite of oversight mechanisms and safeguards to protect the rights of patients.

Mental Health Tribunal

The bill establishes the Mental Health Tribunal to replace the Mental Health Review Board and the Psychosurgery Review Board. The tribunal is a quasi-judicial body that is independent of designated mental health services.

The principal role of the tribunal will be to make treatment orders for patients. Under the current Mental Health Act 1986, the authorised psychiatrist is responsible for both making treatment orders and deciding the treatment a patient will receive. This dual role can lead to tensions between the patient and the treating psychiatrist and can be a barrier to establishing a collaborative treatment relationship and a focus on recovery.

This bill establishes the tribunal as an independent body to decide that a person requires compulsory treatment. This will leave the authorised psychiatrist and other members of the treating team free to engage with the patient in ways that promote recovery-oriented mental health care.

Mental health complaints commissioner

Feedback through the community consultation processes identified a level of dissatisfaction with the current arrangements for making complaints about mental health service providers. People reported that complaints pathways can be complex and difficult to navigate, and that responses to complaints have not been timely or responsive to the needs of people with mental illness. Further, there have been no statutory mechanisms to ensure complaints lead to improvements in the safety and quality of mental health services.

The bill establishes a mental health complaints commissioner to receive, manage and resolve complaints about mental health service providers. The commissioner will provide an accessible, supportive and timely complaints mechanism that will be responsive to the needs of people with mental illness.

Chief psychiatrist

The chief psychiatrist will continue to provide clinical leadership and advice to public mental health services.

The bill redefines the role of the chief psychiatrist to focus on supporting mental health service providers to improve the quality and safety of the mental health services they provide and promoting the rights of people receiving mental health services, in particular people receiving compulsory assessment or treatment.

This will be achieved through expert clinical advice and other leadership functions, including clinical guidelines, specialist clinical information, training and education.

I now turn to the parts of the bill.

Part 1 sets out the purpose of the bill and definitions. It includes a definition of mental illness to ensure the scope of the legislative scheme is clear. For the removal of doubt, the definition sets out a list of attributes which by themselves cannot be used to determine that a person is mentally ill.

Part 2 sets out the objectives and principles of the bill.

A key objective of the bill is to enable the assessment of persons who appear to have mental illness and the treatment of persons with mental illness. The grounds for determining that a person needs assessment or treatment are set out elsewhere in the bill.

The bill seeks to ensure that assessment or treatment is given in the least restrictive way possible with the fewest restrictions possible on rights and dignity. It also aims to protect the rights of persons receiving assessment or treatment, and ensure they are informed of their rights under the bill and supported to exercise their rights.

The bill also seeks to ensure that assessment and treatment occur within a broader recovery-oriented framework by supporting people to be involved in decisions about their assessment, treatment and recovery.

Part 2 also includes the guiding principles of the bill. Mental health service providers must have regard to the mental health principles when providing mental health services and any other person must have regard to the principles when exercising a power or performing a function under the bill.

Part 3 sets out the requirements for informing patients about their rights. Detention and treatment in a designated mental health service places limitations on liberty and security of a person.

The bill establishes a right to communicate lawfully and specifies the limited circumstances when communication can be restricted. Communication is critical to enable patients to seek and obtain support consistent with recovery-oriented practice. For this reason, the bill provides that restrictions on communication cannot limit access to a legal representative, the mental health complaints commissioner, the Mental Health Tribunal or a community visitor.

Division 3 of part 3 sets out the requirements for making and revoking advance statements. An advance statement enables a person to record their treatment preferences in the event that they become unwell and require compulsory treatment.

Division 4 of part 3 provides for the appointment of nominated persons and defines the role.

Part 4 of the bill establishes a comprehensive framework of orders for compulsory assessment and treatment of persons with mental illness.

Assessment order

A registered medical practitioner or a mental health practitioner may make an assessment order for a person if they have examined the person and are satisfied that the criteria for an assessment order apply to the person.

The criteria for an assessment order require the relevant practitioner to be satisfied that the person appears to have a mental illness and because of the apparent mental illness appears to need immediate treatment to prevent serious harm to the person or another person or to prevent serious deterioration in the person's mental or physical health.

The practitioner must be satisfied that there is no less restrictive means reasonably available to assess the person. For example, if the person is willing to seek voluntary treatment, this would be a less restrictive option and the practitioner should not make the person subject to an assessment order.

The purpose of an assessment order is to enable an authorised psychiatrist to examine the person to determine whether they have a mental illness and require compulsory mental health treatment. It is this process of examination and deciding whether the criteria for a treatment order apply to the person that is known as assessment.

Assessment may be conducted in an inpatient setting or in the community. Consistent with the objectives of the bill, a practitioner should only make an inpatient assessment order if they are satisfied that the assessment of the person cannot occur in the community.

The authorised psychiatrist must complete the assessment of a person subject to an assessment order within 24 hours of the person being received at a designated mental health service, in the case of an inpatient assessment order, or within 24 hours of the making of a community assessment order. An authorised psychiatrist may extend the assessment period twice, up to a maximum of 72 hours in total, if he or she needs more time to complete the assessment.

A patient subject to an assessment order may only be given treatment for their apparent mental illness if they consent to the treatment or if the treatment is necessary as a matter of urgency to prevent serious harm to the person or another person or to prevent serious deterioration in the person's mental or physical health.

Temporary treatment order

At the assessment, if the authorised psychiatrist determines that the criteria for a temporary treatment order apply to the person, the authorised psychiatrist may make a temporary treatment order.

The criteria require the authorised psychiatrist to be satisfied that the person has a mental illness. It may not be possible for the authorised psychiatrist to make a specific medical diagnosis at this early stage, such as schizophrenia, but he or she must be satisfied that the person has a mental illness as defined in part 1 of the bill.

The authorised psychiatrist must be satisfied that, because of the person's mental illness, they need immediate treatment to prevent serious harm to the person or another person or to prevent serious deterioration in the person's mental or physical health.

The authorised psychiatrist must be satisfied that treatment will be provided to the person if they are placed on a temporary treatment order. This criterion ensures that people are only made subject to an order if the authorised psychiatrist is satisfied that there are suitable services available to treat the person's mental illness. This criterion serves to ensure that if the person is placed on an order, the relevant designated mental health service has an obligation to provide the person with treatment.

Finally, the authorised psychiatrist must be satisfied there is no less restrictive means reasonably available to enable the person to be treated, including the person being treated on a voluntary basis.

The treatment criteria deliberately set a high threshold for initiating compulsory treatment because compulsory treatment imposes serious limitations on human rights.

Treatment order

If a person remains on a temporary treatment order at the end of the period of the order, 28 days, the Mental Health Tribunal must conduct a hearing to determine whether the criteria for a treatment order apply to the person.

The tribunal can make a treatment order if it determines that all the criteria apply to the person.

The tribunal must also determine the setting of the order (either inpatient or community) and the duration of the order: up to six months for an inpatient treatment order, up to 12 months for a community treatment order and no more than three months if the person is under 18 years of age regardless of the setting. The shorter time frame for people under 18 years of age will ensure that there is greater oversight of compulsory treatment decisions for young people.

At the end of the period of the treatment order, the authorised psychiatrist may make an application to the tribunal for a further treatment order if the criteria for a treatment order still apply to the person.

Part 4 of the bill also enables patients who are detained in a designated mental health service to be granted leave of absence from the service and for any patient to have the responsibility for their treatment transferred to a different designated mental health service.

Part 5 of the bill governs the treatment of patients.

Division 1 of part 5 deals with capacity and informed consent.

Informed consent must be sought before treatment is given to a person.

The person must be presumed to have capacity to give informed consent unless at the time the decision needs to be made the relevant clinician forms the opinion that the person does not have the capacity to give informed consent.

The bill sets out the criteria for determining whether a person has capacity to give informed consent and the necessary elements for a person to make an informed decision to consent to mental health or medical treatment under the bill.

Treatment

Division 2 of part 5 provides that patients, excluding people on assessment orders and court assessment orders, must be provided with mental health treatment.

The government believes this is necessary to ensure that patients receive treatment at times when:

> they do not have the capacity to give informed consent to treatment; or
>
> they have capacity but do not consent to treatment and the person needs treatment to prevent serious harm to the person or another person or to prevent serious deterioration in the person's mental or physical health.

The authorised psychiatrist is responsible for the treatment of a patient. The authorised psychiatrist must seek a patient's informed consent to treatment before it can be administered.

Where a patient is unable to give informed consent or does not give informed consent to a course of treatment, the bill authorises the authorised psychiatrist to treat the person without consent. The authorised psychiatrist must have regard to the person's views and preferences about the treatment and the reasons for these views and preferences, including any recovery outcomes that the person would like to achieve. These may be contained in the advance statement. Consistent with the model of recovery-oriented mental health practice, the person should be given information and involved in the decisions to the greatest extent possible.

The bill also seeks to involve the nominated person, carers and other people who are significant in the life of the patient in any decisions made by the authorised psychiatrist.

The authorised psychiatrist must review and revise all treatment given to patients on a regular basis.

Medical treatment

The bill establishes a regime to regulate consent to medical treatment for patients who are unable to consent to general health care and specifies who can consent to medical treatment in these circumstances.

Second psychiatric opinions

The bill provides a right for patients to seek a second opinion from a psychiatrist. The role of the 'second opinion' psychiatrist is to assess the patient and provide an opinion as to whether all the criteria for the treatment order apply to the patient (except forensic patients) and to review the treatment provided to the patient and recommend any changes the second opinion psychiatrist considers appropriate in the circumstances.

The second opinion psychiatrist must provide a written report to the patient, the authorised psychiatrist and other specified people, including the nominated person and the carer.

The authorised psychiatrist is required to consider any second psychiatric opinion report provided to them and may make changes to the patient's treatment based on the recommendations. It is intended that any changes would be discussed with the patient, the nominated person and other specified people in the same way any decision about treatment is made under the bill.

A patient will be entitled to apply to the chief psychiatrist for a review of their treatment in the event that the authorised psychiatrist does not adopt any or all of the recommendations contained in the second opinion report. The chief psychiatrist may make any recommendations to the authorised psychiatrist and the patient about the disputed treatment that the chief psychiatrist considers appropriate in the circumstances.

Ultimately, the chief psychiatrist will have the power to direct an authorised psychiatrist to make changes to a patient's treatment if alternative treatment is more appropriate in the circumstances.

Electroconvulsive treatment

Electroconvulsive treatment (ECT) is an effective treatment for severe depression and some other mental illnesses.

Nevertheless, feedback from the community consultation processes showed that the community expects greater oversight of the performance of ECT on:

> patients receiving compulsory treatment subject to an order under the bill; and
>
> people under 18 years of age.

ECT is a treatment rarely given to young people, but the clinical advice is that it may be the most appropriate treatment in a limited number of circumstances. It is for this reason the government has not prohibited its use, but will require any ECT for people under 18 years of age to be approved by the Mental Health Tribunal.

Any adult patient may give informed consent to ECT and receive the treatment.

If a patient does not have capacity to give informed consent, ECT may only be performed on the patient with the approval of the independent Mental Health Tribunal following an application by the treating psychiatrist. The tribunal may only approve ECT if it is satisfied that there is no less restrictive way for the person to be treated.

A psychiatrist may apply to the tribunal for approval to perform ECT on a young person if the young person has given informed consent or, if they are unable to give informed consent, a parent or guardian has given consent to the ECT. The ECT cannot be performed unless the tribunal approves.

If the tribunal finds that a young person has capacity to consent to ECT and has in fact given informed consent to the ECT, the tribunal must approve an application to perform ECT.

If the tribunal finds that a young person does not have capacity to give informed consent to ECT, it may only approve the ECT if it is satisfied a parent or guardian has consented to the ECT and there is no less restrictive way for the young person to be treated.

The tribunal cannot approve ECT if a patient has capacity and refuses to give consent to ECT.

In any decision it makes, the tribunal must consider the person's views and preferences about the ECT, the views of other significant people such as carers, the likely consequences if the ECT is not performed and a range of other factors described in the bill.

In all decisions about ECT, the patient or young person must be presumed to have capacity unless it can be demonstrated that the person lacks capacity at the time the decision needs to be made.

The government has been advised that the likely need for emergency or 'same day' ECT is extremely rare because of the nature of the treatment and the way it is administered. Accordingly provisions to allow emergency ECT without consent of the patient have not been included in the bill. Nevertheless, it is recognised that in some cases the commencement of a course of ECT may be urgent. The tribunal will be able to expedite a hearing in response to an urgent request.

Neurosurgery for mental illness

Neurosurgery for mental illness, which was previously known as psychosurgery, is a surgical procedure performed on the brain to treat severe, incapacitating mental illness.

In recent years, all applications to the current Psychosurgery Review Board have been in relation to deep brain stimulation. Deep brain stimulation has been used successfully over the past 15 years to treat neurologically based movement disorders, such as Parkinson's disease, and is now being trialled and is showing promising results for treating severe treatment-resistant depression and severe obsessive compulsive disorders.

The bill provides that neurosurgery for mental illness may only be performed on a person who has given informed consent and where the Mental Health Tribunal has approved the performance of the treatment. The tribunal must be satisfied that the neurosurgery for mental illness is likely to remedy the person's mental illness or lessen the symptoms and improve the person's quality of life.

No substitute decision-maker will have the authority to consent to neurosurgery for mental illness on behalf of another person.

Part 6 of the bill regulates the use of restrictive interventions such as bodily restraint and seclusion.

Bodily restraint and seclusion are highly intrusive practices that tragically have been linked to injuries and deaths.

The government is committed to reduce and wherever possible eliminate the use of bodily restraint and seclusion by designated mental health services. To this end, the bill provides that these restrictive interventions may only be used after all reasonable and less restrictive options have been tried or considered and have been found unsuitable in the circumstances. It also requires that any restrictive intervention must be stopped immediately when the grounds for using the restrictive intervention no longer apply.

The regulation of restrictive interventions applies to all people receiving mental health services in a designated mental health service, regardless of the person's legal status under the bill or their age.

The bill extends the existing regulation of mechanical restraint to the use of any physical restraint, such as the use of physical force like 'holding' to limit a person's free movement. The regulation of physical restraint will require services to examine why and how these practices are being used in order to reduce and where possible eliminate them from clinical practice.

The bill will create greater accountability and oversight of the use of restraint and seclusion by strengthening the role of the authorised psychiatrist with respect to the authorisation and continued use of these restrictive practices.

High levels of clinical care, monitoring and reporting will apply, commensurate with the intrusiveness of these practices, for example people being bodily restrained must be continuously monitored because of the risks involved.

In addition, the bill requires that key people, such as the patient's nominated person and the chief psychiatrist, are notified whenever restrictive interventions are used.

Part 7 of the bill outlines the role of the secretary and redefines and enhances the role of the chief psychiatrist to focus on providing statewide clinical leadership to improve the quality and safety of public mental health services.

The chief psychiatrist will monitor services and may conduct clinical practice audits, clinical reviews and investigations.

Part 8 of the bill establishes the Mental Health Tribunal and sets out its main functions. It also sets out the membership of the tribunal and the procedures for appointment, removal and resignation of members.

At each hearing the tribunal will consist of three members: a lawyer, a registered medical practitioner or psychiatrist and a member of the community. Where the tribunal is considering an application for ECT or neurosurgery for mental illness, it must include a psychiatrist to ensure the tribunal has the benefit of the specialist knowledge and expertise provided by psychiatrists.

The tribunal is intended to be an accessible, timely and responsive body. Depending on their nature, proceedings can be initiated by a patient, the patient's treating psychiatrist, a person at the request of the patient, a guardian of the patient or a parent if the patient is under 16 years of age.

The person who is the subject of proceedings before the tribunal is entitled to appear and to be represented by anyone of their choice.

The tribunal is expected to take a holistic approach when it makes determinations and consider a range of factors, including the patient's goals, preferences and aspirations and the views of other people who are significant in the life of the patient, such as the nominated person and carers.

The tribunal will be bound by the rules of procedural fairness and may inform itself on any matter as it sees fit. It is expected the tribunal will conduct each proceeding as expeditiously and with as little formality and technicality as possible in the circumstances.

The tribunal will take a solution-focused and recovery-oriented approach to hearings. This will place the patient at the centre of the hearing, as an active participant in the discussion and decision-making process. The patient will be supported to discuss their thoughts, views, preferences and goals to enable problem solving and promote self-determination. The overall goal of these hearings is to support patient progress toward voluntary treatment and recovery.

Part 9 of the bill continues the role of community visitors.

Public consultation identified strong support for community visitors to continue to monitor the adequacy and appropriateness of mental health services provided to people with mental illness.

Part 10 of the bill establishes the mental health complaints commissioner.

This is a new role being introduced in this bill. The commissioner will provide an accessible, supportive and timely complaints mechanism that will be responsive to the needs of people with mental illness. The commissioner will have expertise in mental health service provision and the complexities of compulsory treatment.

The bill enables the commissioner to consult with other persons or bodies, such as the health services commissioner, in order to coordinate complaints that straddle the mental health and general health sectors. The commissioner may refer complaints or accept referrals from other bodies to simplify the processes for people making complaints.

It is intended that the procedures of the commissioner will be flexible and proportionate to the cause of the complaint and will provide appropriate remedies. It is expected that most complaints can be resolved through informal processes rather than resorting to formal investigation. However, the commissioner will have a range of powers to investigate and take necessary actions in more serious cases.

A key reform is that the bill will enable the commissioner to receive complaints by families and carers on behalf of consumers, for example where the patient does not have capacity to make a complaint or where the patient is a child. This will ensure all patients can have their complaints heard and addressed and be supported to participate in the complaints process.

It is recognised that complaints can assist public mental health services to identify areas for improvement and contribute to better and more responsive mental health services. The commissioner will have an important role to identify, analyse and review quality, safety and other issues arising out of complaints and to make recommendations for improvements to mental health service providers, the chief psychiatrist, the secretary and the minister.

Part 11 of the bill provides for the detention, treatment, management and discharge of security patients who are prisoners who require compulsory mental health treatment.

Part 12 of the bill provides for the detention, treatment and management of forensic patients. Forensic patients are people who have been found not guilty of an offence or unfit to plead because of mental impairment under the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 or a comparable law in another jurisdiction and are being detained in a designated mental health service for treatment.

Part 13 provides for the recognition of compulsory mental health treatment orders and provisions in mental health laws of other Australian states or territories. These provisions enhance access to mental health services across state borders and ensure that no matter where a person is in Australia they can receive responsive and timely mental health services.

Part 14 of the bill continues the Victorian Institute of Forensic Mental Health, Forensicare, which has existed since 1998. The role of the institute is to provide, promote and assist in the provision of forensic mental health and related services in Victoria.

The bill updates the regulatory framework establishing the institute to modernise the functions and governance arrangements.

Members of the board of directors will now be appointed by the Governor in Council rather than the minister and the clinical director will be appointed by the institute in the same way clinical directors are employed by other health services.

These new arrangements will strengthen the independence of the institute and its board of directors.

Part 15 of the bill sets out a number of procedural and operational matters.

Division 1 of part 15 establishes the confidentiality of health information held by mental health service providers and then sets out the specific circumstances when that health information may be disclosed to external organisations and individuals. From the public consultation process it was evident that the existing provisions in the Mental Health Act 1986 are complex and difficult to understand. The bill will provide clear guidance about when health information may be disclosed so that people with mental illness, clinicians, families and carers can understand their rights and responsibilities.

A person may consent to the disclosure of their health information. Consent may be express or implied, but it is intended that implied consent should only be relied upon where that consent can be confidently and reasonably inferred through the actions of the person.

The government recognises that there are certain circumstances where it will not be appropriate or practicable to obtain consent to disclosure of health information and these have been addressed in the bill.

The bill permits health information held by a mental health service provider about a person to be disclosed to another health service provider in order to assist them to provide services to the person. Many health services, such as mental health service providers, drug and alcohol service providers and primary care providers, share common clients. The capacity to share information between providers promotes access to health services, opportunities for early intervention and health promotion, and improved health outcomes. While it is preferable that consent to sharing of information should be obtained, in some circumstances it will be necessary to share information to ensure health services can be provided safely and effectively. This might be necessary where the person is unable to give consent or to prevent serious harm to

the person or another person or to prevent serious deterioration in the person's mental or physical health.

The bill creates a scheme to regulate the collection, use and disclosure of health information through an electronic health information system. It authorises members of staff of mental health service providers to enter information in an electronic health information system in the knowledge that other services may collect and use that information to provide mental health services to an individual. The bill limits access to an electronic health information system. A person must not collect or use, or attempt to collect or use, health information in an electronic health information system unless it is reasonably required by a mental health service provider to provide mental health services to a person.

The bill will permit a mental health service provider to disclose a person's health information to a friend, family member or carer in 'general terms'. It is intended that only very limited information may be disclosed under this exception to confidentiality. For example, it would extend to telling a telephone caller that an inpatient is well enough to receive visitors or the disclosure of limited information, such as diagnosis, during family psycho-education sessions.

The government recognises that carers need adequate information to allow them to perform their caring role. The bill seeks to balance a patient's right to privacy and the carer's need for information in order to provide sufficient support or care. It is recognised that this support and care can be crucial to the ongoing wellbeing of both the patient and the carer.

In a significant advance for carers and families, the bill sets out the circumstances when information can be shared with carers if a patient has not consented to the information sharing, or does not have the capacity to consent. Currently, clinicians must make a complex and difficult judgement about what information needs to be shared. The resulting confusion has often led to a failure to appropriately share information, to the detriment of both patients and their families and carers.

The bill enables health information to be disclosed to a carer where the disclosure relates to a patient and the health information to be disclosed is reasonably required by the carer to provide care to the patient or to determine the nature and scope of the care to be provided and to make the necessary arrangements in preparation for that role.

Division 3 of part 15 sets out powers and functions for the apprehension and transport of people with mental illness or the appearance of mental illness in prescribed circumstances. The bill includes specific powers to enter premises to enable a person to be taken to a designated mental health service. In addition, it authorises the use of sedation and bodily restraint where it is necessary to prevent serious and imminent harm to the person or another person. Consistent with the objectives of the bill, sedation and restraint may only be used after all reasonable and less restrictive options have been tried or considered and have been found to be unsuitable to ensure safe transportation.

The bill enables a police officer to apprehend a person who appears to have a mental illness so as to prevent serious and imminent harm to the person or another person.

It is intended to give police officers maximum flexibility about where they can take a person to be examined. In practice police will often take an apprehended person to the emergency department of a public hospital to be examined by a medical practitioner.

The bill will support this existing practice by enabling a police officer to take an apprehended person to a public hospital, denominational hospital, privately operated hospital, or public health service within the meaning of the Health Services Act 1988. The police officer will then be able to release the person from police custody into the care of the relevant hospital or health service. The hospital or health service must then arrange for the person to be examined as soon as practicable by a registered medical practitioner or mental health practitioner. This is intended to allow police to return to their other duties as soon as practicable without the need to wait until the examination has been completed.

Division 5 of part 15 of the bill provides for codes of practice. Codes of practice will provide practical guidance to any person or body exercising powers or performing functions or duties under the bill to promote best practice. The codes of practice will provide a greater level of detail than would generally be included in legislation or regulations and can be more readily updated to reflect new developments in interpretation of the law and clinical practice.

It is expected that codes of practice will also be used by clinicians, people with mental illness, families and carers to understand the application of the bill.

Part 15 provides for a number of other miscellaneous matters.

Part 16 of the bill provides repeal and transitional provisions.

Part 17 of the bill makes amendments to the Sentencing Act 1991, the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 and other acts.

The options available to the courts have been updated to achieve greater consistency with other orders made under the bill and simplified to encourage increased usage by the courts.

This is a substantial piece of legislation, which will make a fundamental difference to people living with mental illness, their families and carers and the broader community.

The government recognises the magnitude and significance of these reforms and is committed to a review of the legislation five years after commencement to ensure that Victoria's mental health legislation keeps pace with innovation and clinical best practice developments.

This bill is the result of the hard work of many people. I would particularly like to acknowledge and thank the members of the community consultation panel, the late Mr Ben Bodna, AM, Mr Julian Gardner, Ms Dominique Saunders and Mr Wayne Schwass, as well as the Mental Health Act reform expert advisory group and the consumer and carer peak organisations, the Victorian Mental Illness Awareness Council and the Victorian Carers Network. I also want to recognise the dedication of the members of the Mental Health Act reform team in the Department of Health and specifically the manager of that team, Ms Emma Montgomery.

In conclusion, the reforms contained in the bill will result in significant changes to Victoria's mental health system and will provide important opportunities to reinvigorate the

service system and improve outcomes for people living with mental illness.

I commend the bill to the house.

Debate adjourned on motion of Mr JENNINGS (South Eastern Metropolitan).

Debate adjourned until Thursday, 20 March.

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL AMENDMENT BILL 2014

Introduction and first reading

Received from Assembly.

Read first time for Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation) on motion of Hon. G. K. Rich-Phillips; by leave, ordered to be read second time forthwith.

Statement of compatibility

For Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation), 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 Victorian Civil and Administrative Tribunal Amendment Bill 2014 ('the bill').

In my opinion, the Victorian Civil and Administrative Tribunal Amendment Bill 2014, as introduced to the Legislative Council, is compatible with human rights as set out in the charter act. I base my opinion on the reasons outlined in this statement.

Overview

The bill amends the Victorian Civil and Administrative Tribunal Act 1998 ('the act') to enhance the powers of the tribunal and to enact a new regime for expert witnesses and expert evidence.

Human rights issues

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

Fair hearing (section 24)

Section 24(1) of the charter act provides that a party to a civil proceeding has the right to have the proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. This right may be relevant to clauses 7, 14, 19 and 22.

Clause 7 inserts new section 32A into the act, which provides that the principal registrar, with the prior written approval of the president, may delegate any of the principal registrar's functions under the rules to a member of staff. Clause 19 inserts new section 157A into the act, which empowers VCAT's Rules Committee to make rules which provide for certain functions of the tribunal to be performed by the principal registrar.

The bill contains appropriate safeguards to ensure that the delegation of these functions is consistent with the right set out in section 24(1) of the charter act. First, under new section 157A(4), the Rules Committee is required to give consideration to whether the function is of a kind that ought to be performed by the tribunal constituted by a member rather than the principal registrar and also must specify whether the function may be delegated under section 32A (new section 157A(5)). Secondly, functions may only be delegated under new section 32A to staff members who are appropriately qualified to perform the function and with the approval of the president. Thirdly, under new section 157B the tribunal may review a decision by a principal registrar at the request of a party or on the tribunal's own initiative. This review is conducted as a hearing de novo (section 157B(3)). Finally, a registrar cannot make any orders finally disposing of a proceeding, other than orders made with consent.

Clause 14 of the bill also enhances the right to a fair hearing. Clause 14 inserts a new division 8A into part 4 of the act, which empowers VCAT to order the reimbursement of fees payable in a proceeding, including a proceeding relating to a small claim.

These provisions are intended to remove a disincentive for applicants with valid claims to seek justice at VCAT. Presently, applicants may be discouraged from bringing claims given the prospect of having to pay application and hearing fees. These provisions allow VCAT to make an order to reimburse the party who has substantially succeeded in the matter or following the consideration by VCAT of the issues in the proceeding and the conduct of the parties.

Clause 22 inserts a new schedule into the act to enhance the case management powers of VCAT in relation to expert evidence in proceedings, including specific powers for VCAT to place restrictions on the use of expert evidence and expert witnesses in a proceeding. For example, VCAT may require a joint experts report or take evidence from a tribunal-appointed expert. This will enable the tribunal to actively manage the use of expert evidence to address issues relating to excessive cost, complexity and delay, along with concerns surrounding the perception of, or actual, expert bias.

Clause 22 therefore enhances access to VCAT and the right to a fair hearing for litigation in VCAT.

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

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

The bill implements a range of measures to support procedural and other reforms being introduced at the Victorian Civil and Administrative Tribunal.

The bill enables VCAT, when exercising its review jurisdiction, to invite an original decision-maker to reconsider the decision under review. This reform is designed to allow the tribunal to bring the decision-maker back into the process, with a view to assisting resolution. The reform is expected to be of particular benefit in proceedings in the planning jurisdiction, where progress towards resolution has been made with the parties, and where the decision-maker may wish to vary its decision or substitute a decision that is acceptable, or more acceptable, to the parties. The power is based on a similar power operating in the State Administrative Tribunal in Western Australia. For example, the power would allow VCAT to formally request that a local council reconsider a decision to grant a permit with certain conditions, thus providing the council itself with the opportunity to consider a proposed resolution to the dispute, rather than having to decide whether or not to authorise council planning officers to agree to possible resolutions during negotiations at VCAT.

The bill also creates a presumption that either the whole or a portion of the VCAT fees incurred in bringing a dispute to VCAT will be met by the unsuccessful party in small consumer claims as well as in owners corporation, domestic building, and residential tenancies disputes, other than residential tenancies disputes where the director of housing is a party. This will provide greater fairness in allocating responsibility for the payment of fees in a proceeding, and will also encourage a party likely to be found at fault to seek to resolve a dispute, thus avoiding or reducing the time and cost incurred by a party with a legitimate claim. The bill provides for the presumption to be displaced if VCAT determines that a different order is appropriate based on the nature of and issues in the proceedings and the conduct of the parties.

Where the presumption does not apply, VCAT will have the discretion to order fees having regard to whether a party was successful in the proceedings, the nature of and issues in the proceedings, as well as the conduct of the parties.

The bill also introduces a legislative scheme for VCAT in relation to expert witnesses and their evidence, modelled on the provisions that apply to the courts under the Civil Procedure Act 2010. The scheme being introduced for VCAT has been modified and simplified where appropriate to take account of the different nature of proceedings in VCAT.

The bill also makes a number of changes to improve internal VCAT administration, such as expanding the rule-making power to give VCAT the flexibility to empower the principal registrar to make certain procedural orders, and to delegate certain functions to appropriately qualified staff where approved by the president. These changes will provide particular benefits to applicants in regional areas, where local registrars and staff will be given authority to make decisions that may have previously required documents to be processed in Melbourne. In all VCAT registries, the change will minimise the need for members to make low-level orders about documents and requests from parties where a request is appropriate for determination by a registrar or appropriately qualified staff member. The tribunal will retain control over which powers may be delegated, and may review a decision at the request of a party or on its own initiative. A registrar will not be able to make any orders finally disposing of a proceeding unless the parties consent.

Other changes to enhance internal administration at VCAT include enabling the principal registrar to certify non-monetary orders as appropriate for filing in the Supreme Court, enhancing the tribunal's power to remove a party from a proceeding if they are no longer a proper or necessary party or their interests are not or are no longer affected by the proceeding, and simplifying the process for reconstituting the tribunal.

The amendments made by this bill are a significant step in improving efficiency and reducing the cost of bringing matters to VCAT, and reinforce this government's commitment to supporting the just, efficient and effective operation of Victoria's courts and tribunals.

I commend the bill to the house.

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

Debate adjourned until Thursday, 20 March.

ADJOURNMENT

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

That the house do now adjourn.

Weighbridge aged-care facility

Ms MIKAKOS (Northern Metropolitan) — My matter is for the Minister for Ageing. I wish to raise my concern at the announced closure of the Weighbridge residential aged-care facility, a 30-bed facility which provides specialised support to aged persons with severe behavioural and mental health issues. Last Wednesday at 6.45 p.m. staff received an email from Dr Ruth Vine, the executive director of NorthWestern Mental Health at Melbourne Health, informing them that Weighbridge would be closing on 30 June 2014. The very next day I understand an attempt was made to relocate one resident, who refused to go.

The following day another resident was moved and one more over the long weekend as well. I understand that

yesterday three patients under the care of the State Trustees were transferred to Melbourne Health's other aged-care facility, Westside Lodge in St Albans. This undoubtedly would have caused these residents a considerable amount of stress and anxiety at not only being moved out of their home but also being moved into a new environment with new faces around them only a few days after being told they needed to go.

The first communication to staff members that the facility would close occurred last Wednesday night. This is an extremely disturbing course of events. There has been no prior consultation with residents, families, staff or the local community as to this closure. I remain astonished at the lack of consultation. The minister needs to address this as an issue of urgency.

Currently the needs of the residents at Weighbridge are being met through the provision of qualified registered nurses, as well as weekly access to review by a psychiatrist and an on-call consultant service, and allied health support such as physiotherapy. In question time this week the minister suggested that the significant lack of capital investment in Weighbridge over the last 20 years or so means that it can no longer meet the standard of service that people would expect going into the future. In her email to staff Dr Ruth Vine also referred to what she described as the inappropriateness of the building. My understanding, however, and that of the Australian Nursing and Midwifery Federation, is that approximately $500 000 was spent to refurbish the building eight months ago and that disability ramps were being installed as recently as a week ago.

Unlike this government, the Labor government redeveloped more than 45 public sector residential aged-care facilities around Victoria and expanded the system to meet rising demand. I call on the minister to explain why this government is closing one of the very few aged persons mental health facilities for residents who are otherwise unable to reside in a mainstream aged-care facility. He also needs to come clean, explain exactly what consultation has occurred with respect to this particular closure and turn his mind to the needs of the particularly vulnerable people who are being moved out of this facility with such great haste.

Albert Jacka, VC

Mr O'BRIEN (Western Victoria) — My adjournment matter is for the Minister for Veterans' Affairs, the Honourable Hugh Delahunty. I take this opportunity to commend the minister on his administration of the portfolio and to wish him well in his post-ministerial career. I also welcome the appointment of my friend and colleague Mr Damian Drum to such an important portfolio as we approach the centenary of Anzac, a portfolio that he will be given in addition to Mr Delahunty's other portfolio of sport and recreation. I think the words, 'More people more active more often', will be repeated in many parts of western Victoria and all over the state as part of Mr Delahunty's legacy as a minister.

The legacy I would like to seek the minister's assistance in preserving is that of perhaps an even finer Victorian, and that is Captain Albert Jacka. I know Minister Delahunty and Mr Drum would agree with that characterisation, as would many others. Captain Albert Jacka was awarded the Victoria Cross, and he could well have been awarded that distinction on military accounts a number of times over. He is in fact a former resident of Winchelsea in the electorate of Western Victoria Region, which region is also the residence of another fine Victorian, Premier Denis Napthine.

Residents and community-minded members of Winchelsea have acknowledged the great legacy and service of Captain Albert Jacka, and they wish for him to be commemorated in their town. Mr Jacka is well commemorated in Southern Metropolitan Region represented by Ms Crozier, another fine western Victorian product. Jacka Boulevard is named after him in the area where he was mayor and where he tragically died at a young age. Albert Jacka, VC, was a larger-than-life recipient of the Victoria Cross. He also has associations with Heathcote in the electorate of Rodney. That town would also like to memorialise its association with Mr Jacka as we move towards the centenary of his Victoria Cross award. I would say that Albert Jacka is a significant Victorian big enough for all places associated with him to be able to commemorate those historic associations.

It is for this reason that I call upon both Minister Delahunty and, in a smooth portfolio transition, Mr Drum to see what can be done to provide assistance during the various centenary of Anzac programs, which have been noted and which will commence on 19 May 2015, the centenary of Albert Jacka's Victoria Cross award. Mr Jacka was in fact the first Victorian and I think the first Australian to receive a Victoria Cross during the First World War for his actions at Courtney's Post in Gallipoli, after which his battalion became known as 'Jacka's mob' with great pride. The residents of western Victoria have great pride in Albert Jacka, as we do in all great Victorians, and I ask the minister for his assistance in this important matter.

Cyclist safety

Ms PULFORD (Western Victoria) — The matter I wish to raise in the adjournment debate this evening is for the Minister for Roads, Mr Mulder. It relates to an inquiry undertaken by the Economy and Infrastructure Legislation Committee in 2012, into the Road Safety Amendment (Car Doors) Bill 2012. That work was undertaken by the committee in good faith. We heard submissions from people who had been horribly affected by car dooring incidents, and I think all committee members will forever remember some of the testimony that we heard from people affected by these terrible accidents.

The recommendation in the report that I wish the minister to respond to is recommendation 2. It seeks that VicRoads undertake a review of car dooring incidents to determine whether increased penalties have acted as a deterrent. Like the Amy Gillett Foundation, I believe zero bike fatalities on our roads is the only acceptable outcome. On average about 38 serious injuries occurred every year between 2007 and 2011. Indeed the Amy Gillett Foundation, as members well know, is named for and in honour of Amy Gillett, an elite cyclist who was training in Germany when she was tragically killed by a motorist. The foundation was set up in her honour, and it now strives to change road laws and to increase public awareness to ensure that this tragedy never happens again.

If further monetary penalties have not been a sufficient deterrent for drivers to be more aware and careful around cyclists, then one of the considerations of the committee was around whether attaching demerit points to this type of offence might be the next step required to keep cyclists safe on our roads. The challenge for the cycling community is that there is not enough information about how the government has responded to these recommendations, and more information is always a good thing in adapting and continuing to improve our road safety principles and practices.

The action I seek on this occasion from the minister is that he publicly provide the government's official response to this inquiry for the benefit of the Parliament and the cycling community.

Geelong defence contract bid

Mr RAMSAY (Western Victoria) — My adjournment matter is for the Minister for Manufacturing, the Honourable David Hodgett, and concerns an opportunity that Geelong and the Geelong region has in relation to a potentially new and emerging manufacturing business. We know Geelong has suffered over a number of years with the withdrawal of its historically long-established manufacturing businesses with Ford, Alcoa and Qantas maintenance in particular, which has resulted in some redistribution of jobs in the region.

The good news though is that there are new industries emerging, like Carbon Revolution. The Premier and the minister visited it the other day to announce a $5 million coinvestment with the federal government and also coinvestments with companies like Geelong Fresh Foods, Little Creatures and support for Cotton On investing in its business to create over 400 new jobs. There is also good news with Coles indicating an expansion with at least four new supermarkets to be built in the Geelong region, which will bring opportunities for 1000 workers.

The issue I raise with the minister is the opportunity for some potential manufacturing work in relation to new defence contracts. I know the new mayor of the City of Greater Geelong, Darryn Lyons, is very passionate and determined to bring new industries to Geelong. He has been working very hard to make sure that Geelong is considered for the $10 billion LAND 400 Sentinel military vehicle. South Australia is also vying to be successful in gaining that defence contract. This is potentially an extremely important opportunity for Geelong, and I know that the federal member for Corangamite, Sarah Henderson, has been working hard to make sure that Geelong is under consideration. Darryn Lyons has also been extremely determined to make sure that Geelong is in the mix in relation to consideration.

The action I seek from the minister is that he give an indication to this chamber about what the state government is doing in relation to its work in lobbying for Geelong to be successful in relation to the LAND 400 combat vehicle defence contract, which I understand will be determined within the next two years. I encourage the minister to visit Geelong, to meet with the mayor and to discuss with the stakeholders what strategy the state government has for lobbying for the defence contract.

Hospital occupational health and safety

Ms DARVENIZA (Northern Victoria) — I raise a matter for the attention of the Minister for Health, David Davis, and it concerns the increasing level of violence that nursing staff are facing at work. The Auditor-General's November 2013 report *Occupational Health and Safety Risk in Public Hospitals* found that nurses and midwives are still regularly and sometimes

very seriously hurt at work by patients, visitors and intruders. They are punched, kicked, hit, bitten, choked, threatened with weapons and knocked unconscious at work.

The Liberal-Nationals coalition went to the last election promising to make hospitals safer places to work and insisted that the safety of nurses and midwives was a key priority for its government. In 2010 the coalition promised to provide funding of $21 million to employ armed protective services officers to work in hospital emergency wards. Hospitals and nurses dismissed the idea of armed protective service officers, as did a parliamentary inquiry held after the 2010 state election. Nurses believe that little has been done since that inquiry.

The Australian Nursing and Midwifery Federation launched a petition in January 2014 as concern grew about the number of violent patients in hospitals. The petition has received very strong support, with thousands of Victorians signing it and calling on the state government to immediately fund measures to reduce violence against nurses in hospitals. I am also aware of data that has been collected in relation to assaults on nurses in mental health facilities.

The specific action I seek from the minister is that he outline what action the state government will take to reduce assaults on nursing staff in hospitals and what funding his government will commit to ensure the safety of nursing staff in our hospitals.

The Auditor-General's report of November 2013, which I mentioned earlier, identified significant issues, including that the protection of hospital employees is not a priority for the Department of Health or hospital management; the Department of Health does not hold public hospitals accountable for the safety of their staff; the IT system, which is known as RiskMan and is used to report staff injury, violent or aggressive incidents, does not work; some hospital safety inspections do not look at occupational violence; and one hospital followed up only 35 per cent of its 586 reported incidents over a 12-month period, which means that it did not look at what happened, why it happened or how it could have been prevented.

It is two years since the inquiry examined the issue of safety in hospitals. The recommendations have not been met and it is now time for members of the Liberal-Nationals government to acknowledge that their lack of support has led to an increase in assaults on nurses and midwives in our hospitals.

Elsternwick Park golf project

Ms CROZIER (Southern Metropolitan) — My adjournment matter this evening is for the attention of the Minister for Sport and Recreation, the Honourable Hugh Delahunty. Like Mr O'Brien, I would like to put on record my appreciation of the work he has done in his capacity as Minister for Sport and Recreation. I have very much enjoyed working with him over the past three and a bit years. I am not sure whether he will be able to address my issue in the time he has left as minister, but I am sure that Mr Drum, who will be taking over from him, will be able to do so once he is sworn in as the minister.

The issue I raise is in relation to a precinct in Elsternwick. All members and all Melburnians enjoy the reputation of Melbourne as the sporting capital of Australia and also the cultural capital of Australia, as we saw just a few weeks ago with White Night. We are very fortunate to be able to host major events and have our sporting prowess, if you like, demonstrated on a regular basis. I mention the Australian Open Tennis Championships, the Australian Formula One Grand Prix and some of the other key sporting events in Melbourne. They bring great economic income — —

Ms Pennicuik interjected.

Ms CROZIER — It is not nonsense, Ms Pennicuik. It is absolute fact that major sporting events are of great economic benefit to this state.

As I said, we host the Australian Open, the AFL Grand Final, the Spring Racing Carnival and the grand prix. All those major sporting events bring great economic benefit to the state. Last year we hosted the 2013 World Cup of Golf. That saw tens of thousands of visitors come to our state and provided great economic benefit, bringing millions of dollars to Victoria. I know the Minister for Tourism and Major Events, Ms Asher, is a strong supporter of these events.

A very exciting opportunity has arisen for the people of Elsternwick. A consortium has put together a project aimed at uniting the world of Australian golf through the development of a national home of golf and centre of excellence at Elsternwick Park. The project will bring together a number of golf industry partners. The project consortium is proposing a world-first development that will see the national, state and local golf organisations unite to work cooperatively with all golf industry sectors. For the first time in golf's history the project will bring together the Australian golf industry, which attracts approximately 1.3 million participants annually. The industry spend throughout

Australia is $2.31 billion. The sport of golf and its associated industries are currently working independently of each other. This is a very exciting project, and I ask the minister to come down and review it.

Special religious instruction

Ms PENNICUIK (Southern Metropolitan) — The matter I raise is for the attention of the Minister for Education, and it concerns the provision of special religious instruction (SRI) in Victorian government schools, in particular by Access Ministries, which provides about 80 per cent of all SRI. I have raised questions about this in Parliament on several occasions — in 2010, 2011 and last year in April and June. The questions have been around issues such as how Access Ministries gains access to schools, how its curriculum is or is not approved and the level of funding provided to it.

In 2011 I listed in Parliament a motion calling on the government to adhere to the principle of secular education in government schools by removing the provision for SRI in the Education and Training Reform Act 2006. The motion was not debated, but shortly afterwards the government changed the system from parents having to opt out of the program for their children to attend SRI to them having to opt in. Last year I asked the Minister for Higher Education and Skills if and how the department was monitoring compliance with the opt-in system. I was advised that the department is essentially not doing so.

In an article by Konrad Marshall published in the *Age* of 17 February it was reported that hundreds of primary school principals have stopped offering weekly religious education in schools. It was reported also that in 2011 there were 940 schools delivering SRI but by 2013 the number had dropped to 666. I am presuming that that is due to the opt-in system. The article reported that Joe Kelly, the principal of Cranbourne South Primary School for 15 years, acknowledged that until two years ago he had supported the presence of Access Ministries until he took a closer look at the classes and curriculum. He is reported as having said, 'It is not education', and also:

> It has no value whatsoever. It is rubbish — hollow and empty rhetoric … schoolteachers are committed to teaching children, not indoctrinating them.

The article reports also that Dr David Zyngier, a senior lecturer in curriculum and pedagogy at Monash, said that his biggest concern remained for parents who opted in but who did not understand what lessons were being taught or that they were being taught by volunteers, not teachers. He is quoted as having said:

> I have reviewed all six booklets produced by Access Ministries, and it's basically low-order, unintelligent, busy work and rote learning.

He is quoted further:

> It horrified me. There's nothing educational about it. It's all about becoming a disciple of Jesus.

I have also seen this material, and I concur that it amounts to proselytising. There have also been errors in processing forms that have resulted in children being included in SRI even though their parents do not want it.

On 22 February Jill Stark reported in the *Age*:

> Parents and teachers have called for an urgent overhaul of religious education in schools after year 6 children were given material claiming girls who wear revealing clothes are inviting sexual assault, and homosexuality, masturbation and sex before marriage are sinful.

Students at Torquay College were presented with that material at the end of the Christian education program run by Access Ministries. My request to the minister is that he remove accreditation from Access Ministries to provide SRI in government schools and cease funding SRI from the education department budget.

Responses

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — A number of members have raised matters this evening. Ms Mikakos raised a matter for the Minister for Ageing; Mr O'Brien raised a matter for the Minister for Veterans' Affairs; Ms Pulford raised a matter for the Minister for Roads; Mr Ramsay raised a matter for the Minister for Manufacturing; Ms Darveniza raised a matter for the Minister for Health; Ms Crozier raised a matter for the Minister for Sport and Recreation; and Ms Pennicuik raised a matter for the Minister for Education. I will pass those matters on to the responsible ministers.

The ACTING PRESIDENT (**Mr Ondarchie**) — Order! The house now stands adjourned.

House adjourned 4.56 p.m. until Tuesday, 25 March.