PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SEVENTH PARLIAMENT

FIRST SESSION

Thursday, 18 September 2014

(Extract from book 13)

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By authority of the Victorian Government Printer

The Governor

The Honourable ALEX CHERNOV, AC, QC

The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

The ministry

(from 17 March 2014)

Premier, Minister for Regional Cities and Minister for Racing	The Hon. D. V. Napthine, MP
Deputy Premier, Minister for State Development, and Minister for Regional and Rural Development	The Hon. P. J. Ryan, MP
Treasurer	The Hon. M. A. O'Brien, MP
Minister for Innovation, Minister for Tourism and Major Events, and Minister for Employment and Trade	The Hon. Louise Asher, MP
Minister for Local Government and Minister for Aboriginal Affairs	The Hon. T. O. Bull, MP
Attorney-General, Minister for Finance and Minister for Industrial Relations	The Hon. R. W. Clark, MP
Minister for Health and Minister for Ageing	The Hon. D. M. Davis, MLC
Minister for Education	The Hon. M. F. Dixon, MP
Minister for Sport and Recreation, and Minister for Veterans' Affairs	The Hon. D. K. Drum, MLC
Minister for Planning, and Minister for Multicultural Affairs and Citizenship	The Hon. M. J. Guy, MLC
Minister for Ports, Minister for Major Projects and Minister for Manufacturing	The Hon. D. J. Hodgett, MP
Minister for Housing, and Minister for Children and Early Childhood Development	The Hon. W. A. Lovell, MLC
Minister for Public Transport and Minister for Roads	The Hon. T. W. Mulder, MP
Minister for Energy and Resources, and Minister for Small Business	The Hon. R. J. Northe, MP
Minister for Liquor and Gaming Regulation, Minister for Corrections and Minister for Crime Prevention	The Hon. E. J. O'Donohue, MLC
Assistant Treasurer, Minister for Technology and Minister responsible for the Aviation Industry	The Hon. G. K. Rich-Phillips, MLC
Minister for Environment and Climate Change, and Minister for Youth Affairs	The Hon. R. Smith, MP
Minister for the Arts, Minister for Women's Affairs and Minister for Consumer Affairs	The Hon. H. Victoria, MP
Minister for Higher Education and Skills	The Hon. N. Wakeling, MP
Minister for Agriculture and Food Security, and Minister for Water	The Hon. P. L. Walsh, MP
Minister for Police and Emergency Services, and Minister for Bushfire Response	The Hon. K. A. Wells, MP
Minister for Mental Health, Minister for Community Services, and Minister for Disability Services and Reform	The Hon. M. L. N. Wooldridge, MP
Cabinet Secretary	Mrs I. Peulich, MLC

Legislative Council committees

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

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

 # Participating member

Legislative Council standing committees

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

Economy and Infrastructure References Committee — Mr Barber, Mrs Coote, #Ms Crozier, Mr Finn, #Mr Leane, Mr Lenders, Mr Melhem, Mr D. D O'Brien, #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 Lewis, Mrs Millar, Mr D. R. J. 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 Lewis, Mrs Millar, Mr D. R. J. O'Brien, #Mrs Peulich, #Mr Ramsay and Mr Viney.

 # Participating member

Joint committees

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

Dispute Resolution Committee — (*Council*): Mr D. Davis, Mr Drum, 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 Millar and Mr Ronalds. (*Assembly*): Mr Burgess and Mr McGuire.

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

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

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

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

House Committee — (*Council*): The President (*ex officio*) Mr Eideh, Mr Finn, Ms Hartland, Mr D. R. J. O'Brien 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 Kanis, Mr Kotsiras, Mr McIntosh 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 D. R. J. 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 D. R. J. O'Brien. (*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 — Acting Clerk of the Legislative Council: Mr A. Young

Parliamentary Services — Secretary: Mr P. Lochert

MEMBERS OF THE LEGISLATIVE COUNCIL

FIFTY-SEVENTH PARLIAMENT — FIRST SESSION

President: The Hon. B. N. ATKINSON

Deputy President: Mr M. VINEY

Acting Presidents: Ms Crozier, Mr Eideh, Mr Elasmar, Mr Finn, Mr Melhem, Mr D. R. J. O'Brien, Mr Ondarchie, Ms Pennicuik, Mr Ramsay, Mr Tarlamis

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

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

Leader of the Opposition:
Mr J. LENDERS

Deputy Leader of the Opposition:
Mr G. JENNINGS

Leader of The Nationals:
The Hon. D. K. DRUM (from 17 March 2013)
The Hon. P. R. HALL (to 17 March 2013)

Deputy Leader of The Nationals:
Mr D. R. J. O'BRIEN (from 17 March 2013)
Mr D. K. DRUM (to 17 March 2013)

Member	Region	Party	Member	Region	Party
Atkinson, Hon. Bruce Norman	Eastern Metropolitan	LP	Lovell, Hon. Wendy Ann	Northern Victoria	LP
Barber, Mr Gregory John	Northern Metropolitan	Greens	Melhem, Mr Cesar [2]	Western Metropolitan	LP
Broad, Ms Candy Celeste [9]	Northern Victoria	ALP	Mikakos, Ms Jenny	Northern Metropolitan	ALP
Coote, Mrs Andrea	Southern Metropolitan	LP	Millar, Mrs Amanda Louise [4]	Northern Victoria	LP
Crozier, Ms Georgina Mary	Southern Metropolitan	LP	O'Brien, Mr Daniel David [8]	Eastern Victoria	Nats
Dalla-Riva, Hon. Richard Alex Gordon	Eastern Metropolitan	LP	O'Brien, Mr David Roland Joseph	Western Victoria	Nats
Darveniza, Ms Kaye Mary	Northern Victoria	ALP	O'Donohue, Mr Edward John	Eastern Victoria	LP
Davis, Hon. David McLean	Southern Metropolitan	LP	Ondarchie, Mr Craig Philip	Northern Metropolitan	LP
Davis, Mr Philip Rivers [5]	Eastern Victoria	LP	Pakula, Hon. Martin Philip [1]	Western Metropolitan	ALP
Drum, Mr Damian Kevin	Northern Victoria	Nats	Pennicuik, Ms Susan Margaret	Southern Metropolitan	Greens
Eideh, Mr Khalil M.	Western Metropolitan	ALP	Petrovich, Mrs Donna-Lee [3]	Northern Victoria	LP
Elasmar, Mr Nazih	Northern Metropolitan	ALP	Peulich, Mrs Inga	South Eastern Metropolitan	LP
Elsbury, Mr Andrew Warren	Western Metropolitan	LP	Pulford, Ms Jaala Lee	Western Victoria	ALP
Finn, Mr Bernard Thomas C.	Western Metropolitan	LP	Ramsay, Mr Simon	Western Victoria	LP
Guy, Hon. Matthew Jason	Northern Metropolitan	LP	Rich-Phillips, Hon. Gordon Kenneth	South Eastern Metropolitan	LP
Hall, Hon. Peter Ronald [7]	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
Lenders, Mr John	Southern Metropolitan	ALP	Viney, Mr Matthew Shaw	Eastern Victoria	ALP
Lewis, Ms Margaret [10]	Northern Victoria	ALP			

[1] Resigned 26 March 2013
[2] Appointed 8 May 2013
[3] Resigned 1 July 2013
[4] Appointed 21 August 2013
[5] Resigned 3 February 2014
[6] Appointed 5 February 2014
[7] Resigned 17 March 2014
[8] Appointed 26 March 2014
[9] Resigned 9 May 2014
[10] Appointed 11 June 2014

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THURSDAY, 18 SEPTEMBER 2014

Thursday, 18 September 2014

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

CRIMES AMENDMENT (SEXUAL OFFENCES AND OTHER MATTERS) BILL 2014

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation); by leave, ordered to be read second time later this day.

PETITIONS

Following petitions presented to house:

Flagstaff railway station

To the Legislative Council of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council the fact that an important public transport access point to the city of Melbourne is inaccessible to commuters. residents and visitors on weekends. Flagstaff station is a key part of the city loop rail infrastructure. It is the closest rail link to the Victoria markets and provides direct access to Flagstaff Gardens which is a much-loved and well-used green open space. Both these iconic city of Melbourne destinations attract large numbers of weekend visitors but the public transport access that could easily be provided through Flagstaff train station is not available. In addition to these benefits for residents and visitors, the failure to open Flagstaff station on weekends has the effect of depressing retail trade in the business precinct surrounding the station. The vibrant local retail traders' community will benefit greatly from the increased weekend foot traffic that accessible public transport will create.

The petitioners therefore request that the Legislative Council ensure that Flagstaff train station opening hours are extended to include weekend operations.

By Mr BARBER (Northern Metropolitan) (189 signatures).

Laid on table.

Retirement village differential rate

To the Legislative Council of Victoria:

The petition of certain citizens of Victoria draws to the attention of the Legislative Council that in Victoria there are approximately 38 000 residents living in approximately 400 retirement villages. Currently, residents pay totally to repair and maintain their own facilities within their villages by fees paid to the managers or owners of the villages. These facilities include several kilometres of roads, footpaths, kerbs, drainage and street lighting. A number of villages also manage their own rubbish removal and include that cost in their fees to residents. Many villages also provide a number of services such as library, swimming pools, suitable sporting facilities, medical support, et cetera, thus reducing the pressure on the community use of these facilities normally provided by council. Last year, despite amendments made to section 161 of the Local Government Act (dealing with differential rates), only 5 councils out of 79 in Victoria introduced a differential rate for their retirement villages. So far as is known most councils appeared to have given no real consideration to those legislative amendments and no indication has been given that any real consideration will be given to them in the 2014–15 year.

The petitioners therefore request of the Legislative Council that they:

(a) introduce legislation amending section 161 of the Local Government Act that will make it obligatory for councils to consider and decide upon any request by the owner of retirement village land (as defined in the Retirement Village Act), that a fair differential rate be applied in relation to the village or land;

(b) introduce into the guidelines by the minister under section 161(2A) of the Local Government Act, guidelines to be applied specifically in relation to retirement village land with reference to facilities and services such as referred to in this petition, and any other relevant matters;

(c) introduce into section 161 a right of appeal to VCAT if any request as referred to in paragraph (a) is refused or not decided upon within 60 days of such request, and in relation to any amount of differential rate decided upon.

By Mr RONALDS (Eastern Victoria) (30 signatures).

Laid on table.

Motor vehicle registration

To the Legislative Council of Victoria:

This petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council the Napthine government's plan to further increase car registration fees and stamp duty.

This is despite the state government cutting costs by abolishing registration stickers and a previous increase in car registration fees in 2012.

Petitioners therefore request that the Legislative Council condemns the Napthine government for its decision to further increase car registration fees.

By Ms TIERNEY (Western Victoria) (175 signatures).

Laid on table.

TAFE funding

To the Legislative Council of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the house the Napthine Liberal/National state government's savage cuts to TAFE and the ongoing impact these cuts are having on TAFEs and students around Victoria. In particular, we note:

1. course fees have skyrocketed putting skills training out of reach for many hardworking Victorians;

2. many courses have been dropped or scaled back, and several TAFE campuses have closed;

3. the $466 million announced this year is still below previous years in 2011–12 of $493 million and 2010–11 of $480 million;

4. with Victoria in recession, manufacturing industries in crisis and jobs being lost every day, skills training has never been more important for Victorians.

The petitioners therefore request that the Legislative Council urges the coalition government restore TAFE funding, including fully funding TAFE institutes' community services obligations.

By Ms TIERNEY (Western Victoria) (66 signatures).

Laid on table.

Emergency services funding

To the Legislative Council of Victoria:

The petition of certain citizens of the state of Victoria draws the attention of the Legislative Council to the underfunding of our state's emergency services, including a $41 million cut in funding to the CFA.

The petitioners therefore request that the Legislative Council take urgent steps to improve funding of our emergency services and to provide better pay and conditions to emergency services personnel.

By Ms TIERNEY (Western Victoria) (94 signatures).

Laid on table.

Regional and rural roads

To the Legislative Council of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the house the Napthine Liberal/National state government's severe lack of funding and resources to maintain regional roads in Victoria. In particular, we note:

1. roads across Victoria have been left to deteriorate since the Liberal/National coalition came to government, with $100 million being cut from roads management in 2012, and 450 staff cut from VicRoads, including many experienced engineers;

2. the government is now playing catch-up to maintain regional roads that have deteriorated thanks to its own neglect, but still fails to provide enough funding for roads maintenance;

3. the $445.7 million announced this year is still below previous years in 2011–12 of $493 million and 2010–11 of $480 million;

4. nearly 80 per cent of new roads funding in 2014 from the Napthine government is being spent in Melbourne, and regional road resurfacing targets remain lower than previous years, with only 7.1 million square metres targeted this year, a drop from 11 million square metres in 2011–12;

5. the proportion of distressed regional roads has increased from 7.4 per cent in 2012–13 to 8.3 per cent in 2014–15.

The petitioners therefore request that the Legislative Council urges the coalition government to immediately reinstate all funding and resources cut from roads maintenance in rural and regional Victoria and guarantee that no further cuts will be made.

By Ms TIERNEY (Western Victoria) (103 signatures).

Laid on table.

VICTORIA LAW FOUNDATION

Report 2013–14

Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation), by leave, presented report of Victoria Law Foundation 2013–14.

Laid on table.

PAPERS

Laid on table by Acting Clerk:

Accident Compensation Conciliation Service — Report, 2013–14.

Adult, Community and Further Education Board — Report, 2013–14.

Alpine Health — Report, 2013–14.

Australian Centre for the Moving Image — Report, 2013–14.

Barwon Region Water Corporation — Report, 2013–14.

Beaufort and Skipton Health Service — Report, 2013–14.

Calvary Health Care Bethlehem Ltd — Report, 2013–14.

CenITex — Report, 2013–14.

Central Gippsland Region Water Corporation — Report, 2013–14.

Central Highlands Region Water Corporation — Report, 2013–14.

City West Water Corporation — Report, 2013–14.

Cobram District Hospital — Report, 2013–14.

Coliban Region Water Corporation — Report, 2013–14.

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Dental Health Services Victoria — Report, 2013–14.

Dunmunkle Health Services — Report, 2013–14.

East Gippsland Region Water Corporation — Report, 2013–14.

Edenhope and District Memorial Hospital — Report, 2013–14.

Emergency Services Telecommunications Authority — Report, 2013–14.

Environment and Primary Industries Department — Report, 2013–14.

Geelong Cemeteries Trust — Report, 2013–14.

Geelong Performing Arts Centre Trust — Report, 2013–14.

Geoffrey Gardiner Dairy Foundation Ltd — Report, 2013–14.

Gippsland and Southern Rural Water Corporation — Report, 2013–14.

Glenelg Hopkins Catchment Management Authority — Report, 2013–14.

Goulburn Broken Catchment Management Authority — Report, 2013–14.

Goulburn Murray Rural Water Corporation — Report, 2013–14.

Goulburn Valley Region Water Corporation — Report, 2013–14.

Grampians Wimmera Mallee Water Corporation — Report, 2013–14.

Hesse Rural Health Service — Report, 2013–14.

Human Services Department — Report, 2013–14.

Inglewood and Districts Health Service — Report, 2013–14.

Judicial College of Victoria — Report, 2013–14.

Library Board of Victoria — Report, 2013–14.

Lower Murray Urban and Rural Water Corporation — Report, 2013–14.

Maldon Hospital — Minister's report of receipt of 2013–14 report.

Mansfield District Hospital — Report, 2013–14.

Melbourne Market Authority — Report, 2013–14.

Melbourne Recital Centre Ltd — Report, 2013–14.

Melbourne Water Corporation — Report, 2013–14.

Metropolitan Waste Management Group — Report, 2013–14.

Murray Valley Wine Grape Industry Development Committee — Minister's report of receipt of 2013–14 report.

Museums Board of Victoria — Report, 2013–14.

National Gallery of Victoria, Council of Trustees — Report, 2013–14.

National Parks Act 1975 — Report on the working of the Act, 2013–14.

North Central Catchment Management Authority — Report, 2013–14.

North East Catchment Management Authority — Report, 2013–14.

North East Region Water Corporation — Report, 2013–14.

Numurkah District Health Service — Report, 2013–14.

Omeo District Health — Report, 2013–14.

Orbost Regional Health — Report, 2013–14.

Parliamentary Committees Act 2003 — Government Response to Public Accounts and Estimates Committee's Review of the Performance Measurement and Reporting System.

Port of Hastings Development Authority — Report, 2013–14.

Port of Melbourne Corporation — Report, 2013–14.

Premier and Cabinet Department — Report, 2013–14.

Public Record Office Victoria — Report, 2013–14.

Regional Development Victoria — Report, 2013–14.

Rochester and Elmore District Health Service — Report, 2013–14.

Rolling Stock Holdings (Victoria) Pty Ltd — Report, 2013–14.

Rolling Stock (Victoria–VL) Pty Ltd — Report, 2013–14.

Rolling Stock (VL–1) Pty Ltd — Report, 2013–14.

Rolling Stock (VL–2) Pty Ltd — Report, 2013–14.

Rolling Stock (VL–3) Pty Ltd — Report, 2013–14.

Rural Finance Corporation — Report, 2013–14.

Rural Northwest Health — Report, 2013–14.

Sentencing Advisory Council — Report, 2013–14.

Seymour District Memorial Hospital — Report, 2013–14.

South East Water Corporation — Report, 2013–14.

South Gippsland Region Water Corporation — Report, 2013–14.

State Electricity Commission of Victoria — Report, 2013–14.

Statutory Rule under the Magistrates' Court Act 1989 — No. 121.

Subordinate Legislation Act 1994 —

Documents under section 15 in respect of Statutory Rule No. 122.

Legislative Instruments and related documents under section 16B in respect of —

Minister's Order of 12 September 2014 under the Food Act 1984.

Order exempting small egg producers from requirement for marking of eggs under the Food Standards Code under the Food Act 1984.

Order for the exemption for retail sale or catering — eggs from small producers under the Food Act 1984.

Tallangatta Health Service — Report, 2013–14.

Terang and Mortlake Health Service — Report, 2013–14.

Tourism Victoria — Report, 2013–14.

Veterinary Practitioners Registration Board of Victoria — Minister's report of receipt of 2013–14 report.

Victoria Legal Aid — Report, 2013–14.

Victorian Arts Centre Trust — Report, 2013–14.

Victorian Broiler Industry Negotiation Committee — Report, 2013–14.

Victorian Catchment Management Council — Report, 2013–14.

Victorian Civil and Administrative Tribunal — Report, 2013–14.

Victorian Funds Management Corporation — Report, 2013–14.

Victorian Institute of Forensic Mental Health — Report, 2013–14.

Victorian Law Reform Commission — Report, 2013–14.

Victorian Managed Insurance Authority — Report, 2013–14.

Victorian Privacy Commissioner, Office of — Report, 2013–14.

Victorian Public Sector Commission — Report, 2013–14.

Victorian Regional Channels Authority — Report, 2013–14.

Victorian WorkCover Authority — Report, 2013–14.

Wannon Region Water Corporation — Report, 2013–14.

West Wimmera Health Service — Report, 2013–14.

Western Region Water Corporation — Report, 2013–14.

Westernport Region Water Corporation — Report, 2013–14.

Yarra Valley Water Corporation — Report, 2013–14.

Yarrawonga District Health Service — Report, 2013–14.

Young Farmers' Finance Council — Report, 2013–14.

BUSINESS OF THE HOUSE

Standing and sessional orders

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

That so much of standing and sessional orders be suspended to the extent necessary to enable —

(1) the sitting of the Council on Tuesday, 14 October 2014, to commence at 12.00 p.m. and that the order of business on that day will be —

(a) messages;

(b) formal business;

(c) members statements (up to 15 members);

(d) government business;

(e) at 2.00 p.m. questions;

(f) answers to questions on notice;

(g) government business (continues); and

(h) adjournment (up to 20 members).

(2) the order of business for the sitting of the Council on Wednesday, 15 October 2014, will be —

(a) at 6.30 p.m. dinner suspension;

(b) at 8.00 p.m. government business to take precedence; and

(c) adjournment (up to 20 members).

(3) in the absence of a report of the Procedure Committee under standing order 5.08, precedence be given to debate on a motion to vary or adopt standing orders on Thursday, 16 October 2014.

Mr LENDERS (Southern Metropolitan) — Just briefly, there are two things I would say. Firstly, in support of the motion the Labor Party will support this, on the basis that it is a sensible way of managing the last week of Parliament. In doing so we would expect the government to prioritise urgent government business and not indulge in motions and the like. I just make that statement; we cannot compel the government to do that. But we are supporting this as an orderly end-

of-session transaction, and we would expect our goodwill to be reciprocated. I congratulate the government on moving a motion to codify this at the start, so we all know what is happening before we go into the week.

The second comment I would make is on point (3). While I have no issue with precedence being given to a motion to amend the standing orders — and there has been a productive discussion at the Procedure Committee on this — I would ask the government that any such motion be presented to the house at least the day before so members have adequate time to analyse and digest it and that it not be a vehicle for lobbing something at us. I am not saying the government is going to do this. I am just making it clear that we are supporting it, and that we think it is a good idea, but I ask that the government do those two things to facilitate an orderly final week in Parliament.

Mr BARBER (Northern Metropolitan) — The Greens will support this motion. However, we are aware that there are a large number of bills on the notice papers of both houses. It is not our intention to block by delay any of the government's bills. We do not agree with all the government's bills, but we are quite willing to debate them. It would be of great assistance if the government could work out an order by which those bills are to be debated so that we can prepare adequately and give some feedback about which ones we think are going to take large amounts of scrutiny and which could move through relatively quickly, and so that the government itself can make some choices about which of the bills it wants to prioritise. We are perfectly happy to stay here throughout the next sitting week until all legislation is finished, but if the government is not going to put all of its bills through, then we would like to know which ones it is prioritising and in what order.

Hon. D. M. DAVIS (Minister for Health) — I take the comments of the leaders of the other parties on board. The government is seeking to get an orderly process through this set of steps; that is precisely what we are seeking to do. I will make a couple of points. There are obviously standing orders amendments, and the government will seek to work through the Standing Orders Committee, or the Procedure Committee as it is now, to get an agreed set of matters. There may also be some non-agreed matters for which we would bring in a separate motion. I do not indicate that we will not do that; we are looking at all those options. We would of course give members sufficient time on those matters too.

The Drugs, Poisons and Controlled Substances Further Amendment Bill 2014, the Drugs, Poisons and Controlled Substances Amendment (Clinical Trials) Bill 2014, the Justice Legislation Amendment (Confiscation and Other Matters) Bill 2014, the Cemeteries and Crematoria Amendment Bill 2014 and the Sentencing Amendment (Historical Homosexual Convictions Expungement) Bill 2014 are already on the notice paper and another one has been flagged from the Assembly. Obviously I will endeavour to take on board Mr Barber's point about wanting the process to be as orderly as possible.

It is true that I cannot control the processes in the Assembly. This is obviously a bicameral Parliament, and we deal with the matters that are brought to us in the form they are brought to us by the Assembly and at the time they are brought to us by the Assembly. We have mechanisms here whereby we can shuffle the order and seek to smooth things in that way, and the government has sought to do that. I should also note that people will wish to make a number of valedictory statements. Mr Lenders and I have talked about a number of individuals who may wish to speak. We will seek to accommodate those to the extent that we possibly can.

Motion agreed to.

BUSINESS OF THE HOUSE

Adjournment

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

> That the Council, at its rising, adjourn until Tuesday, 14 October 2014, at 12 noon.

Motion agreed to.

MEMBERS STATEMENTS

Submarine manufacture

Mr SOMYUREK (South Eastern Metropolitan) — I rise to urge the federal government to keep its pre-election commitment and build Australia's next fleet of submarines in Australia. The federal government claims that it has made no decision yet as to where the submarines will be built, but strategic leaks and off-the-record briefings to journalists make it clear that the Abbott government intends to renege on its pre-election commitment and purchase these submarines from Japan.

Australia's ship and submarine-building industry is now at a crossroads. Unless the 48 vessels Australia needs over the next 20 years are built in Australia, this valuable, high-end industry is at risk of collapsing, forcing thousands of valuable manufacturing jobs offshore. It seems the Abbott government is determined to wipe another important and strategic industry from Australia.

Automotive industry

Mr SOMYUREK — On another matter, in a members statement yesterday I warned about the dire consequences of the Abbott government's axing of the $500 million fund provided to the automotive manufacturing industry by the previous federal government. Yesterday I warned that should the auto makers exit our shores ahead of time it would be disastrous for the workers and their families. Unfortunately within 4 hours of my making that members statement the media began to report that Holden was planning on cutting 300 jobs by the end of the year, well before originally expected. It is time that the Abbott government put the jobs of Australian workers ahead of ideology.

Public transport

Mr SOMYUREK — On a further matter, I condemn the Napthine government for the increase in acute overcrowding on Melbourne's trains and trams, with data showing that nearly one in two commuters travel on overcrowded trains and trams during peak times. The Dandenong line, which runs through my electorate, was identified as one of the worst affected.

Sunbury municipality

Mrs MILLAR (Northern Victoria) — The creation of a new municipality, the City of Sunbury, from 1 July 2015 is a momentous announcement. It follows two decades of calls from the community, two expert reports from KPMG, a report by the local government panel of experts, a vote conducted right across the city of Hume with 61 per cent of residents voting in favour of the new municipality and a community consultation process conducted across the city of Hume and attended by more than 500 people.

This week we see the members for Yuroke and Broadmeadows in the other place seeking to stifle the democratic voices of the people by opposing this decision. Residents of Sunbury should read *Hansard* and be quite clear on what Labor is saying. What this means is that Labor will tear up the contract if elected. As chair of the Sunbury Out of Hume community consultation committee, I have been to Craigieburn, Broadmeadows and Tullamarine and listened to hundreds of residents on this issue. Their message is clear. They want Sunbury out, but they want to keep the airport, and that is what they are getting.

On the 10-year-long Melbourne Airport rate split with the new Sunbury City Council, let us be perfectly clear that this is based on the percentage of residents leaving the city of Hume. Is Sunbury not entitled to its proportionate share? Let us be clear that before Hume was created, the old Shire of Bulla, which included Sunbury, was one of three councils that shared the airport rates. All Sunbury is getting, for a capped 10-year period only, is the proportionate share of something it always had — no more, no less.

I congratulate the current Minister for Local Government, Tim Bull, and the former minister, the member for Shepparton in the Assembly, Jeanette Powell, on their significant work on this. I also note the advocacy of the Liberal candidate for the Assembly seat of Sunbury, Jo Hagan. Only the Napthine government has listened and delivered — —

The PRESIDENT — Time!

Wanganui Park Secondary College

Ms LEWIS (Northern Victoria) — Last week I joined students, staff, parents and community members at Wanganui Park Secondary College in Shepparton for the launch of a student-produced DVD titled *Your Move*. While this film is essentially about graffiti vandalism, it demonstrates to young people the possible outcomes of their personal actions. It highlights the fact that everyone has choices to make and that at times the consequences can be good but at other times the consequences can be bad, either for the individual or the community.

The DVD is part of a package being distributed to local schools to be used as a conversation starter about the issue of graffiti vandalism as well as about choices and decision-making. My congratulations to all those involved in the production, particularly the local Shepparton police, the students and the coordinating staff.

Mooroopna Secondary College

Ms LEWIS — Mooroopna Secondary College caters for years 7–12 students and is a major part of the local community. The loss of manufacturing jobs at SPC Ardmona has seen a decline in student numbers, and this has had an effect on the school budget and

created a problem in regard to maintaining and upgrading facilities to meet the needs of students and the expectations of the community. The school has entered into community partnerships to refurbish its science facilities and establish a Victorian Certificate of Education centre, while major facilities such as the Westside Performing Arts Centre are located on the school site and co-owned and managed by the school and the City of Greater Shepparton.

Mooroopna Secondary College like other schools across rural and regional Victoria needs a guaranteed long-term building renewal program to support its students' needs.

Morwell schools

Mr D. D. O'BRIEN (Eastern Victoria) — The Napthine coalition government — The Nationals in particular — is delivering for the community in Morwell. Last week I was pleased to join the Minister for Energy and Resources, Russell Northe, the member for Morwell in the other place, to announce the $13 million commitment to the Morwell schools regeneration project. This project has been a long time coming but it is great to announce it now. The $9 million project will bring together Commercial Road Primary School and Morwell Primary School, formerly known as Crittenden Road and Tobruk Street primary school, so that around 450 Morwell students can share their learning experiences and benefit from the advantages of a world class education.

In addition, a further $4 million will go to support the further modernisation of Morwell Park Primary School, meaning all of Morwell's primary school students will benefit.

I note that on the same day the ALP also committed to the project. That is a good outcome for the community of Morwell as it ensures that it will be built. We look forward to that project going ahead and note that the 2014–15 budget commits funding to complete the planning of this new school. It is a great outcome for students in Morwell.

Country Fire Authority Morwell station

Mr D. D. O'BRIEN — Also last week the Deputy Premier, Peter Ryan, and the member for the Morwell in the Assembly announced $5 million to build a new Country Fire Authority station in Morwell. This is not an election commitment; these funds have been allocated and will help fund land acquisition and the construction of a new station. The Morwell Country Fire Authority is an integrated station with 17 career firefighters and around 80 volunteer firefighters who do and have done a great amount of work, particularly over a trying last 12 months or so. This is a fantastic announcement that will set up a new station with better facilities for the fantastic firefighters in Morwell.

Public transport

Mr BARBER (Northern Metropolitan) — All of us here would understand that political parties are driven by political movements, and political movements are driven by ideas. This government ran out of ideas within about a month of being elected and spent years drifting until it found itself in so much trouble that it latched on to a particular idea, an idea that has been tried by many cities around the world but an idea that has failed and been rejected — the idea of the mega road project as the key to personal mobility, freedom and all wonderful things.

Unfortunately that idea has been comprehensively rejected by the people who were supposed to love it. Labor, after taking a series of opinion polls and getting a bunch of legal opinions, has belatedly decided that its big idea for this election will be public transport. It is the Greens who have consistently, at election after election after election, worked on the idea of public transport as the way to meet the needs of a busy, increasingly crowded but ultimately still livable city, and it is that idea that will be tussled over in the 72 days until the election.

Boral Western Landfill

Mr EIDEH (Western Metropolitan) — I rise to speak briefly on an issue that has been plaguing residents in my electorate for months. In May the Melton City Council rejected Boral's application to expand its landfill site, which would have increased the site by 179 million cubic metres of garbage, asbestos and other contaminates. I am still regularly receiving letters from and being contacted on a daily basis by my constituents. In those contacts they stress their opposition to any plan to make the west Melbourne's dumping ground.

I congratulate all those who have actively campaigned against this proposal. However, I remind them that this fight is not over as Boral has indicated that it will reapply for the expansion at the end of this year. If this expansion goes ahead in the future, my constituents will be faced with living under a cloud of debris during periods of westerly winds. In addition to this, the immediate surrounding suburbs, such as Burnside, Caroline Springs, Deer Park and Albanvale, will have their amenity destroyed and residents will see their

property values decrease significantly. I encourage all of my constituents to continue to fight hard against this proposed expansion to ensure that we can stop the tip.

East–west link

Mr RAMSAY (Western Victoria) — Today I want to use my members statement to say how disgusted I am with the Labor Party. Through its leader, Daniel Andrews, the member for Mulgrave in the Assembly, who sweated through a press conference looking uncomfortable, and understandably so, on realising that this was a doomsday policy, Labor has stated that if elected to government at the election, it will tear up the east–west link contracts. This decision by the Labor Party signals a number of facts. One is that Labor cannot be trusted. The second is that Labor has climbed into bed with the Greens to save inner city seats and is prepared to become an economic vandal to gain political office at any expense. It has sold its soul to the Greens. It has sold out western Victoria. It has condemned communities in western Victoria to years of traffic congestion confinement. It is prepared to forego 6200 new jobs and thousands of others and the $3 billion in commonwealth funding committed for one of the most important infrastructure road projects in the west.

It is unbelievable, even to Labor voters, but particularly to communities in western Victoria, that Labor would knowingly enslave the west to one river crossing, being the West Gate Bridge, and have those who live in regional Victoria subjected to long travel delays, traffic congestion and a loss of productivity for years to come. Even LeadWest has said that Labor's diversion option is a dog of a policy. It defies belief that any person with any ethical or moral fibre in their body would make such a decision, break the trust of the people they purport to represent and purposely inflict more traffic congestion misery on their people.

Industry groups like the Victorian Employers Chamber of Commerce and Industry, the Victorian Farmers Federation, the RACV and the Australian Industry Group, to name but a few, are outraged. But as we have seen from the Royal Commission into Trade Union Governance and Corruption, the parliamentary Labor Party has a serious problem with its union-dominated MPs and their morals and ethics. The cancer in the union-riddled party is seriously affecting its ability to exercise good judgement and provide good policy — —

The PRESIDENT — Order! Thank you, Mr Ramsay.

Local learning and employment networks

Ms DARVENIZA (Northern Victoria) — I am disappointed that the Liberal-Nationals state government refuses to continue funding for local learning and employment networks (LLENs) beyond the end of 2015. LLENs were created in 2001 as part of a strategy to improve school retention rates, lower youth unemployment and provide jobs to those most in need. A few months ago I spoke at a Building a New Generation Youth Leadership program event and I heard from participants just how vital LLENs are in keeping young people engaged with education and training. LLENs provide valuable support to young people in creating partnerships and brokering initiatives with education providers, industry and the community. They require ongoing funding to effectively plan programs and resources.

The fact that the Liberal-Nationals state government has only committed to one more year's funding shows a lack of understanding by the coalition of how important LLENs are in regional and rural communities. Thankfully Labor does have a vision when it comes to educating and providing jobs for our young people and will reinstate funding for local learning and employment networks for the next four years if re-elected.

Labor Party election candidates

Mr FINN (Western Metropolitan) — I rise to voice my concerns about the possibility of a looming breach of trust between certain elected politicians and the community. That potential breach comes closer every day as Victorians prepare to vote on 29 November. Sadly for the newly appointed Labor member for Northern Victoria Region, Margaret Lewis, her short period in office will end with the expiry of this Parliament, and we will miss her. In her place Labor is fielding another candidate, the current member for Eltham in the Assembly. The member for Eltham tells us that he is moving houses because he cannot cope with the workload involved in holding a marginal seat and his workload as a shadow minister. That is an interesting explanation, but could it be that after the election, as has been speculated, he in turn will give up his seat in the Legislative Council for Emma Walters, a former Construction, Forestry, Mining and Energy Union (CFMEU) official and the partner of CFMEU Victorian secretary and convicted criminal John Setka?

Is this part of a cosy Labor deal to bypass the democratic process and do the bidding of a rogue union, and has the Leader of the Opposition in the Assembly given his blessing to such a dirty deal? After

letting the CFMEU back into the party last year and accepting more than $10 million from it over the last decade, the ALP has shown itself to be the puppet of a rogue union. The Leader of the Opposition has been revealed to be a frontman for the CFMEU. Victoria deserves better than a frontman. It needs a real leader for the next four years in the form of Premier Denis Napthine.

TAFE funding

Ms TIERNEY (Western Victoria) — For more than three years Victorians have watched the Napthine coalition government systematically destroy Victoria's TAFE system. Victorians have seen valuable teachers and staff sacked, campuses closed, courses cut and fees go through the roof. We have seen educational opportunities to get ahead in life or make a new start for both young and older Victorians ripped away from their fingertips, and as a consequence we have seen youth unemployment skyrocket to the point that Victoria now has a youth unemployment crisis,

Last Thursday evening I attended a crowded TAFE forum in Geelong which addressed the issues that our TAFE system now has to deal with as a consequence of the Napthine government's systematic destruction of the TAFE system. Almost $23 million has been slashed from Gordon TAFE in Geelong, which has hurt the city's most vulnerable. There were 136 job losses between 2012 and 2013. One teacher described the ongoing battle with the funding cuts in the following way:

> Staff have lost their enthusiasm … our hearts are sore knowing we can't give our students the future they deserve …. When we lost staff, we lost people with expertise that we might never get back.

Victorians want a future, not a government that locks them out of TAFE, locks them out of training opportunities and locks them out of jobs. People in Victoria know what this government has done to them and their children, and they will vote for their futures on 29 November.

Medical cannabis

Mr TARLAMIS (South Eastern Metropolitan) — Recently the Leader of the Opposition in the Assembly, Daniel Andrews, announced that a Labor government will seek advice from the Victorian Law Reform Commission on how the use of medical cannabis could be permitted in exceptional circumstances — for example, where a person is terminally ill, receiving palliative care or has a life-threatening condition. We take a step forward on this issue knowing that the use of medical cannabis can indeed assist people suffering acute pain. A number of cases have come to light recently where concerned parents have found themselves on the wrong side of the law trying to treat their chronically ill children when other medicines have failed. Residents in my electorate who are suffering from debilitating illnesses, such as cancer, multiple sclerosis, glaucoma, Parkinson's disease and HIV/AIDS, have bravely shared their own personal stories with me and many of my colleagues about how pain management using legal synthetic pharmacotherapies have left them with barely mitigated pain and difficult side effects that they have had to endure on top of their illnesses. Many Victorians with terminal illnesses or life-threatening conditions want to use medical cannabis to relieve their pain and treat their conditions, but they cannot do so legally. Cannabis oil can have a powerful effect treating very sick children and adults by reducing symptoms with life-changing results. It is a substance that can change the life of a person suffering a debilitating illness.

To be clear, this is not about recreational drug use; it is about helping sick people live a better life. I appreciate concerns some may have. However, with this announcement society is being presented with a different perspective on the use of cannabis. It is in this regard that I commend the opposition leader's call to review this issue and seek recommendations through the Victorian Law Reform Commission. It demonstrates an ability to listen to the community, and it demonstrates a capacity for great leadership on an issue many find difficult.

INQUIRIES BILL 2014

Second reading

Debate resumed from 4 September; motion of Hon. M. J. GUY (Minister for Planning).

Mr SCHEFFER (Eastern Victoria) — The opposition supports the Inquiries Bill 2014. I will begin my contribution today with the report on the 2009 Victorian Bushfires Royal Commission and the words contained in volume III, *2009 Victorian Bushfires Royal Commission — Final Report — Establishment and Operation of the Commission*, part 5, 'Reflections', in which the commissioners have something to say about the way they worked together and where they recommend that legislation be introduced that would guide future royal commissions.

Reading the report on the bushfires royal commission — and all members have done so on many

occasions since its release in 2010 — one is struck by the humanity, the dignified and respectful tone that infuses the whole of this very lengthy and solemn document. It is powerful evidence that the commissioners, the Honourable Bernard Teague, Ronald McLeod and Susan Pascoe, were deeply sensitive to the enormous impact of the fires on the lives of so many Victorians, and of how well they listened to their stories and noted their needs. But the commissioners also found time to consider how they were discharging the task the Governor had set them, and in part 5, 'Reflections', at the end of volume III, they make the point that the 2009 Victorian Bushfires Royal Commission operated without a legislative framework and that they were largely left to determine their own way of conducting the commission.

The commissioners point to the Australian Law Reform Commission's 2009 report entitled *Making Inquiries — A New Statutory Framework*, as an example of the work underway to provide inquiries such as royal commissions with a sound administrative process and methodological footing. The Australian Law Reform Commission's inquiry was the first since the Royal Commissions Act 1902, which was 107 years previous, and it covers an enormous number of issues. They include the best form or forms of inquiries; the protection of privacy and disclosure of restriction; the national security implications of inquiries; questions of openness, transparency and public engagement; the structure of the types of inquiries; the statutory framework; the need for a handbook that maintains institutional knowledge; how reports should be tabled; issues relating to the implementation of recommendations; cost; inquiry powers; and matters relating to inquiries that may affect Indigenous Australians.

The Australian Law Reform Commission's report was clearly a document that had considerable value for the commissioners as they conducted the bushfires royal commission, and volume III of their report represents their contribution to this important discussion that includes recommendation 67 — that is, that the state develop and introduce legislation for the conduct of inquiries in Victoria, in particular for royal commissions.

The commissioners of the bushfires royal commission said their first priority was to ensure that the community was engaged in the process of the commission's work to the maximum extent and to produce a substantial report within budget. The commissioners noted that the key challenges were that they embarked on their task in the wake of a major catastrophe that involved the deaths of 173 people, that their time was limited and that they needed to maximise the benefits of working within a legal model that had advantages but also disadvantages.

The commissioners decided to innovate within the parameters that had been set and conducted community consultations, live streaming of the hearings and the use of expert panels, but in the end they felt that future royal commissions and inquiries should not be left to grapple with these issues and that more enduring arrangements should be determined. That brings us to the bill — which the opposition supports, as I said earlier — to establish Victoria's first dedicated legislation for royal commissions and other ad hoc executive inquiries, such as boards of inquiry and formal reviews.

The second-reading speech and the explanatory memorandum for the bill set out the features of the legislation, namely, that the bill confirms the current practice that the Governor in Council can establish a royal commission, nominate the commissioners and set out the terms of reference. Royal commissions will have wideranging coercive powers to enable them to obtain documents they require and to compel witnesses to appear to give evidence under oath, and they can enter and search premises if they have a warrant. Under the legislation royal commissions will have greater flexibility than courts. Royal commissions will not be bound by the rules of evidence and can abrogate legal professional privilege and partially abrogate the privilege against self-incrimination, and they can prevent self-incriminating evidence from being admissible against a person in subsequent proceedings.

Under the provisions in the bill the Governor in Council can establish boards of inquiry and set out their terms of reference, but a key difference between a board of inquiry and a royal commission is that a board of inquiry has a narrower range of coercive powers and cannot abrogate privileges nor enter and search premises. In addition, boards of inquiry are to be less formal than royal commissions, but the bill indicates that where the issues being investigated by a board of inquiry warrant greater power, there is a capacity to convert the board of inquiry into a royal commission.

The bill provides that the Premier or a minister, with the consent of the Premier, may establish a formal review to inquire into and report on specified matters set out in certain terms of reference. A formal review will have no coercive powers, and the evidence the board is after can only be given voluntarily. There is no requirement for a report to be tabled in Parliament.

Aside from establishing these three types of inquiries, the bill also gives a general flexibility to inquiries once they are underway in recognition of the fact that every inquiry is unique and must be permitted to function as the chair and commissioners see fit within the framework set by the legislation and the terms of reference for the inquiry. Those constraints go to protecting witnesses and include procedural fairness, the right to legal representation and the opportunity to respond to proposed adverse findings, as well as ensuring that any answer or information or document that is produced by a person in the course of an inquiry cannot be admitted against that person in any other proceeding.

Another important provision that should be mentioned in this debate is that the provisions of the Freedom of Information Act 1982 do not apply to any document in the possession of an inquiry, but persons who conduct and support an inquiry will be subject to the jurisdiction of IBAC. The exemption of royal commissions, boards of inquiry and formal reviews from the provisions of the freedom of information legislation gives the relevant inquiry control over its documents during the operation of the inquiry, and the explanatory memorandum states that this means that where the inquiry provides an agency with a draft report, that report cannot be obtained under the freedom of information regime. Such documents will be available after the conclusion of the inquiry.

In 2011 the research service in the parliamentary library published a paper entitled *Royal Commissions in Victoria — 1854 to 2009*, and I am indebted to the library and the writer, Adam Delacorn. At the time the research was conducted, which was prior to the introduction of this bill, it was difficult to define a royal commission in Victoria. However, the key features of a royal commission are that it is initiated by the executive and established by letters patent, it is independent, open to the public and it provides an inquisitorial or policy advice function. The paper traces the history of royal commissions, from 1854, when the first royal commission was conducted, to 2009, and the changes that have occurred over time, such as how up until 1928 MPs were appointed as commissioners, an action that today would be seen to compromise the independence of a royal commission.

That is an interesting point, because members of Parliament do in fact exercise independence in the performance of their roles. By way of example I refer to the role of the President of this place, where an ordinary member, once elevated to the adjudicating role of President, is perfectly capable of being independent. Another example is the role that MPs play in parliamentary committees, whereby they are required to rely on evidence gathered through formal hearings and on authoritative research. They act independently. Every day, in relation to constituent issues, members of Parliament are required to assess requests for representation. They are required to act independently in the best interests of their constituents, within the context of the law and the procedures available to them.

Of course there have been examples in recent times where MPs have been appointed by the executive to conduct inquiries or consultations, and they have been meritorious and very often of considerable value; however, I accept that this independence that MPs exercise every day is not widely understood, and it is unlikely that an executive would appoint an MP as a commissioner or member of an inquiry today. It seems to me that the question is not only about who is appointed as a commissioner or a member but also about the framework in which they are required to conduct the inquiry, and the provisions of the legislation before us today make a significant and positive contribution to strengthening inquiries.

Mostly, former members of the judiciary are appointed as commissioners and members of inquiries, especially in the case of royal commissions. That is because they clearly have a profound understanding of the law, they have experience in assessing and making determinations on complex matters on the basis of evidence, and they are highly respected across the community. While former members of the judiciary are certainly suitable persons to conduct royal commissions and other inquiries, there are others who might also be drawn upon — ethicists, philosophers and scientists, for example — and it is a good thing that the bill leaves the question of who is appointed to conduct inquiries to the executive of the government of the day.

Referring again to the parliamentary library's research paper, the paper states that royal commissions fall into two types: inquisitorial and policy. The earliest of them were commissioned to consider policy matters — interesting issues, such as the best method to remove sludge from the goldfields, the defence of the colony, internal communications and the conditions and prospects of the goldfields. The first inquisitorial royal commission was in 1862, and it inquired into the circumstances connected with the sufferings and death of Robert O'Hara Burke and William John Wills, the Victorian explorers.

It was not until 1877 — 23 years after the first royal commission — that there was a commission appointed to inquire into what was called the 'present condition of the Aborigines', the report of which is now available in

full on the Parliament website. The commission's report stands as shocking testimony of the brutal treatment of Victorian Aboriginal people at the hands of the European invaders and the incapacity, in my view, of the men who conducted the commission to see, much less understand, the preventable harm perpetrated against Aboriginal people. It is worth noting that it was not until 1923 that the first woman was appointed to a royal commission. Eleanor Glencross, who was described as a 'feminist and housewives' advocate' in the *Australian Dictionary of Biography*, was a commissioner on the Royal Commission on the High Cost of Living.

While royal commissions and executive-instigated inquiries appear to be widely respected by the community, they do not always warrant this respect. Executive government needs to be very considered in its use of inquiries, as they always operate in political contexts that can be highly charged. The difficulty for executive government is that royal commissions, once they commence, have a life of their own and cannot be controlled by government; so it is folly for governments to think that a royal commission is a way of setting up an arena or a media circus that will unleash damaging stories to harm political opponents.

It is fair to say that in recent times most royal commissions and inquiries have greatly benefited the community. The royal commissions into the Victorian bushfires, the metropolitan ambulance services and the Esso Longford gas plant accident, as well as the recent board of inquiry into the Morwell coalmine fire, have all been important and have made valuable observations. They have documented events and experiences for posterity, formulated clear recommendations to prevent or minimise future harm and proposed improvements to current practice.

The Labor opposition's commitment to establishing a royal commission into domestic violence is another example of an issue that is of an appropriate scale for a royal commission, and I hope a royal commission into this matter will be instigated, whichever party wins government in November.

In conclusion, the Inquiries Bill 2014 is a good piece of legislation, and the opposition will not be opposing its passage.

Mr ONDARCHIE (Northern Metropolitan) — I rise to speak to the Inquiries Bill 2014. This bill demonstrates the government's commitment to having an open, transparent system of review in Victoria. Politics and government are being studied in our secondary colleges this year, and people are very interested in how systems of government work. Ivanhoe Grammar School is an example of a school that teaches politics, and it is always interested to know how we as a government ensure that we maintain transparency and keep the ball rolling on great initiatives like IBAC. Students, teachers and other citizens are always interested in making sure that they can have faith in their government.

This bill provides for the establishment and conduct of executed inquiries in Victoria. It creates three forms of inquiry that can be established by government to inquire into any matter. The first is a royal commission, which will remain at the apex of the hierarchy and will be able to exercise extensive coercive and investigative powers. The second is a board of inquiry, which is a mid-tier inquiry option. These inquiries will be able to exercise a more limited range of coercive and investigative powers. The third is a formal review, which is the lowest tier of inquiry. The latter types of inquiry will not be able to exercise coercive powers but will receive information voluntarily.

The bill creates a framework for these three types of inquiry with the differing levels of power I have outlined. The government will choose the type of inquiry that best suits the nature and importance of the subject matter. In particular the government will consider what powers are necessary to effectively conduct an inquiry when determining which type of inquiry to establish. The bill provides the executive government with the option of converting a lower level inquiry into a higher level inquiry if it subsequently becomes necessary for an inquiry to have further powers.

I will touch on the differences between the three types of inquiry. A royal commission can require individuals to give information and produce documents, and it can enter and seize material from premises under a court warrant. It can override certain privileges and statutory secrecy obligations. A board of inquiry is able to require individuals to give information and produce documents. It cannot enter premises or override privileges but can override certain statutory secrecy obligations. A formal review, the lowest level of inquiry, cannot exercise any of these coercive powers. However, it can request and seek information that is provided voluntarily.

Victoria is one of the few Australian jurisdictions without specific legislation for executive inquiries. The existing legislation is both dated and unwieldy, and as a consequence has been strongly criticised by previous royal commissions.

The government has left royal commissions at the top of the pedestal when it comes to inquiries. Royal commissions have the broadest ranging powers and are reserved for only the most serious of matters. We have seen crucially important royal commissions and inquiries, such as the royal commission into the 2009 Black Saturday bushfires and the inquiry which produced the *Betrayal of Trust* report. I commend the members of that parliamentary committee, in particular my friend and colleague Ms Crozier, who chaired that inquiry, on their work.

Interestingly enough, the member for Melbourne in the Assembly mentioned the Labor Party's commitment to establishing a royal commission into family violence. While no-one could oppose such a measure on principle, that would simply be effectively a lawyers' picnic for $50 million that could otherwise be put into programs to help women avoid violence. Establishing a royal commission simply does not add up.

When it comes to violence against women and protecting our vulnerable people — our elderly, our women and others — on the streets, there is no greater example of silence from the Australian Labor Party than that on the issue associated with the Moreland City Council that has come up this week. In response to the tragedy associated with Jill Meagher, 19 months ago this government pledged $250 000 for Moreland City Council to put up closed-circuit TV cameras to add to security and deter crime on Sydney Road, Brunswick. Here we are 19 months later and those cameras are partially in but none of them is working. All we are getting from the mayor, Lambros Tapinos, and his supporter group in Moreland are excuses, excuses, excuses. They have de-prioritised the safety of people in the city of Moreland. It cannot be said that it is purely about councillors and Labor, because Cr Oscar Yildiz, who is a member of the Labor Party, has been critical of the fact that Moreland City Council has not put in the cameras. He has been critical of Moreland City Council members prioritising other political endeavours ahead of safety for their community.

What has been disappointing is that my colleagues across the chamber who represent Northern Metropolitan Region, where Moreland is, have been silent. In particular, Ms Mikakos has been silent about Moreland's inaction. I wonder why she is not joining the government in condemning Moreland City Council for not putting up the cameras and getting them operating. It is now nearly two years since the tragic death of Jill Meagher, and Ms Mikakos has been silent. This is a classic example of politics over people. Ms Mikakos is happy to support Labor mayor Lambros Tapinos, and not be critical of his excuses and inaction on putting cameras in place.

By way of conclusion, I refer to the independence of inquiries. The independence of executive government is a fundamental feature of the three forms of inquiry. That independence reflects the important public purpose the inquiries serve and is necessary if they are to be effective. The bill allows the executive government to establish an inquiry, set its parameters, such as the terms of reference and reporting date, and appoint its key personnel. They are appropriate roles for government. However, once an inquiry is established, the government has no further role in directing the conduct of the inquiry — for example, an inquiry and its personnel are not subject to ministerial direction or control. Further, inquiries have autonomy to determine how to manage the inquiry's operations, including the employment and engagement of staff and the conduct of the inquiry.

The Inquiries Bill 2014 is an outstanding step forward and another example of the Napthine coalition government building a better Victoria. I commend the bill to the house.

Ms PENNICUIK (Southern Metropolitan) — The Inquiries Bill 2014 establishes dedicated legislation for setting up royal commissions and other executive inquiries. Victoria is one of the few jurisdictions in Australia without specific legislation for establishing inquiries that can be set up by the executive to varying degrees. In his contribution, Mr Scheffer mentioned the excellent research paper written by Adam Delacorn, a research officer in the parliamentary library. The paper states that following a review as long ago as 2006 the then Victorian Law Reform Committee recommended the enactment of a Victorian royal commissions act. Almost a decade on, we have such legislation before us.

The bill retains the inquiry models, such as they are. The bill will apparently modernise and build on the existing legislative provisions in the Constitution Act 1975 and the Evidence (Miscellaneous Provisions) Act 1958. The provisions in those two acts relating to inquiries are fairly brief. The Constitution Act really just provides the power for the establishment of inquiries and oversight of the conduct of those inquiries by the Supreme Court, which oversight I am assuming is maintained by this bill. I put that question to the Leader of the Government.

The bill creates a framework for the establishment and conduct of three types of inquiry that may be established by the executive government at any time to inquire into any matter. Those three types of inquiry

will, firstly, be royal commissions, which will remain at the apex of the hierarchy, if people want to describe them that way, of inquiries. They will be able to exercise extensive coercive and investigative powers, as they already do. The second tier of inquiry will be boards of inquiry, which are described as a mid-tier option. They will be able to exercise a more limited range of coercive and investigative powers and will not be able to abrogate privileges. What are described as formal reviews will be the lowest tier of inquiry. They will not be able to exercise coercive powers but will be able to receive information voluntarily. Examples of that are the Protecting Victoria's Vulnerable Children Inquiry and the parliamentary inquiry chaired by Ms Crozier, who is in the chamber at the moment.

The Premier mentioned the Hazelwood inquiry in his second-reading speech for the bill in the Assembly, and I will turn to that a bit later. At the moment these inquiries are established by executive government without any legislative basis or recognition in any act of Parliament. The bill sets up the three types of inquiries under the act. Interestingly, there are other ways of doing it. For example, the Australian Law Reform Commission has recommended a two-tier system. At any rate, we have this bill setting up the three-tier system.

The bill provides for a number of matters in relation to the establishment and conduct of these inquiries, including a process for establishing an inquiry; the administrative arrangements for an inquiry, including the employment of staff and consultants; the manner of conducting an inquiry; the powers and protections of inquiry members; the rights and protections of participants in an inquiry, which I will return to based on one of the issues raised by the Scrutiny of Acts and Regulations Committee; and the process for reporting inquiries to Parliament. The bill does not go to the purposes of setting up such inquiries, which once again I will return to a little later in my contribution.

Royal commissions will have the broadest range of coercive powers, and are likely to be conducted with the greatest level of formality. They will be engaged to conduct inquiries involving the most significant and serious matters. The bill gives no guidance as to what types of matters should be referred to what types of inquiry, although it does provide that if a matter is being inquired into at the lowest tier — that is, by formal review — and it appears from the evidence being given to the inquiry that it needs to become a more serious inquiry, such as being scrutinised by a board of inquiry, it can be upgraded. A board would then have a limited range of coercive and investigative powers. If a board finds that its investigations are leading to the conclusion that the inquiry needs to be upgraded to a royal commission, the bill does also allow for that to happen based on the evidence coming forth to the inquiry.

A royal commission would be established by the Governor, on the advice of the Premier, under letters patent published in the *Government Gazette*, as is currently the case, but it may also be established other than under the proposed act. The bill says that a royal commission may be established otherwise but it does not give any details as to how that may come about or by whom it could be established. The letters patent must specify the persons undertaking the inquiry, where there is more than one person the chair of the commission and the terms of reference of the commission.

A commission is not bound by the rules of evidence and may inform itself in any matter it sees fit. A commission must comply with the requirements of procedural fairness, however, under clause 12 of the bill. A person may be allowed legal representation under clause 15 and must be given an opportunity to respond to any personal adverse findings under clause 36. Similar provisions apply to a board of inquiry and a formal review. A royal commission may take evidence on oath or affirmation, may by notice summons a person to attend and may compel the production of documents or things. The Supreme Court may compel compliance with a notice served under these provisions and a commission may apply to the Magistrates Court for a search warrant.

A commission or a board of inquiry does not have powers over certain public entities, including the courts, IBAC, the Ombudsman and the Director of Public Prosecutions. The Premier outlined this in the second-reading speech. A commission's proceedings or part of its proceedings may, where necessary, be closed to the public if the nature and subject matter are sensitive, or prejudice or hardship might be caused to a person. Persons who disrupt proceedings may be expelled. Similar provisions exist in relation to boards of inquiry and formal reviews. A commission may prohibit or restrict publication of its proceedings; factors for this include prejudice or hardship that may be caused to any person through the publication due to the nature and sensitivity of the information, or potential prejudice to the legal proceedings. Similar provisions apply to the proceedings of a board of inquiry and a formal review.

Legal professional privilege does not apply in respect of evidence or documents required to be given or produced before a commission. The abrogation is consistent with current provisions in the Evidence Act

2008. However, the act makes the proviso that privilege does not cease to attach to the evidence merely because it is being given to the commission. This privilege is not abrogated in respect of a board of inquiry or a formal review. Public interest, immunity and parliamentary privilege are not abrogated.

A person must comply with a requirement to give evidence to a commission even if that evidence may incriminate the person and make the person liable to a penalty other than where the privilege is claimed in relation to proceedings which have been commenced against the person but not yet finally disposed of. This is not uncommon in royal commissions but is not the case with official inquiries. The commission should have the power to require a person to answer a question or produce a document notwithstanding that such an answer or production may incriminate the person or expose that person to a penalty. A use immunity is provided by the bill and the statement of compatibility says that the abrogation of this privilege is balanced by a use immunity which ensures that material given to a commission by a person is inadmissible in any subsequent proceedings against that person.

The immunity extends to information, answers, documents and things. It applies directly to all materials obtained by the commission, whether by compulsion or voluntarily. In cases of self-incriminating material, the Supreme Court has held that similar immunity provisions extend to other evidence obtained as a direct result of such materials, and it applies in all subsequent criminal, civil and administrative hearings before a court or tribunal in any disciplinary proceeding.

There are limited exceptions to this immunity which allow materials to be used in proceedings for an offence under the act, or for perjury or destruction of evidence under the Crimes Act 1958. Documents may also be used where they are or could have been obtained independently of their production to the commission, either before or after that production. This ensures that authorities are not prevented from making use of documents they have obtained or could have obtained independently of the royal commission inquiry.

Statutory secrecy and confidentiality do not apply in respect of royal commissions and boards of inquiry to government departments and agencies, other than the bodies specified by the bill. A department cannot argue that a person is unable to comply with a requirement to give information because other enactments prohibit them from doing so. The bill makes provisions for offences concerning confidentiality of information obtained by the commission, failure to comply with notices to attend and produce documents or things, failure to take an oath or affirmation, failure to answer questions and other offences concerning the integrity and security of a commission's proceedings.

The bill also provides that a person who is given information by a commission or board of review or an officer of those bodies in the course of the inquiry must not take advantage of the information to benefit themselves or any other person, unless the information is lawfully in the public domain. This attracts a penalty of 12 months in prison or 120 penalty units. This applies to a commission or a board of review. This is the issue that was raised by the Scrutiny of Acts and Regulations Committee (SARC) with regard to clauses 45, 85 and 117. The committee noted that:

> … these provisions may apply to honest or innocuous behaviour. The committee will write to the Premier seeking further information.

The committee observed that:

> … offences of this type usually only apply to statutory officers and, in that context, are designed to prevent the misuse of public office. Such officers typically have the knowledge and resources to identify relevant ethical constraints on their behaviour. By contrast, clauses 45, 85 and 117 apply to any people, including witnesses before an inquiry.
>
> The committee notes that the terms of clauses 45, 85 and 117 may apply to honest or innocuous behaviour, such as a person altering his or her testimony in response to the information, seeking legal advice concerning the information he or she received or adjusting his or her work practices to avoid a potential hazard suggested by the information.

The Premier responded to a letter from SARC, defending the aforementioned clauses. Amongst other things, the Premier said:

> Given the wide subject matters that inquiries can investigate, it is appropriate that these clauses do not apply only to public officers. The effect of the clauses is intended to be similar to the 'implied undertakings' that apply to all parties in respect of discovered documents in civil litigation.
>
> These clauses are not intended to apply to 'honest or innocuous' behaviour. It is intended that these clauses will be interpreted in the context of the bill as a whole, which contemplates that inquiries involve persons considering, responding to, and obtaining legal advice on information before inquiries.

That may be all well and good, and it is useful to have the Premier's response to the query raised by SARC. But the response assumes that all persons who may be participants in an inquiry, in particular witnesses, will have access to and obtain legal advice on information before the inquiry. That may not be the reality.

The Premier went on to say:

> Further, taking advantage of information is intended to capture behaviour that involves profiting or gaining from that information for a purpose other than the inquiry. For example, using the information to obtain a commercial advantage.

Of course nobody would want to see that happening, so that should be an offence. The Premier has gone some way to explaining or clarifying that provision, but, as I mentioned, the assumption that everyone has access to or has obtained legal advice may not be borne out.

The bill provides that within 30 days of the Governor receiving a royal commission report the Premier must cause the report to be laid before each house of Parliament or, if neither house is sitting, be given to the Clerk of each house. The publication of any report so tabled is absolutely privileged within the meaning of sections 73 and 74 of the Constitution Act 1975. The same applies to boards of inquiry. A formal review must be delivered to the Premier and, where necessary, to the minister. The bill goes on to provide similar establishment provisions regarding boards of inquiry and formal reviews, with the differences in the powers attributed to those types of inquiries that I mentioned earlier.

Royal commissions and other executive inquiries serve an important role in examining issues of public interest independently. It is important to provide some legislative basis for their establishment. One issue that I mentioned earlier is that this bill does not go to the issue of the purposes of inquiries. Prior to the United Kingdom's Inquiries Act 2005, a lot of inquiries had been set up in an ad hoc way, which is in fact the situation in Victoria at the moment. In 2009 a House of Lords select committee conducted its post-legislative scrutiny of the Inquiries Act 2005, which looked into how it was proceeding four years after the establishment of the act. That would probably be a good thing for a future Parliament to consider, once this act has been in operation for a number of years.

Interestingly the report mentions the purposes of inquiries, which include establishing the facts, especially where they are disputed or the chain of causation is unclear; determining accountability; learning lessons and making recommendations to prevent recurrence, often by improving the constitution and powers of regulatory bodies; allaying public disquiet and restoring public confidence; catharsis, an opportunity for reconciliation between those affected by an event and those whose actions caused it or whose inaction failed to prevent it; developing public policy; and discharging the obligations of the state to satisfy international conventions.

The second-reading speech of the Premier says that they are also a catalyst for change, with the reports and recommendations of previous inquiries delivering far-reaching benefits for the Victorian community. Interestingly the two inquiries mentioned by the Premier in his second-reading speech were the Royal Commission into Institutional Responses to Child Sexual Abuse and the inquiry into the Hazelwood coalmine fire, which it is acknowledged had no legislative basis. He was implying that that inquiry was exemplary. The Greens would beg to differ on that. In fact that inquiry highlights how inquiries may fall short, even in part, of the ideals of what an inquiry should be achieving, as I said when referring to the House of Lords inquiry into legislation and conduct of inquiries in the UK.

My colleague Greg Barber has made comments on the Hazelwood inquiry, including that apart from an emergency response, the Hazelwood inquiry report recommends no particular measures to make the mine itself safe to avoid a repeat of the disaster that we saw earlier this year. The response notes that rehabilitation is complex, costly and time consuming, and simply suggests that the mine owner should go away and study the problem. That recommendation is not good enough, and the state government needs to step in. The rehabilitation bond is not enough, and the current work is inadequate. Rehabilitation will not come cheap, and it is the power company that should be paying. Also of concern is that Morwell residents and others have said that the report should have made stronger recommendations on the current and future health of residents. The recommendations as far as the health department is concerned were really weak.

The Greens have raised this issue in Parliament. There is nothing to really push the health department to do anything now for the immediate impacts. In fact it could be said that the report of the inquiry into the Hazelwood coalmine fire should have been an interim report because of the ongoing issues with regard to no recommendations about prevention, actions for prevention of a similar incident either at that mine or at similar mines around Victoria, and indeed around Australia, and about the ongoing health issues that are continuing to be raised, seen and observed in residents affected by the fire.

Another issue is that, given the important purpose of executive inquiries, before introducing this legislation ideally the government should have established a committee to inquire into the establishment of this legislation that could consult with all relevant stakeholders as to how to legislate for inquiries in the best interests of this state. Such a consultation could be

similar to the House of Lords select committee conducting its own inquiry, which took evidence from the Ministry of Justice, special academics and legal experts, and Liberty, and visited another inquiry to hear it take evidence. Likewise, the Australian Law Reform Commission (ALRC) in its report *Making Inquiries — A New Statutory Framework*, report 111, undertook a comprehensive review of the Royal Commissions Act 1902 and related issues, which involved ensuring that all stakeholders and interested members of the public had an opportunity to participate in the inquiry. The commission produced an issues paper and discussion paper before producing its final report, and it also used a website to facilitate community education and participation in the inquiry. Nothing of the sort has happened in Victoria in the lead-up to this bill.

The terms of reference for the Australian Law Reform Commission report included whether there is a need to develop an alternative form or forms of commonwealth executive inquiry with statutory functions to provide more flexibility and less formality, whether there is a need to develop special arrangements of powers for inquiries involving matters of national security, the appropriate balances between powers of persons undertaking inquiries and the protections of the rights and liberties of persons interested in or potentially affected by inquiries, and the appropriateness of restrictions on the disclosure of information to and use of information by royal commissions and other inquiries, which is an issue I have talked about in my contribution to this debate. Interestingly the ALRC report recommended that the commonwealth Royal Commissions Act 1902 should be amended to provide for the establishment of two tiers of public inquiry — royal commissions and official inquiries.

The House of Lords Select Committee on the Inquiries Act 2005 welcomed views on a number of issues that included the following. What is the function of public inquiries? What principles should underlie their use? Are inquiries generally set up when they are needed and not when they are not? Are there examples of cases of where an inquiry would have been useful but was not set up? Are there cases of where an inquiry has unnecessarily been set up to deflect or defer criticism? Is there a danger that the role of ministers will prevent the setting up of inquiries into their conduct or restrict the roles of inquiries looking into the conduct of ministers? Hopefully under this bill that will not be the case. Other issues referred to include whether the recommendations of inquiries were adequately implemented, whether there should be a procedure for an inquiry to reconvene to consider this and whether lawyers or counsel acting for an inquiry or representing those complaining or complained against make an appropriate contribution.

Nothing like that occurred in Victoria before introducing this legislation, important legislation as it is. The need for it is clear, but we do not know whether this particular piece of legislation is perfect and perfectly adapted to the needs of Victoria, because there has not been any public inquiry into it. Government members may have referred to the Australian Law Reform Commission report and the very good parliamentary library brief, but there have been no public hearings in regard to this legislation. There could be an opportunity for former royal commissioners and others to give their views on the matter.

For these reasons I will attempt to refer the bill to the Legal and Social Issues Legislation Committee for inquiry and report by the first Tuesday of the next sitting week, which would allow time for the bill to pass through this Parliament.

Motion agreed to.

Read second time.

Referral to committee

Ms PENNICUIK (Southern Metropolitan) — I move:

> That the Inquiries Bill 2014 be referred to the Legal and Social Issues Legislation Committee for inquiry, consideration and report by 14 October 2014.

This bill sets up a framework for the establishment of royal commissions, boards of inquiry and formal reviews. It is an important issue of public interest, but the public has had no opportunity to consider this legislation in an open and transparent way. There has been no public inquiry. My motion for referral seeks to give at least a couple of weeks for interested members of the public and people who have been intimately involved in past inquiries to present to the committee their views during a hearing or by written submission. The committee can then report back to the Parliament about the bill.

I do not foresee any great problems with the legislation, but some problems may be identified through the inquiry, and it is always best to identify problems prior to the legislation being passed rather than afterwards. During the establishment, via a number of bills that came through the Parliament, of the Independent Broad-based Anti-corruption Commission, the Victorian Inspectorate and the Public Interest Monitor, we certainly know that from the outset many people, including me, identified flaws with the legislation.

I attempted to refer that legislation to the Legal and Social Issues Legislation Committee, which could have called for submissions, held hearings and heard from the horse's mouth, so to speak — for example, from people from other states around Australia who are involved in these issues — as to the problems with IBAC. Those problems were outlined over several years, but the government refused to have the bill referred; it refused to listen to the criticisms. Now we have a bill — which I looked at yesterday — arriving in the Parliament at 5 minutes to midnight which is supposed to fix up the problems. The matter could have been dealt with earlier if the bill had been considered by the legislation committee that is set up to do that job.

The bill before us could be sent to the committee, which could spend a good couple of weeks looking at it and report back to the Parliament before it is passed, thereby preventing any of the issues that we have seen arise with the establishment of IBAC, for example. The establishment of royal commissions, boards of inquiries and formal reviews in the Victorian statute is as important an issue as the establishment of IBAC.

The 2009 Victorian Bushfires Royal Commission was of course not the first royal commission into bushfires; there have been several. The royal commission that looked at the 1939 bushfires made recommendations in regard to such things as where people should build houses, but those recommendations were ignored. That goes to the issue raised by the House of Lords select committee about the implementation of recommendations made by inquiries, which is sometimes less than perfect.

This is an important piece of legislation and therefore deserves scrutiny by the Legal and Social Issues Legislation Committee.

Hon. D. M. DAVIS (Minister for Health) — Whilst I appreciate the points Ms Pennicuik made and the spirit in which she has moved this motion, in this particular circumstance I am conscious of the limited time we have to get this bill through the chamber. I am also conscious of the fact that part of the genesis of this bill came from the royal commission itself. In that circumstance I believe the bill should now proceed. A number of useful points have been made throughout the debate, but notwithstanding that, on this occasion the government will not support a referral.

Ms PENNICUIK (Southern Metropolitan) — As I said in my motion to refer the bill, it is not that I am expecting it to have major problems, but all pieces of legislation can cause issues. It is quite a large bill and has a lot of technical amendments and some important principles that could be investigated by the committee.

Notwithstanding that, the minister made two points I would like to respond to. Firstly, this bill comes out of the 2009 Victorian Bushfires Royal Commission. I do not need to be constrained by the fact that the bill has arrived in the second-last week of Parliament, when it has been several years since the handing down of the bushfires royal commission report and the arrival of this bill.

It is very quaint of Mr Davis to say that on this particular occasion the government will not be agreeing to the referral of the bill. For the information of members, this is the 47th bill for which a referral motion has been moved in this chamber, only four of which have been agreed to. We know that of those four motions, three were for private members bills introduced by the Greens and one was for the Wills Amendment (International Wills) Bill 2011. Every other attempt to refer legislation to the Legal and Social Issues Legislation Committee or the other legislation committees set up by the Legislative Council to look at legislation has been rejected by the government.

House divided on motion:

Ayes, 18

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

Noes, 20

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

Pairs

Viney, Mr	Atkinson, Mr

Motion negatived.

Third reading

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

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

In doing so, I thank all parties for their support for this bill and all members who made a contribution to the debate. In discussions, Ms Pennicuik raised a matter with me. She asked: does the bill in any way alter the arrangements with respect to the Supreme Court? I inform her that I sought advice on that matter and confirm both her understanding and mine that the bill does not in any way alter the Supreme Court's inherent jurisdiction. I hope that assists her with that matter.

I also say that the bill completes a further step in the government's work in ensuring that the recommendations of the bushfires royal commission are implemented. This bill is a further step in that process. I thank all members who have contributed to its passage.

Motion agreed to.

Read third time.

RESOURCES LEGISLATION AMENDMENT (BTEX PROHIBITION AND OTHER MATTERS) BILL 2014

Second reading

Debate resumed from 4 September; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Mr BARBER (Northern Metropolitan) — On the matter of energy Victoria is quite literally standing at a crossroads. There are two energy futures in front of us and one behind us, and not only do the parties around this Parliament need to make a choice on this bill but the whole of the Victorian public will be making a choice between those two energy futures, which will start to roll out very quickly. The choice is between a future based on natural gas, which is getting more expensive and is highly polluting with a large impact across the landscape, and a future based on renewables, which are getting cheaper all the time and whose environmental footprint is minimal.

The past that is rapidly receding behind us is based on coal, and there will be no future development of coal or coal generation in Victoria. As Bloomberg said yesterday, the window for major coal development has now closed. The two major markets of China and India are setting a new course which will see lowered coal demand. Here in Australia, with an excess of coal-fired generation but huge exit costs in rehabilitation and so forth required, there will not be another coal-fired power station ever built.

Ms Pennicuik — Hear, hear!

Mr BARBER — It is worth not only understanding it but celebrating it. We have some of the most polluting coal-fired plants in the world. The environmental impact of those at both the local and global level is more than any Victorian citizen is willing to bear. It comes back to those two choices: gas, which is getting more expensive, and renewables, which are getting cheaper. That is exactly what is in front of us here today with the Resources Legislation Amendment (BTEX Prohibition and Other Matters) Bill 2014. Make no mistake, the government's bill is not about banning benzene, toluene, ethylbenzene and xylenes (BTEX); it is about regulating BTEX in the future rollout of an unconventional gas drilling industry, which is right round the corner.

The government's policy is to have a moratorium on this issue until July next year, and Labor's policy was to have a moratorium while it did further study, but it is very clear that both parties are committed to the development of some sort of gas drilling industry onshore in Victoria; it is just that they want to have an argument about how it should be regulated, and this bill is part of that argument.

Mr Ramsay interjected.

Mr BARBER — I know what the bill says, Mr Ramsay, but it is the mechanics of the bill itself that we will need to get into in order to understand if that is the case.

Mr Ramsay — Scaremongering again.

Mr BARBER — Mr Ramsay says I am scaremongering. On a Sunday night just a few weeks ago residents in the south-western Sydney suburb of Camden were woken up by a loud hissing noise. There are 144 coal seam gas wells in the Camden area. The hissing noise was one of the wells suddenly releasing methane gas under high pressure close to houses.

Mr Tee — It does not sound good.

Mr BARBER — It does not sound good, Mr Tee. Fire and Rescue NSW cordoned off the area. Frightened residents came out into the street in the middle of the night. AGL described the leak as being something the gas release valves were designed to do; they were operating, in the words of AGL, 'exactly as

is designed', which pretty well summarises the arguments against fracking and my response to this bill.

The chemicals that go into a fracking operation are toxic, but they are nothing compared to what comes out — what comes out is a nightmare. Even when a fracking operation is working exactly as designed, it releases explosive gas and toxic chemicals. But it never works as designed. Once you fracture rock, there is no way of telling where the fractures will form and what will flow through the fractures. It is impossible to prevent cross-contamination of freshwater aquifers and gas leaks coming up through dams or soil to the surface. Even when they do not use fracking, the process of extracting unconventional gas creates uncontrollable emissions, which brings me to one of the central themes of this bill, the value to Victoria of a farm compared to the value of mining.

Victorian farms and communities are under threat from new coalmines and unconventional gas, which may also involve fracking. This bill goes to the issue of comparing the value of a farm against the minerals beneath it. There should be no contest, especially when mining and drilling have the potential to damage the soil, poison the groundwater or cover everything in toxic coal dust, including an entire town. Farming is the long-term good, our prosperity is based on farming and our future survival depends on it. The areas most threatened by mining and drilling are the food bowl areas of Victoria. Food production depends on fresh water from dams, streams and sometimes from aquifers. Water is food, and any risk to our water is an unacceptable risk.

Gippsland is blanketed in exploration licences for coal and gas — 18 exploration licences for coal seam gas and 4 for tight gas and shale gas.

Mr Ramsay interjected.

Mr BARBER — I will take up the interjection. Mr Ramsay is absolutely correct: most of those licences were issued under a Labor government.

Mr Ramsay — Shame!

Mr BARBER — 'Shame!', he says, and I agree. What we need here is a permanent ban on the issue of these licences, not Mr Ramsay's temporary moratorium while more study is done. Whichever party is the next government will have a very real decision to make on whether to continue or reissue any new licences and in particular licences for the extraction of coal, such as out at Bacchus Marsh, which I may return to if I have time. Lakes Oil conducted 11 fracking operations in Gippsland before the 2012 moratorium, and the company now known as Ignite Energy Resources conducted 12 fracking operations. Gippsland produces 30 per cent of Victoria's milk, 23 per cent of Australia's dairy, 25 per cent of our beef and $82 million worth of vegetables, based on conservative figures. Yesterday I received an invitation from the Victorian Farmers Federation (VFF) to visit some of its members' farms.

Mr Ramsay — Chook farms, anyway.

Mr BARBER — I have visited a lot of farms in the last little while, and I make it a habit to ask those farmers whether they are members of the VFF. The answers I get would not be suitable for incorporation into *Hansard*. The group of farmers I am working with have long ago left behind the kind of lowest common denominator approach of the VFF. They are striking their own path, seeking out and in many cases creating their own market. They do not see how being lumped in with every other farmer necessarily helps them do that. In fact on these big questions — on the question we are here dealing with of gas extraction, on the question of the renewable energy target (RET) and on the question of how best to take advantage of these new markets where one of the key market drivers is the public's increasing demand for high standards of animal welfare — the VFF is hopelessly split. It cannot find a position.

This morning in one of the Horsham newspapers I read about a couple of superfine Merino producers who have just resigned from the VFF as a result of the VFF's call a week ago to scrap the RET. The VFF on that Friday called for the scrapping of the RET, and on the Monday the federal industry minister came out and said, 'Listen, everybody, there is no way we are scrapping the RET'. It is not really clear what you are actually getting for your VFF membership, except that the organisation will call for something on Friday and the government will come out and commit to the opposite on Monday. On this particular question in front of us I really cannot get any sense out of the VFF, so it is really only from my experience in talking to farmers, including a beef producer, a dairy operator and a piggery operator, who are under threat from these operations in Gippsland, that I can form a view on this bill.

Some Gippsland farmers produce organically. In fact 80 per cent of Australia's certified organic milk is processed in a West Gippsland cooperative. I have also visited the organic producers in the Camperdown area who have been involved in the revival of part of the Camperdown dairy processing facility that was closed

for so many years, along with Aussie Farmers Direct, of which I should say I am a customer.

Bacchus Marsh is famous for its apples and local farm produce like vegetables and fruit, including you-pick orchards. Bacchus Marsh residents are fighting a giant coalmine, and when they look at the experience of Morwell there is no doubt in my mind that voters in that area will be virtually 100 per cent in opposition to the idea of a giant coalmine in the middle of a vibrant and verdant food bowl. There are a number of gas exploration licences across that area. The south-west coast and hinterland are rich in farming and grazing, as well as spectacular tourism areas. The entire landscape there really is a wonder, and there are 10 exploration licences for gas, including tight gas, shale gas and some conventional onshore gas and oil drilling.

In this bill we also see a further erosion, in spite of the calls by the VFF, of a farmer's ability to control their land. This is such a big issue that a whole campaign has been named after it, Lock the Gate. Having travelled across the back roads of some of these areas, I know you can drive an entire country lane and see 'Lock the gate' signs on every single gate.

Hon. D. K. Drum — Especially if you put them up there.

Mr BARBER — If a farmer can lock the gate, that is. Mr Drum, the minister who will shortly be at the table, has had some personal experience in this matter, because he has visited Queensland, where, as he told us, he never met anybody who was against it.

Hon. D. K. Drum — No, that's not true. I went out and sought them.

Mr BARBER — I thank the minister for that clarification. When we are at the table I will be able to ask him not only about the mechanics of the bill but about his own very direct experience as to how regulation plays out in practice.

The state might own the minerals and gas, but the farmers own the really important bit, which is the topsoil. They should have a right of veto over who touches that, but as it stands mining companies are negotiating with a trump card. At any stage mining companies could call off the negotiations and go to the Victorian Civil and Administrative Tribunal (VCAT). One landowner approached my office about the pressure she was under from a well-known mining company. Basically the company bullied the landowner about an access agreement, telling her, 'Say yes now or we will drag you through VCAT and get what we want, and your compensation will be determined by the court. You will lose control of the process'. Mining companies do not even need to have the farmer's consent for the proposed rehabilitation plan. The company has to consult, but there is no requirement for the plan to meet a farmer's expectations for future land use.

This bill contains a new erosion of anyone's right to lock their gates. When a mining company that does not have an exploration licence wants to enter someone's land to survey the boundaries, it has to ask permission. If the landowner refuses permission — that is, locks the gate — the department head can now grant an authority for the company to enter the property anyhow. That means when the mining company contacts the owner to ask permission to enter the property, it will be a meaningless exercise.

The bill deals with unconventional gas, and there is some confusion about what that means. Depending on the geology, we could be talking about coal seam gas (CSG), shale gas or tight gas. It is all basically the same gas, but it is at different depths below ground and in different types of rock. There are even a few areas where they overlap, with CSG being closer to the surface above a tight gas or shale gas deposit, but mostly they are separate, even if they are in the same region. Currently people are fighting against having coal seam gas exploration in Gippsland because Lakes Oils also wants to exploit the tight gas it has found in Gippsland.

It is common ground between the Greens and gas companies that, until the price of gas goes up dramatically, the economics of drilling for it are not going to be there, but we all know that is just around the corner. Any member who comes in here and says we have to do this to keep the price of gas down is kidding themselves. It is the rising price of gas — the fact that a wholesale level could double or triple fairly soon — that is the driver for the economics, and that in itself is now attached to the world export price. You do not drill for this stuff because it is cheap; you drill for it because it gets very expensive, and that is the energy future we should be avoiding. We should be relying more heavily on cheaper renewables.

CSG is found in pores and cracks in the coal seam under high pressure held in place by water. It is deeper underground in the Otway Ranges than in Gippsland. We understand that it also has a higher carbon dioxide content in the Otways, which means you get two potent greenhouse gas emissions every time there is a leak, planned or otherwise. Drilling for CSG produces a lot of toxic water by-product as the mining company pumps out the water that was holding the gas in place.

Once the water is pumped out, all bets are off. Where is that water going to go? Generally, it will go into some sort of small holding dam right beside the drill head, and I have seen what some of those look like. The options at that point would be to leave it there to evaporate, to accidentally release it in some kind of flood or to pump it back down into the ground, and that is very pertinent to the provisions in the bill that purport to ban the use of BTEX.

Not all CSG mines use fracking; it depends on the geology. Therefore a moratorium on fracking itself does not necessarily protect our farms. Mining for shale gas and tight gas, which can be found down in the less porous rock, often uses fracking to crack open the rock and get the gas, hence the name 'tight gas'. Sometimes miners use horizontal drilling to access deposits that are not even under the particular land that the mine is located on. In all cases it involves drilling down through numerous levels and layers, and that is where the interaction with aquifers arises as a potential problem.

Here we are, with this threat to our farms bearing down on us, with short-term profits leading to possible long-term damage, and niggling away in my left ear I have a former VFF president, Mr Ramsay, who has made it his life's work to oppose wind turbines.

We want the Mineral Resources (Sustainable Development) Act 1990 and the Petroleum Act 1998 to be made consistent, just like the consistent approach of the Greens in this matter. All farmers should be treated equally, regardless of which particular type of gas is being drilled under the provisions of any particular piece of legislation. Later I will be asking questions about why different farmers are still being treated differently in this bill, which is supposedly all about harmonising the legislation. It certainly harmonises a number of aspects, but it does not harmonise that particular aspect.

The VFF has found its voice in saying it wants the fracking moratorium to be extended to the next full term of government, which would be the end of 2018. I will support it on that policy because four years might give everyone enough time to come to their senses and impose a permanent ban. It also gives us time to roll out the alternatives. There are many households in Victoria that use gas because it has always been cheap in the past, but there are now cheaper and better alternatives, including all-electric options, such as solar panels connected to efficient electric air heating and of course heat pumps for heating hot water as well. In fact using solar energy during the day to heat up hot water using a heat pump is a form of energy storage. It is a good way to use electricity in the middle of the day when it is plentiful and much cheaper. It can then be stored for the evening when the sun goes down. People ask how they are going to deal with intermittent renewables because there is not enough storage, but in fact doing certain things with them, such as cooling your house in the middle of the day so that it is pleasant when you get home or heating up water in the middle of the day, is in fact a form of energy storage, and it is very efficient. There are also a lot of industries, including food processors, for example, which use low-grade heat of various sorts, including hot water. Many case studies have been rolled out, some of them with money provided from the Clean Energy Future package negotiated between Labor and the Greens at the federal level. They have helped these enterprises deliver really high levels of efficiency in the way they use low-grade heat.

There is a further and more complicated challenge for those who use gas as a chemical feedstock or use very high-grade heat based on gas, but in any case the solution is to wean households and light industry off gas as quickly as we possibly can so as to save our reserves for those more tricky applications. As it stands, the moratorium is only on new CSG exploration licences and on fracking. It does not affect the existing exploration licences because they are all being given extensions throughout the period of the moratorium. The new government will face some very pressing decisions on those licences.

The BTEX prohibition in this bill is meant to have something to do with protecting water resources, so I will say a few words about that. Unconventional gas drilling causes a number of problems with water. The first is the water produced, especially from CSG. It is generally saline and it might also be toxic from chemicals that naturally occur in the coal seam as well as the chemicals used in drilling and fracking. In Queensland each CSG well produces 20 000 litres of water and about 100 kilograms of salt per day. Disposal is a huge issue because reinjecting it underground is even more likely to cause problems.

The second issue is aquifer contamination, because the whole purpose of fracking is to crack open new links between freshwater aquifers and other formations. Any loss of integrity in the drill holes that pump through those different layers could connect the freshwater aquifers with the toxic ones. How are we going to maintain the integrity of these drill holes for hundreds of years after they have hoovered up the resource and fracked off?

The third issue is the use of fresh water. Fracking uses a lot of water. The fresh water is mixed with chemicals and sand and pumped out at high pressure to cause fractures in the rock, then the liquid is pumped back up again to get gas out. The water has to be stored somewhere and has to be disposed of because it is contaminated.

The fourth issue is the depletion of aquifers and the drawing down of the water table. I am sure many country members would know how big an issue that can be just in regular consumptive use of groundwater, and we have seen instances where farmers have found their bores and dams drying up when a new consumptive user comes into the area.

The fifth issue is the risk of water being contaminated by methane bubbling up because there is not necessarily a way to control where the rock will fracture and release the gas. You cannot make food without water and water will be contaminated and depleted from mining or fracking whether or not you use BTEX — that is, add it.

The BTEX ban is a decoy which is designed for us of all to focus on. The title of the bill is meant to drag our attention away from the actual content. We do not know if anyone intends to use BTEX in fracking. Some sources say that nobody has used it for years and we might as well be debating the use of wooden teeth in dentistry, so I think this bill is something of a cynical move to create the false impression of doing something to prevent contamination, because prohibiting the addition of BTEX will not stop aquifers and soil being poisoned.

By the way, the fugitive emissions from unconventional gas are so great and until recently so poorly measured that by some estimates the ultimate energy provided from the use of gas when it reaches its final destination, when added together with fugitive emissions during the drilling process, can make gas almost as polluting as coal. Certainly, banning BTEX will not stop Lakes Oil putting concrete drilling pads in 750-metre grids all over your farm — even closer together in some other types — —

Mr Ramsay — You would know all about concrete pads.

Mr BARBER — That is my very point. Mr Ramsay wants to draw a comparison with concrete pads for wind turbines. Landholders have the right to let wind turbines be constructed on their land.

Mr Tee — Not under this government.

Mr BARBER — In this case they will not be.

An honourable member interjected.

Mr BARBER — You are completely jammed. There is no way for you to reconcile — —

An honourable member interjected.

Mr BARBER — We could be here for 100 years and you could not reconcile the position taken by this government on wind farms with the position it is taking here today with this very bill in regard to allowing landholders to take some control over their land.

This bill does not prohibit BTEX; it gives some government the power to restrict BTEX by regulation at some time in the future. It relies on a minister — and we are talking about a future minister because there will be an election in 72 days — doing the work before the moratorium ends. Even then a future minister gets to choose the level of restriction on BTEX chemicals. A good future minister might lead us to something that is close to a ban. A bad one might set a very high allowable amount of BTEX in the regulation that is to be promulgated down the line somewhere, or a future minister might not do the work at all. There is nothing in the bill to compel the minister to do it. If the work is not done before the moratorium is lifted next year, fracking can start up without any restriction. There is a lot of uncertainty, but one thing we know for sure is that this bill does not prohibit BTEX.

Another thing we do not know about is enforcement. I might have to address this when we get to the clause itself, but seemingly the only place where one can check that the chemical being added meets the standard in the hypothetical future regulation is above ground at the very moment when it is added to the other drilling fluids. Good luck with enforcement under those circumstances.

If I had more time, I could go into the whole statement of economic significance matter to clause 31. We may consider that during the committee stage of the bill. There is the question of high-impact exploration and what that now means. There is the confusing aspect that with the statement of significance the rights under the Petroleum Act will not be the same, but I may save those matters for the committee stage.

In conclusion, exploration for new coalmines and unconventional gas drilling is not just dangerous but unnecessary at the point we are at. We have better, cheaper, less risky, less impactful and certainly more environmentally friendly options to meet our energy needs. Just yesterday we got the latest statistics for the

installation of solar panels. Another 10-megawatts worth of solar panels were added to homes and businesses in just the month of July.

Mr Elsbury interjected.

Mr BARBER — I thank the member opposite for the interjection and reminder. The federal government of course threatens all this. It has threatened to abolish completely the renewable energy rebate for solar panels. We have an interesting energy market in which people are paid simply by the electrons they feed into the grid. Other services, such as ensuring reliability, voltage and the rest of it, are taken care of by regulation. As it is now, the market allows people to plug in and feed their energy into the grid, but that is where the level playing field ends. It is for that reason that we need a renewable energy target, never mind the fact that we need a mechanism to rapidly increase our clean energy component.

We do not yet have a mechanism to retire old and dirty fossil fuel-powered power stations. In fact there are barriers for those stations to exit. They include not just the cost of rehabilitation but also the fact that those who remain in the energy market will benefit. The various schemes that have been put forward, including cash for closure, have not worked. At the moment there is a good incentive to put your expensive, polluting, coal-fired power station into mothballs but not to take it offline permanently. It is only when those power stations are taken offline that new entrants, new generators, can step in with confidence. We need to protect the renewable energy target because under the policy settings of both Labor and Liberal — including the abolition of the carbon tax — the problem has not actually been solved. We need a rational approach to an energy market.

The world has moved on rapidly from the old technologies. I suggest people ask the residents of Camden whether they would not rather have solar panels on their roofs than coal seam gas wells in their suburb. Do members know what a major uncontrolled spill at a solar farm is called? The answer is that it is called a sunny day! Residents of Morwell would not have spent weeks choking on toxic fumes if they lived near a wind farm instead of a coalmine. Fossil fuels are unreliable and dangerous, and they are literally dinosaurs. The policy that will save the farm is the same one that will save the planet — that is, moving away from coalmines and unconventional gas quickly and replacing them with renewable energy.

Ms LEWIS (Northern Victoria) — As members have heard, the opposition will not be opposing the Resources Legislation Amendment (BTEX Prohibition and Other Matters) Bill 2014. My colleague Mr Scheffer has detailed the opposition's position on the bill. However, I will take the opportunity to make some remarks on the legislation, particularly on the prohibition of the use of benzene, toluene, ethylbenzene and xylenes in hydraulic fracturing, commonly referred to as fracking.

Along with many Victorians, I have some grave concerns about fracking, particularly its potential to cause ongoing, irreparable problems in the long term for the economy and the environment, including damage to our precious groundwater systems. There are many unknown factors relating to the use of fracking. Most significantly we do not know enough about our groundwater systems and their connectivity with the surface water in our watercourses and wetlands to risk the damage that could be done by the use of such dangerous chemicals. The consequences of chemicals entering our groundwater or surface water systems could be disastrous for our environment, our economy and our communities. Many communities in rural and regional Victoria rely directly on groundwater for their stock and domestic water supplies, while others have a secondary connection via businesses which rely on groundwater.

As I have already stated, the connectivity between groundwater and surface water is generally poorly understood across Victoria. Consequently the potential effects on surface watercourses and wetlands could be disastrous for the wildlife that is dependent on clean, fresh water and the communities that rely on the surface water supply, including the associated economic activity such as tourism, horticulture and agriculture. I am firmly of the view that the precautionary principle must be applied to the introduction and use of hydraulic fracturing processes in Victoria. As an early step in protecting our precious groundwater supplies I am pleased to see this bill before us today.

Mr RAMSAY (Western Victoria) — I have been champing at the bit to say a few words on this bill, not so much about its contents but in response to Mr Barber's contribution to the debate, in which he made suggestions that I am not supportive of the wind farm industry. As Mr Barber well knows, only a few weeks ago we were both down at Portland at a renewables forum where I stated very clearly that I see, as does the Napthine government generally, the renewable energy industry forming a very important part of our energy needs in the future. I defy Mr Tee and Mr Barber to find anything on the public record that indicates that I do not support the wind industry. What I do not support is the behaviour of some of the

wind generators in coercing landholders to provide land under some quasi-lease arrangement for turbines. Certainly I support the wind industry, as I do the solar industry and as I will support other new technologies that might come before us over the next few years.

I again refute Mr Barber's commentary around the renewable energy target (RET). He took the opportunity to again criticise the Napthine government on its commitment to a RET. Representing the Premier at the renewables forum in Portland, I stated very clearly that the government does support a RET and has provided to the review panel a submission to that effect. Mr Barber has again used the opportunity to scaremonger and tell mistruths — and even lies in relation to my personal position on both those issues.

But we do have some things in common. I want to talk about the issues of food security and water security that Mr Barber raised. It is interesting to note that Mr Barber was happy to use the Victorian Farmers Federation (VFF) as a reference. In one sentence he complained that it actually does not represent farmers, and in the next sentence he said it is a representative body that has certain concerns around rights to access farms et cetera. It is interesting that he has used the VFF to suit his own arguments. The fact is that the VFF is the largest farmer organisation in Australia and the largest farmer community representative body in Victoria. It is a powerful agripolitical body that provides assistance to all governments and all members of Parliament in representing the views of the farming community.

This bill furthers the government's commitment to maintaining an effective and robust regulatory framework for the earth resources sector. The earth resources sector, which includes the mining and extractive industries, plays an important role in our economic growth. The bill furthers this commitment by making a series of necessary facilitative amendments to legislation within the earth resources portfolio.

The bill amends the Mineral Resources (Sustainable Development) Act 1990, the Petroleum Act 1998, the Geothermal Energy Resources Act 2005, the Greenhouse Gas Geological Sequestration Act 2008, the Pipelines Act 2005 and the Offshore Petroleum and Greenhouse Gas Storage Act 2010 and makes some minor other amendments. The amendments to these acts reduce the administrative and regulatory burden and given we made a pre-election commitment to reduce red tape they are important. We are removing some of the cost burdens on industry, while maintaining an effective and robust regulatory framework for the earth resources sector in Victoria.

I would like to make some general comments about the area of coal seam gas extraction, which Mr Barber also spent a considerable amount of time on in his contribution. It is true that I live in the Otway Basin. There has been scrutiny of the possibilities of coal seam gas extraction in that basin; Gippsland has also seen significant scrutiny of those opportunities. Mr Barber is right in saying that there is community concern about the environmental impacts of extracting gas onshore. I, like the community I represent, share those concerns. My concerns and my response have more of a scientific basis, rather than being based on an emotive or political position. Certainly I wish to err on the side of caution rather than expediency.

I would like to say that the Napthine government is not going to allow coal seam gas extraction which would in any way threaten the environment in which we live, affect our groundwater or underground water aquifers or compromise the food and fibre security of our state — or indeed our livability in this state. In relation to the Otway Basin, GeoScience Victoria is doing a comprehensive assessment on the basin itself, which will provide a great template, as we will have for Gippsland, for further discussions around our earth resources sector and how we may be able to advance that.

As other speakers have said, the government has instituted a moratorium on hydraulic fracking until July 2015. There is nothing to say that that might not be well extended into the future. It gives us time for a full and frank discussion with the communities of Victoria. I congratulate the Minister for Energy and Resources, Russell Northe, who has provided a number of community forums across the state which allowed communities to engage and express their concerns and ideas about gas extraction onshore. I understand that those forums have been collating information arising from the communities in attendance.

Science and water studies are being done in relation to potential impacts upon our quality of water. Again, I share the same concerns as other members of the house. I believe there needs to be significant scientific research done into what impact coal seam gas extraction — and it does not always have to be fracking — would have upon the quality of our watertables. I can assure Mr Barber and others in this chamber, and in the wider community, that I would not support any mineral extractions that would affect our environment, water or capacity to provide clean, safe, good quality food.

It might well be that Victoria or parts of it are not suited to coal seam gas extraction. We are different from other states. We have high populations across the width and

breadth of our state, and we want to protect the quality of our agricultural and food and fibre industries. Those industries have both wonderful productive capacity and environmental standards that are second to none anywhere in the country. That allows us to brand Victorian food as being of extremely high quality and also as being produced under extremely good environmental and welfare conditions. I would fight tooth and nail if I found that any legislation we brought before this house compromised that wonderful competitive advantage that we have in the primary industry sector.

I want to talk briefly about the bill itself in relation to BTEX, and I will leave some detail to my parliamentary colleague Mr Danny O'Brien, a member for Eastern Victoria Region. The major amendments to be made by the bill include prohibiting BTEX chemicals in hydraulic fracturing. I know it is very hard for Mr Barber to admit, but in fact this bill is going to ban the use of BTEX chemicals in any potential fracturing that may happen in this state. I am not in any way suggesting that that will happen. In fact I know in my own communities in western Victoria there is very strong resistance to hydraulic fracturing in the Otway Basin and beyond.

BTEX refers to chemicals that are naturally occurring compounds in petroleum products. The chemicals have been known to have harmful effects on human health. I am pleased to see that the government has taken a proactive position in moving legislation which will underpin the regulations to ban the use of those chemicals. The bill will implement the government's commitment to enshrine legislation to ban the use of BTEX chemicals in hydraulic fracturing fluids.

The point that Mr Barber missed was that, in order for the legislative ban to take effect, substantial amendments to associated regulations will be required. Given the ongoing community consultations and scientific studies associated with onshore natural gas, the timing of the amendments to the regulations has not been set and, accordingly, no default commencement date has been inserted into the bill in relation to the legislative ban. But the current administrative ban on the use of BTEX chemicals in hydraulic fracturing fluids will be maintained until the regulations are amended. I point out to Mr Barber that that is the safety net.

In November 2013 the gas market task force, headed by Mr Peter Reith, released its final report into gas supply in Victoria. As part of that report, it was recommended that the government impose a permanent ban on the use of BTEX chemicals in the hydraulic fracturing process. In response, the government publicly committed to enshrine legislation to ban the use of BTEX chemicals in hydraulic fracturing fluids. The bill implements this commitment. It is not pre-empting the lifting of the moratorium. The moratorium will continue to be maintained until at least July 2015, and possibly after that. This amendment will provide Victorians with the confidence that strong protections have been applied to the regulation of the earth resources sector, with a focus on the continued protection of our environment and agricultural industries. The government is committed to maintaining the moratorium on hydraulic fracturing until 2015 while a 12-month community consultation process is undertaken, and this has been happening.

Mr Barber, through the Greens, has been publicly commenting that this legislation will not actually ban BTEX chemicals in fracking. The comments from the Greens are incorrect and misleading, and that is no surprise. The Greens have failed to understand that regulations flowing from this legislation have to pass through Parliament first. The bill implements our commitment to enshrine in legislation the ban on the use of BTEX chemicals in hydraulic fracturing fluids. It is not — —

Mr Tee — What do you think about fracking? Give us a view.

Mr RAMSAY — No fracking has ever occurred under a Victorian coalition government, not like your government, Mr Tee, which was flipping out licences all over Victoria.

The ACTING PRESIDENT (**Mr Finn**) — Order! I was hoping the flow of interjections would cease. Mr Ramsay is not helping the situation by directing his comments directly across the chamber. If he would speak through the Chair, that would be appreciated.

Mr RAMSAY — I was making the point that it was only the Labor Party that issued permits for fracking in Victoria. The coalition never has. We have put a hold on all onshore gas exploration until the community has had its say and the scientific facts are known. Labor did not worry about science when it was putting out licences for fracking, nor when it was putting out wind farm permits.

The coalition will continue to take a considered approach to gas development, once it has a full understanding of the effects on community farmland, the environment and the economy. Labor's track record speaks for itself. It supports unconventional gas and fracking and has never listened to the community. That is the same for renewables. The last time fracking

occurred in Victoria was when it was approved by the former government, supported by the poor judgement of local members of Parliament, including Mr Tee. When in government, Labor issued 73 licences for unconventional gas exploration and approved 23 fracking operations without any public consultation, and that is just a disgrace.

At this very moment the South Australian Labor government is actively encouraging unconventional gas well drilling in that state. Here we go — Labor government policy in all states, supporting fracking without any consultation with their communities. Labor cannot be trusted on this issue.

Business interrupted pursuant to standing orders.

QUESTIONS WITHOUT NOTICE

Junction Oval

Ms PULFORD (Western Victoria) — My question is to the Minister for Sport and Recreation, Mr Drum. I refer to media reports of a government-led plan for the redevelopment of the Junction Oval and other grounds and public open space at Albert Park Reserve, and I ask: can the minister assure the house and the community surrounding Albert Park Reserve that there will be no loss of open space and that the community will continue to have full access to Ian Johnson Oval?

Hon. D. K. DRUM (Minister for Sport and Recreation) — I thank Ms Pulford for the question and her interest in the goings-on around the Junction Oval. As a state, can we develop a second first-class cricket venue for the city of Melbourne and for the state of Victoria? Is there an opportunity in amongst that to develop an elite training venue — a centre of excellence — for all our elite cricketers? If that can be a part of that project as well, that would be another outstanding coup for the state. Many other states already have centres of excellence, which provides them with the opportunity to take their cricketers to another level with expert training. We would heavily support that project. In fact we have already supported it by committing $10 million to the project.

The future of the surrounding area has become an issue due to the possibility of bringing the St Kilda Football Club back to the Junction Oval. The AFL has been very proactive in its conversations with a whole range of stakeholders. The stakeholders include St Kilda Primary School, which has given its blessing to any proposal that may involve bringing St Kilda back to the Junction Oval, and Port Phillip City Council, which has given its blessing to this project and has made a commitment to provide finances to bring St Kilda back to the Junction Oval. I understand from meetings with the Old Melburnians amateur football club that it is very supportive of the possibility of bringing St Kilda back to the Junction Oval. A range of other community groups seem to be very supportive of bringing St Kilda back to the Junction Oval.

As we now have two of our major sporting bodies, cricket and football, trying to redevelop the Junction Oval into an elite training centre there is an opportunity for us to really get involved in an amazing project here. This is going to be very important for some of those people who are using the outside ovals, such as Ian Johnson Oval. We understand that the St Kilda Cricket Club has had a long-term tenancy at the Junction Oval itself. There is an amazing community feel about this project. Another one of the AFL's beneficiaries of this will be other parkland in another area, which will also be used as an elite training area for community clubs.

The more people who have been involved in this process, the more people who have given their tick of approval, because the benefits seem to just keep washing through to more and more community groups. This looks like a project, if it can be brought to the fore, where you are going to see elite cricket, elite football, high-level amateur football, primary school students, Parks Victoria, local and district cricket, and a whole range of community and elite programs all working together for the betterment of the Albert Park region in general.

Supplementary question

Ms PULFORD (Western Victoria) — I thank the minister for his answer and note that he declined to comment on the question around the potential loss of open space and limiting of community access to Ian Johnson Oval. By way of supplementary I give the minister another opportunity to answer the question. Can the minister advise the house what arrangements have been put in place to protect the access rights to the oval currently enjoyed by St Kilda Park Primary School, including its recently installed community garden and relocated playground?

Hon. D. K. Drum — Can I have the question again? And I want it all — the whole preamble as well.

Ms PULFORD — I note that the minister declined to specifically answer the substantive question around assuring the community that there would be no loss of open space and around the question of community access to Ian Johnson Oval. By way of supplementary, I ask: what arrangements are being put in place to

protect the access rights to the oval that are currently enjoyed by St Kilda Park Primary School, including its recently installed community garden and relocated playground?

Hon. D. K. DRUM (Minister for Sport and Recreation) — I just wanted to make sure that I heard it right — that I was being accused of not answering the question openly and not dealing with the issue about open space around Ian Johnson Oval — because I thought I might have touched on that area just carefully. I thought I mentioned in my initial answer the fact that St Kilda Primary School has been consulted about this potential upgrade to Ian Johnson Oval. It has been reported to me that something like 60 or 70 per cent of the children have been asked, and apparently they are mad St Kilda supporters. The school is apparently falling over itself to — —

The PRESIDENT — Order! Thank you, Minister.

Hon. D. K. DRUM — — welcome St Kilda back.

The PRESIDENT — Order! Thank you, Minister!

Honourable members interjecting.

The PRESIDENT — Order! Mad St Kilda supporters? Mad is right!

Ebola virus disease

Ms CROZIER (Southern Metropolitan) — My question is to the Minister for Health, Mr Davis, and I ask: can the minister update the house on Victoria's preparedness against the Ebola virus disease?

Hon. D. M. DAVIS (Minister for Health) — I thank the member for her question and note the importance of the topic. We have all become very aware of the significance of the Ebola virus and the impact it is having, particularly in certain parts of Africa. That is highlighted by the steps taken by the United States in the last few days to ensure that there is greater support for those people in Africa. The impact that Ebola is having cannot be doubted given the significance of what we have all seen. Equally, other nations, including Australia, ought not imagine that we are immune from Ebola cases and the risks they pose. For that reason Victoria, along with other Australian jurisdictions, is working hard to ensure that our preparations are done and that we have put in place every possible reasonable step to enable us as a community to manage a case, or indeed a suspected case, or cases of Ebola virus disease.

The chief health officer, Dr Rosemary Lester, has today updated an existing alert. The alert provides a link to the *Victorian Ebola Virus Disease Response Plan*. A great deal of work has been put into this plan. It works in synergy with the commonwealth plan, and chief health officers and other officials have been working over recent months to put in place a satisfactory national response. The plan outlines the exact actions that will be taken by the Department of Health, commonwealth border agencies, Ambulance Victoria and any health service, particularly the two hospitals that will receive any suspected cases.

The Royal Melbourne Hospital has been designated as the facility for assessment and management of patients suspected of having a viral haemorrhagic fever such as Ebola virus disease. In the case of children under 16 the Royal Children's Hospital will be the relevant hospital. However, all of our health services around the state have participated in the development of this plan, and I pay tribute to the work done, particularly by a number of our key infectious diseases specialists.

We have seen a suspected case in Queensland in recent days. It turned out not to be a case; nonetheless, it highlighted the need for this preparedness. Professor Mike Richards, an infectious diseases specialist at the Royal Melbourne, has played a significant role in equipping the state in this area, and the viral haemorrhagic fever plan is well placed to handle cases that may come forward. Information under the plan will be issued to major metropolitan, regional and other services, and stakeholders, including general practitioners.

As I say, this is an important set of work that has been done by the chief health officer and her team. It outlines simple steps for front-line clinicians and the steps they should take if somebody presents with a suspected case. There are border control measures that ensure that there are questionnaires in place for people returning from affected countries, and Melbourne Airport is prepared to respond in such cases.

Obviously testing will be an important part of this, and the new Peter Doherty Institute, opposite Melbourne University and near the Royal Melbourne Hospital, is taking a lead in that nationally. It is the first facility of its kind as an infectious diseases institute for infection and immunity and will play a very significant role into the future.

South Stone Lodge

Ms MIKAKOS (Northern Metropolitan) — My question without notice is to the Minister for Ageing. Staff at Melbourne Health's South Stone Lodge residential aged-care facility in Werribee — another 30-

bed aged persons mental health facility — were informed on Monday that their facility will close in December. This is another closure that is happening with no prior consultation with residents, staff and the local community, and comes on top of the closure of a 30-bed aged-care facility in Flemington in June. What steps will the minister take to ensure that this facility stays open for the local Wyndham community?

Hon. D. M. DAVIS (Minister for Ageing) — The member will understand that our health services are independent bodies that make decisions in the interests of their communities. She will understand that from time to time services do open and do close. It is very clear that from time to time there are changes in this regard. South Stone Lodge is a Melbourne Health facility, I am informed, and there are currently 25 residents at South Stone Lodge. I understand that Melbourne Health has made a decision to close South Stone Lodge.

A number of changes that have occurred in accreditation requirements in recent years have had an effect. As I say, services do from time to time open and new ones come forward — some private, some not for profits — and importantly some do close from time to time too where health services make those decisions. Ms Mikakos will remember that in this chamber I have pointed to closures that occurred under Labor, such as at Peninsula Health, Ballarat Health Services' Pleasant Home Hostel, Alfred Health's Caulfield facility, Ballarat Health Services' Midlands Hostel in Ballarat North, Ballarat Health Services' Queen Elizabeth Village and a Frankston aged-care service at Peninsula Health. A total of 197 beds were closed under Labor.

What is important to understand here is that from time to time a decision is made by a health service in the interests of its community to reconfigure and to provide a different set of services. That is clearly what has happened in this case, and Melbourne Health has made that decision. I have been informed of that decision in recent days, and I understand that Melbourne Health will ensure that there are options for redeployment of staff within Melbourne Health and, importantly, that those residents are accommodated in other local services.

Supplementary question

Ms MIKAKOS (Northern Metropolitan) — This will be the ninth closure of an aged-care facility under the minister's watch and during the term of this government. I refer to the change impact statement that Melbourne Health has issued in respect of this matter. It states that the transition of residents will commence this month and, further, that residents could be moved to mainstream facilities. I ask: will the minister provide a guarantee that residents of this facility will be located at other specialised mental health facilities for aged persons?

Hon. D. M. DAVIS (Minister for Ageing) — I am informed that residents will be accommodated in appropriate facilities and that staff will be offered alternative employment arrangements.

Ms Mikakos interjected.

Hon. D. M. DAVIS — From time to time the member makes wild assertions. The fact is that services open and services close.

Ms Mikakos — On a point of order, President, the minister is now debating the question. I have referred to a document that has been issued by Melbourne Health that categorically states that residents could be moved to mainstream facilities. I have asked the minister to provide a guarantee to very anxious and concerned residents and their families about — —

The PRESIDENT — Order! Ms Mikakos is also debating the point of order. A point of order is raised to state the issue under which the point of order is raised, which is debating by the minister. I cannot uphold the point of order on this occasion because Ms Mikakos is constantly interjecting and provoking the minister, and I cannot stop him from responding to the interjections. Either Ms Mikakos puts her question and lets it stand so I have some ability to ask the minister to respond in an apposite fashion to the question, or she can continue to interject and assert other things from a document, in which case the minister is of course going to respond or go in a different direction, and I cannot stop him. The minister, to finalise.

Hon. D. M. DAVIS — As I have indicated, I have been informed that residents will be appropriately accommodated. I have been informed that there will be alternative employment arrangements offered to the staff as appropriate. I also understand that there will be changes from time to time in the configuration of services, as there were under Labor when 197 beds were closed.

Questions interrupted.

DISTINGUISHED VISITORS

The PRESIDENT — Order! It is my pleasure to inform the house of some distinguished visitors in the gallery. They are members of the 31st delegation to Australia of the American Council of Young Political

Leaders from the United States of America, led by, as I understand, Amy Sinclair, who is a member of the Iowa State Senate. We welcome all members of the delegation. We trust that your visit is productive and that you get to experience some of the world's most livable city in a way that is not constrained entirely by your minders.

QUESTIONS WITHOUT NOTICE

Questions resumed.

VicSmart

Mr FINN (Western Metropolitan) — Welcome from our state senate. My question is to my friend and colleague the Minister for Planning, and I ask: can the minister inform the house what action the government has taken to speed up planning application processes across Victoria through a new codified model of planning?

Hon. M. J. GUY (Minister for Planning) — What a pleasure it is to take a question from my friend and colleague State Senator Bernie Finn. Without the cheekiness, can I thank Mr Finn for his question and again say what a pleasure it is to talk about the Victorian government's reforms that are transforming our planning system so that there is a reason for people to come and do business in Victoria, as opposed to using our planning system as a deterrent to people coming to Victoria and wanting to be a part of our great state.

I can inform the house that today the City of Greater Geelong's VicSmart codified planning system will be gazetted. You will see some great reforms in the use of VicSmart codified planning applications in the central city area of Greater Geelong, covering buildings and works with a value of up to $250 000 — above the state standard of $50 000 — restaurant or cafe liquor licence trading between 7.00 a.m. and 11.00 p.m., car parking spaces and a whole range of applications that would usually follow a normal planning system will now come under what is called the VicSmart system for a 10-day permit turnaround, the fastest in Australia.

The introduction of VicSmart — a concept, a development, a plan, from the Liberal-Nationals coalition government — is one that we believe and know will put Victoria and planning assessment in Victoria — —

Mr Tee interjected.

The PRESIDENT — Order! Through the Chair!

Hon. M. J. GUY — We are hoping the fish jumps on the hook.

Can I just say again how proud I am to be a part of a government that has reformed our state's planning system to be the best and most efficient in Australia. Can I say how proud I am that we have got the VicSmart codified system in operation in Australia and how pleased I am that the City of Greater Geelong and its mayor, Darryn Lyons, have adopted VicSmart, expanded VicSmart and are using VicSmart as a reason to come and do business in central Geelong and to put the city way ahead of competitor markets in, for example, Hobart, Townsville, Cairns, Newcastle and Darwin. That is the reason we put in VicSmart for central city areas like Greater Geelong.

It is going to have a massive impact on the Geelong CBD. I congratulate the mayor in particular on his willingness and determination that his council contemporise its planning systems and do business differently, not just for the benefit of his council but for the benefit of all people in Geelong, for the state government and local members such as David O'Brien, David Koch and Simon Ramsay, who represent Western Victoria Region and who have been champions of VicSmart for their local communities. This is further evidence of how the coalition government and the Liberal Party and The Nationals are not just talking about building a better Victoria but are building a better Victoria.

Mentone Gardens aged-care facility

Ms MIKAKOS (Northern Metropolitan) — My question is again to the Minister for Ageing. I refer to the minister's letter to me dated 22 October 2013 in response to a question I asked him in Parliament on 17 October 2013. In his letter the minister advises that the first time the Department of Health became aware of financial issues at Mentone Gardens was on 11 January 2013. On ABC TV last Sunday the minister conceded that it is only now that he has learnt there were financial issues at Mentone Gardens as early as 2011, and I ask: did the minister deliberately mislead me and the house in his earlier advice, or is he just incompetent?

Hon. D. M. DAVIS (Minister for Ageing) — I begin by saying that I do not accept the contentions of Ms Mikakos. I have to be quite clear here. We need to draw a clear distinction between the matters around Mentone Gardens and the subsequent liquidation that occurred. These reports became clear in January 2013. Equally, there are many occasions where special residential services in all of their different guises around

the state are investigated or reports are received from them from time to time.

I am informed that there were reports in 2011 regarding Mentone Gardens. They were not of any systemic nature, I am informed by the department. They were of a more minor nature, and I am informed that they were resolved. They were not of the nature that related to the later matters at Mentone Gardens. To draw a parallel between those matters is wrong. I am informed by the department that in no way were they related to the later matters. Unfortunately for Ms Mikakos, she has tried to conflate two things, and she has got it wrong again.

Supplementary question

Ms MIKAKOS (Northern Metropolitan) — I note the response from the minister, and I ask: did any of the matters that the department was previously aware of relate to security deposits paid by residents, which has been the issue which led to the company going into liquidation and significant losses being incurred by residents?

Hon. D. M. DAVIS (Minister for Ageing) — I am informed they did and that they were matters that were subsequently satisfactorily resolved.

Howmans Gap Alpine Centre

Mrs COOTE (Southern Metropolitan) — My question this afternoon is for Damian Drum, the Minister for Sport and Recreation. Can the minister inform the house about the recent announcement of funding for Howmans Gap?

Hon. D. K. DRUM (Minister for Sport and Recreation) — I thank Mrs Coote for her question. In this job there are good days, there are bad days and there are absolutely great days.

Honourable members interjecting.

Hon. D. K. DRUM — Talk about jumping onto the hook, Mr Lenders! When Ms Pulford asks me questions about Lakeside Oval and the Junction Oval, it is always a good day. But it is not as good a day as it was last Tuesday when I had the opportunity to travel to Howmans Gap and announce that this government is going to be spending $2.5 million on an accommodation centre which will be built to universal design to accommodate up to 40 people, some of whom may be in wheelchairs or have sight impairment issues, together with their carers and support staff. This is one of the great projects with which we are going to be able to assist people who are battling through life with a disability. We are going to open up the alpine ski resorts to them. We are going to support Disabled Wintersport Australia. This is going to be a project that will change people's lives.

Two weeks ago I had an opportunity to get to Falls Creek with Jim Blackburn, the president of Disabled Wintersport Australia. I was strapped into a sit ski, and down we went. We had a couple of goes at it. Luckily Jim was standing behind me to assist me. You do not need a great imagination to understand what it would be like if you had been in a wheelchair all your life and an organisation such as Disabled Wintersport Australia gave you that feeling and that experience. You would never know how to repay them. You would never know how you could ever thank them enough for giving you that experience.

While I was going down the mountain with Jim holding onto me, taking me into the corners and helping me out of the corners and making sure that I did not injure myself, I was joined by a couple of Paralympians, who were a little more accomplished than me. My vision of them was a bit blurred because they were flying, barely touching the snow, hooking in left, hooking in hard through the trees and back onto the run. Their speed was phenomenal. Not only that but they were able to get themselves through the crowd and onto the ski lifts with just a fraction of assistance from the ski lift operators. They went back to the top of the mountain and away they went again. At the top of the lifts we had a bit of a conversation when one of them looked across at me and said, 'Mate, when I am in this thing here, I leave my disability in the wheelchair. I am as able-bodied as anybody'. Sometimes in this job you get to help people change their lives.

Two weeks later we went back to announce that we were going to spend $2.5 million on an accommodation centre at the YMCA camp at Howmans Gap. People with a disability will now be able to drive themselves into the accommodation centre, store their gear underneath where they can access it, then drive themselves to the mountain. They can get themselves into special parking bays and then directly onto the snow, straight down to the ski lift. Those people will be totally independent. They will be able to develop their skills and enjoy their sport and their passion. We are very lucky to be able to help them do that.

Mentone Gardens aged-care facility

Ms MIKAKOS (Northern Metropolitan) — My question is again to the Minister for Ageing. The liquidator investigating the collapse of Mentone Gardens has previously questioned whether the minister's department has been acting in good faith

when he has failed to obtain documents relevant to his investigation. I have raised this issue with the minister previously. I understand from the liquidator that he still has not received these documents, and I ask: why is the minister engaging in a cover-up of this sorry saga and refusing to provide the liquidator with the information he needs to complete his investigation?

Hon. D. M. DAVIS (Minister for Ageing) — Again I do not accept any of the assertions of the member, who is very excited by this issue and very excited by a number of the people involved. This is a sad story of financial loss by a number of people under the old regime of regulation — Labor's regime of regulation — which was flawed. The government has introduced stronger regulations in this area to protect people. I note that in the Community Visitors report for 2013–14 tabled this morning recognition is given to the strengthening of the regulations put in place by this government.

This occurred under Labor's regulations. It is clear the regulations were too weak; I accept they were too weak. However, let us be quite clear. In Ms Mikakos's case I have not heard her say that she is going to financially compensate those people in some way, because there is no easy mechanism to do that. An arrangement occurred with a particular operator of a supported residential service and that group went broke. That is sad, and that is why we have strengthened the regulations, so that this does not happen in this way again.

Mr Jennings interjected.

Hon. D. M. DAVIS — For that principle — to ensure that there is a stronger arrangement in place so that this sort of thing does not happen again.

Mr Jennings — That is why you have done it.

Hon. D. M. DAVIS — One of the things is the old regulations did not give the department sufficient capacity to regulate these areas, and that is why the regulations have been strengthened. Let me be quite clear. Ms Mikakos does not seem to understand how freedom of information laws work — —

Ms Mikakos — On a point of order, President, the minister is again debating the question. I specifically asked him about cooperating with the liquidator and providing documents to the liquidator, and he has spent the first 2 minutes of his response misleading the house about an act that he knows Labor introduced in 2010.

The PRESIDENT — Order! I do not understand the statement. Ms Mikakos said that Labor introduced the act in 2010 and yet she says the minister is misleading the house in saying that that act was introduced. I do not understand that, but at any rate, as I understand it, the minister is about to address the member's specific question, and I will allow him to do so. The minister knows my view on debating.

Hon. D. M. DAVIS — What I will be quite clear about is freedom of information laws are administered by the department under the act and under the relevant guidelines, and the department has complied with all of those, as I understand it. It is not for me to make decisions about that release of information; it is for the departmental officials. What I will say is that the department has had some difficulty with the liquidator, who did not provide information to us in a timely way.

Ms Mikakos — It's not actually the case.

Hon. D. M. DAVIS — It is actually the case, Ms Mikakos. The department has had some considerable difficulty getting assistance from the liquidator to seek what steps it could take.

What I am saying here is that this is a very sad situation; the government is very aware of the sadness of the situation. It is not being helped by Ms Mikakos giving people false hope. That is what she has done in this process, and that is very sad. The fact is Labor has not said it will fund some compensation arrangement.

The government and the department were not in a position to regulate in the way we would have liked until the new regulations were in place. We were stuck with Labor's regulations and arrangements until the new regulations came in. This occurred under the regime that Labor left in place and the government has sought to work its way through it the best it can. I cannot be clearer than the fact that I have huge sympathy for the people involved, but I am not able to do things that are not available to the government in a statutory sense.

Supplementary question

Ms MIKAKOS (Northern Metropolitan) — The minister knows full well that the act was changed in 2010 by Labor. In fact he spoke on that bill and welcomed it. It put in place a new regulatory regime with new powers. The community visitors report tabled today says that the minister has not been exercising those regulatory tools. I have now had to resort to writing to the Victorian Ombudsman and asking him to investigate the role of the minister's department in the lead-up to the collapse of the Mentone Gardens aged-care facility, so I ask: will the minister provide an assurance that he and his department will fully

cooperate with any Ombudsman investigation into this matter?

Mrs Peulich — On a point of order, President, the first question was about cooperating with the liquidator. Now we have another investigation that Ms Mikakos is asking for cooperation with. I suggest that the supplementary question does not deductively or inductively lead from the main question.

Hon. D. M. Davis interjected.

The PRESIDENT — Order! I know the minister is always happy to answer every question. Nonetheless, Mrs Peulich raised a point of order about something I was actually considering before I called the minister, which is why I had not called the minister to answer the supplementary. I had the same concern as to whether this really was a supplementary question considering it went to quite a different subject matter. The only common link is whether the minister cooperates with these bodies, or in the case of the substantive question with the liquidator. On balance, I will let it through on this occasion, but I indicate that I have concerns about supplementary questions that go to different matters. Mrs Peulich is right; this one is tenuous.

Hon. D. M. DAVIS (Minister for Ageing) — As you would imagine, I and my department would cooperate in any way with any proper investigation. If the Ombudsman or other bodies sought to look at this matter, that would be a matter for them. I can also tell Ms Mikakos that I have written to the police because I think this is potentially a criminal matter. The particular matters around Mentone Gardens with the proprietors and the steps that were taken by them may well fall into that jurisdiction. It will be a matter for the police to make their own decisions about that in the normal way.

Regulations that existed under Labor flowed through until the new regulations were made, and that period is when the matter with the proprietors and the residents occurred. In that period it is most likely a matter for police, and that will be their decision.

Valley Park redevelopment

Mr ONDARCHIE (Northern Metropolitan) — My question this afternoon is to the Honourable Wendy Lovell in her capacity as the Minister for Housing. I ask the Minister for Housing if she could update the house on any recent projects that will provide affordable housing for vulnerable Victorians?

Mr Lenders interjected.

Hon. W. A. LOVELL (Minister for Housing) — For Mr Lenders, who has been sucking on lemons once again, I will tell him how I am going to get candidates into that. Last week I was out at Westmeadows at the site of the previous Mews housing estate. I was there together with Gladys Liu, a candidate for Northern Metropolitan Region, and Jo Hagan, the Liberal candidate for the new seat of Sunbury in the Legislative Assembly. We were there with Cr Casey Nunn, mayor of the City of Hume, and with partners in the Valley Park redevelopment.

The Valley Park redevelopment is a $160 million project. It is a redevelopment of an 18-hectare site in Westmeadows that was previously known as the Mews, which contained 94 public housing homes. This site is being redeveloped in a partnership between the Victorian coalition government, which has committed $56 million to the project; Australand, which was selected to build 110 social housing units — that is an increase in the number of social housing units in that place — 210 private homes and 34 independent living units for the elderly; and Baptcare, which will develop and manage a 90-bed aged-care centre on the site.

Recently I was thrilled to celebrate the important land transfer agreement between the Napthine government and the City of Hume. That includes 39 hectares of the Broadmeadows Valley Park and the western parts of the former school sites being transferred to the City of Hume, and the City of Hume transferring to the government some parcels of land to enable this redevelopment to go ahead. This is a very cooperative arrangement between the state government and the City of Hume, which is absolutely delighted with what the Napthine government is doing in its municipality.

This is an area where under the former minister — the hopeless Minister for Housing in the former government, Richard Wynne, the member for Richmond in the Assembly — the former government could not get this project off the ground. We have worked with the City of Hume. We have worked with our partners in this redevelopment, and this is going ahead and is delivering affordable options for Victorians and good quality housing for those who need social housing.

I was also delighted last week to open the impressive Valley Park display centre. The first of four stages of the redevelopment will deliver 30 private homes, including the display centre, and 10 social housing dwellings. Currently 40 homes are being built, with the first social housing dwellings to be completed in November, when residents will begin to move in and have a fresh start in this wonderful community. Private

residents are expected to begin moving into their new homes this month.

The Valley Park redevelopment is just another way that the Napthine government is building a better Victoria and providing suitable, affordable accommodation for our most vulnerable Victorians.

Honourable members interjecting.

The PRESIDENT — Order! There is too much general hubbub.

Hon. W. A. LOVELL — I know Mr Lenders is upset at the amount of investment this government has put in to helping those who are less fortunate than himself. His wisecracks about 'poor' people are really derogatory and should not be part of this chamber. He is talking down people. We are about assisting people, about giving them the opportunity to build a better life for themselves, rather than being derogatory towards them.

Mrs Peulich — On a point of order, President, I wish to draw to your attention tweets coming from Mr Lenders, the most recent being:

> Libs trying to protect David Davis from answering a question in LegCo of whether he will cooperate with the Ombudsman.

And that is with the Spring Street hashtag. My concern, President, is that Mr Lenders may well be reflecting on you as Chair in terms of your management of debate and adjudication on standing orders and points of order in this chamber. I ask that you take that on notice and perhaps look at the manner in which Twitter is used by members of Parliament during proceedings in the chamber, especially given that tweets are not covered by privilege.

The PRESIDENT — Order! Partly because of the noise in the chamber, I did not hear what the member said about the tweet, but from what I heard there did not appear to be any reflection on the Chair in the tweet. I have problems with people tweeting from the Parliament during question time in the context that these short, sharp comments sometimes say things that might convey a very different interpretation to people when compared with what is actually happening in the chamber. They are obviously politically barbed at times, and that makes it rather difficult because it can reflect on members, and that is not necessarily helpful. I do not believe there has been any reflection on the Chair. I am not even sure that Mr Lenders sent the tweet.

An honourable member interjected.

The PRESIDENT — Order! Mr Lenders in this case did tweet, and I know Ms Mikakos is a very active tweeter. This is a matter that is being considered by the other house. There have been concerns raised in the other house about the use of social media when it has been used during proceedings, particularly during question time, and whether in some instances in that house it constituted a reflection on the Chair.

I will inquire of the Legislative Assembly as to where it is at with its views on the use of social media, particularly in the chamber. No matter the circumstances, I counsel members to be very mindful of their responsibilities in terms of the information they put out. Tweets are not covered by parliamentary privilege. We all need to be mindful of the integrity of this place as well. That is important in the context of communications that people make. The problem with tweets is that you can be encouraged to say something very quickly, but then it is out there and maybe you, on reflection, will regret that it is out there.

I have been provided with the tweet. I have not had a chance to read it, but from what Mrs Peulich said to me, I am not sure there was a reflection on the Chair in what was said. I am not concerned about that.

Mr D. R. J. O'Brien — Further on the point of order, President, I raise this because there is another person it could reflect upon — and there is only one other person if that is not you — and that is Mrs Peulich herself, which is why I raise it now. The tweet said, 'Libs trying to protect' the minister. The only two Liberal members who spoke on the issue were, possibly yourself, President, which would clearly be a reflection on your independence, or Mrs Peulich for raising a point of order that you upheld. Members should not be criticised for raising a point of order that you uphold. That is not protection; it is supporting the standing orders. This is unparliamentary, and Mr Lenders should be cautioned.

The PRESIDENT — Order! I have now had a chance to read the tweet by Mr Lenders. It reminds me of Shakespeare, not because it is a particularly great tweet but simply because it is much ado about nothing. The reality is that this tweet — let us put it on the record for posterity — reads:

> Libs trying to protect David Davis from answering a question in LegCo of whether he will cooperate with the Ombudsman.

What a damning tweet! I am almost compelled to expel Mr Lenders from the chamber.

Honourable members interjecting.

The PRESIDENT — Order! I know I would be encouraged in that, but the fact is there is absolutely no reflection on the Chair in this matter. There is absolutely no reflection on any other member in this matter. It is fair political comment. Whether it should be made in the context of our proceedings is another issue, and that is what I will talk to the Legislative Assembly about, but the actual material that Mr Lenders has put out is certainly milder than Keen's curry.

West Wimmera planning scheme

Mr BARBER (Northern Metropolitan) — My question is for the Minister for Planning. Iluka Resources operates a mineral sands mine at Douglas near Horsham. Its previous method of operation has been to return processing wastes and put them back into the mine. It now proposes to take processing wastes from a whole series of mines and dump them there, and it is seeking a planning scheme amendment from the local council in order to do so. The council is asking a whole range of questions about health, transport, groundwater and the low-level radioactivity itself. Given that the planning scheme amendment process would inevitably come to the minister, does he think it would be better to require an environment effects statement alongside the planning scheme amendment?

Hon. M. J. GUY (Minister for Planning) — I thank Mr Barber for that question. At the end of the day it sounds as if there will be a planning scheme amendment process that will be followed at Douglas, which I believe is in the rural city of Horsham.

Mr Koch — West Wimmera.

Hon. M. J. GUY — The shire of West Wimmera, says Mr Koch. I suspect that following a planning scheme amendment process, assuming it is approved, that would then be submitted by the council to me, and at that stage there would be a discussion around an environment effects statement (EES). Obviously, as Mr Barber knows, the Environment Protection Authority would be involved, and there would be a statutory process if there was an EES.

Mr Barber interjected.

Hon. M. J. GUY — Respecting the fact that it is a hypothetical question, I would say it is probably wrong of me to pre-empt the process, should it actually arise. I will wait for any request that may come from West Wimmera Shire Council.

Supplementary question

Mr BARBER (Northern Metropolitan) — The reason I seek the minister's assistance in giving some guidance to the council is that it really has two choices. One choice is to say to the applicant, 'No planning scheme amendment, and you'll have to apply for a planning permit', or alternately the council could take it out of its existing zoning and make a special use zone, which is what the company is requesting.

The best way to handle this issue, including all the complicated matters relating to health and the Environment Protection Authority works approval, would in fact be neither of those options but rather to set up an environment effects statement with a set of recommendations. Would the minister undertake to have his department contact the council and discuss with it the various possibilities?

Hon. M. J. GUY (Minister for Planning) — That is a pretty reasonable request, and I am happy to follow up on what was put by Mr Barber.

Questions interrupted.

DISTINGUISHED VISITORS

The PRESIDENT — Order! I take this opportunity to note that we have a former member in the gallery, the Honourable Digby Crozier, a former minister, and we welcome him and Mrs Crozier. I do not know if there is anyone here of interest to you today.

QUESTIONS WITHOUT NOTICE

Questions resumed.

Lethbridge Airpark

Mr KOCH (Western Victoria) — My question is for my good friend and aviator the Minister responsible for the Aviation Industry, the Honourable Gordon Rich-Phillips. Can the minister update the house on how the Victorian government is supporting local aviation, particularly in the Geelong region?

Hon. G. K. RICH-PHILLIPS (Minister responsible for the Aviation Industry) — I thank Mr Koch for his question and his ongoing interest in aviation infrastructure in the Geelong region. In 2010 I was delighted to visit Geelong at the invitation of Mr Koch to talk to some of the operators of general aviation businesses at the then Grovedale Airport, south of Geelong, about the future of that facility. The facility at that time was to be subsumed by the Armstrong

Creek residential development, and that has subsequently occurred.

At that time the coalition, when in opposition, committed to undertaking a feasibility study to look at the infrastructure needs of general aviation businesses in the Geelong region. After the coalition came to government I was delighted to commission that feasibility study in 2011, which recommended that a number of things take place: firstly, to look at the long-term general aviation needs of Geelong and, secondly, the setting aside of a greenfield site for the future development of a local airport. One of the other things the study recommended was the further development of the Lethbridge Airpark facility, which is located between Geelong and Ballarat.

Since the preparation of the feasibility study in 2011–12 I have been delighted, through my department, to work with Golden Plains shire, Mr Koch and the operators of Lethbridge Airpark to upgrade that facility in recognition of the need for the Geelong community to have an improved replacement general aviation facility. Following that work with Golden Plains shire, Mr Koch and the operators of the airport, in July 2013 I was delighted to announce that through the Regional Aviation Fund the Victorian government would contribute a grant of a little over $1 million for the upgrade of that facility to act as a replacement for the Geelong-Grovedale facility. I am delighted to inform the house that at the end of August Mr Koch represented me at the opening of that upgraded facility at Lethbridge.

This is a facility that has now delivered a realigned main runway to take account of noise impacts on the Lethbridge community. It has delivered an all-weather, 24-hour sealed runway and upgraded 24-hour pilot-activated lighting, as well as upgraded apron and taxiway facilities. Importantly, this facility now meets the needs of the Geelong community. It meets the needs for emergency services. It is now capable of taking air ambulance services into Lethbridge, which was previously not possible. It provides new support facilities for the Country Fire Authority, particularly with respect to fire suppression activity in terms of water supply for those activities, as well as delivering a new helipad.

This is a project which was initiated four years ago through the hard work of Mr Koch in representing his constituents in Geelong. I am delighted that the Victorian government, through the Regional Aviation Fund, has been able to support and fund this project through to its execution in July this year. This will meet the needs of the general aviation industry in Geelong for years to come. It is a great testament to the hard work of the local members in Geelong, particularly Mr Koch, that this project has been delivered and is benefiting the industry in Geelong.

RULINGS BY THE CHAIR

Statements on reports and papers

The PRESIDENT — Order! Mr David O'Brien, as Acting President, last night referred a matter to me with regard to a statement on reports and papers made by Mrs Peulich. Mrs Peulich discussed the Department of Transport, Planning and Local Infrastructure annual report 2012–13, and in the course of her remarks she discussed the activities of the current mayor of Monash in respect of a number of projects. Her contribution was subject to a number of points of order, and on the basis of some of those points of order Mr O'Brien suggested that I should perhaps give some consideration to this matter.

I indicate that perhaps the member was mistaken in terms of the report that was chosen on which to make those remarks, because I have read through the report and I cannot find that the contribution that was made on that report has any relevance to the report. The projects that were mentioned, which included the Clayton and Huntingdale railway stations and the Mount Waverley police station, are not mentioned in the report. The activities of local government are not mentioned in the report. In fact it is not a local government report; it is a transport, planning and infrastructure report. The member seems to have relied on a structure on page 143 for the relevance of her contribution.

In my view, had the Acting President understood the report or had I been in the chair, the member would not have been permitted to pursue that line of contribution on the basis of relevance. When we consider reports it is important that members actually attribute their comments to matters that are raised or covered by the report, and in this case that did not happen.

I understand that there are limited opportunities left for members to make contributions to the Parliament on matters of significance to them because the Parliament is coming to an end, but it is important to preserve the opportunities that we have in debate to make sure that contributions are relevant to those mechanisms. This report process is a significant opportunity for members to consider both the substance of reports and issues that are raised in those reports and perhaps to explore matters that come under that department's purview as issues, but in this case I do not believe the matters

canvassed last night, without comment on the matters themselves, were relevant to this report.

CASINO AND GAMBLING LEGISLATION AMENDMENT BILL 2014

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

> In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (the charter act), I make this statement of compatibility with respect to the Casino and Gambling Legislation Amendment Bill 2014 (the bill).
>
> In my opinion, 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.
>
> **Human rights issues**
>
> There are no human rights protected under the charter act that are relevant to this bill. I therefore consider that this bill is compatible with the charter act.
>
> Hon. Edward O'Donohue, MLC
> Minister for Liquor and Gaming Regulation

Second reading

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

Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation) — I draw to the attention of the house that a clerical error has been identified on page 4 of the bill. I move:

> That the bill be now read a second time.

Incorporated speech as follows:

> On 22 August 2014 the government announced that it had reached an agreement with the Melbourne Casino operator, Crown Melbourne Limited (Crown), an agreement that supports continuing investment and jobs for Victoria in an increasingly competitive environment while delivering substantial financial benefits to the state.
>
> The Casino and Gambling Legislation Amendment Bill 2014 makes amendments to the Casino Control Act 1991, the Casino (Management Agreement) Act 1993 and the Gambling Regulation Act 2003 consistent with the agreement.
>
> The agreement provides significant financial benefits to the state, as well as improved competitiveness and investment certainty for Crown and the 8800 people who work there. Crown will receive a licence extension, removal of the supertax on commission-based gaming, a modest increase in gaming product and enhanced regulatory certainty.
>
> As part of this agreement, the state will receive payments of up to $910 million from Crown. These payments will support enhanced investment in services and infrastructure that will directly benefit Victorians.
>
> Since the Melbourne Casino was established there have been nine variations to the casino management agreement, reflecting the dynamic nature of both the industry and the regulatory environment.
>
> The tenth variation is proposed as the Melbourne Casino faces sharply increased competition from casinos in Australia and the region. In 2001 there was one casino operator in Macau and now there are over 30 casinos operational in Macau. Queensland is in the process of issuing three new casino licences. A second casino in Sydney targeting VIP players will be established on the Barangaroo site in 2019.
>
> Interstate and overseas casino patrons make an important contribution to the Victorian economy, particularly in the hospitality and tourism sectors. It is in the state's economic and employment interests that the Melbourne Casino continues to remain a competitive destination of choice for such visitors.
>
> This bill, consistent with the agreement between the state and Crown, enhances the competitiveness of the Melbourne Casino as a destination for interstate and overseas patrons and encourages investment in Victoria, supporting employment.
>
> Specifically, the bill extends the term of Crown's licence to operate the Melbourne Casino from 18 November 2033 to 18 November 2050.
>
> The bill provides for the number of gaming tables to increase from 400 to 440 and the number of fully automated table game terminals to increase from 200 to 250.
>
> The number of electronic gaming machines the Melbourne Casino is able to operate will increase by 128 from 2500 to 2628. An explicit power to extinguish unallocated and forfeited hotel and club gaming machine entitlements under the Gambling Regulation Act 2003 will be introduced to ensure compliance with the statewide cap of 30 000 gaming machines.
>
> That is to say, the modest increase in electronic gaming machines at the Melbourne Casino will not result in an increase in the maximum number of electronic gaming machines permitted in Victoria.
>
> To ensure the Melbourne Casino remains tax competitive with other casinos in Australia and internationally, the supertax on commission-based play for international and interstate VIP players will be removed. The bill also ratifies

the tenth deed of variation to the casino management agreement.

Victoria's gaming regulation features some of the strongest responsible gambling measures in the world. Since 2010 the government has implemented a ban on automatic teller machines (ATMs) being located within 50 metres of the gaming floor at the Melbourne Casino, created the Victorian Responsible Gambling Foundation as an independent provider of responsible gambling research, public communications and help services and has done so with significantly increased funding.

The government is determined to further strengthen these measures through the introduction of a voluntary precommitment regime across electronic gaming machines operating in Victoria.

In acknowledging the case for enhanced regulatory certainty in the context of an increasingly competitive environment both within Australia and overseas, the government is determined to ensure that the strong responsible gambling regulatory requirements in operation are preserved.

Consistent with this intent, the agreement enhances regulatory certainty for Crown by providing compensation if the state makes certain specific changes to the regulatory environment adverse to Crown. The compensation is calculated as 10.5 times the annualised negative impact on the earnings before interest, tax, depreciation and amortisation (EBITDA) of Crown until 2030, after which the 10.5 multiplier will decrease annually. However, compensation payable is capped at $200 million, indexed at CPI, in a parliamentary term.

Subject to a number of exceptions, the compensation could be triggered if the state were to:

amend Crown's current limited smoking exemption;

restrict the current manner in which Crown's loyalty scheme is permitted to operate;

lower the maximum bet limits on table games and electronic gaming machines;

impose further ATM restrictions, noting that these are already prohibited on and within 50 metres of the gaming floor;

introduce mandatory precommitment; or

alter the manner in which electronic gaming machines are currently permitted to operate in unrestricted mode, beyond the restrictions that already apply.

Other than the provision in relation to the operation of gaming machines in unrestricted mode, the compensation provisions will not be triggered if all other state and territory governments have taken substantially the same actions or series of actions.

The government is committed to implementing a system of voluntary precommitment on electronic gaming machines across Victoria. Consistent with this commitment, implementation of the government's voluntary statewide precommitment scheme is also expressly excluded from the regulatory certainty provisions, including the prohibition of any alternative limit-setting system from 1 December 2015, being the scheduled date for the commencement of the new statewide precommitment system.

For the avoidance of doubt, this prohibition includes Crown's existing loss and time limit-setting system known as 'Play Safe'.

Ordinary principles of damages for breach of contract also apply, if the state were to:

impose new or increased casino taxes without Crown's consent. Taxes exempt from the damages regime include, for example, those of general application to Victorian businesses, property owners or occupiers;

amend Crown's licence conditions without its consent; or

terminate Crown's licence (other than as a result of disciplinary action).

In addition to improving the competitiveness of the Melbourne Casino and supporting greater investment and employment, the agreement between the state and Crown also delivers significant financial benefits to the state. Crown has agreed to pay the state up to $910 million, comprising:

an up-front payment of $250 million in 2014 and a payment of $250 million in 2033;

payment of $100 million in 2022 if the compound annual growth rate of normalised gaming revenue at the Melbourne Casino exceeds 4.0 per cent and an additional $100 million if such growth exceeds 4.7 per cent; and

guaranteed annual tax payments related to new gaming product of at least $35 million per annum for six years commencing in 2015–16, representing a total guarantee of $210 million.

For the purposes of the contingent payments in 2022, 'normalised gaming revenue' means total gaming revenue excluding revenue from commission-based play, plus normalised revenue from commission-based play calculated as the turnover on that play multiplied by a win rate of 1.35 per cent.

Amendments to the Casino Control Act 1991 are required to extend Crown's licence to operate the Melbourne Casino and to increase the number of gaming machines Crown is entitled to operate, noting that these will fall within the existing statewide cap.

Amendment to the Casino (Management Agreement) Act 1993 is required to ratify and annex the tenth deed of variation to the casino management agreement.

The Victorian Commission for Gambling and Liquor Regulation is required to make the amendments to Crown's licence providing for the increased number of gaming machines it will be entitled to operate once the bill receives royal assent, as well as to provide for the increased number of table games and fully automated table game terminals Crown is entitled to operate as a result of the agreement.

In summary, the agreement between the state and Crown delivers significant financial benefits for the state while

preserving the significant responsible gambling provisions currently operating in Victoria.

It also provides, through a period of licence extension, modest additional product, tax reform and measures to support regulatory certainty and enhanced capacity for the Melbourne Casino to remain competitive in the market for interstate and international customers.

This bill reflects an agreement that supports jobs, investment, tourism and the state's finances while reflecting the government's strong commitment to responsible gambling.

I commend the bill to the house.

Debate adjourned on motion of Mr LENDERS (Southern Metropolitan).

Debate adjourned until Thursday, 25 September.

Mr Finn — On a point of order, President, I wanted to illuminate you as to the situation surrounding Mrs Peulich's contribution on the report that was listed. On Tuesday afternoon I listed the Local Government Victoria annual report as a report I wished to refer to. On the advice of the clerks I changed it to the report that was listed on the notice paper, and that was how Mrs Peulich came to speak on that particular report and not on local government as I had originally proposed.

Hon. D. M. Davis — On the point of order, President, it sounds to me like there may have just been some confusion about which report the local government section was in. If local government is covered in that report, Mrs Peulich is entirely in order, but if she were misled in some way, there may be mechanisms for us to deal with that.

The PRESIDENT — Order! As I understand it, the report Mr Finn sought to consider had not actually been tabled in the Parliament at the time he listed it, so therefore it was not possible to proceed with that report. It was changed to this alternate report, which was the Department of Transport, Planning and Local Infrastructure report. Unfortunately the transport, planning and infrastructure report does not cover local government and certainly does not cover the matters that were raised by the member on that occasion.

Mrs Peulich — On the point of order, President, it was actually my request to Mr Finn to list that matter for me as I was expecting not to be in the chamber. I thank him for trying to shed some light on the matter. I note that I did cite page 143, which states that as part of the structure of the department there is responsibility for the Local Government Act 1989, which provides for matters to do with the structure, administration and operations of local government. What I endeavoured to do was to develop a case reflecting on the previous night's adjournment debate, during which I called on the minister to provide some guidance to local government on the interface between legitimate advocacy and political campaigning and the partial use of resources. I note also that the clerks admitted to the Acting President at the time, Mr O'Brien, that they believed there was a tenuous link. I just place that on the record.

The PRESIDENT — Order! The Acting President, Mr O'Brien, thought no such thing. Mr O'Brien was in a position where he had not read the report and he was unable to establish whether or not the matters that were raised were relevant to the report. That is the case with anyone in the chair. A chairperson is obviously not in a position to be familiar with every report and relies on the member to provide information that is relevant to that report. Mr O'Brien did not have such a position. He basically took the view that he did not know what was in the report. That was fair enough and quite understandable, and he has my total support.

The fact is that this was not a local government report. Page 143 refers only to local government and there is a second mention of local government in the report. However, in both cases it only refers to, if you like, the state government department responsible for transport, planning and infrastructure in liaison with local government in the delivery of projects. As I said, the projects and certainly the matters related to the conduct of members of councils was not in any way relevant to the report. I accept, as Mr Finn has put and Mrs Peulich has amplified, that there was perhaps confusion about which report was going on the notice paper, but, again, members need to be conversant with which report they are tabling for consideration.

PETITIONS

The PRESIDENT — Order! With the indulgence of members, I seek leave of the Council to have two petitions introduced. We normally do this earlier in the day — and in fact we did — but Mr Koch had put a petition into the office and it had been overlooked. Because Mr Koch had done the right thing and fulfilled all the requirements in terms of having that petition considered, he has asked if he might be able to table it this day. Ms Pulford also had a petition to table but was not here when the earlier petitions were presented.

By leave, following petitions presented to house:

Torquay–Lorne bus service

To the Legislative Council of Victoria:

The petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council that there is a slack bus timetable for the Great Ocean Road V/Line service on Saturdays and Sundays throughout the year; excluding the special summer timetable. The times are unsuitable, making it difficult for the local teens, elders and other bus travellers to get around on weekends.

The petitioners therefore request that a new bus service should be introduced, travelling to and from Lorne and Torquay on Saturdays and Sundays throughout the year. Currently there are two V/Line coaches travelling to and from Apollo Bay and Geelong on the weekend; however, the times are inconvenient for bus travellers.

By Mr KOCH (Western Victoria) (99 signatures).

Laid on table.

Motor vehicle registration

To the Legislative Council of Victoria:

This petition of certain citizens of the state of Victoria draws to the attention of the Legislative Council the Napthine government's plan to further increase car registration fees and stamp duty.

This is despite the state government cutting costs by abolishing registration stickers and a previous increase in car registration fees in 2012.

Petitioners therefore request that the Legislative Council condemns the Napthine government for its decision to further increase car registration fees.

By Ms PULFORD (Western Victoria) (83 signatures).

Laid on table.

Sitting suspended 1.09 p.m. until 2.13 p.m.

RESOURCES LEGISLATION AMENDMENT (BTEX PROHIBITION AND OTHER MATTERS) BILL 2014

Second reading

Debate resumed.

Mr RAMSAY (Western Victoria) — I want to make some closing remarks on the bill. Prior to question time I was saying that Labor cannot be trusted given its history in issuing licences for fracking in Victoria. I reconfirm our commitment to make sure that this government fully canvasses community opinion in relation to onshore gas exploration in Victoria. I acknowledge the steps we have taken in relation to the consultation process, including: putting a hold on granting new exploration licences for all types of onshore exploration whether it be tight, shale, coal seam or conventional gas; putting a hold on approvals for hydraulic fracturing; a hold on exploration drilling activities; putting an administration ban on the use of benzene, toluene, ethylbenzene and xylene chemicals, which is being enshrined in this legislation; and initiating scientific studies to understand the possible impact of a potential onshore natural gas industry on Victoria's surface water and groundwater. Unlike Labor, we have engaged and are engaged in a legitimate and extensive community consultation with Victorians.

My fellow rural members of Parliament in both the Liberal Party and The Nationals and I would not support any legislation that would compromise food and fibre security in this state. We would not support any legislation or the granting of licences for any sort of mineral exploration — —

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

Mr SOMYUREK (South Eastern Metropolitan) — I rise to speak on the Resources Legislation Amendment (BTEX Prohibition and Other Matters) Bill 2014 and note from the outset that, as my colleague Mr Scheffer said, we will not be opposing the bill.

The bill amends the licensing system for mineral exploration and in particular restricts the adding of benzene, toluene, ethylbenzene and xylene (BTEX) chemicals to hydraulic fracturing fluids. It does so through amendments to the Geothermal Energy Resources Act 2005, the Greenhouse Gas Geological Sequestration Act 2008, the Mineral Resources (Sustainable Development) Act 1990 and the Petroleum Act 1998. The bill also amends the Offshore Petroleum and Greenhouse Gas Storage Act 2010 and the Pipelines Act 2005.

BTEX is an acronym for the chemicals benzene, ethylbenzene, toluene and xylene. We note that while they are naturally occurring compounds found in petroleum products, they have harmful effects on human health. This is partly where the controversy regarding fracking originates. The issue of fracking is well known, and there are certainly passionate advocates on both sides of the debate. However, I will not focus on that debate in my contribution today but on the BTEX chemicals that the bill prohibits, and I will explain the concerns about each of them. The information I use is freely available on the federal Department of Environment's National Pollutant

Inventory. The fact that these compounds are listed on this database indicates that they should be used extremely cautiously at the very least. When it comes to mineral explanation the reasons for the prohibition will become apparent.

Exposure to benzene can result in skin and eye irritations, drowsiness, dizziness, headaches and vomiting. More seriously, it is carcinogenic and can cause leukaemia. Long-term exposure can affect normal blood production and the immune system. I do not wish to sound alarmist about all of this; I am merely stating the information from the National Pollution Inventory. To put the use of benzene into context, many people are exposed to benzene through tobacco smoke and car exhaust. We have extensively debated limiting exposure to tobacco smoke and car exhaust in this place, and it is quite apparent that the use of benzene for mineral exploration needs to be restricted.

Likewise exposure to ethylbenzene can cause eye, nose and throat irritation. High levels can cause dizziness and light-headedness or cause you to pass out. Very high levels can cause paralysis, trouble breathing, liver damage and death. Prolonged exposure can cause drying, scaling and even blistering of the skin. Chronic health effects due to ethylbenzene exposure can occur for some time after exposure and last for years.

Short-term exposure to high levels of toluene results first in light-headedness and euphoria followed by dizziness, sleepiness, unconsciousness and in some cases death. Long-term exposure to high amounts of toluene through intentional abuse have been linked to permanent brain damage, problems with speech, vision and hearing, loss of muscle control, loss of memory and balance, and reduced scores on psychological tests. Finally, the health impacts include ear, nose and throat irritation; stomach problems; drowsiness; loss of memory; poor concentration; nausea; vomiting; abdominal pain; and incoordination. High levels of exposure may cause dizziness, passing out and even death. Repeated exposure may damage bone marrow, and it can damage a developing foetus. For someone listening to me, that list of things might sound a bit alarmist. I have not made that up. That is on a credible web page.

The bill may not prevent BTEX chemicals from being used. Rather the regulations define a maximum amount of BTEX chemicals that may be used, and the bill provides that once the amount is reached, the compounds become restricted hydraulic fracturing substances. This is a large loophole, which I hope is not exploited. Given the concerns I have raised about even low-level or short-term exposure to these chemicals, I prefer to err, as I always do, on the side of caution and prohibit their use. Whilst Labor members will not oppose the bill because we wish to see regulation in this space, it is important to note that the use of BTEX chemicals is not being banned completely by this bill.

Mr D. D. O'BRIEN (Eastern Victoria) — I am pleased to rise to speak on this bill, which in fact honours one of the commitments the coalition government has made in this space in relation to onshore gas exploration, including fracking, coal seam gas, tight gas and shale gas. This is a very big issue in my electorate of Eastern Victoria Region, in particular in the rural areas of Gippsland and especially in areas of South Gippsland, where there is quite a high level of very genuine concern. I say 'genuine concern' because I do not doubt for one second that the concerns of landholders and residents in my electorate are very genuine.

Many issues that are raised in this space are sometimes a little misplaced. I fear that sometimes the debate has run way ahead of the facts and reality. I say that in the sense that there may not be gas in some of the areas, or there may not be commercial quantities or commercially accessible gas in the areas. In some senses the debate has become a little overheated. I hope what the coalition government is doing will go some way towards addressing the genuine concerns that people have.

From a starting point, it is important to highlight my view and that of the government generally. I can echo the Premier's words on this whole debate on onshore gas. On 4 August when the Premier was in Hamilton in the Western District, of all places, he said:

> … while I'm Premier of this state, we will do nothing that will jeopardise our prime agricultural production, our prime agricultural land, jeopardises our environment, or jeopardises our underground water supplies.

That position is very clear. The government will not jeopardise our future. Government members know that in a place like Gippsland there will always be a strong role for agriculture in our long-term future. It is one of our strengths, and the government will ensure that we do not harm that future. Sustainable production and sustainable jobs are obviously important for feeding and clothing people in not only Australia but the world.

I quote again from the Premier:

> … but I said to the group this morning that they could be very confident that under my premiership there will be no fracking, no actions with respect to onshore gas, that jeopardises our prime agricultural production, and jeopardises our underground water supplies.

I hope it would be fair to say that members of this chamber are on a unity ticket on that — that is, that no-one will do anything that will jeopardise our water supplies and our prime agricultural land.

We need to understand that agriculture is fundamental to many of our communities, certainly those in Gippsland, and we need to make sure that we protect it. As I have said in the past, Gippsland is an agricultural powerhouse. It has some 20 per cent of Australia's milk production, and it is a great producer of beef, sheep meat, vegetables and other horticultural products in various forms.

I have referred to some discussion in this debate that I consider to be a little misplaced. There have been various commentaries and videos online about Gippsland being pristine. As beautiful as Gippsland is and as wonderful as the produce from Gippsland is, to say it is pristine would be stretching the truth a bit. Unlike many other areas of the state, Gippsland has long been able to manage a balance between agriculture and quality of life and mining. We have coal, oil and gas industries. Obviously we have a significant coal industry in the Latrobe Valley, and we have oil and gas on Bass Strait, with the onshore works at Longford.

It is important to understand that it is simply not true to say that the two cannot coexist. What will happen with onshore gas is yet to be seen. I am pleased that the government is taking a very cautious approach to this matter. It would be very clear to anyone who looks at what has happened in Queensland and New South Wales that the Victorian government is taking a very cautious approach. That is because the government genuinely wants to ensure that we look after our agricultural land and groundwater supplies.

As Mr Ramsay said, the coalition government is doing a number of things in addition to this legislation, which bans the use of BTEX chemicals in fracking. There is also a hold on the granting of new exploration licences for all types of onshore gas, whether that be tight, shale, coal seam or conventional gas. There is a hold on approvals for fracking, a hold on exploration drilling activities and at the moment an administrative ban on the use of BTEX chemicals, which will be enshrined in this legislation.

Most importantly, the government has begun a number of scientific studies to better understand the base level status of our groundwater. I understand that the federal government's Geoscience Australia is assisting in that process. With the bit of background I had on this issue in northern New South Wales and Queensland in my previous role of working with irrigators, I learnt that one of the things they struggled with most was how to measure whether the industry has had an impact on the groundwater if they did not know what the groundwater was in the first place. It is important that we do this work and we have that baseline understanding. I am very pleased that the coalition government is doing that work with the support of the commonwealth. That will ensure that we have the debate in a factual and sound scientific sphere, rather than with all the emotion. I do not for a second belittle or seek to diminish the concerns that people have, but we do need to look at the best available facts and ensure that we have a rational debate.

I come to another aspect of the coalition government's action, and that is the very extensive consultation sessions that the government is having. I was somewhat frustrated to read some of the concerns about this raised by members of Lock the Gate and various others. There have been 16 sessions across the state. They have run from 2 in the afternoon until 8 at night, so covering all times of the day to allow people to get there before work or after work. It has been a very open process. People can simply walk in. They do not have to stand up in front of a group but can approach people.

I went to one of the sessions for a few hours just to learn a little bit and to hear what people were saying. People had the opportunity to have their say and to listen and talk to other people. One of the claims made was that no notice was given of the events. I had signed up on the government website, and I certainly received an email notifying me of the events that were happening. I am concerned that people are saying, 'The government doesn't really want to listen to us'. That is what this process is all about. I encourage people to take it seriously, to go along and have their say and ensure that their voice is heard.

Government members are genuinely interested in what people have to say, but we are also genuinely interested in having a rational debate about this. I look forward to that work coming to the government, and to future decisions being made.

It will be interesting to see how this issue plays out at the election. I unfortunately missed Mr Barber's contribution earlier, and I thank him, but I do not need him to give it again: I am pretty sure I know where the Greens stand on this one. When it comes to the Labor Party, I am not so sure. Its members have not been terribly clear as to their position on this issue, but I welcome their support for this piece of legislation.

I have listed what the coalition is doing: it is taking a very cautious approach to this. Labor, on the other

hand, just went ahead with the industry holus-bolus. Seventy-three licences were issued, 23 fracking operations occurred and there was little or no public consultation. I know all sorts of comments are made about us on this side of politics to the effect that we are in the pockets of the gas companies, but we on this side are the ones who have put a halt to this until more research is done. We are the ones who are listening to people and letting them have their say. It is important that that be recognised.

I look forward to further debate on this issue. This legislation adds one piece of the puzzle that the coalition is working through to deal with the onshore gas issue. The government recognises this is a very serious issue, as it is in my electorate. People have genuine concerns. We need to be balanced and to ensure that we consider things. As Mr Barber often reminds us, we need to look at the science. That will be important as this debate goes forward.

It is important to recognise that this bill meets one of our important commitments, which is to implement the ban on BTEX chemicals in fracking. I know my colleague Mr David O'Brien, a member for Western Victoria Region, has genuine concerns similar to mine about the western part of the state.

Mr D. R. J. O'Brien — Longstanding concerns.

Mr D. D. O'BRIEN — They are longstanding concerns, as he says.

Mr D. R. J. O'Brien — And support for our aquifer!

Mr D. D. O'BRIEN — He is strongly supportive of aquifers and the use of water in the Western District, where we have good groundwater supplies.

This bill meets one of our main commitments and reinforces our determination to ensure that we protect our communities, our farmland and our water supplies. I commend the bill to the house.

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1

Mr BARBER (Northern Metropolitan) — My first question for the minister on this clause, as it relates to the whole bill, is as follows: the second-reading speech says that BTEX are naturally occurring compounds found in petroleum products and that these chemicals have been known to have harmful effects on human health. Can the minister describe to me what the threat to human health is that could occur if BTEX was allowed in a gas drilling exploration or production process?

Hon. D. K. DRUM (Minister for Sport and Recreation) — My understanding in relation to the terms that Mr Barber is using has to do with the fact that extremely small traces of BTEX chemicals are found naturally in our waterways and streams. The concept is that none of these elements would be allowable at levels over and above what would normally be found in drinking water.

Mr BARBER (Northern Metropolitan) — Groundwater is drinking water for a lot of people in this area, so is the minister saying that if there are some levels of BTEX detectable in groundwater at the baseline, then the aim of this regulation, when it is eventually brought in, is to ensure that there is no increase to that baseline?

Hon. D. K. DRUM (Minister for Sport and Recreation) — That is certainly my understanding.

Mr BARBER (Northern Metropolitan) — How does this bill ensure that?

Hon. D. K. DRUM (Minister for Sport and Recreation) — I would imagine in the event that these chemicals were found in levels greater than what will be set in regulation, then there will be incredibly stiff penalties applying to anybody who has been using these chemicals.

Mr BARBER (Northern Metropolitan) — But unless you catch them in the act of using these chemicals, then they might use chemicals and insert them into a drilling rig. Later you might find some levels of BTEX in groundwater in the vicinity. What option does the government then have? Unless you are there at the very moment when the chemicals might have been added to a bore in a drilling operation, you would never be able to prove that the BTEX was at a level due to that operation.

Hon. D. K. DRUM (Minister for Sport and Recreation) — I will ask the support staff to help me in relation to whether it is possible to find a way to catch the perpetrators of a criminal act.

I am advised that amendment to regulations will be required to prescribe the amounts of BTEX needed for a hydraulic fracturing substance to be considered

restricted as well as the development of a compliance and enforcement regime capable of effectively regulating this activity. So the enforcement and compliance regime will be developed along with the prescribed amounts.

Mr BARBER (Northern Metropolitan) — A whole range of chemicals can be used during drilling operations. In some of the paperwork I have seen on a couple of unconventional gas drilling operations vast lists of chemicals are provided as to what they may be used to do in a drilling operation. A lot of them simply list trade names. Sometimes the recipes, if you like, for these various chemicals are themselves trade secrets. It is quite important that the government, in putting forward this bill that purports to create a mechanism to prohibit BTEX, explains how that will work. If a company provides a list of chemicals that it is going to use during a drilling operation, or even during a fracking operation, and no-one knows what is in those chemicals, then it will be basically impossible to determine the level of BTEX that might occur in those chemicals.

Hon. D. K. DRUM (Minister for Sport and Recreation) — I understand what Mr Barber is saying. However, I need to come back to the concept that we have four chemicals here that are part of the prohibition in relation to this bill. They are the four chemicals read out by Mr Ramsay; most of the speakers in the second-reading debate mentioned the four chemicals that come under the BTEX prohibition. It may very well be the case that there may be others into the future — that there may be cocktails of other chemicals coming together to form other harmful compounds. I imagine, as with similar legislation in relation to drugs and poisons, we could very well be back here in 6 to 12 months time adding further chemicals to this list.

Mr BARBER (Northern Metropolitan) — There is the further problem that some of these chemicals are recognised as occurring naturally in coal seams. What we are contemplating here is legislation that would regulate coal seam gas fracking. I do not seem to be getting an answer. The question that is still open is: how do you successfully regulate BTEX chemicals in fracking when they might be inserted during the drilling process or they might be naturally occurring but only released due to the fracking operation and may be sucked back up the hole and put into a dam on the surface and then possibly even reinjected using water from that dam? These are very water-hungry operations.

I will explore this a little bit more when we get the definitions clause, because that is the thing — the act, if you like — that is being regulated. But I want to pursue a little bit more about these chemicals and the safe levels. As noted, they are naturally occurring in some coal seams. Benzene, toluene and xylene are found in motor vehicle exhaust, for example. In fact the air quality measures that have been set up for the east–west link and its vent stacks set levels of benzene, toluene and xylene emissions at 53 micrograms per metre cubed or 650 micrograms per metre cubed. It seems these very dangerous chemicals that we have been hearing about, which the Premier has told us he will never let harm the land and water of his electorate, can be spewed out of a road tunnel vent stack in Collingwood. That brings us to the question: what does the government believe would be safe levels of these chemicals to be used in a gas drilling operation?

Hon. D. K. DRUM (Minister for Sport and Recreation) — This bill is all about prohibiting the use of these chemicals in the process of fracking. Based upon science, we will put together limits consistent with, as I am led to believe, what we would find in drinking water in a natural environment. We would be setting our limits based on those levels, and there would be a prohibition on injecting any of these chemicals in a commercial fracking operation.

Mr BARBER (Northern Metropolitan) — The minister just said two contradictory things. The first was that he would prohibit their injection, and the second was that they would set safe levels that were drinking water levels. I could understand it if the minister was saying that anything injected into a gas well must have no more BTEX than drinking water would. In other words, you could safely inject drinking water into the well. But they are in fact two different things. I am happy to come back to that when we deal with the specific provision.

Picking up on another part of the minister's answer, about the monitoring, as noted by earlier speakers the government has issued a document entitled *Specification for Baseline Monitoring of Groundwater in the Gippsland and Otway Basins for Victorian Water Science Studies*. That is a tender that I believe has just closed. I have obtained a copy of it, and it suggests that the scope of the baseline monitoring would be 30 sites in the Gippsland Basin and 30 sites in the Otway Basin, to be monitored for, I guess, currently occurring or naturally occurring levels of BTEX.

That might be a helpful exercise in getting some samples, but 60 bores is hardly going to make much of a baseline across the southern half of Victoria, which is what we are talking about. Is it the minister's advice that the baseline samples that are taken of these bores

now will be what is used to determine the safe or naturally occurring level of BTEX in groundwater across these two regions, or, alternately, that monitored levels discovered now are what will be used later in an attempt to detect whether there might be any illegal injection or release of BTEX chemicals into groundwater?

Hon. D. K. DRUM (Minister for Sport and Recreation) — The drilling program that is planned is effectively to give us all a better understanding of the structure beneath the surface; it is to give us an understanding of a whole range of naturally occurring phenomena beneath the surface and an idea of what is down there. In amongst that will be the levels of the four BTEX chemicals. That will be used to ensure that in future we do not find any increase. Ultimately extraction licences would be bound to ensure that they adhere to the regulatory structure that is going to be put around the licences themselves. That is about as much as I can say in response to that particular question.

Mr BARBER (Northern Metropolitan) — It is not in fact a drilling program. It is a sampling program of existing bores either from the state observation bore network or by arrangement with private bores. The intention of sampling those 60 bores from across Gippsland and the Otways is to measure the existing levels of BTEX in those 60 bores. So there are two possibilities, are there not? One is that we take this sample now, and later those baseline levels are used to say, 'Well, if water either inserted or extracted from an unconventional gas well has the same amount of BTEX in it, then the assumption is that that is the natural baseline level'. Alternately, one would have to find higher levels and presume, by reference to one of the 60 bores that, therefore, something must have happened. That is one way of enforcing the so-called prohibition. Actually it is not a prohibition; it is about setting levels, as the minister said, somewhere around drinking water guideline standards.

The second possibility can only be to actually be standing there at the exact moment when a BTEX chemical is either injected into a drilling operation or added to the water that is to be used to be injected into the operation. That is why it is very important for the minister to explain the purpose of measuring now what the BTEX levels are in the 60 bores. Is it because that will be the baseline against which future standards will be set for the purpose of monitoring gas extraction operations, or is it simply that the intention is to regulate the chemicals at the point where they might or might not be added?

Hon. D. K. DRUM (Minister for Sport and Recreation) — My understanding is that the primary purpose of this inspection is not necessarily to gain a baseline measurement of BTEX chemicals, although that will be a peripheral piece of work that gets done. What I am informed is that the primary purpose of the inspection of these sites is to gain a better understanding about what is down there in the first place — that is, the profile of the soils beneath the surface. That is the primary purpose of this inspection regime.

Mr BARBER (Northern Metropolitan) — Perhaps I was confused by the title of the tender, which refers to 'baseline monitoring of groundwater' in the basins.

An honourable member — It does not say BTEX.

Mr BARBER — It does say BTEX. In fact there is a background note, which says:

> The Victorian government is undertaking a major program of studies to examine the potential impacts of possible onshore natural gas development on Victoria's water resources.
>
> …
>
> The program will improve the understanding of Victoria's water resources and provide independently reviewed scientific data and information …

And when we get down to what is to be monitored, the scope, it says:

> The water quality monitoring is expected to include the following parameters:
>
> > field characterisation of the water, including salinity, pH, temperature, and methane levels;
> >
> > laboratory analysis of groundwaters to determine the occurrence of methane and BTEX …

It goes to the exact thing that everybody is concerned about. They find methane bubbling up out of one of their dams and say, 'That's because the fracking has released all of that methane. I can literally put a cigarette lighter to it and set it on fire', and the response is, 'No, no, that's just naturally occurring methane'. I would presume the government is sampling 60 bores to see whether there is the occurrence of methane and BTEX.

If I was a member of the community, I would be concerned that the whole exercise of setting and enforcing the safe levels will be driven by the measurement of 60 bores out of thousands and thousands of them, which indicates that we are dealing with a very large landscape. The minister's explanation

is his explanation, but my view of it is still as I have just stated.

Hon. D. K. DRUM (Minister for Sport and Recreation) — I want to touch on what Mr Barber said. I have witnessed on many occasions, across the Western Downs in Queensland, the naturally occurring phenomenon of people being able to put a cigarette lighter to bare ground and light the methane or whatever chemical is emanating from the surface. A farmer who was doing this very thing told me that a couple of years previously during the floods he was out in his tinny and was able to see gas bubbling through the floodwater. The land had not been flooded for many years, but he was told by the older people that that is what happens when the land floods — you can see the bubbles emanating from the surface right across the plains. That was his understanding, and that is what my colleagues and I were told on that day — that this is a naturally occurring phenomena where the coal seams and the gas seams are close to the surface. I saw this in person.

Mr BARBER (Northern Metropolitan) — I thank the minister for that old bushies tail. We were told this was all about the science. I was told relentlessly this morning that this was going to be all about science — 'We have to put the facts in. We don't want emotion; bring the facts in'. The facts are the government is going to monitor 60 bores and set those baselines. If anyone comes along later and complains about the quality of their groundwater, they will have to meet the burden of proving, by reference to a bore that could be tens of miles away, that their particular situation was not already some naturally occurring variation that had not been picked up by the monitoring program.

That is fine, provided we understand that this bill has been brought in in preparation for the introduction of unconventional gas drilling across Victoria. We have a policy moratorium in place until July 2015, but the only purpose for bringing in this bill is that the government intends to start licensing unconventional gas exploration and production in Victoria. Otherwise, what would be the purpose of this bill, and what would be the purpose of the tender for baseline monitoring of groundwater — which is hidden away on the Tenders VIC website for those who have a login but otherwise is not generally circulating and has not to date been brought forward as part of the discussion.

Hon. D. K. DRUM (Minister for Sport and Recreation) — Again I take the opportunity to rebut what Mr Barber is saying because it is simply not true. I feel as if Mr Barber is wasting my time if he is going to say things that are simply not true. The government has given no indication of its objectives, its aims or its intentions for the future because the government is still doing the work that is going to inform which direction it is going to take. To say this does not matter because the government is going to do it anyway or that the only reason for the introduction of bans on these chemicals is that we are going to commence unconventional gas exploration is totally wrong.

Clause agreed to; clause 2 agreed to.

Clause 3

Mr SCHEFFER (Eastern Victoria) — Some of the questions I wish to ask might run across what Mr Barber has been speaking about, but I will follow my own logic rather than the logic of the way the questions have been pitched before. There might be some repetition.

I refer to clause 3 of the bill, which inserts a new section, in this instance, in the Geothermal Energy Resources Act 2005. The minister will know this clause is identical to clauses 6 and 69 of the bill that insert the same amendment into the Greenhouse Gas Geological Sequestration Act 2008 and the Petroleum Act 1998 respectively.

The clause states that 'restricted hydraulic fracturing substances' mean fluids or gases used for the purposes of hydraulic fracturing that contain petroleum hydrocarbons containing benzene, ethylbenzene and xylene in greater quantities than the maximum amount prescribed by the regulations. I understand that the regulations are not yet prepared, and I also understand that in the fracking process water and sand as well as the additives are inserted into a borehole.

I am laying this out for the minister in the hope that we have the same view of what the process involves. I understand that the additives represent a small percentage of the inserted mixture, which is called the proppant, and that the BTEX chemical compound plays a part in the process in three ways.

The first way is as a component which is actively mixed into the additives by the miner. The second way is that a component already exists in small quantities in the water and sand mixture, the proppant, and the third way is in the underground environment, which has been referred to previously, into which the borehole is inserted. Members may recall that the second-reading speech states that these chemicals are naturally occurring compounds found in petroleum products.

Given that background, I have four questions. Can the minister confirm that the regulations provided for in

clause 3 will prohibit any BTEX chemical compound from being mixed into the additive with the proppant — that is, no BTEX chemical at all, no compound, will be added to the proppant?

Hon. D. K. DRUM (Minister for Sport and Recreation) — My understanding is yes.

Mr SCHEFFER (Eastern Victoria) — Coming to the second part of it, where a component already exists in small quantities in the water and sand mixture that is part of the additive, can the minister ensure that the regulations will set a prescribed maximum occurrence for each of those chemicals that is equal to or less than the values prescribed under the Australian Drinking Water Health Guidelines, which I think he referred to earlier on.

Just before the minister stands, I note that New South Wales has not passed legislation. That state has a policy that prohibits the use of BTEX chemicals in fracking and it lists the values for benzene as 0.001 milligrams per litre; toluene, 0.8 milligrams per litre; ethylbenzene, 0.3 milligrams per litre; and xylene, 0.6 milligrams per litre. Queensland has legislation and I have seen another set of data in that legislation or in the regulations to the legislation. Will the minister give a commitment that the Victorian regulations will use the Australian Drinking Water Health Guidelines? If I can have his indulgence, I would also be interested to know why the Queensland regulations appear to use different values.

Hon. D. K. DRUM (Minister for Sport and Recreation) — The scenario that Mr Scheffer has put to the chamber today accurately describes the intention of what we are doing. As members know, the limits have not been set in the regulations as we speak. The regulations and the limits within those regulations will be put in place between now and when the government finishes its work midway through next year. That is the time line the government has set to finalise its work. However, I will just check with the advisers on the question about the Queensland limits.

The regulatory impact statement process will look at exactly these limits and will look at using drinking water standards and limitations as the amounts to be permitted within these regulatory limits.

Mr SCHEFFER (Eastern Victoria) — With respect, I did ask the minister about Queensland. There seem to be different sets.

Hon. D. K. DRUM (Minister for Sport and Recreation) — I am unable to assist Mr Scheffer with why Queensland has a different set of values.

Mr SCHEFFER (Eastern Victoria) — To be absolutely crystal clear, is it envisaged that in Victoria the regulations will use the four quantums that I listed previously?

Hon. D. K. DRUM (Minister for Sport and Recreation) — Yes, providing they are considered to be safe amounts of these chemicals in standard drinking water.

Mr SCHEFFER (Eastern Victoria) — The third area I refer to is the subterranean environment. Are the provisions in clause 3 sufficient to ensure that the fracking process will not release naturally occurring petroleum hydrocarbons that contain benzene, ethylbenzene, toluene and xylene in more than the maximum amounts?

Hon. D. K. DRUM (Minister for Sport and Recreation) — Coming back to the purpose of the bill, this is about legislating and prohibiting what goes in. What is down there is what is down there. The idea that by opening up seams you are going to have certain chemicals all of a sudden congregating in one particular area is not the reality. What is down there is down there. This bill is about prohibiting humans from putting four chemicals into the subterranean profile.

Mr SCHEFFER (Eastern Victoria) — We are now in a situation where we are clear about what is going to go into the proppant and we are clear about the quantities that already exist in that proppant, but now the minister is saying that the fracking process could release these very chemicals that could then go into the groundwater and cause extremely dangerous situations in the subterranean strata. Does the bill not in any way address that, or is there no way of addressing that? Does it just happen?

Hon. D. K. DRUM (Minister for Sport and Recreation) — Mr Scheffer is talking about a totally different issue. He is talking about the whole impact of fracking. This bill does not go into that space. What we are doing here is putting a prohibition on putting four chemicals, known collectively as BTEX, into a fracking process. We are putting that ban in place.

Mr SCHEFFER (Eastern Victoria) — Finally, and probably the minister has answered this but I will come back to it again, the provision in section 206(4)(b) of the Queensland Environmental Protection Act 1994 restricts the use of chemicals likely to produce BTEX chemicals as they break down in the environment. That is in the Queensland legislation. Coming back to the answer he gave before, is the minister saying that this legislation does not deal with that contingency?

Hon. D. K. DRUM (Minister for Sport and Recreation) — It is a good question, Mr Scheffer. This bill does not deal with those types of chemicals. However, I am informed that that it is the type of work that would be looked at through the regulatory impact statement process. That is the sort of thing they will be looking to do and to be across — those like chemicals or substances that may break down into what resembles a BTEX chemical into the future.

Mr BARBER (Northern Metropolitan) — I want to talk about the definitions and how they operate with the prohibition clause as set out in clause 25. The definition at clause 3 and elsewhere then operates at the actual sections where BTEX chemicals are prohibited, so I want to chop and change between the two sections to get to the essence of how this definition works. We have a definition of hydraulic fracturing in clause 3, which says:

> ***hydraulic fracturing*** means the injection of a substance or substances into a bore under pressure for the purposes of stimulating a geological formation;

We then have a definition of restricted hydraulic fracturing substances, which says:

> ***restricted hydraulic fracturing substances*** means fluids or gases used for the purpose of hydraulic fracturing that contain petroleum hydrocarbons containing benzene, ethylbenzene, toluene or xylene in more than the maximum amount prescribed by the regulations.".

On prohibition, clause 25 says:

> It is a condition of a licence that the use of restricted hydraulic fracturing substances is prohibited in carrying out any hydraulic fracturing permitted by the licence.

What I have been trying to find out, and I think Mr Scheffer was trying to explore the same issue, is what is the actual act that is going to be prohibited? There is something of a circular definition in the bill. If I were to read the prohibition clause, including the words of the definitions, it would say:

> It is a condition of a licence that the use of fluids or gases used for the purpose of the injection of a substance or substances into a bore under pressure for the purposes of stimulating a geological formation that contain petroleum hydrocarbons containing benzene, ethylbenzene, toluene or xylene in more than the maximum amount prescribed by the regulations is prohibited in carrying out any hydraulic fracturing.

It means we would then have to go back to the hydraulic fracturing definition and insert that. In actual fact there are about four circles in this definition, and it is absolutely unclear to me what specific act is being prohibited.

The whole fracturing operation could release a whole range of BTEX chemicals in amounts and quantities that even the operator would be completely unaware of because for the time being it is all happening down there in the ground, unless it escapes into another aquifer and maybe rises to the surface somewhere or comes out in the water which is then dewatered — that is, water is pumped down to open up the fractures, then that same water is sucked out to extract the gas. At what actual point in all of that is someone considered to have breached the provision? If I come along and find that someone is sucking water out of a gas well — dewatering it — and the BTEX quantity in that is higher than the drinking water guidelines, at what point have I broken the law? Or does the provision directly operate only at the moment where I take some BTEX chemicals up on the surface, mix them with water and then start to inject them?

Hon. D. K. DRUM (Minister for Sport and Recreation) — It is the second scenario, Mr Barber.

Mr BARBER (Northern Metropolitan) — So unless you catch someone in the act of injecting water containing BTEX into a well, then they have done nothing wrong. The fact that the entire fracturing operation may have released BTEX, that BTEX may have made it into the groundwater and that groundwater may have made it into someone's drinking water supply is basically irrelevant. There are massive amounts of surface water being used in the process of injection, but as long as you only mix the right quantity of BTEX into that water then it really does not matter what happens afterwards.

Hon. D. K. DRUM (Minister for Sport and Recreation) — Or you can prove that a miner has added BTEX chemicals to their fracking process, but in this bill we are not taking it further than prohibiting the use of these chemicals in the fracking process.

Mr BARBER (Northern Metropolitan) — It makes me wonder then what the use of the groundwater monitoring program is, because even if we subsequently discover BTEX in groundwater adjacent to a fracking operation, we will not be able to, or seemingly even want to, pin that particular incidence of contamination on the act. Unless we can catch them in the moment of actually injecting it, then nobody has done anything wrong.

I suppose a further issue arises when the water itself is extracted from the gas well. It would then be prohibited to use excessively contaminated water to reinject it into another nearby well. This water would now be sucked to the surface — it is in excess of drinking water

guidelines for BTEX and has nothing to do with it — and sit there as surface water. It would seem that there is a big problem with disposing this water. Given that these operations, including at the exploration level — never mind the production level — are going to go through this process, there will be a lot of contaminated water, which Mr Drum says you cannot inject into the groundwater. But large amounts of it will be sitting around on the surface, presumably to be dealt with by another process.

Clause agreed to; clauses 4 to 12 agreed to.

Clause 13

Mr BARBER (Northern Metropolitan) — This was the definitions clause but I think I covered it in the earlier clause, so we can move on to clause 30.

Clause agreed to; clauses 14 to 29 agreed to.

Clause 30

Mr BARBER (Northern Metropolitan) — I am not proposing to vote against the clause. It has some good parts and some bad parts. It sets out the process for surveying land that is proposed to be covered by a mining, prospecting or retention licence. It is unclear what the status of the mining company's operation would be at this stage. It includes the new ability for the department head to grant authority to a person to enter private land to survey it for mining or gas drilling after the landowner has refused entry. The clause has some good in that it sets up a process for requesting and obtaining the farmer's permission, and we would support that. However, I do not see the point of setting up such a process and then letting the government overturn the decision. In the same situation on Crown land the Crown actually has a right of veto. In other words, it has more power over its land than a farmer has over their own private property. Does the government acknowledge that this clause gives the mining company a greater power than the landholder in the negotiation process?

Hon. D. K. DRUM (Minister for Sport and Recreation) — There is no change at all under this legislation to powers over the land. The slight difference that will be enacted as part of the surveying of land is that previously you would receive your licence and would go in and conduct your survey. What we are doing in this bill is asking that the survey be conducted prior to the granting of the licence. In relation to the powers over Crown land and private land, the landowner versus the mining company, none of that changes. It is just that when you apply for your licence, you will do your survey at that time. It will be either granted or knocked back before the licence is permitted on the grounds of your surveying.

Mr BARBER (Northern Metropolitan) — I am sure Mr Drum and other regional members have noticed quite a few of these lock-the-gate signs as they have been driving around, because this is the exact point. The minister may say the same provision would apply after the issue of the mining licence, but we are talking about people who do not intend or wish to have these licences on their land and therefore want to use their powers of objection. There is no doubt that arrangement is in fact being reversed here and that miners will be on your land looking around, poking around, taking measurements maybe with a GPS, before they have been issued their mining licence, whereas previously that might not have been the case.

Hon. D. K. DRUM (Minister for Sport and Recreation) — Again, I disagree with that in relation to the point that nothing under this legislation is going to give mining companies greater power or less power, landowners greater power or less power, or government with Crown land greater power or less power. All of those issues will be identical. It is just that as a process the surveying will be done prior to the granting of a licence.

Clause agreed to.

Clause 31

Mr BARBER (Northern Metropolitan) — The bill makes changes to the statement of economic significance under the Mineral Resources (Sustainable Development) Act 1990. Currently if a mining or prospecting licence-holder wants to 'carry out work' on 'agricultural land' that they do not own, they must prepare a statement of economic significance and give it to the farmer. The statement has to set out the economic and employment benefits to Victoria of the work with the use of the farm and without it, and then the farmer can apply to the minister to have the farm excised from the licence. The farmer sets out the economic benefit to Victoria of the farm and anything the farmer disputes about the licence-holder's section 26A statement and gives it to both the minister and the licence-holder. If the minister decides the farm has a greater value to Victoria than the work, whatever that work might be under the act, the minister must excise the property from the licence, which is section 26B. If there is a dispute process, that goes to section 26C and a resolution process under section 26D.

The government says the amendments will have the effect of clarifying the requirement, which does not

apply at the exploratory stage, by changing 'work' to 'mining' and 'proposed work' to 'proposed mining' and so on, but I am not so sure. Under the current legislation the statement of economic significance must be given to the owner six months after the granting of the mining licence or the date on which the licensee lodges the work plan for any work — not limited to mining — under MRSDA section 41(1), whichever is the earlier. In case that is not clear, and it was not clear to us when we first looked at it, I will read an excerpt from the Victorian government's *Minerals Exploration and Mining in Victoria — Landholder Information Booklet*, which says:

> Where mining is proposed on agricultural land, the licensee must prepare a statement of economic significance to establish whether the value of the mineral resource is more or less than its agricultural worth. This statement must be made within six months of the granting of the licence (or lodging of a work plan) and a copy must be provided to the landholder.

That is a work plan, not just a work plan for mining, which is the commercial production stage of the operation, but any work plan. Of course exploration work can occur under a mining licence. The same information booklet says:

> A mining licence does not imply permission for mining to take place, but is required to seek work approvals required to establish a mining operation. Exploration is also permitted under a mining licence, which may cover an area of up to 260 hectares (or larger with ministerial approval).

It is absolutely clear from the government's own material that exploration can occur under a mining licence and therefore that is works. With coal seam gas drilling, for example, the exploration looks very similar to the production. It is a whole bunch of drilling and in some cases even fracturing to test how much gas is down there, how easy it will be to pump and all the other exercises that go along with that, including the concrete pads, dams and what have you.

The amendment shifts the statement of economic significance and the farmer's right to apply to have their land excluded from the licence from pre-mining work to the commercial production work, for the whole of the mining licence, which means it delays the moment at which the farmer can exercise his or her rights. The government's explanation of the amendment, in my view, is inaccurate because the amendment does not simply clarify the existing law, it changes the existing law, and it does that to the detriment of farmers. There is high-impact exploration, including drilling for gas and fracking, drill pads, drill holes, access roads, machines, dams for toxic water and flare pits to burn off the gas. If there is remnant vegetation on the farm, that could be cleared because, after all, the whole operation could be a fire risk. In the case of fracking it can damage the groundwater and surface water forever, including the neighbours' water.

I can cite recent examples of high-impact exploration. In Bacchus Marsh drilling for coal occurred on council land near houses and farms under an exploration licence, but in the Wombat Forest a goldmine was dug as part of exploration. A great body of soil was proposed to be shifted under what was called exploration. The works involved in that work plan included widening of the road access, clearing native vegetation, cutting a slot to the depth of 9 metres, further slots being cut deeply into the ground and even, in stage 6, the actual rehabilitation of the site. That was to take away the bulk sample — which was sampling, not mining — which was supposed to reap in the order of 5000 tonnes of gold ore from the land with a market value in excess of $1 million. Under the amendments in this bill that sort of work, that sort of operation on agricultural land, would not trigger a statement of economic significance, and therefore there would be no opportunity for the farmer to argue for the excision of their farm from the area of operations.

The government says the amendment is designed to make it fair to the mining companies because it is hard for them to quantify the value of the minerals before they finish the exploration stage. It makes it pretty hard for the farmer too. Farmers should retain the right to argue for the value of their farm before the damage is done, and for that reason we will oppose this clause.

Incidentally, farmers do not have the same rights under the Petroleum Act 1998 as they have under the MRSDA, and yet unconventional gas drilling, depending on the geology, occurs under either type. I am surprised that in so much of this bill — which was said to be about harmonising the requirements of similar procedures under the two pieces of legislation — it seems to stick out like a sore thumb that farmers actually have different rights depending on what sort of rock formation the gas is in.

I did have a couple of questions on this clause.

Hon. D. K. DRUM (Minister for Sport and Recreation) — That is good.

Mr BARBER (Northern Metropolitan) — Has any licence-holder prepared a statement of economic significance under the current act in relation to this existing clause?

Hon. D. K. DRUM (Minister for Sport and Recreation) — Could Mr Barber ask that again?

Mr BARBER (Northern Metropolitan) — In the past, using this existing provision, has any landholder actually applied to have their farm excised from a licence and in the process prepared a statement of economic significance?

Hon. D. K. DRUM (Minister for Sport and Recreation) — An exploration licence?

Mr BARBER (Northern Metropolitan) — Under a provision for this licence, which of course is a mining licence.

Hon. D. K. DRUM (Minister for Sport and Recreation) — My understanding is that there was one case between 10 and 20 years ago where someone had their land excised under this provision.

Mr BARBER (Northern Metropolitan) — So the outcome was that they had their land excised in that one instance. I understand these provisions have been substantially in place since 2001 at least, and the question in my mind when looking at this provision in the bill is the parameters for the economic benefit being calculated. Since we do not have a great body of examples to work from, perhaps because in the past the nature of mining was different to the type of mining we are about to get in the form of coal seam gas extraction, the question would arise, if this provision were in place and a farmer sought to take advantage of it, as to how to compare the economic value of the minerals — in this case gas — that is about to be in someone's hand with the economic benefit of the farmland, the water, the soil carbon, the value to generations into the future, the wider economic benefits of having a farmer on that land keeping the local community alive and keeping the school open, and of course the real difficulty that a farmer would have in accessing the necessary skills to mount such an economic argument.

After all, the skills of a farmer are in farming. Quantifying the economic benefits to the state of Victoria is going to be an onerous task for them. Mining companies are in exactly that business. They are already out there now telling us what great economic benefits there are going to be from unconventional gas, so I guess my question to the minister, if he wants to reflect, is: can the minister see that there is an unequal balance of power between the mining company and the farmer in the exercise of this particular provision?

Hon. D. K. DRUM (Minister for Sport and Recreation) — I can only answer by saying that this is the very reason we have the statement of economic significance and we do an economic analysis in the first place. It is so that we can compare apples with apples. Without doing that work we are guessing, hoping or suggesting that there may be something under the ground that is of greater value to the state than the day-to-day operations of the farm, complete with all the additional benefits that Mr Barber mentioned. We have to do this work so that we can have some decent and strong data on which to make that judgement.

Mr BARBER (Northern Metropolitan) — Or in this case you are perhaps comparing apples with fossil fuels. The minister said we are comparing 'apples with apples'. I am saying we will be comparing apples with fossil fuels in this instance, and I do not think there is a clear way to compare those things in economic terms.

My last question relates to the matter I raised earlier. Why has the Petroleum Act 1998 not been amended to harmonise the provisions in this instance? A number of different acts are being harmonised in this bill, but in this aspect the Petroleum Act is not being harmonised with the Mineral Resources (Sustainable Development) Amendment Act 2014.

Hon. D. K. DRUM (Minister for Sport and Recreation) — I am not aware of the reason why; however I suggest there is one area that needs to be highlighted in this debate. When we travelled north we saw firsthand literally hundreds of farmers on the Western Downs who were incredibly happy and falling over themselves to be a part of this industry. We saw the cohesive way in which grazing, cropping, irrigation and the unconventional gas industry work hand in hand right through that area, which is bigger than the Goulburn Valley. Therefore we need to be careful about the language we use in debating that we do not adopt an 'us against them' mentality. We do not want to portray that kind of mentality, keeping in mind that it is not standard practice within the Condamine region and all of the Western Downs area.

In relation to why the Petroleum Act 1998 has not been harmonised with this bill, I have some notes here that say that there are a number of differences between the two acts which are not the subject of this bill. These include the statement of economic significance and the community engagement plan, neither of which is a requirement under the Petroleum Act. The government may wish to consider these issues, subject to the findings of the community consultation exercise which is currently underway.

Committee divided on clause:

Ayes, 35

Atkinson, Mr	Lovell, Ms
Coote, Mrs	Melhem, Mr
Crozier, Ms	Mikakos, Ms
Dalla-Riva, Mr (*Teller*)	Millar, Mrs
Darveniza, Ms	O'Brien, Mr D. D.
Davis, Mr D.	O'Brien, Mr D. R. J.
Drum, Mr	O'Donohue, Mr
Eideh, Mr	Ondarchie, Mr
Elasmar, Mr	Peulich, Mrs
Elsbury, Mr	Pulford, Ms
Finn, Mr	Ramsay, Mr
Guy, Mr	Rich-Phillips, Mr
Jennings, Mr	Ronalds, Mr
Koch, Mr	Scheffer, Mr
Kronberg, Mrs	Somyurek, Mr
Leane, Mr	Tarlamis, Mr
Lenders, Mr	Tierney, Ms (*Teller*)
Lewis, Ms	

Noes, 3

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

Clause agreed to.

Clauses 32 to 102 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Motion agreed to.

Read third time.

SENTENCING AMENDMENT (COWARD'S PUNCH MANSLAUGHTER AND OTHER MATTERS) BILL 2014

Second reading

Debate resumed from 4 September; motion of Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation).

Ms MIKAKOS (Northern Metropolitan) — I rise to speak on the Sentencing Amendment (Coward's Punch Manslaughter and Other Matters) Bill 2014, and indicate to the house that Labor will not be opposing it.

By way of background I remind members that back in February the Labor opposition promised to introduce a new offence of causing death by assault. Given the considerable criticism by the government back then, it is curious, to say the least, that the government is now introducing the same thing only months before an election. Nevertheless, we are not opposing the bill.

The bill amends the Crimes Act 1958 to specify that a single punch or strike is a dangerous act for the purposes of the law relating to manslaughter by an unlawful and dangerous act. The bill also amends the Sentencing Act 1991 to introduce a statutory minimum sentence of 10 years imprisonment for manslaughter in certain circumstances. It introduces new section 4A into the Crimes Act so that a single punch or strike delivered to a victim's head or neck, which by itself causes injury to the head or neck, is taken to be a dangerous act in the context of manslaughter by an unlawful and dangerous act.

One of the reasons Labor indicated it would introduce a one-punch law is because police cannot always be sure of a murder or manslaughter conviction in these cases. In the past accused killers successfully claimed that they did not realise that a single punch could kill. The law needs to be changed so that one-punch killers are left without an excuse. We want to send a very clear message that one punch can kill and you will go to jail for it.

A minimum non-parole period of 10 years will apply in cases of manslaughter in circumstances of gross violence and manslaughter by a single punch or strike. However, what the government terms a statutory minimum is not necessarily how it appears on paper. The same exceptions to this statutory minimum apply as those we have seen in the past with other legislation that the government has brought to the Parliament when it has claimed to be legislating a statutory minimum. This includes a cover-all provision, which in effect means that if in all the circumstances and in the interests of justice a judge does not believe that the 10-year minimum sentence should apply, they have the discretion not to impose that sentence. The inclusion of minimum sentences for these manslaughter offences is more spin than substance given the special reasons exemptions. The Director of Public Prosecutions must give notice of its intention to seek the imposition of a sentence carrying the 10-year minimum.

It is important to understand that the coward's punch provisions are not designed to catch circumstances where two people are fighting and one throws a punch, which might then lead to the death of the other. This is about dealing with a single punch or strike to a victim's head or neck which is unexpected and where the recipient of that punch or strike could not have reasonably expected it to be coming. It is irrelevant whether the punch or strike is one of a series of attacks. The bill makes it clear that a death may be caused by a

single punch or strike even if the death was as a result of an injury from another impact caused by the punch or strike. This would occur in circumstances where a victim falls and hits their head on the ground after being hit.

For manslaughter by a single punch or strike the sentencing judge must be convinced beyond reasonable doubt that the offender has punched or struck the victim in a manner that constitutes a dangerous act, that the offender intended to hit the victim's head or neck, that the victim was not expecting the punch or strike and that the offender knew that the victim was not expecting, or was probably not expecting, the punch or strike.

These circumstances can occur even where there was a confrontation prior to the punch or where the offender warned the victim that they would punch or strike them. The bill specifies only punches to the head and neck as dangerous acts, omitting other punches that might kill someone, for example, by rupturing their spleen. It also allows for a manslaughter conviction only where the punch was unexpected and the offender knew this.

The bill also contains provisions relating to manslaughter in circumstances of gross violence. This occurs where an offender in company or in a joint criminal enterprise with two or more other persons causes the death of a victim and the offender was armed with an offensive weapon or firearm, planned to use it and in fact did so, causing the victim's death, or the offender planned to and did in fact engage in conduct of which the victim's death was a reasonably foreseeable result, or the offender caused two or more serious injuries to the victim in a sustained and prolonged attack on the victim.

The one concern the Labor opposition has about the offence of manslaughter in circumstances of gross violence is that it may be used in cases where murder is more appropriate. It is difficult to imagine circumstances where an assault takes place with an offensive weapon or firearm or where multiple serious injuries are inflicted in a prolonged attack not constituting intentional or reckless murder. I would welcome government speakers addressing why this may not be the case.

In passing, I thank the staff of the parliamentary library. It is important that we acknowledge the work they do in providing members with research briefs. They provided a very extensive and useful research note on the bill.

In conclusion, Labor members are pleased that the government has decided to respond to coward's punch or one-strike attacks. As I indicated at the outset, back in February we announced that it was our intention to bring in a new provision for assault causing death. We do not want to see circumstances where people find loopholes in the law and get off scot free. We want to send a clear message to the community that one punch kills and if you throw that punch and someone dies, you will go to jail.

Ms PENNICUIK (Southern Metropolitan) — The Sentencing Amendment (Coward's Punch Manslaughter and Other Matters) Bill 2014 amends the Crimes Act 1958 to insert a new section 4A to provide that a single punch or strike delivered to the head or neck of a victim is taken to be a dangerous act for the purposes of unlawful and dangerous act manslaughter. The single punch or strike may be one of a series of punches or strikes. The punch or strike may be the cause of a person's death even if the injury from which the person dies is from an impact to the person's body caused by the punch or strike.

The bill amends the Sentencing Act 1991 to provide for a statutory minimum non-parole period sentence of 10 years for manslaughter involving gross violence and manslaughter by single punch or strike where the Director of Public Prosecutions has given notice to the court of an intention to seek the imposition of the statutory minimum sentence if the accused is found guilty and where special circumstances, as provided for in the bill, do not exist.

The bill inserts new section 9B aimed at addressing gang violence into the Sentencing Act. The court must be satisfied beyond reasonable doubt of the following factors. The person must be acting in the company of or in joint criminal enterprise with two or more persons and the offender must have planned in advance to have and use a weapon and to have used it, or the offender must have planned in advance the conduct and at the time of planning foreseen that the conduct would be likely to result in death, or the offender must have caused two or more serious injuries to the victim during a sustained or prolonged attack on the victim.

The bill inserts new section 9C for manslaughter involving a single punch or strike. The factors of which the court must be satisfied beyond reasonable doubt are that the victim's death was caused by a punch or strike that under new section 4A of the Crimes Act is taken to be a dangerous act for the purposes of the law relating to manslaughter by an unlawful and dangerous act, that the offender intended that the punch or strike be delivered to the victim's head or neck, that the victim was not expecting the punch or strike, and that the offender knew the victim was not expecting, or

probably not expecting, the punch or strike. In his second-reading speech the minister said:

> This will ensure that the new statutory minimum sentence will apply to an unprovoked and unexpected coward's punch that kills.
>
> The bill also makes clear that the sentencing judge may be satisfied that the aggravating factors apply even where there was a prior confrontation between the offender and victim. The intention is that the aggravating factors capture the gravamen of the coward's punch attack, which is that the offender caught the victim unawares, completely off guard and, in a sense, defenceless.

The bill provides special reasons. If the aggravating factors are found to apply for manslaughter by gross violence or manslaughter involving a single punch or strike, the sentencing judge must apply the statutory minimum sentence unless special reasons exist under section l0A of the Sentencing Act.

Under new section 9A of the Sentencing Act, which is inserted by clause 6, the Director of Public Prosecutions may give notice either on committal or at trial of the prosecution's intention to seek the statutory minimum sentence in murder or manslaughter trials. When reading the second-reading speech one sees that one of the statements made by the minister is that:

> Many coward's punch deaths are already successfully prosecuted under Victoria's existing manslaughter laws.

That applies also to murder laws. The Greens agree that these types of violent crimes are abhorrent and, along with all other members of the chamber, agree that any type of violence should be accounted for in the courts. The Greens maintain that such offences are already accounted for in the courts as they are already prosecuted successfully under Victoria's existing laws, including the Sentencing Act 1991.

The day before yesterday members debated the Sentencing Amendment (Emergency Workers) Bill 2014, which also introduces minimum mandatory sentences into the Sentencing Act. This comes after a raft of other bills that do the same thing have been passed. The effect of this has been to make the sentencing regime under the Sentencing Act complex, ambiguous and open to confusion, with an outcome of unjust sentences being imposed by the courts. They could be unjust for the victim or for the perpetrator of a violent act.

The government has said that offenders who use extreme violence and make unprovoked attacks on unsuspecting victims must be held to account. The Greens agree with that totally, and we believe the courts already do this. The government has said that it has introduced a number of initiatives designed to address alcohol-fuelled violence in this state.

I refer to the research note on this bill prepared by the staff of the parliamentary library. I agree with Ms Mikakos that it is an excellent brief. While the brief contains just the facts, it would have to be said that on reading it it can be seen that there is no need for the laws the government has introduced and is introducing. There are provisions already in place in the Sentencing Act and the Crimes Act to deal with this type of violence.

On the government's claims about alcohol-fuelled violence in this state, the statistics and graph on page 7 of the library brief are clear. Of the 90 incidents identified by Jennifer Pilgrim of Monash University's department of forensic medicine in her review of the so-called 'king hit' fatalities in Australia from 2000 to 2102, 24 were in Victoria. In that period there were 24 of these incidents in Victoria. Forty-nine of those 90 incidents occurred in either a public space or a hotel, pub or bar. Another eight occurred in nightclubs. Additionally, 16 of those 90 incidents occurred in residences.

The government says it is addressing alcohol-fuelled violence by introducing exclusion areas; powers for licensees and police to bar patrons from entering or remaining on premises if they are drunk, violent or quarrelsome; and the new gross violence causing serious injury offences brought in by this and other bills. In fact the government is not addressing alcohol-fuelled violence. These are not initiatives to prevent alcohol-fuelled violence in this state. As was pointed out in an article published in the *Age* just last month regarding these laws, the government — and any subsequent government — needs to look at preventing this type of behaviour, described as 'alcohol-fuelled aggression', which we see mostly, though not always, in young men.

As I have mentioned before with regard to addressing alcohol-fuelled violence, there are known ways of achieving that in terms of reducing the availability and clustering of alcohol outlets. None of that is being put in place in any of the planning schemes or anywhere else. In fact those measures are vigorously opposed by the alcohol industry, and of course the alcohol industry and the Australian Hotels Association are donors to both of the major political parties.

Measures need to be looked at across the community and there needs to be a whole-of-government approach to dealing with alcohol-fuelled violence. This violence may result in many altercations, not all them involving

the so-called 'coward's punch' or 'one-punch' attacks that this bill is aimed at. Other types of violence occur as a result of groups of young people drinking too much.

I noticed an article by Shaun Carney on this issue in the *Herald Sun* of 19 August. He was in favour of the laws and is really one of the few commentators I have seen actually writing in favour of these laws. Certainly the *Age* editorials have been calling these laws a big mistake. All of the other organisations that are involved intimately with criminal law, such as the Criminal Bar Association of Victoria, Liberty Victoria, the Law Institute of Victoria and the Federation of Community Legal Centres Victoria, are totally opposed to these laws.

However, Shaun Carney made a point that I do agree with: he asserted that there is actually nothing new about these types of incidents if we are talking about single-punch assaults on the person or gang violence. He talked about growing up in the outer suburbs of Melbourne, which is what I did. I grew up in the western suburbs of Melbourne, and I remember these things happening when I was growing up. They are a social problem, and the way to deal with them is to deal with the social issues that are behind them.

As the Attorney-General discussed in his second-reading speech for this bill, these deaths are already successfully prosecuted under Victoria's existing laws. He makes the point that in some cases it may be difficult to prove that a single punch or strike was dangerous and that it involved an appreciable risk of serious injury. This could have been overcome with a single amendment or in fact by using judicial guidelines to make sure the judiciary is aware of that. It could also have been included in jury directions to make sure that juries are aware of it.

The parliamentary research brief states that average non-parole periods for manslaughter have ranged from 5.5 years to 4.83 years from 2008 to 2012. Of the 86 people who received a term of imprisonment for manslaughter, the longest non-parole period was 10 years and the most common non-parole period was between 6 and 7 years, received by 15 offenders. Those convictions were for manslaughter and do not relate solely to this particular offence.

I pointed out that 16 of the 90 incidents identified by the Monash University research occurred in residences. I would like to make the point that this bill, called the Sentencing Amendment (Coward's Punch Manslaughter and Other Matters) Bill 2014, is focusing on a very narrow series of actions — that is, a deliberate punch, hit or strike to the head or neck of someone who is unaware that the attack is coming. These issues are going to be difficult to establish in court, which is one of the problems with this legislation. It will not only be very difficult to establish the facts but the mandatory sentences will only apply in the narrow circumstances I have outlined.

The Greens do not agree with mandatory minimum sentences because we support judicial discretion. We argue that every case should be judged by the jury and the judge on the circumstances before them. There are many commentators out there who feel that sentences are too low, but the Criminal Bar Association of Victoria has made the point that in fact sentences in Australia are relatively high compared to those in the rest of the world for most offences and that the public perception is not correct on that. I have made the point before that when the public is taken through cases and is made familiar with all of the evidence and circumstances of a case, they tend to either agree with the sentence imposed by the judge or they may come out on the side of being more lenient than the judge, according to studies that have looked at that issue over the years.

Even if you did support these laws, what about the example of someone deliberately kicking a person in the knees. The victim falls to the pavement and hits their head. That would not be covered by this bill, but it would be covered by the existing sentencing regime outlined in the Sentencing Act, which takes into account the aggravating circumstances in every case. If it were a deliberate attempt by somebody to topple and disable another person, that would be just as egregious as a one-punch hit. Somebody could headbutt a person's torso and knock them over and have the same effect. Again, it would not be covered by this legislation. This legislation is completely flawed: firstly, because it narrows the offence to something that is very difficult to establish; and secondly, because it imposes mandatory sentencing. We believe judges and the courts are best able to deal with the cases in front of them and to establish for themselves the mitigating and aggravating circumstances.

The Attorney-General points to Western Australia as having introduced similar legislation. Of course Western Australia is a different jurisdiction in terms of its criminal code; New South Wales and Victoria are common-law jurisdictions, and Western Australia is a code jurisdiction. It was seen that there was a gap in Western Australia, but that gap does not exist in Victoria. But 5 of the 12 cases prosecuted under the new offence in Western Australia have involved men killing partners against a background of domestic

violence, and have resulted in lesser sentences for those offenders. There was an outcry about that.

This brings me to the title of the bill — the coward's punch. Unfortunately, the vast majority of coward's punches in any state or territory are thrown in the home, usually by men targeting women and children. The home is where coward's punches are most often to be found. Sometimes these are situations of ongoing continual assaults, not covered by this legislation — and nor should they be. All assaults should be dealt with by the courts according to the sentencing regime we already have although that has changed quite a lot in the term of this government, to the detriment of the sentencing regime in this state, as many have already said.

The chairman of the Criminal Bar Association, Peter Morrissey, SC, speaking on behalf of the association, opposes these laws, which remove too much of the judge's discretion and undermine the public's faith in the courts and the justice system. He describes the laws as:

> … a short-term political move. It's an election year auction, having nothing to do with justice …

He also makes the comment that:

> … the courts are not too soft at all; Australia is comparatively a very heavy sentencing country compared to the rest of the world.

The Law Institute of Victoria opposes the laws. An institute media release, quoting its president Geoff Bowyer, reads:

> The government is increasingly telling the courts how to sentence, leaving them little discretion to deal with individual circumstances such as early guilty plea, potential for rehabilitation, youth or remorse.
>
> This one-size-fits-all approach will add to our already stretched prison population but do nothing to address the causes of crime. Alcohol and drug-fuelled violence is the problem, and it is unlikely offenders will stop to consider the mandatory prison term before they lash out …
>
> … new laws were also more likely to lead to accused pleading not guilty and taking their chances with a jury verdict, which will result in longer trials and court delays.

The library brief mentions quite a few examples, and I would like to go through some of them to illustrate that the one-size approach does not fit all. Each case is unique. In one case the victim tried to calm down an offender after he got aggressive towards an ex-girlfriend in the street. The offender punched the victim, who fell to the ground and hit his head on the concrete. That is almost an iconic example of the coward's punch. Another case is an altercation between friends after a day of drinking. As the victim was walking away, he looked over his shoulder at the offender, who struck him on the jaw. The victim immediately passed out.

Two 17-year-olds were in a verbal fight at the end of a house party. The offender grabbed the victim's collar and delivered one or two jabs to the head, causing the victim to fall back and hit his head on the concrete footpath. The victim died from a brain injury two days later. That 17-year-old offender would not be covered by these laws, because they do not apply to juveniles. Two best friends, drinking together, fought when the victim decided to leave. The offender approached the victim from behind, and when the victim swung around quickly, the offender thought the victim was going to punch him and responded with a punch. The victim fell and hit their head on the road. In a final case, a victim was refused entry to a nightclub. The offender called to the victim, who turned around and was struck.

These are all terrible and reprehensible actions, but they are all different. They involve different circumstances, different relationships between the offender and the victim and different contexts. That is the sort of thing that courts should be able to take into account in any of the cases that come before them.

The intention of these laws with such specific provisions may in fact mean that the offender is not convicted because the court will have to establish that the offender must have intended to deliver the punch to the specific part of the victim's body, which may be contested by the offender and could rule out the chance of a conviction.

I have received quite a lot of correspondence on this. Liberty Victoria wrote to me expressing concerns about this legislation and talking about the types of legislation that has already been introduced. It says:

> It is important to acknowledge that these bills all combine to whittle away the power of the courts in a manner never before seen in Victoria. Of course the courts honour the convention not to criticise Parliament, but it is a significant shift in power and an attack on judicial discretion.

Liberty Victoria believes the bill will prevent judicial officers from exercising mercy or take into account circumstances other than those that are:

> within … the prescribed 'special reasons' (for example, where an offender without a prior criminal history may have acted out of character and/or when drug affected, and is otherwise a law-abiding citizen in gainful employment and a provider for his or her family …
>
> … provide a disincentive for offenders to plead guilty (and also provide an incentive for offenders to appeal), which will

> only put further pressure on courts which are stretched to breaking point, and see witnesses and families of the deceased having to be drawn into protracted court proceedings …
>
> … change the key decision-making from the judiciary to the executive, whereby the decision will rest with prosecutors as to whether to proceed with charges that have mandatory sentences or proceed with (and/or resolve to) some lesser alternative charge that does not result in mandatory jail (for example not alleging that it was a 'coward's punch' or that the offence occurred in circumstances of gross violence). This may well result in inconsistent, personality-driven decision-making.
>
> Also, the bill is ambiguous —

as I said —

> Perhaps the worst example is cl 6(5) in relation to whether a strike is 'unexpected' … where it provides:
>
> > 'the fact that the offender warned the victim of the punch or strike immediately before delivering it does not mean that the victim was expecting —

it. Liberty Victoria also says:

> Simply put, the meaning of all this will need to be tested in the superior courts at great public expense. Given the ambiguity, that provides another disincentive for accused persons to plead guilty …

It went on to say that the bill should not be rushed through Parliament, as it is being, along with quite a few others.

I noticed that in relation to another young person — in fact a 16-year-old person — who was charged just a couple of weeks ago after a similar incident, the police said that these attacks are too frequent. They are, and they should never occur, but these laws are not going to stop them.

Paul McDonald from Anglicare Victoria has made the comments publicly that these laws:

> … could do more harm than good to the young men involved.
>
> Much of the violent offending among men aged from 18 to 24 happens in the company of alcohol. Lashing out is unfortunately commonplace in many licensed venues …
>
> Often the act is fuelled by irrationality and then reflected on with deep regret.

Of course that does not assist the victim and bring the victim back, but we need to see the context of all actions by young people and not leave them with no hope.

An editorial in the *Age* of 20 August also suggested that these laws are a mistake. It referred to former High Court Chief Justice Sir Gerald Brennan having once said that mandatory sentencing is a legislative hammer used to satisfy political objectives.

The editorial states:

> At risk are human rights and longstanding principles of justice. The *Age* deplores violence in all its forms, whether it is carried out with a single punch or multiple blows, with weapons or a boot, in the street or at home. Men's behaviour must change. But this state is headed to certain injustice if it persists in imposing mandatory sentences.

I agree with the editorial in that regard. Those who work in the criminal justice system are not supporting these laws. The Greens do not support mandatory minimum sentencing, and consistent with that view, we will not be supporting this bill.

Hon. R. A. DALLA-RIVA (Eastern Metropolitan) — I am pleased on behalf of the government to make my contribution on the Sentencing Amendment (Coward's Punch Manslaughter and Other Matters) Bill 2014. I am one of the very few people in this chamber who has actually had to deal with the one-punch situation, having been a former police officer. Fortunately the young man who was assaulted did not die, although he was close to it. Having been punched once, he hit his head and fell, and at that stage the homicide squad and others were involved. Luckily the young man recovered, and went on to become a police officer, of all things, so there was a good outcome in the end. However, having said that, the perpetrator did get two years jail.

When listening to the comments made by Ms Pennicuik in her contribution to the debate, I was quite surprised that she said this is not something that occurs often. In fact it was occurring when I was a policeman too many years ago — 30 years ago.

Ms Pennicuik — That's not what I said.

Hon. R. A. DALLA-RIVA — They were Ms Pennicuik's words. She said, 'This does not occur that often'. I was interested in Ms Pennicuik's contribution because she mentioned alcohol-fuelled violence and its cause, yet made reference to her earlier years when this was occurring as well. At that time there was not the same amount of alcohol available, but she is now saying that because there is more alcohol available now it is causing these types of offences. If you listened to her contribution — and I did not interject because I wanted to hear it in full — you would have heard those sorts of arguments peppered throughout the speech.

I will demonstrate why it was important to bring in this piece of legislation. The reforms in this bill are about

ensuring that existing manslaughter laws are brought into line with community expectations. That is the principal issue here: community expectations. This is not about what one or two people think; this is about what community expectations are.

As has been outlined by previous speakers, including the speaker for the Greens, this has been going on for too long. There is an expectation by the broader community and the perpetrators that it is okay. I will demonstrate why it is not okay for people to think that they can continue to do this, without the ramifications that it incurs in terms of not only the families who are affected by deaths as a result of a coward's punch but also the fact that there seems to be no recognition by others in the community that there are serious consequences from undertaking this type of activity — that that one punch can mean death. One punch: that is all it takes. I think the community has had enough, the Parliament has had enough and the government has had enough, and the opposition agrees and is supporting the bill. The only ones who do not agree seem to be the Greens.

This is another situation where the Greens are very selective. They were selective in their reporting. They only referred to the *Age*; if they were fair they would have referred to all types of media. In fact the *Sunday Herald Sun* gave much praise in its editorial about ensuring that community expectations would be dealt with once and for all.

The editorial states:

> The *Sunday Herald Sun* has been campaigning for this tough stance … since 2007, following the death of Shannon McCormack.

Again, there has been plenty of evidence. According to the same editorial:

> More than 90 Australians have died in single-punch assaults since 2000.

You cannot call the deaths of 90 people since 2000 a minor occasion. The community expects better from government.

I note the concerns of some in the chamber regarding the statutory minimum sentence of 10 years for the offence of causing death by a coward's punch or gross violence. It fits the government's agenda of addressing alcohol-fuelled violence. The changes to the act will take effect, subject to the Parliament, on 1 November 2014.

The bill clearly provides important things. It provides that a punch or strike may cause a person's death even if the injury from which the person dies is not from the punch or strike itself but from the impact of the person's head, neck or body caused by the punch or strike — for example, where a person falls down and hits their head on the road. This will simplify the issue of causation in manslaughter prosecutions. I was interested in Ms Pennicuik's assertions that if a person grabs somebody by the knee or pushes them in the chest, it can cause them to fall over. I think it is very rare for someone to actually fall over as a result of being pushed in the chest.

The coward's punch is defined as a punch that a person did not expect to their head or the neck, as defined in the act, that caused them to die, either from the strike or because they were severely incapacitated before they hit the ground. The impact of a person's head hitting the ground is quite traumatic. Witnesses to these incidents say it sounds like a coconut hitting the ground. It is a severe fatal impact.

Some people say that we as a government should not be dealing with this problem, but we have identified something that is continuing to occur. Alcohol-fuelled violence occurred in the era that Ms Pennicuik spoke about and it was also occurring in the years that I was a young police officer in the 1980s when nightclubs closed at 1.00 a.m. It is fair to say that this has been occurring for a long time, even before the term 'alcohol-fuelled violence' was used. That is why we have legislation for it.

The bill makes it very clear that when defence counsel say that causation or dangerousness is an issue in the trial, the prosecution may request that the trial judge gives direction on either of these issues to the jury. When it is clear that the offender intended to strike the victim's head or neck, the victim was not expecting the punch or strike and the offender knew that the victim was not expecting or probably not expecting the punch or strike, then the statutory minimum sentence of 10 years will apply to this offence.

I might stop there in terms of the statutory minimum 10-year sentence being applied. Ms Pennicuik and others have referenced the same research. The excellent research paper put together by the parliamentary library is entitled *Research Note on One-Punch Laws and the Sentencing Amendment (Coward's Punch Manslaughter and Other Matters) Bill 2014, August 2014, No. 3*. Ms Pennicuik referred to some of the incidents that occurred. However, what she did not talk about and what I intend to put on the record are the offences that were received by the offenders, because most of the offenders who are listed in the research note are now free. They are out and about. That was the law

as it was back then. Some of those offences were committed by people who had a continued history of violence against people in the community and clearly had no intention of changing their behaviour. We as legislators intend to make it clear to those types of offenders that if they want to do it again they will go to jail and they will serve a non-parole period. We are not afraid of saying that. I will read some of the offences and the sentences the offenders received:

> Two groups of youths approached each other after drinking. Offender delivered one punch to the victim's jaw, who fell back and hit head on road. Victim went home … and subsequently died from brain injuries.

One of the offenders was sentenced to detention in a youth justice centre for three years, while the other offender was sentenced to six years in jail but received a non-parole period of four years.

I refer to another example, which was mentioned previously:

> Altercation between friends after day of drinking. As victim was walking away, he looked over shoulder at offender, who struck him in the jaw —

clearly a coward's punch —

> Victim immediately passed out.

The offender received a non-parole period of seven years in prison. The offender had an impressive record — or 'an unimpressive 20-year record of prior convictions', according to the judge — a significant number of which were for violent crimes. He was on parole at the time and had previously been convicted of recklessly causing injury — and the list goes on.

I refer to another example:

> Three friends attacked a patron leaving a pub … victim was distracted by assault from another person, offender ran back and struck offender to the side of the head, causing him to become unconscious and hit his head on the kerb. Friend proceeded to kick/stomp victim while on the ground.

The offender was sentenced to 10 years but received a non-parole period of 7 years.

Another case was raised by Ms Pennicuik:

> Victim tried to calm offender down after he got aggressive towards ex-girlfriend in the street. Offender punched victim, who fell to the ground and hit head on concrete.

The offender was given a non-parole period of seven years and six months.

Another one:

> After drinking all day, offender went to victim's house at 2.00 a.m. to confront him over an argument … and punched him. Victim later died in hospital …

The offender received a non-parole period of five years and six months.

> Two 17-year-olds in verbal fight —

the victim was punched —

> … hit head on concrete footpath … died from brain injury two days later.

The offender received three years detention in a youth justice centre.

In another case:

> After verbal exchange … offender punched victim … Jury acquitted offender of manslaughter by unlawful and dangerous act, and instead found him guilty of recklessly causing serious injury.
>
> Appeal dismissed.

That was *R. v. Pota* [2007]. The sentence was a non-parole period of four years.

In a further case:

> Two … friends drinking together, fought when victim decided to leave. Offender approached victim from behind, and when victim swung around quickly offender thought victim was going to punch him. Offender responded with a punch to the head. Victim struck back of head on bitumen road, and later died.

This is a good one. The offender received a non-parole period of two years, which was suspended for three years.

In the next case:

> Victim refused entry to night club … Offender called to victim who turned around and offender struck victim with one punch to the chin. Victim fell and hit head on pavement.

The offender received a non-parole period of three years.

In two other cases the offenders received non-parole periods of two years and seven years respectively.

Enough is enough. The government is not going to put up with this anymore. The government is steadfast in ensuring that this legislation proceeds. I do not wish to say anything further other than that I think the arguments put forward by Ms Pennicuik are wrong. We are very clear about what we are doing. This legislation makes it very clear to those who are considering

delivering a coward's punch that there will be severe consequences unless special circumstances are outlined. I say to them, 'You will definitely be spending time in jail'. Having had the experience of seeing victims assaulted in circumstances like that, I believe offenders are deserving of the 10-year minimum non-parole period.

Mr ONDARCHIE (Northern Metropolitan) — I rise today to speak in the debate on the Sentencing Amendment (Coward's Punch Manslaughter and Other Matters) Bill 2014. I will pick up where Mr Dalla-Riva left off. Enough is enough. This bill sends the clear message that coward's punches are to be abhorred not celebrated. They are stupid and dangerous, and can ruin the lives of both the attacker and the victim. They exemplify the waste of human life that can occur in these split-second drug and alcohol-affected decisions. They will deliver a minimum non-parole period of 10 years for fatal coward's punches and a minimum non-parole period of 10 years for gang attacks resulting in death. We are building a safer Victoria by being tough on crime and this is in line with community expectations.

I acknowledge the One Punch Can Kill campaign which carries the slogan, 'It takes grunt to throw it, it takes guts to walk away'. Ten years on from 19 January 2004, I am reminded of the death of my friend David Hookes. He was 48 years of age, a champion bloke and a champion sportsperson. He had a lot more life to live. He received one punch, fell to the road and never recovered. Enough said. I commend the bill to the house.

Bells rung.

Ms Hartland — On a point of order, President, as Mr Ondarchie was counting he referred to the three of us as cowards. I think that is inappropriate.

The PRESIDENT — Order! It is a bit unusual to have a point of order during a division, but it is apposite to what happened. I will not require Mr Ondarchie for the count. However, once the count is completed he will leave the chamber for half an hour. That is outrageous.

House divided on motion:

Ayes, 33

Atkinson, Mr
Coote, Mrs
Crozier, Ms
Dalla-Riva, Mr
Davis, Mr D.
Drum, Mr
Eideh, Mr (*Teller*)
Elasmar, Mr
Elsbury, Mr
Finn, Mr
Guy, Mr
Jennings, Mr
Koch, Mr
Kronberg, Mrs
Leane, Mr
Lewis, Ms
Lovell, Ms
Melhem, Mr
Mikakos, Ms
Millar, Mrs
O'Brien, Mr D. D. (*Teller*)
O'Brien, Mr D. R. J.
O'Donohue, Mr
Ondarchie, Mr
Peulich, Mrs
Pulford, Ms
Ramsay, Mr
Rich-Phillips, Mr
Ronalds, Mr
Scheffer, Mr
Somyurek, Mr
Tarlamis, Mr
Tierney, Ms

Noes, 3

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

Motion agreed to.

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

Third reading

The PRESIDENT — Order! The question is:

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

House divided on question:

Ayes, 35

Atkinson, Mr
Coote, Mrs
Crozier, Ms
Dalla-Riva, Mr
Davis, Mr D.
Drum, Mr
Eideh, Mr
Elasmar, Mr
Elsbury, Mr
Finn, Mr
Guy, Mr
Jennings, Mr
Koch, Mr
Kronberg, Mrs
Leane, Mr
Lenders, Mr
Lewis, Ms
Lovell, Ms
Melhem, Mr
Mikakos, Ms
Millar, Mrs (*Teller*)
O'Brien, Mr D. D.
O'Brien, Mr D. R. J.
O'Donohue, Mr
Ondarchie, Mr
Peulich, Mrs
Pulford, Ms
Ramsay, Mr
Rich-Phillips, Mr
Ronalds, Mr
Scheffer, Mr
Somyurek, Mr
Tarlamis, Mr
Tee, Mr (*Teller*)
Tierney, Ms

Noes, 3

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

Question agreed to.

Read third time.

SUSPENSION OF MEMBER

Mr Ondarchie

The PRESIDENT — Order! Under standing order 13.02, I ask Mr Ondarchie to vacate the chamber for 30 minutes.

Mr Ondarchie withdrew from chamber.

PRIMARY INDUSTRIES LEGISLATION AMENDMENT BILL 2014

Second reading

Debate resumed from 4 September; motion of Hon. M. J. GUY (Minister for Planning).

Ms PULFORD (Western Victoria) — It is my pleasure to outline the opposition's position on the Primary Industries Legislation Amendment Bill 2014. The bill makes amendments to a number of acts. It is the legislation that, amongst other things, is the government's response to the strong community campaign for reform to deal with puppy farms. The Labor Party will not be opposing the bill, but it will seek to move amendments during the committee stage.

The bill seeks to amend the Livestock Disease Control Act 1994 to include bison in the definition of cattle to improve tracing and control, to create a separate corporate penalty under the swill feeding offence and to make changes to representation on the Apicultural Industry Advisory Committee. The bill also seeks to amend the Plant Biosecurity Act 2010 to make changes to certification requirements that reflect current practice, the capacity of inspectors to return produce and notification requirements in the operation of infringement notices. The bill will also amend the Veterinary Practice Act 1997 to make a number of minor changes to the operation of the Veterinary Practitioners Registration Board of Victoria and the registration of veterinarians. The bill also makes a number of statute law revision amendments to the Prevention of Cruelty to Animals Act 1986.

I now come to the part of the bill that is the government's response to the issue of puppy farms. I suppose the government's approach on this issue can be characterised as being not a bad try but a demonstration that its heart is not really in it when it comes to cracking down on puppy farms. A number of important elements are required to properly crack down on puppy farms, which this bill in no way addresses.

The Victorian community is demanding that we put an end to puppy farming in Victoria. The RSPCA definition of a puppy farm is an intensive dog breeding facility whose conditions fail to meet the dogs' needs. There are a number of other definitions, but in the community I think the notion of an intense, for-profit breeding facility is what people think of when they think about puppy farms — a facility where conditions are poor and dogs' physical, psychological and emotional wellbeing is damaged and, for the breeding dogs that spend a lifetime in these intensive facilities, greatly diminished.

According to the government's regulatory impact statement that accompanies the new code of practice for intensive breeding facilities, there are around 100 puppy farms with more than six breeding dogs operating in Victoria. Another couple of hundred smaller breeding operations are thought to exist. Online sales have caused a proliferation of backyard breeders. There are some very large organisations with hundreds and hundreds of breeding dogs, and there are also many much smaller organisations that fly under the radar — small-time operations run from someone's backyard to earn a bit of additional income for the household.

Breeding dogs and puppies in puppy farms can suffer great physical and psychological injury as a result of being kept in inadequate conditions. The government promised to crack down on puppy farms, but it has comprehensively failed to deliver on its commitment to do so. A review of the code of practice for intensive breeding facilities earlier this year resulted in a number of proposed changes that would have ensured greater protections for breeding dogs.

The so-called final draft — the draft with the word 'final' branded on it that was circulated to some 10 000 or so people who had submitted to the consultation process — was abandoned without explanation, and some key safeguards like breeding limits and pre and post-breeding checks were removed. The government claims that the reviewed code is the toughest that Victoria has ever had, with the harshest penalties. But it is important to note that there is no additional funding or resources to enforce it.

In response to the community's demands that we crack down on puppy farms, this bill basically does three things. The first is to ban puppy farm operators convicted of cruelty from operating a puppy farm for 10 years. The second is to fail to embrace the policy that the Labor Party announced in May of this year, which required pet stores to be able to demonstrate the point of origin of their animals. Being able to trace a puppy from the point of sale back to the point of origin is an important and necessary step in throwing the doors open and shining the bright light of scrutiny on unscrupulous breeders. The third is to create new arrangements for the registration of animals by breeders who are members of an applicable organisation. What that really means is a breeding club.

With this bill the government has missed the opportunity to crack down on puppy farms in a number of ways. The legislation bans owners of puppy farms

from operating if they are convicted of animal cruelty. This is a welcome step, but the government has failed to back in its own plan. We have been unable to elicit from the government how many puppy farmers are expected to be put out of business by this legislation. I note and acknowledge the assistance of the Minister for Agriculture and Food Security, Mr Walsh, and the people from his office and department in providing a briefing on this bill. I thank them for that, but I have been unable to ascertain from anyone in the government exactly how many of the people currently operating puppy farms have been found guilty of a cruelty conviction.

There was a case in the last couple of weeks in Gippsland where Poowong property owner James Forbes pleaded guilty in the Wonthaggi Magistrates Court to a number of charges relating to his dog breeding business. I am referring to local media reports. As it transpired, a guilty plea was made to number of charges on the day, but none of them were animal cruelty charges. Our concern is that whilst the government's intention is to stop those convicted of cruelty from operating a puppy farm, there are very few to whom that penalty will apply. I have heard reports from people involved in animal welfare non-government organisations of there being maybe three or so organisations. However, there is nothing in this legislation to preclude a puppy farmer found guilty of cruelty from transferring the operation of the business to a family member or to a friend as the registrations have a relationship to the property rather than to the individual.

Our concern is that while this is an admirable thing to be doing, the government is failing to provide the resources required to give it proper effect. The government is very much missing the mark and the opportunity.

Puppy farm operators exist in the shadows, as we know, but the bill does not address this. The government has not committed an extra dollar to the fight against puppy farming. Whilst the bill provides powers to inspect a pet store owner's records or to enter a puppy farm operated by someone who has been convicted of cruelty, the government has not provided additional powers for inspectors to enter puppy farms where there has been no conviction of cruelty. We welcome the government's adoption of parts of Labor's puppy farm policy, but, as I indicated at the outset, we will seek to amend the bill to ensure that inspectors are provided with the powers they need to effectively crack down on puppy farms.

The Labor Party has indicated that it has a comprehensive plan to deal with this issue, but there are a number of elements of that plan that the government has declined to adopt. The Labor Party will limit the number of litters for breeding bitches, introduce mandatory vet checks for breeding dogs and provide an additional $5 million to the RSPCA to support its inspectorate. It is our intention to provide inspectors with the right-of-entry powers they need and to resource a flying squad of inspectors to audit puppy farms to make sure they are compliant and to close those that are not.

I note the comments of government speakers during the debate on this bill in the Legislative Assembly, particularly the comments of Dr Sykes, the member for Benalla, who was a veterinarian before entering Parliament. He said:

> … the minister got it right … in relation to how many litters it is appropriate for a bitch — that is, a female dog — to have.

Dr Sykes, as the government's lead speaker, indicated:

> The arbitrary ban or ceiling at five litters defies logic.

On that, we beg to differ. Mr Southwick, the member for Caulfield in the Assembly, who also addressed the question of the adequacy of resourcing to the RSPCA inspectorate, seemed to indicate that there is no problem with the powers to enter properties to inspect puppy farms and also seemed to suggest that the current level of government funding support for the RSPCA inspectorate is adequate. Again, on that, we disagree.

The Labor Party is keen to work with retailers as well as online sellers so that people can be confident that their new family member has come from a compliant facility or shelter. It is our intention to make the standard much higher and, importantly, to provide the resources to enforce that standard.

In some respects the government is missing the point with this legislation. It is not providing the additional resources required to make sure that organisations are compliant. It is tinkering at the edges, and our concern is that this bill, while it will do no additional harm, will have quite a modest impact. The community expects better from the Premier, as a vet. The Liberal Party and The Nationals talked a good game on puppy farms in the lead-up to the 2010 election, but this bill should be seen as a missed opportunity to do proper work on this issue. I invite government speakers to respond to some of our concerns, particularly the question of resourcing and entry powers. I look forward to speaking to my amendment during the committee stage.

Mr RAMSAY (Western Victoria) — It gives me pleasure to speak on the Primary Industries Legislation Amendment Bill 2014, albeit it is getting very late in the afternoon. I congratulate and thank the Minister for Agriculture and Food Security, the Honourable Peter Walsh, who, I might add, is an ex-president of the Victorian Farmers Federation (VFF). I also thank his staff, who provided briefing notes for my contribution to the debate this afternoon, in particular Tanya Pittard, who is also an ex-executive officer of the VFF. It is great to see talent coming out of the VFF into the realms of the Parliament and supporting our ministers.

Mr D. D. O'Brien interjected.

Mr RAMSAY — That is right, Mr O'Brien. I think I said in a previous contribution that Mr Barber is a bit one way or another about what to do with the VFF and how he sees that organisation, but it is the largest and most powerful lobby group for farmers in this country.

Mr Barber interjected.

Mr RAMSAY — If Mr Barber will allow me, I will get back to the Primary Industries Legislation Amendment Bill 2014 and refer to some commentary and questions around enforcement and compliance that Ms Pulford raised in her contribution. This bill is another in the tranche of legislation introduced by the Honourable Peter Walsh, who has worked diligently over four years to put in place laws that protect the integrity of our food production and animal welfare standards, and protect our primary industries from the threat of disease incursion into Australia. The bill continues that important work by making amendments to the Domestic Animals Act 1994 (DAA), the Livestock Diseases Control Act 1994, the Plant Biosecurity Act 2010, the Prevention of Cruelty to Animals Act 1986 (POCTA) and the Veterinary Practices Act 1997.

It is pleasing to see that the Labor Party is not opposing this bill. I note that Ms Pulford has foreshadowed an amendment, and it will be interesting to see the content of that. However, Labor does see the merit of having legislation that provides strength in relation to enhancing our food security and animal welfare standards. As for the Greens members, who knows what they will do, because protecting our food security, our farmers' livelihoods and our primary industries has never been a priority for them.

I will deal with the smaller amendments first, starting with those to the Livestock Diseases Control Act. The inclusion of 'bison' in the definition of cattle in the act is important. While they may be small in number in Victoria — approximately 180 — they are a ruminant and have the potential to carry and spread disease, particularly exotic or emergency animal diseases that can be transferred to other ruminants. The bill will require bison, like cattle, to have lifetime identification and whole-of-life traceability. Whole-of-life animal identification and traceability to respond to a disease outbreak was never shown to me to be more critical than when I travelled to the UK in 2000 to see how a country responded to a foot and mouth disease (FMD) outbreak without lifetime traceability of animals. That outbreak crippled the agricultural industry, requiring the slaughter of 10 million animals with a cost to the UK Treasury of well over £1 billion.

A very important amendment to this act is the corporate penalty for the swill-feeding offence. It will recognise the liability of companies that operate food premises or garbage disposals and which distribute swill as a form of waste management. The feeding of swill may lead to an exotic disease like FMD, which could cost the Australian economy up to $50 billion. We see many domestic pigs in backyards in our suburbs and that poses significant disease risks to Australia if swill or food waste that contains mammalian proteins is misused and fed to those pigs. Australia has not had FMD for 140 years, and we cannot let our guard down now.

Another amendment will enable the VFF to nominate an additional committee member who has certain beekeeping knowledge and skills to join the agricultural industry advisory committee. The amendment to the Plant Biosecurity Act strengthens the compliance nature at transfer of product whereby a person will be required to receive a certificate for produce imported into Victoria or an area within Victoria and verification that the product meets the requirements of the act. The bill will enable inspectors to direct a person to return product to its source of origin if it does not meet the requirements specified in the act. It also provides financial penalties as an enforcement option for inspectors for those persons who do not comply. The bill strengthens the requirements for a person to notify an inspector of the presence of an exotic or notifiable plant, pest or disease in a plant or plant product to include used equipment, used packaging or earth material.

The changes to the POCTA act are minor statute revisions which will further enhance the Prevention of Cruelty to Animals Act, but I say to the Greens that to use this act in a motion, as Ms Pennicuik did yesterday, to advocate for free-range eggs is a disgrace and a total misuse of her position. As she well knows, the purpose of the act is to prevent cruelty to animals and it is not to

be used for populist commercial gain, whether by supermarkets or by the Greens themselves. As the Premier rightly points out, this is a consumer choice issue and not an animal welfare issue. The VFF's egg group president, Brian Ahmed, has invited the Greens to visit his farm to see it firsthand.

Mr RAMSAY — I think Mr Barber mentioned this yesterday, even though he has not been gracious enough to accept the invitation to see firsthand how animals can be farmed in a caged environment with high animal welfare standards. Go to the CSIRO and hear some scientific experts talk about the welfare of chooks, or chickens — whatever you want to call them — in relation to their caged environment as opposed to free range. However, I am straying from the important points of this bill. It is important that we recognise the Prevention of Cruelty to Animals Act for what it is, and it should not be misused by any political party.

The bill makes further amendments to the Veterinary Practice Act 1997. It aligns the registration period to a financial year rather than a calendar year, in line with the New South Wales legislation. It also makes some other minor amendments, including removing some administrative requirements, allowing for representation by current practising lawyers during disciplinary proceedings and removing the prohibition of testimonials in an advertisement of veterinary practice, all of which, I am advised by the veterinarians in the Parliament, such as Dr Denis Napthine and Dr Bill Sykes, being the Premier and the member for Benalla in the Assembly respectively, are supported by the veterinary industry.

Much of the interest of the opposition and the Greens is centred around the Domestic Animals Act 1994. While they bemoan the fact that the amendment is not strong enough to deter rogue puppy farm operators, it is only this government that has brought forward legislation that will improve the welfare of dogs and cats being bred and the quality of dogs and cats available for sale. This is another step made by this government, not the Labor Party or the Greens, to close down illegal, cruel and rogue puppy farms.

Changes to the definition of 'domestic animal business' mean that members of an applicable organisation are only exempt from a requirement to register a domestic animal business and compliance with the rearing code if they have fewer than nine animals and no more than two animals that are not registered with an applicable organisation. This will ensure that the animals are cared for within the organisation's code of ethics or, for most operators, the code of practice for the operation of breeding and rearing businesses. Councils will now be prohibited from registering and renewing the registration of a breeding domestic animal business if the person registering the business, the proprietor or a person who conducts a business has in the preceding 10 years been found guilty of cruelty or aggravated cruelty, breeding or selling animals with heritable diseases under the Prevention of Cruelty to Animals Act or been subject to a banning order under that act. Do I still have the attention of the chamber? This part of the act is important.

Mr Melhem interjected.

Mr RAMSAY — Yes, Mr Melhem, you're listening. I know that because you are a strong animal lover.

This bill further strengthens compliance in that pet shops will be required to keep records for each cat and dog that is offered for sale or sold at the pet shop, which include names and addresses of the persons from whom the proprietor obtained the animals. Shops are required to keep and maintain copies of all records of transactions. Maximum penalties for non-compliance will be over $17 100.

Another important change is that councils will have the ability to issue lifelong identification markers for cats and dogs as an alternative to the annual issuing of markers. Lifetime identification, whether it be by microchip or some other technology, is strongly supported by the animal industry and the RSPCA.

The draft details of the Primary Industries Legislation Amendment Bill 2014 have been widely debated, and there has been consultation with the community and industry stakeholders, including the RSPCA. The bill will improve animal welfare standards and weed out rogue operators of puppy farms. It will also apply significant penalties to those who do not comply with the relevant acts and give more powers to animal inspectors. I note that Ms Pulford asked a question about powers, compliance, enforcement and penalty in her contribution. I am going to go briefly into a couple of those areas in my conclusion.

None of these changes gives animal right activists, who are encouraged by the Greens and others, the right to act illegally. I will use an example from personal experience in my role as the Victorian Farmers Federation president years ago. I remember Mr Ralph Hahnheuser, an old foe of mine, who tried to stop the live export sheep trade by contaminating a sheep feedlot in Portland. He was then convicted of trespass and other crimes, and he is now a declared bankrupt.

That should be a warning sign and a lesson to those who are encouraged to act illegally from an ideological position rather than according to a law and order rule. The community demanded tighter controls on puppy farms and the government has responded with this legislation, but it will not tolerate illegal activity by ideologists, the Greens or animal rights activists who act in an illegal manner.

I will respond to a couple of issues raised by Ms Pulford in relation to inspectors and their powers. As part of the revised mandatory code of practice, we have introduced mandatory veterinary checks and a limit of five litters. This is going around the size of the litters. During 11 years of Labor in government there were no mandatory vet checks or breeding limits. Labor then impugned the reputation of Victoria's highly professional vets by claiming incorrectly that there are no compulsory vet checks and that against the requirements of our code vets would allow dogs to be bred for an extra litter if it was not safe for them to do so. Labor would have you believe that vets cannot be trusted to decide if an individual dog or cat requires more than one minimum compulsory vet check each year.

We have ensured that all dogs and cats sold in Victoria must be advertised, as I said before, with a microchip number, which was not a requirement under Labor for any traceability. We have given authorised officers the power to enter an illegal puppy or kitten farm to seize dogs or cats. Previously, under Labor, there were very limited powers. We gave the RSPCA greater powers to inspect pet shops and it will be able to apply to a magistrate for a warrant to obtain records to collect evidence of illegally bred puppies. Under Labor there were very limited powers.

The RSPCA now has the power to inspect cat breeding establishments; under Labor only dogs were counted. The RSPCA now has the power to issue a notice to comply whereas under Labor that was reserved for council officers. The RSPCA now has the same powers as council-authorised officers to file charges in relation to non-compliance with the code of practice. The RSPCA and council-authorised officers now have the ability to inspect and shut down unregistered, illegal businesses. Under Labor that was reserved just for council officers. The RSPCA now has the power to seize dogs and cats from unregistered and therefore illegal businesses. Previously, under Labor, only councils issued notices to comply with requests to register businesses — how weak was that? The RSPCA now has the power to issue infringement notices to people selling dogs or cats without microchips. Any animals seized from unregistered establishments under the DAA can automatically be desexed, which means it will never be possible to exploit those animals again.

We do not rest on our laurels. We continue to improve our hardline approach. There is never one solution to a problem, so we have worked on the education, regulation, legislation, enforcement and funding to ensure that we have a comprehensive package of actions to meet our commitment to stamp out illegal puppy and kitten farming. We will not stop there. Next year we plan to review the POCTA legislation, the pet shop code of practice and to continue to work with the RSPCA — which is a very willing partner in relation to this legislation — and councils to make sure that they continue to shut down illegal backyard breeders.

Given what we have already done, a coalition government can be trusted to continue to get on with what needs to be done to protect animals from those who are unscrupulous and cruel. I commend this bill to the house.

Mr BARBER (Northern Metropolitan) — I am delighted to be answering the call from Mr Ramsay and supporting his government's legislation today, because Mr Ramsay now recognises, as has long been recognised by the Greens, that animal welfare is a significant concern for a large part of the community. That debate continues to roll out even as we stand here. Ms Pennicuik has raised some matters in the Parliament this week. I have been out visiting farms and talking to various people about this issue over the last little while. In fact I noticed before I came in here that Subway has now joined McDonald's in flagging that it is moving away from using eggs from caged hens towards eggs from free-range hens and barn-laid forms of production.

Mr Ramsay — Shame!

Mr BARBER — Mr Ramsay said, 'Shame', in relation to the decision made by Subway. I would have thought he was a big fan of the free market. I noticed earlier this week that the Victorian Farmers Federation was calling for a price premium from McDonald's if farmers were to move towards production systems involving free range methods. Many years ago those who pioneered the free range industry may have received a price premium, but now that it is rapidly moving to the point where all consumers expect cruelty-free products I do not think there is necessarily going to be a price premium for that. McDonald's has hardly been a radical environmental organisation over the years; it is simply listening to the demands of consumers.

In the same way I wonder why some people cannot listen to the voting choices, where groups who represent animal welfare, including the Greens and others, are finding that there is an increasing level of public support for these positions. But it is good that the government is moving rapidly in this area. The Greens have been consistent all along in their positions on animal welfare, so every day that Mr Ramsay gets further away from his previous position and closer to my position, that is a good thing. That is progress.

Mr Ramsay — That will never happen.

Mr BARBER — He says it will never happen, but we have seen some big changes in consumer demand for animal welfare in farm production.

Elsewhere in the bill, in clauses that are uncontroversial so I will not spend much time discussing them, further powers are given to RSPCA officers, and that is something we are all going to agree on here today — Labor, Liberal, The Nationals and Greens. When I say they are uncontroversial, I should say that there is one political party that is extremely opposed to the new powers in this bill, and that is the Country Alliance. It has spoken out and said it does not believe the RSPCA should have these powers or in fact any powers, if I read its material correctly. The Country Alliance believes this should be a matter for the Department of Environment and Primary Industries. It is a great moment of consensus here. I would hope no party in this Parliament wants to preference a party like the Country Alliance, which seems to have such extreme and backward views on animal welfare, when the parties in this Parliament, and I think all Victorians, are in favour of the measures that we are discussing and implementing today.

However, the part of the bill that is going to have the most interest today contains the clauses in relation to so-called puppy farms. The government had the opportunity to close down puppy farms and did not do it. Why? There was overwhelming pressure from the public and animal welfare groups to ban puppy farms, and therefore you would be wondering who was it that was pushing back? Let us face it, we have a surplus of domestic animals in this state. The pounds can barely keep up. Many animals are destroyed in pounds while other animals are being bred and purchased through various aspects of the breeding industry. We do not seem to be able to bring the matter back to a more sensible group of settings.

In April, though, the government published a new code of practice for the operation of breeding and rearing establishments after a two-year process. It seemed like most people had agreed to the draft code, even though those who participated in the process wanted stronger laws, such as the banning of puppy farms. The government quietly excised key provisions without telling anyone and then published the final code. Why was the upper limit of five litters removed? Why were the compulsory pre-breeding and post-breeding vet checks removed? Nobody stands to benefit except for the puppy farms.

The government claims that this bill includes 'good character' provisions and breeder information for every pup sold, but those provisions are flawed in some quite obvious ways. The Liberal pre-election promise was to empower RSPCA inspectors with the same powers as local government to enforce the code of practice for breeding establishments to eliminate illegal and/or poorly run puppy farms. That was partly done, but only after a public flogging by the RSPCA. In April this year the RSPCA wrote a furious letter to the Minister for Agriculture and Food Security, Peter Walsh, in which it said:

> And Minister — we take great exception to statements that continue to be made in your press releases which indicate that the RSPCA has been given greater funding and powers. Neither of these statements is true … to deliberately mislead and deceive is just unacceptable.

This legislation will allow the RSPCA to support councils, which the RSPCA is now pleased about. Empowering the RSPCA does not just mean giving it legal powers, it also means giving it funding for the new job the government wants it to do. Councils and the RSPCA are both hamstrung by a lack of right-of-entry powers in this bill. Good on it for welcoming the extra powers anyway. This shows what a great group the RSPCA is.

A further promise was to change the definition of a domestic animal breeder — that is, a puppy farm — from 10 breeding females to 3 and increase the penalties for operators who have committed acts of cruelty from $1195 to $30 000. Yes! Clause 12 provides for the reregistration of domestic animal businesses with council or an applicable organisation, which is quite important. The penalty for individual non-compliance is now 246 penalty units or 600 penalty units for a body corporate. That changed in 2011.

The promise was to continue the current core funding of the RSPCA with $1 million per year. The government has honoured that promise, but it is a pathetic promise. That amount is a decrease in real terms and has not given the RSPCA extra money to use its extra powers to enforce the new laws. In order for

the RSPCA to operate, it needs $3 million per annum. It is getting $1 million. Labor has pledged $1.5 million per year for the next five years. It describes this as 'an additional $5 million', meaning in fact $1.5 million per year. The RSPCA's additional responsibilities need extended funding on top of the core funding. The community expectation is clearly there.

The Greens policy is to ban puppy farms. As Ms Pennicuik said, they are intrinsically cruel, yet the government advocates that there should nevertheless be puppy farms. The Greens position is consistent with major stakeholders like the RSPCA. We do not believe the code of practice is sufficient.

The problems with the new code are that the limit on the number of litters was included in the draft code then removed in favour of a veterinarian certificate after five litters. As Ms Pennicuik said, thousands of people who participated in good faith and made submissions are now left feeling furious and betrayed by the process. Dogs can be caged for 23 hours per day, with exercise periods only increased by 10 minutes.

The RSPCA wants the complete banning of intensive breeding establishments. It also opposes the sale of animals in shops. Again, this is another of the Greens policies that has been there for a very long time. We do not want impulse buying of animals. This bill and some proposals from the Labor Party are now trying to set up a whole range of chains of custody and back checks through the production chain. However, that is complicated by cats and dogs being sold in pet shops and shopping centres where someone on impulse, maybe because of kids nagging or whatever, will buy a pet with very little thought. There are so many different places where you can buy pets that have been well looked after and well prepared for domesticity that we really do not need the sale of animals to be promoted in that way.

The RSPCA said it was surprised and disappointed at the code backflip. CEO Maria Mercurio wrote a strongly worded letter to Peter Walsh about it, saying that two years of consultation had been undone. In her letter she said:

> To remove the breeding limits undermines the whole intent of the code. This was one of the key, central elements which certainly led the RSPCA to publically support the code which was a major improvement but hardly perfect. And why remove the requirement for pre-mating and post-birthing vet checks? Are we trying to cut costs to make the intensive breeding industry viable?

In relation to clause 12(a), in the committee stage we will have some conversation across the table about this problem with the so-called 'applicable organisation' provision. This aims to fix a loophole left open by the 2011 reforms in relation to small puppy farms registered with DOGS Victoria instead of their local council. This is better than nothing, but the Greens cannot see a reason why any breeder should be exempt from registering with their local council.

In 2011 a new definition of 'domestic animal business' was created to include an exemption for breeders with between three and nine fertile female dogs or with between three and nine fertile female cats. It gave them the option of registering with an applicable organisation instead of their local council. If a small breeder is registered with an applicable organisation, they are not considered to be running a domestic animal business. The bill closes a loophole so that small breeders opting to register with an applicable organisation, like DOGS Victoria, instead of their local council will have to register more animals with the organisation — a maximum of two can remain unregistered. During the committee stage we need to get a bit of clarity about this loophole or escape route if the government believes this is an unintended use of the provision. How many breeders are using it, and what difficulties might that cause for the enforcement of the aims of the legislation?

In relation to clause 14, on our reading it fails to remove the ability for people with a history of animal cruelty to run a puppy or kitten farm because convictions are so rare, and in any case the proprietor could continue to operate under the name of an associate or even a family member. Oscar's Law, the campaign group, advised that:

> This amendment if passed would directly affect two people in Victoria who are currently operating a domestic animal business … and have been charged with cruelty under POCTAA —

the principal act —

> in the last 10 years.
>
> It is not that cruelty has not occurred on puppy factories, but rather it is indicative of the weakness and ambiguity of the POCTA act. The burden of proof remains very difficult and therefore animals are not protected on puppy factories.
>
> …
>
> There is nothing in the amendment that would prevent the partner/spouse/offspring of the 'relevant person' to become the proprietor and apply for the transfer of the permit into their name or applying for a new permit in their name. It will still be business as usual for these two …

convicted individuals.

> Oscar's Law does support the amendment that would disqualify anyone convicted of cruelty to operate a puppy factory but the amendment needs to close the potential

> loophole that would allow relatives of the 'relevant person' to simply make a few administrative changes to paperwork to allow the puppy factory to continue. Hopefully in the future the POCTAA can be reviewed and strengthened so as to provide real protection for animals, and this amendment if tightened would be effective.

Clause 15 is another good idea, but it is doubtful it will work in practice. It inserts a new section to require a pet shop owner to make and keep records in relation to every cat or dog sold of the name and address of the person from whom they obtained the animal and any other prescribed information. Oscar's Law, the group that first brought this issue to wide attention, said:

> We agree with this amendment in theory. However, many puppy farmers prefer to sell litters of puppies to 'brokers' who then sell to many pet shops; this effectively disguises where the puppies originated from. The pet shop may well record the name and address of the broker, but there is nothing in the legislation that would make the 'broker' keep a record of where they are purchasing the puppies from. There still remains a high risk of not being able to trace exactly who and where the puppy was bred. So this will still offer no protection for the consumer …

The consumer might want to know that the puppy was bred in humane conditions or might need the information if they are trying to recover veterinary expenses or for another reason. It continues:

> It will also be of no value to the RSPCA or councils when investigating a complaint and trying to establish where the pet shop is getting puppies from. Brokers are not included in the DAA or in the COP. They remain a huge but unregulated part of the trade …

and so on and so forth, really, with this legislation. It is an increasing set of attempts to regulate something which has many difficulties and in many ways, even when operating as intended, sets a number of quite unacceptable animal welfare outcomes.

There are good and bad examples in any industry, including, no doubt, within the caged hen industry, where there is a degree of variation between the worst and the best operators. That is why I place no particular weight on the invitation that came from the head of the Victorian Farmers Federation's (VFF) egg producer division to visit his farm. I do not doubt that he will be in compliance on the day I appear, but anytime animal rights activists make an unannounced and illegal visit to an establishment where they think cruelty is occurring, it gets Mr Ramsay to his feet in double-quick time. I do not need to take up the invitation from the VFF in relation to battery hens.

The market is moving on very rapidly, and expectations of standards are moving on very rapidly. In fact a regulatory approach would provide some certainty and an end date, at least, for the industry, as is now happening in a number of other states in relation to other issues such as sow stalls. Groups like the VFF can continue to resist even as the market moves rapidly ahead, or they can seek some regulatory certainty around best and acceptable practice. We are moving in that direction very quickly anyway. A number of the issues that have been debated for many decades are now moving rapidly towards regulatory certainty, and if the consumer wishes it to be that way, there really should not be much more argument about it.

On the issue of puppy farms, which in some ways has risen to a higher level of awareness only in recent years, we are seeing something of the same approach. We are seeing pushback from those who stand to make money and some progressive incremental movements in terms of standards but we are not moving smoothly towards what should be a very clear and acceptable standard and one that would find support amongst the vast majority of the community.

Mr D. D. O'BRIEN (Eastern Victoria) — One day we will introduce a bill that the Greens can support. It might need to be a bill about motherhood. Even then I am not so sure that they would be on our side.

Mr Barber — Wind farms.

Mr D. D. O'BRIEN — You would support wind farms? We will see what we can do.

I am pleased to rise to support the Primary Industries Legislation Amendment Bill 2014. I will speak very briefly, as Mr Ramsay has done a good job of outlining what the bill does. There are some important things the coalition government has done in this omnibus bill, which has quite a number of aspects to it. It reduces red tape, and with its amendments to the Domestic Animals Act 1994 it allows councils to adopt lifelong identification markers.

The bill reduces red tape for councils, pet owners and dog owners and improves animal welfare, and we have had quite a debate about that so far. It puts the onus back onto pet shops in relation to keeping records. It also outlaws a relevant person who has been found guilty of a specified offence under the Prevention of Cruelty to Animals Act 1986 to be involved in a domestic breeding business if they have had a conviction in the previous 10 years. Bison will be included under the definition of cattle in the Livestock Disease Control Act 1994.

Something I want to focus on for a moment is that penalties will be strengthened for the feeding of swill — that is, food scraps containing animal products, in particular meat, but animal products generally. There

is a new offence introduced for businesses such as restaurants or garbage disposal services found to be supplying swill for feeding pigs. This is a small amendment to the legislation, but it is critical in the overall scheme of things for our agricultural industries. We know that we have been foot and mouth disease-free in this country for about 140 years, and may it ever remain that way.

Members of the coalition's rural and regional backbench committee recently met our new chief veterinarian, Professor Charles Milne, who has extensive experience in the United Kingdom, including with the foot and mouth disease outbreaks there in 2001. It was quite startling to hear some of the experiences the United Kingdom went through. I am reminded that it has been estimated that a foot and mouth disease outbreak in Australia would cost the national economy $50 billion, and the ongoing effects that an outbreak would have on our agricultural industries would be enormous. Everything we can do to reduce the biosecurity risk is very important.

There are other aspects of the bill that have been canvassed at length. I will not go into them in great detail, but there are amendments to the Plant Biosecurity Act 2010 and the Veterinary Practice Act 1997, including some minor amendments allowing a veterinary practitioner who does not reside in Victoria to be registered here, and some other minor amendments in relation to vets, all of which are good changes to reduce red tape burden, to reduce unnecessary regulation and to improve animal welfare. I appreciate that others have different views as to whether it goes far enough, but in addition to those two issues its enhancement of biosecurity to protect our agricultural industries is absolutely critical. I certainly support the bill, and I commend it to the house.

Mrs MILLAR (Northern Victoria) — I am very pleased to make a brief contribution today to the debate on the Primary Industries Legislation Amendment Bill 2014. I would like to acknowledge the amazing work undertaken by the Minister for Agriculture and Food Security, Mr Peter Walsh; the departmental secretary, Adam Fennessy; and the absolutely fabulous team of the Department of the Environment and Primary Industries (DEPI). I have often spoken about the work of the staff of DEPI, and today I would like to particularly focus on their vitally important work in Victoria in relation to protecting our agricultural sector and biosecurity.

Mr Danny O'Brien has touched on this issue, but I feel that this point is particularly important to emphasise. The bill introduces a range of very important measures. I will not touch on all of them today, but there is a lot to be proud of in this bill. We have talked about measures for improving animal welfare, and this government is certainly very proud of its record in stamping out illegal puppy farms. We have implemented our election commitments in relation to those puppy and kitten farms which operate in an illegal manner. While it is true that some disagree with the extent of this, illegal puppy farms will no longer be able to hide from councils, DEPI or the RSPCA. That is important. The coalition government has more than doubled the penalties for cruelty and aggravated cruelty to animals, and given its record in introducing over 100 new regulations for breeders to meet, this is a very significant election commitment that has been met and delivered by the government.

I wish to touch briefly on the issue of biosecurity. I note that the coalition government has put a very significant priority on delivering biosecurity to protect the value of Victoria's food and fibre industry. Victoria is Australia's largest food and fibre exporting state. In 2012–13 the sector was valued at close to $9.4 billion, and that is increasing.

Recently I had the privilege of meeting the newly appointed chief veterinary officer, Dr Charles Milne. It is a fabulous appointment for Victoria in securing an expert of his calibre and experience. He led the teams that responded to a number of significant outbreaks in foot and mouth in the United Kingdom in 2001 and other outbreaks. It is very important that we understand that those outbreaks in the UK led to the decimation of their agricultural sector — and I do not use that word lightly. Having access to Dr Milne's experience and expertise is significant and further supports the high priority that biosecurity in Victoria needs to have to protect our agricultural sector.

While we have the benefit of Australia's geographical isolation, everything is for nothing if we do not also have a strong quarantine system. On that matter, I point out the significant investment this government has made in improving quarantine, with a new quarantine facility to be located at Whittlesea. It is most important to have a state-of-the-art quarantine system. Only a coalition government has prioritised biosecurity in this way. We have the best people in place, we have new state-of-the-art quarantine facilities coming on board, and with this bill and other recent legislation we have the legislative framework to prioritise and protect our agricultural sector from biosecurity threats.

The bill provides for a number of other initiatives. As colleagues have already addressed those, I will not touch on them. I commend the very important

protections provided for by the bill. This is one of the most significant pieces of work delivered by Minister Walsh's Department of Environment and Primary Industries. It is an absolute credit to those who have worked on the bill, and I commend it most wholeheartedly to the house.

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1 agreed to.

Clause 2

The ACTING PRESIDENT (**Mr Elasmar**) — Order! I call Ms Pulford to move her amendment 1, which tests her amendments 2 and 3 to clause 2 and her remaining amendments 4 to 6.

Ms PULFORD (Western Victoria) — I move:

1. Clause 2, line 6, omit "38" and insert "39".

This amendment is a response to the concerns of people who are at the forefront of the battle against puppy farming. What I continually hear from organisations, like Oscar's Law, the RSPCA, Animals Australia and other people involved in the rehabilitation of rescue dogs, like the people who are patching animals up every single week in places like Lort Smith Animal Hospital in North Melbourne, is that there are real limitations on the ability of inspectors to enter puppy farms to see what is going on. We know some puppy farms are very large businesses. We know others are much more modest backyard operations. We also know that the ability to sell things on the internet has caused something of a proliferation of new puppy farming operations all over the state.

This amendment provides for new powers for RSPCA inspectors. This is modelled on the powers of other authorised officers as set out in section 74 of the Domestic Animals Act 1994. It includes the powers to ask questions and to enter premises. My amendment 4 seeks to insert a new clause to follow clause 15 of the bill to provide that:

(1) An authorised officer appointed under section 72A may take any reasonable action that is necessary to find out whether the provisions of —

(a) this Act; or

(b) the regulations; or

(c) any Code of Practice made under this Act; or

(d) a notice to comply issued under this Act —

that relate to the conduct of domestic animal businesses are being complied with.

(2) An authorised officer who is exercising a power under subsection (1) may —

(a) at any reasonable time and by any reasonable means and with any assistance which the authorised officer requires enter any building not occupied as a place of residence or any land or vehicle; or

(b) search the whole or any part of any building, land or vehicle entered under paragraph (a); or

(c) inspect animals, enclosures or other goods; or

(d) ask questions; or

(e) seize, examine or take copies of, or extracts from documents; or

(f) seize and remove any animal in accordance with Division 2 of Part 7A.

This is an essential power for an effective fight against puppy farming practices. During the second-reading debate I outlined what I believe are the limitations to the government's approach to this. Having a properly resourced inspectorate with the ability to enter puppy farms is essential. If the Labor Party is successful in forming government in November, it intends to provide additional resources to the RSPCA to support an audit and inspection of all puppy farming businesses in Victoria. This amendment creates the power for that to occur.

Ms PENNICUIK (Southern Metropolitan) — The Greens obviously support more powers to take action against puppy farms. My question regarding this clause, however, is to which type of authorised officer is it directed? It appears to be restricted to those appointed under section 72A, which refers to authorised officers appointed by a council who are not employees of the council. I would suggest they are not council-employed domestic animal welfare employees but somebody else appointed by the council. I hope Ms Pulford can elucidate on that point.

Ms PULFORD (Western Victoria) — My understanding is that RSPCA authorised officers are appointed under section 72A of the Domestic Animals Act 1994, so in addition to local government inspectors, it is a power the RSPCA inspectorate needs so it can properly police illegal puppy farming practices.

Ms PENNICUIK (Southern Metropolitan) — It has been my understanding that the RSPCA inspectors are appointed by the minister under section 71. I wonder if the minister at the table can clarify that — namely, who the inspectors are appointed by and under which section they are appointed.

Hon. D. K. DRUM (Minister for Sport and Recreation) — I will have to seek advice on that. The RSPCA inspectors will be appointed under section 71A of the Domestic Animals Act 1994.

Ms PENNICUIK (Southern Metropolitan) — Could the minister clarify what type of person is appointed under section 72A by a council? What would be an example of that sort of authorised officer?

Hon. D. K. DRUM (Minister for Sport and Recreation) — These services are normally provided by a contracted service; for example, a lost dogs pound. I know in Bendigo this service could be contracted to an animal emergency service organisation. As Ms Pennicuik said, these services are not provided by council workers; an organisation is contracted to do this work for councils.

Ms PENNICUIK (Southern Metropolitan) — I am wondering whether this amendment needs some further consideration in terms of the type of persons. Is this the actual class of persons to which Ms Pulford is aiming her amendment?

Ms PULFORD (Western Victoria) — My amendment seeks to insert a new section 74AB after section 74A, which I believe would provide the power required for RSPCA authorised officers. My advice is that the amendment I am moving would appear in the appropriate place in the act under which powers can be provided to RSPCA inspectors to enter domestic animal businesses.

Hon. D. K. DRUM (Minister for Sport and Recreation) — I have been informed that under section 72A they are effectively not council workers. As I have just said to Ms Pennicuik, the group covered under section 72A of the act is effectively contractors who would be contracted to do a service for council, not the RSPCA. I think it may be the RSPCA at times, but generally speaking we are talking about a specific service that might be picking up a few dogs that have been wandering around the street without tags and without owners and taking them to a pound. That is the sort of organisation that would come under sections 72 and 72A of the Domestic Animals Act 1994.

Ms PULFORD (Western Victoria) — I ask the minister to clarify or seek clarification that councils would be able to appoint an organisation such as the RSPCA to do this, and if they were contracting that inspectorate function out that the RSPCA would be the kind of organisation that could be contracted.

Hon. D. K. DRUM (Minister for Sport and Recreation) — I have been informed that they are one of a range of different services that can be contracted to do that work. So sometimes, yes, it is the RSPCA, but many other times and in the majority of times, no, it is a specific company, a specific contractor, that will come out and pick your dog up if it has got out of your backyard, and the contractor will take it to the pound and you will have to pay the fee. That is a service that is usually offered to the council by a contractor other than the RSPCA, although there are examples of where the RSPCA does this work.

Ms PENNICUIK (Southern Metropolitan) — I was wondering if I could perhaps assist with the amendment, which I have a lot of sympathy for, and whether we could postpone this clause and perhaps I or someone else can move an amendment to Ms Pulford's amendment to insert clause 71 instead of 72A. I think that would make the amendment do what it is aiming to do.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! Let me clarify something. This amendment is a test for amendments 2 and 3 to clause 2 and remaining amendments 4 to 6; that is my understanding.

Ms PULFORD (Western Victoria) — If I am correct, Ms Pennicuik might have some questions under clause 12.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! I am not going to allow a conversation. The committee stage is for questions to the minister. I did not mind the first one, which was for clarification about Ms Pulford's amendment.

Ms PENNICUIK (Southern Metropolitan) — The amendment I need to amend is amendment 6, or perhaps somebody else could amend it.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! I am happy to put Ms Pulford's amendment if she agrees to it and test amendments 2 and 3 on clause 2 and remaining amendments 4 and 5. We might have a break for a couple of minutes so Ms Pulford can sort it out.

Sitting suspended 6.04 p.m. until 6.12 p.m.

Ms PULFORD (Western Victoria) — Chair, thank you for the committee's forbearance while we sorted

out a numbering problem. I also thank the minister and Ms Pennicuik. For the benefit of the house I clarify that line 5 of my amendment 4 as circulated reads:

(1) An authorised officer appointed under section 72A —

but should read —

(1) An authorised officer appointed under section 71A …

I pass on my appreciation to members for agreeing to my making that clarification. It is important to note that new section 74AB(2), which this amendment seeks to insert, concerns the key group of powers needed by RSPCA inspectors to properly give effect to what I think is our shared desire to crack down on puppy farms.

Proposed new section 74AB provides that:

(2) An authorised officer who is exercising a power under subsection (1) may —

(a) at any reasonable time and by any reasonable means and with any assistance which the authorised officer requires enter any building not occupied as a place of residence or any land or vehicle; or

(b) search the whole or any part of any building, land or vehicle entered under paragraph (a); or

(c) inspect animals, enclosures or other goods; or

(d) ask questions; or

(e) seize, examine or take copies of, or extracts from documents; or

(f) seize and remove any animal in accordance with Division 2 of Part 7A.”.’.

This amendment is required so that RSPCA inspectors have the powers they need to enter puppy farms to ensure that they are compliant with the code and, if they are not, to take immediate action to remove the animals. All members have indicated during the course of their contributions a desire to crack down on puppy farms. This is an essential measure, and I urge members in the house to support this amendment.

Hon. D. K. DRUM (Minister for Sport and Recreation) — The government will not be supporting this amendment. We understand there was a typographical error with it, and there is no problem in correcting it, but the government is of the opinion that an authorised officer appointed under section 71A can do the various things listed under Ms Pulford’s proposed sections 74AB(1) and (2) in this amendment. The government believes that if you look at the Domestic Animals Act 1994, it is clear that the necessary powers to enable RSPCA officers to have these search powers are well and truly covered in sections 74(1A) and 74(2). Now that the minister has triggered these powers in this bill, we believe the amendment is no longer necessary, and the government will be opposing the bill on those grounds.

Ms PENNICUIK (Southern Metropolitan) — I think the minister will be supporting the bill but not supporting the amendment!

Hon. D. K. Drum — Amendment. Did I say the bill? You know what I mean!

Ms PENNICUIK — With regard to the amendment, on my reading I think the minister is correct that the first part is covered by the principal act, but I have not seen the second part of the amendment in the act. As the first part replicates what is already in the act with regard to the powers of authorised officers, and the second adds more powers, or outlines them in a more specific way with regard to the exercise of those powers and relates to a domestic animal business, the Greens are inclined to support the amendment, as amended.

Hon. D. K. DRUM (Minister for Sport and Recreation) — Again I say to Ms Pennicuik that section 74(2) of the principal act provides for the ability to exercise those powers for any reasonable means and with any assistance in any building. So effectively the government is of the opinion that the issues that are highlighted in the amendment are in fact covered specifically by sections 74(1A) and 74(2), and the government will not be supporting these amendments.

Ms PULFORD (Western Victoria) — I will respond to the minister’s comments. At the moment RSPCA inspectors are required to have a reasonable belief that cruel practices are occurring, rather than a right to inspect without information that would lead them to believe that cruel practices are occurring. The second part, we believe, creates new powers. The advice that the member for Bendigo East in the Assembly, who is the shadow minister for agriculture, and I received from the government in the briefing was that the new powers of entry that were provided by the government’s legislation were not broader than already exist in circumstances where there has been a conviction for cruelty. We were advised that that was not the case, so I proceed with my amendment. We believe it is an important gap in the government’s response to this issue.

Committee divided on amendment:

Ayes, 16

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

Noes, 18

Coote, Mrs	Lovell, Ms
Crozier, Ms	Millar, Mrs
Dalla-Riva, Mr	O'Brien, Mr D. D. (*Teller*)
Davis, Mr D.	O'Brien, Mr D. R. J.
Drum, Mr	O'Donohue, Mr
Finn, Mr	Ondarchie, Mr
Guy, Mr	Ramsay, Mr (*Teller*)
Koch, Mr	Rich-Phillips, Mr
Kronberg, Mrs	Ronalds, Mr

Pairs

Darveniza, Ms	Atkinson, Mr
Tierney, Ms	Elsbury, Ms
Viney, Mr	Peulich, Mrs

Amendment negatived.

Clause agreed to; clauses 3 to 11 agreed to.

Clause 12

Ms PENNICUIK (Southern Metropolitan) — Clause 12 refers to the definitions in section 3(1) of the Domestic Animals Act. I must say that many of us in and outside the chamber spent a long time trying to get to the bottom of the meaning of clause 12 and in fact section 3. The minister has been very accommodating in trying to help me out. He directed me to the advisers, and I thank them for clarifying what is before us now.

We had an amendment to clause 12 because we did not think this clause was going to necessarily close the loophole by which many puppy farms are escaping registration with councils, and that really is the crux of the issue. As I understand it, the clause put forward by the government will see organisations that are registered with an applicable body — basically Dogs Victoria — classified as a domestic animal business if they have 10 or more fertile dogs or cats or if they have between 3 and 9 fertile female dogs or cats and only 2 of those 3 to 9 animals are not registered, as in they could be family pets and therefore not registered with Dogs Victoria. In the case of organisations that are not registered with Dogs Victoria, any organisation that has more than three fertile dogs or cats will need to register with their municipal council.

The clause goes quite a long way to closing that loophole but of course it will depend on enforcement. I did not speak during the second-reading debate on this bill but when the amendments to the Domestic Animals Act 1994 were introduced in 2011 I said to the then minister, Mr Hall, that the whole thing would succeed or fail on the enforcement of it. It is good to have these things in the act, but are they being enforced? Perhaps this clause will make them easier to enforce. It certainly makes it clear who has to be registered with a municipal council — basically anyone with more than three fertile animals. I am reasonably happy with that. It is something I would like to keep an eye on. The minister can continue consulting with the RSPCA, Oscar's Law and Animals Australia, as these organisations have a keen interest in this issue.

A few issues have been raised with me. How many organisations is the minister aware of that have been avoiding registration with councils? Do we actually know how many puppy farms are out there? I am advised that we do not really know that. Does the minister think this provision will assist in finding that out?

Hon. D. K. DRUM (Minister for Sport and Recreation) — We would not know how many are out there; otherwise we would have our people hunting them down. Sometimes the politics of puppy farms override common sense. The fact is these illegal puppy farms have been illegal for quite a few years. Our problem has been in hunting them down and exposing them. I will ask the advisers if they have any information on the number of puppy farms that have been exposed.

We do not have with us the number of puppy farms that have been exposed recently. However, there is an expectation that with these changes and pet shops having to keep full details of the people who delivered the dogs to the pet shops, with the microchipping of animals at a young age, with the RSPCA as enforcement officers and with the additional information that will be available to councils and the RSPCA, the compliance regime in this state will be significantly strengthened.

Ms PENNICUIK (Southern Metropolitan) — I think the minister was anticipating my next question, which was on clause 15. I suppose we could prosecute this for hours, but the issue with clause 12, which we are discussing now, is that that clause is going to make it very difficult for anyone to run a domestic animal business if they are not registered with the council. But then again the issue is how the council, the RSPCA or whoever makes sure they are complying with the code,

notwithstanding the limitations of the code, which are numerous. We know the code is still allowing breeding females to breed after five litters, and other aspects of the code with regard to the housing of animals and the exercise of animals are, in my view, still deficient.

In terms of clause 12, all I can say is that we will support clause 12 as it is, with the clarification of what it is intended to do. But we will be consulting with groups on how that new provision and the closing of the loophole actually works in terms of catching those organisations that have been avoiding registration with councils.

Clause agreed; clauses 13 and 14 agreed to.

Clause 15

Ms PENNICUIK (Southern Metropolitan) — Clause 15 is about pet shop proprietors being required to keep records of the names and addresses of persons from whom dogs or cats have been obtained and of any other prescribed information in a manner prescribed by the regulations. I repeat that the Greens are opposed to the sale of dogs and cats through pet shops and that this requirement would go a long way towards getting rid of puppy farms. The issue has been raised with us that the proprietor of the puppy farm might not be the person supplying the cats and dogs; in fact it may be a broker who works for a number of puppy farms. Will the regulations pick this up? If the person is a broker, will the proprietor of the domestic animal business also be listed?

Hon. D. K. DRUM (Minister for Sport and Recreation) — Ms Pennicuik makes a good point. I can assure her that the breeder's details will be kept on record, as will the vendor's. Irrespective of who is selling the animals, the breeder's details will be kept on record.

Ms PENNICUIK (Southern Metropolitan) — I thank the minister. That is certainly a step forward and clarifies the meaning of the practical application of that clause.

Ms PULFORD (Western Victoria) — Will the government require that those records are provided to the department as well as being kept by pet stores?

Hon. D. K. DRUM (Minister for Sport and Recreation) — As it turns out departmental officers are authorised officers with the power to go in and access that data; they have access to that data should they wish to have it.

Ms PULFORD (Western Victoria) — So it is not the government's intention that the data be collected and provided to the department as a matter of course?

Hon. D. K. DRUM (Minister for Sport and Recreation) — In fact the data is available to departmental officers whenever they wish to access it. If the data is delivered to the department, someone has to have the will to access it, but the information is there for departmental officers to access whenever they want to.

Ms PULFORD (Western Victoria) — That is my concern. The department may lack the resources to routinely inspect and ask every pet store in the state to provide information about each and every puppy that goes through their doors. I am just seeking to confirm whether it is the government's intention to require that that information also be provided to the department.

Hon. D. K. DRUM (Minister for Sport and Recreation) — In a practical sense I say to Ms Pulford that if the department was made aware of any irregularity in relation to puppy farms, it would have the information that Ms Pulford is talking about at its fingertips; it could access that information. Whether that information physically sits with the pet shop or whether it is delivered to the department en masse, that information is 100 per cent available to access whenever the department has an inclination to do so.

Ms PULFORD (Western Victoria) — Would it be a matter of departmental resourcing and prioritising to obtain that information rather than that information just making its way to the department? Victoria covers a large area; there are a lot of pet stores selling puppies. What does the government think is an appropriate frequency for the department to visit pet stores to check records?

Hon. D. K. DRUM (Minister for Sport and Recreation) — Without being flippant in response to Ms Pulford, there are things called computers, and this data would be electronically stored so that it could be accessed.

Ms PULFORD (Western Victoria) — That is a little different to what the minister said earlier about this information being held by pet stores and not the department.

Hon. D. K. DRUM (Minister for Sport and Recreation) — It can be accessed by the department whenever it wants it.

Ms PULFORD (Western Victoria) — How?

Hon. D. K. DRUM (Minister for Sport and Recreation) — I failed to mention that details stored on a microchip will be made available to the secretary of the department. We can access this information on computers. Should an issue arise anywhere in the state, all the details and information will be available to the secretary of the department.

Clause agreed to; clauses 16 to 48 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

Hon. D. K. DRUM (Minister for Sport and Recreation) — I move:

That the bill be now read a third time.

I thank all members who participated in the debate.

Motion agreed to.

Read third time.

EMERGENCY MANAGEMENT AMENDMENT (CRITICAL INFRASTRUCTURE RESILIENCE) BILL 2014

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

For Hon. M. J. GUY (Minister for Planning), Hon. D. K. Drum 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 Emergency Management Amendment (Critical Infrastructure Resilience) Bill 2014.

In my opinion, the Emergency Management Amendment (Critical Infrastructure Resilience) 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 purposes of the bill are to amend the Emergency Management Act 2013 to provide for risk management arrangements for critical infrastructure resilience and to consequentially amend the Freedom of Information Act 1982 and the Terrorism (Community Protection) Act 2003.

Human rights issues

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

Right to freedom of expression

Section 15(2) of the charter act provides that every person has the right to freedom of expression. This includes the right to seek and receive information.

Clause 3 of the bill will insert a new section 74K into the Emergency Management Act 2013. New section 74K provides that Emergency Management Victoria must ensure that information contained on the Victorian critical infrastructure register is only accessed by certain persons, such as the minister and the inspector-general for emergency management. This new section will potentially limit the right to receive information. However, section 15(3) of the charter act provides that the right to freedom of expression may be subject to lawful restrictions reasonably necessary for the protection of national security and public order. The register will contain information specifying which Victorian infrastructure is major, significant, or vital infrastructure. It is necessary for this information to remain undisclosed in order to protect national security and to ensure public order. Accordingly, new section 74K does not limit the right to freedom of expression.

Clause 7 will amend section 29A of the Freedom of Information Act 1982 to provide that a document is an exempt document if it is a document held or created by Victoria Police for the purpose of counterterrorism or a purpose related to counterterrorism; or for the purpose of the protection of critical infrastructure. A person does not have a right to an exempt document under the Freedom of Information Act 1982, and the 'public interest override' in section 50(4) of that act will not apply to documents exempt under new section 29A. A person may therefore be prevented from receiving information contained in documents exempt under new section 29A. However, for the same reasons as outlined above, I consider that section 15(3) of the charter act will apply and that, consequently, new section 29A will not limit the right to freedom of expression.

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 proved guilty according to law. This 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 3 of the bill will insert a new section 74V into the Emergency Management Act 2013. New section 74V contains various offences applying to 'responsible entities', including several which provide that the relevant conduct must not occur 'without reasonable excuse'.

In general, these offence provisions are likely to only apply to bodies corporate rather than individuals. However, even if the offences in new section 74V will apply to individuals, new section 74V does not transfer the legal burden of proof to an accused, because once an accused has adduced or pointed to some evidence, the burden will be on the prosecution to prove the absence of the exception raised. Courts in other jurisdictions have generally taken the approach that an evidential onus on a defendant to raise a defence does not limit the presumption of innocence. The defences of reasonable excuse provided in new section 74V relate to matters within the knowledge of an accused and, if the onus were placed on the prosecution, would involve the proof of a negative which would be very difficult.

Consequently, even if this new provision was found to limit the right to be presumed innocent in section 25(1) of the charter act through imposing evidential onus on an accused, the limitation would be reasonable and justifiable under section 7(2) of the charter act.

For these reasons, I consider that it is appropriate for an evidential burden to be placed on an accused in these instances.

Matthew Guy, MLC
Minister for Planning

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. D. K. DRUM (Minister for Sport and Recreation).

Hon. D. K. DRUM (Minister for Sport and Recreation) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

Honourable members will be aware that the *Victorian Emergency Management Reform — White Paper* (the white paper) released in December 2012, details the government's overall reform program for emergency management. Emergency management arrangements underwent comprehensive review after the catastrophic bushfire events of 2009 and the floods of 2010 to 2011 and 2012. A key reform target was achieved when the new Emergency Management Act 2013 came into effect on 1 July 2014. The new act implements efficient governance arrangements that better clarify the roles and responsibilities of agencies, facilitate cooperation between agencies, and ensure the coordination of emergency management reform across the emergency management sector.

A fundamental commitment in the white paper is to replace the existing terrorism-focused critical infrastructure protection regime with an all-hazards approach to critical infrastructure resilience. Since 2001, protecting critical infrastructure from a terrorist attack has been a high priority for Australian governments. While terrorism remains a top priority, the changing and complex risk environment requires consideration of other hazards that can also disrupt essential services. As critical infrastructure becomes more interdependent, demand for services increases and climate variability affects the frequency and severity of emergencies, the challenge of ensuring continuity of supply in the face of natural disasters becomes all the more important.

For this reason, the Victorian *Critical Infrastructure Resilience Interim Strategy*, released in December 2013, and this bill, will replace the existing terrorism-specific approach to critical infrastructure protection with all-hazards arrangements for critical infrastructure. In so doing, the bill will repeal part 6 of the Terrorism (Community Protection) Act 2003, which contains the existing critical infrastructure protection provisions.

The coalition government understands the importance of integrated risk management planning and assessment by industry owners and operators. These new critical infrastructure arrangements are a significant step in ensuring owners and operators are adequately prepared to respond to all hazards including fire, flood and storm, in addition to the risks posed by terrorism.

Emergency management is built on community participation, resilience and shared responsibility. While the primary responsibility for critical infrastructure resilience rests with infrastructure owners and operators, there is an expectation that government will take appropriate measures to ensure that owners and operators are managing their risks and that vital service delivery is not interrupted. The bill balances flexible risk-based arrangements with a strong oversight role for government, and a renewed emphasis on performance measurement and assurance.

I now turn to the substance of the bill.

The purpose of the bill is to amend the Emergency Management Act 2013 to provide for risk management arrangements for building critical infrastructure resilience. The bill will also consequentially amend the Freedom of Information Act 1982 and will repeal part 6 of the Terrorism (Community Protection) Act 2003.

The bill introduces new definitions, and carries across certain existing definitions from the Terrorism (Community Protection) Act 2003. It is worth making note that the definition for infrastructure also contemplates any communication system used for the delivery of an essential service, including any system used to generate, send, receive, store or otherwise process any electronic communication for the purpose of an essential service.

Accountability

The bill seeks to detail clear roles and responsibilities across government and industry, including accountability for assuring the new arrangements.

This includes under proposed section 74F, the designation of a relevant minister for each critical infrastructure sector, and the nomination of an industry accountable officer under proposed section 74I, for each owner and operator of critical infrastructure designated as vital. The industry accountable officer is determined to be an officer within the meaning of section 9 of the Corporations Act 2001 and accordingly, occupies a position of accountability within the responsible entity.

Under proposed section 74G, relevant ministers can delegate their functions and powers to departmental employees, except for the power to recommend designation of vital critical

infrastructure and the power to require revision of a statement of assurance.

The critical infrastructure resilience interim strategy represents a watermark in all-hazards critical infrastructure planning. An integral part of the critical infrastructure model, contained in the interim strategy, is the process for assessing the criticality of infrastructure. Using a standardised criticality assessment methodology, owners and operators will be able to determine the criticality of their infrastructure, and its significance not just for commercial operations but also in delivering the state's essential services. Under the model, critical infrastructure will be categorised as either 'local', 'major', 'significant' or the highest category of 'vital'. The assessments will be undertaken by critical infrastructure owners and operators, but will not be done in isolation. The relevant minister, with advice from the portfolio department, is enabled to make a recommendation to the Governor in Council to designate by order, infrastructure that is assessed as 'vital'.

Victorian critical infrastructure register

The next component of this bill deals with the creation and maintenance of a critical infrastructure register that will record all Victorian critical infrastructure designated as vital, or assessed as major or significant. Under proposed section 74J, the relevant minister will be required to advise the Minister for Police and Emergency Services of the infrastructure designated as vital, or assessed as major or significant, and provide a copy of the order designating vital critical infrastructure to Emergency Management Victoria (EMV).

EMV will establish and maintain the register, and be required to review it under proposed section 74L on a three-yearly basis or at the request of the Minister for Police and Emergency Services. The role of relevant ministers and their departments will be integral to ensuring the register contains current and accurate information for their respective sectors.

It should be noted that under proposed section 74K the register will be appropriately secured with access only available to those in government who require it for the function or exercise of their powers for the purposes of this bill.

Resilience improvement cycle

Under the Emergency Management Act 2013, the inspector-general for emergency management (IGEM) has wide enough scope to provide a system-level assurance function for critical infrastructure resilience; however, the bill aims to clarify this intent. The bill makes it clear that the inspector-general has the power to gather information from agencies in providing system-level assurance for the critical infrastructure arrangements, while relevant ministers and portfolio departments will form an important component of the assurance framework at a sectoral level.

The bill requires owners and operators of infrastructure deemed vital critical infrastructure to complete a resilience improvement cycle. This is the basis of how vital critical infrastructure owners and operators are required to demonstrate their application of risk management processes. The cycle includes the development of a statement of assurance, risk management planning and documentation, an annual exercise and an audit.

Under proposed section 74N, owners and operators of vital critical infrastructure will be required to provide the statement of assurance to the relevant minister at the end of each annual resilience improvement cycle, creating an assurance process designed to continually build resilience as industry sectors mature. Regulations and guidelines will outline the details of the statement of assurance and risk management planning.

The bill allows owners and operators to utilise risk management documentation prepared as part of an organisation's enterprise risk management planning or under other legislative obligations, provided entities comply with the standards set out in the bill and associated regulations and guidelines.

I want to stress that this aspect of the bill is important to providing an environment for critical infrastructure owners and operators that facilitates their cooperation in delivering the state's essential services without unnecessarily restrictive regulation.

Compliance

The objective of the offence provisions in the bill is to provide for penalties that are greater than the cost of compliance. The offence provisions, under proposed section 74V, apply to the owner and operator as the responsible entity, and will not attach to individuals in their personal capacity. The inclusion of the 'without reasonable excuse' clause allows the relevant minister to exercise discretion in the application of penalties. Throughout extensive consultation, industry owners and operators have supported the inclusion of penalties to ensure compliance, given the interdependent nature of essential service supply chains.

Consequential amendments

The bill makes consequential amendments to the Freedom of Information Act 1982 to protect documents created under the bill, or created for the purpose of counterterrorism or critical infrastructure protection. This is consistent with current provisions for protecting documents produced for the purposes of part 6 of the Terrorism (Community Protection) Act 2003 and is important for maintaining the security of the state's critical infrastructure.

Clause 8 of this bill repeals the current risk management arrangements for declared essential service operators, which exist under part 6 of the Terrorism (Community Protection) Act 2003. The arrangements to be repealed require owners and/or operators of declared essential services to prepare risk management plans and conduct exercises in relation to their preparedness to respond to terrorism-related risks only.

Transitional arrangements

I want to now refer to the savings and transitional provisions in the bill.

The existing terrorism-specific risk management plans, prepared under part 6 of the Terrorism (Community Protection) Act 2003, remain in force for declared essential services until they are designated as responsible entities through order of the Governor in Council under proposed section 74E, and until their respective industry accountable officers attest to the first statements of assurance under proposed section 74N.

The responsible entity will have six months to submit a statement of assurance to the relevant minister after receiving a copy of an order designating the responsible entity as 'vital'. Any essential services previously declared under the Terrorism (Community Protection) Act 2003, but not designated as responsible entities when this bill commences, will not be subject to the mandatory risk management requirements in the bill, unless they are later designated as responsible entities.

The bill contains a default commencement date of 1 July 2015. This commencement date will allow sufficient time to transition the administration of the new arrangements to the portfolio for police and emergency services and will allow critical infrastructure owners and operators time to adjust to the new arrangements.

I commend the bill to the house.

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

Debate adjourned until Thursday, 25 September.

IMPROVING CANCER OUTCOMES BILL 2014

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

For Hon. D. M. DAVIS (Minister for Health), Hon. D. K. Drum 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 Improving Cancer Outcomes Bill 2014 (the bill).

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

Overview of the bill

The bill provides for the repeal of the Cancer Act 1958 (the act) and introduces modern cancer legislation, the principal aim of which is to support Victoria's efforts to reduce cancer incidence, morbidity and mortality and to enhance the wellbeing of those affected by cancer and the wellbeing of Victorians generally. The bill articulates the functions of the Secretary to the Department of Health (the secretary) with respect to cancer, establishes a framework for the collection, management, use and disclosure of information relating to cancer, and provides a mechanism for setting Victoria's strategic policy framework for cancer.

Human rights relevant to the bill

The rights relevant to the bill are the right to privacy and the right to freedom of expression. Both of these rights are examined below.

The right to privacy

Section 13(a) of the charter act provides that a person has the right not to have his or her privacy unlawfully or arbitrarily interfered with. The clauses relevant to this right are described below.

Part 3 of the bill empowers the secretary to collect the health information of individuals for the purpose of performing the secretary's functions with respect to cancer. Specifically, the bill provides for the mandatory reporting of prescribed information to the secretary about individuals who have been screened for cancer and those who have been diagnosed with cancer.

The act has provided for the reporting of cancer diagnosis and screening information in Victoria since the 1980s. The bill remedies a number of the limitations identified with the current legislation by allowing for the secretary to direct that further information is provided in order to ensure the accuracy of reported information and empowering the secretary to collect health information about Victorian residents from other sources, including interstate cancer screening and cancer registers.

Part 3 of the bill empowers the secretary to use and disclose the health information of individuals for the purpose of performing the secretary's functions with respect to cancer. These functions are articulated in part 2 of the bill and include promoting participation in cancer screening and supporting cancer research. For example, the secretary will be able to use an individual's health information to invite the individual to undergo cancer screening. The secretary would also be able to disclose an individual's health information to a third party undertaking cancer research.

The bill also articulates a number of circumstances in which the secretary may lawfully disclose an individual's health information to a third party. These include where the purpose of the disclosure is to enable the recipient of the information to provide appropriate follow-up and clinical management to an individual who has been screened for cancer.

For the reasons that follow, the limitations which the bill imposes on an individual's right to privacy are reasonable and justifiable. The bill provides for health information about individuals to be collected, used and disclosed in order to deliver better health outcomes for those individuals. For example, the bill will assist individuals in mitigating their risk of developing cancer by providing the means for a comprehensive record of their cancer screening history to be held in their home jurisdiction.

More broadly, the bill allows for the information which is collected by the secretary to be used to benefit the health of the broader community. Cancer incidence in Victoria is projected to increase over the coming years as the population ages. The bill will better position Victoria to deal with the challenges posed by this disease by empowering the secretary to make well-informed decisions about the provision of health services relating to cancer and the development of cancer policies, programs and initiatives. Further, the bill will inform

cancer research and promote continuous improvement in the quality and safety of health services relating to cancer.

The bill also sets out a number of safeguards for the protection of an individual's privacy. For example, section 14 of the bill provides that if the secretary uses or discloses health information for a purpose other than performing the secretary's functions, consent of the individual is required. Further, the secretary is required to comply with the protections and safeguards set out in the Health Records Act 2001 in collecting, using and disclosing health information.

The right to freedom of expression

Section 15 of the charter act articulates the right to freedom of expression. The mandatory reporting obligations which are contained in part 3 of the bill are relevant to this right as these provisions compel prescribed persons or organisations to report information about individuals screened for or diagnosed with cancer to the secretary.

Section 15(3)(b) of the charter act recognises that the right to freedom of expression may be subject to lawful restrictions reasonably necessary for the protection of public health. These provisions are considered reasonably necessary to allow for the secretary to perform his or her functions with respect to cancer. As stated with respect to the right to privacy, the bill provides for information which has been collected by the secretary to be used for public health purposes.

Hon. David Davis, MP
Minister for Health

Second reading

Ordered that second-reading speech be incorporated into *Hansard* on motion of Hon. D. K. DRUM (Minister for Sport and Recreation).

Hon. D. K. DRUM (Minister for Sport and Recreation) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

Victoria has a strong and engaged cancer sector that has driven significant improvements in cancer prevention, treatment and research, supported by the legislative framework of the Cancer Act 1958. As part of a 2012 review of the Cancer Act 1958, stakeholders identified major impediments to cancer research, programs and service planning and called for reforms to enable the collection of a broader range of data, improve access to collected data, and allow data sharing and linkage. The Improving Cancer Outcomes Bill 2014 represents the government's response to address the issues within the existing legislation that were identified by the sector. This bill will meet the desired policy objectives and achieve the modern, principles-based and flexible legislative framework that is required, whilst setting parameters for prescribing specific elements under regulation. It will support improved service delivery and research, deliver better outcomes for those with cancer, and help prevent cancer in the first place. The bill I introduce today adopts an approach that reflects the principles in our existing privacy legislation, which provides protections for health information under the Health Records Act 2001. It continues to recognise the importance of registers in underpinning an organised approach to population cancer screening, and cancer control: this is a long-established best practice approach both nationally and internationally. This approach will consolidate Victoria's leadership in cancer control and strengthen Victoria's ability to respond to scientific, technological and policy developments in cancer into the future.

History

Victoria has a long tradition of dedicated cancer legislation, the nature and purpose of which have evolved over time.

In 1936, the Anti-Cancer Council Act provided for the incorporation and governance of the Anti-Cancer Council of Victoria, empowering the council to raise funds for coordinating and funding cancer research.

In 1948 the Cancer Institute Act established the Cancer Institute, subsequently renamed the Peter MacCallum Cancer Institute. Peter Mac provided cancer treatment services and undertook cancer research.

Then in 1958 these two pieces of legislation were consolidated into the Cancer Act 1958, which is the basis of the act that has been in operation to this day.

By 1980, the importance of information about the incidence of various types of cancer, until that time unknown, was recognised in a new part to the Cancer Act: this part made it compulsory to report diagnoses of cancer to the Anti-Cancer Council.

The passage of the Health Services Act in 1988 was a further key change in legislation which brought Peter Mac under the uniform public health service governance provisions of that act.

And while cancer legislation continued to evolve, so too did cancer research. In particular, it was found that early detection could lead to cure in some types of cancer. In the case of cervical cancer, it was considered mostly preventable and completely curable if detected early enough. Cervical screening — known more familiarly to most as pap tests — was introduced, and with it the need to collect information about its effectiveness. The establishment of a central cervical screening register would allow laboratories with access to previous results to be better placed to detect changes to cervical cells, and enable reminders to be sent to women due for their next screening test.

Hence, Parliament enacted the Cancer (Central Registers) Act in 1989, which amended part III of the Cancer Act 1958 to authorise the reporting of pap test information to a central register. This act not only established the Victorian Cervical Cytology Register (the cervical screening register), it also allowed for additional cancer screening registers to be established by regulation. Subsequently, Victoria's breast screening register was first established by the Cancer (BreastScreen Register) Regulations 1994. More recently, researchers established a link between the human papilloma virus (HPV) and cervical cancer. With HPV being considered a precursor to cervical cancer, the act was amended in 2008 to allow for HPV test results to be recorded on the cervical screening register. The inclusion of this information on the cervical screening register facilitated improved clinical management of women participating in the cervical screening

program. Victoria currently has three registers: The Victorian Cancer Registry managed by the Cancer Council of Victoria which captures cancer diagnoses, the cervical screening register maintained by the Victorian Cytology (Gynaecological) Service and the BreastScreen Victoria Registry maintained by BreastScreen Victoria.

Bringing governance into the modern era

It is clear that in the 78 years since the initial 1936 act was passed the nature and purpose of Victoria's cancer legislation has evolved considerably. The Cancer Act 1958, which came into operation on 1 April 1959, has provided the legislative and regulatory framework for cancer prevention, research and treatment, and regulated the governance of the Cancer Council of Victoria, the Peter MacCallum Cancer Institute and the reporting of cancer cases and screening tests to registries. Parts I and II of the 1958 act, which deal with the governance of the Cancer Council Victoria (CCV) and the objectives of the Peter MacCallum Cancer Institute, are historical elements of the early and important efforts to reduce the burden of cancer in Victoria by concentrating resources and expertise in these specific entities. These two entities continue to deliver exemplary contributions to cancer control, however they are now joined by many others. Victoria's cancer sector now consists of multiple organisations, including various peak bodies, research institutes, hospitals and other service providers. Cancer programs and services have been mainstreamed and expertise rests within many different entities and individuals. The sector is funded by multiple sources including government, industry, research grants, philanthropy and public fundraising. Consequently, the governance arrangements in parts I and II of the 1958 act no longer reflect Victoria's present day cancer sector, nor best practice governance principles.

Up until 1980, the act focused solely on the work of the Anti-Cancer Council and the Peter Mac in coordinating, funding and providing cancer research and treatment. Since 1980, the focus of the act has shifted towards cancer information, more specifically, information about persons screened for and diagnosed with cancer. Part III, the heart of the act, deals with cancer reporting and registers. The introduction of legislation to allow for the collection and use of information about persons screened for and diagnosed with cancer has delivered enormous benefits to the Victorian community through improvements to the clinical management of individuals, our understanding of cancer and ability to respond to the challenges posed by this disease. The collection and use of cancer information is fundamental to Victoria's response to the challenges posed by cancer.

Notwithstanding the benefits brought about by amendments to the 1958 act, the legislative framework does not capitalise on some of the key developments which have since taken place. Whilst the legislation has undergone many amendments during this time, it has failed to keep pace with advances in research, treatment and prevention, and requires very significant change to support Victoria's current and future cancer information needs. The 1958 act has constituted a major barrier to managing cancer data effectively in Victoria; further amendments will not adequately address the issues. Consequently, the government has chosen to repeal the 1958 act and introduce a new principal act that can meet the policy objectives for this legislation and achieve the modern, principles-based and flexible legislative framework that is required.

New directions for cancer control in Victoria

Cancer continues to be a leading cause of illness and death in Victoria with around 80 new diagnoses and 30 deaths every day. Cancer imposes a significant social and economic cost on the Victorian community, and the Victorian government invests significantly in cancer services, research, and infrastructure. This investment needs to be underpinned by evidence-based policy and a legislative framework that supports linkages and collaboration across the system and promotes the coordinated use of information and knowledge. This bill complements and supports other legislation to promote and protect public health and wellbeing. These include the Public Health and Wellbeing Act 2008, the Radiation Act 2005 and the Tobacco Act 1987, which together contribute to a more effective cancer control system. The Tobacco Act 1987 specifically seeks to reduce the burden of one of the major causes of cancer death in Victoria — namely, smoking rates. However, cancer is one of the leading causes of ill health and burden to Victorians and a dedicated cancer act is required to focus public and political attention on cancer awareness, prevention, treatment and research, as well as providing a vehicle for a policy focus on cancer by government, all of which will achieve better health outcomes.

The key to driving even greater advances in cancer outcomes in Victoria is the coordinated use of information and knowledge; data linkage and sharing within a modern legislative framework is central to achieving this. Government, health administrators, service providers, researchers, private industry and community members require consolidated information on the characteristics of cancer and its burden on the community. There is a need for intelligence and analysis to enhance our understanding of how cancer and its risk factors affect different populations; how it is being treated and managed; the gaps that exist in service availability; clinical and cost effectiveness; and the impact of policy initiatives on both patient-centred and system-focused outcomes. Data on all of these elements is fundamental for effective planning and the efficient use of resources. There is currently a range of disconnected datasets relevant to understanding cancer control in Victoria and nationally. The current act has been a barrier — for example, it prohibits ongoing data linkage between Victorian cancer and screening registries, and prohibits collecting and disclosing information with the national HPV vaccination program registry. Hence, a woman's HPV vaccination status could not be recorded with her cervical screening test results, and if she moved interstate her screening results could not be provided to another registry. The new bill will allow this. Effective strategies to integrate and interrogate these datasets will deliver better patient experiences, a more efficient care delivery system and cost-effective outcomes. These strategies require an enabling legislative environment as a matter of urgency.

A new Improving Cancer Outcomes Bill for Victoria

The principal aim of the new bill is to support Victoria's efforts to reduce cancer incidence, morbidity and mortality and to enhance the wellbeing of those affected by cancer. In order to achieve this aim, the objectives of the bill are to:

establish a modern, flexible and principles-based legislative framework;

support the Victorian government's overall strategy for cancer control; and

strengthen Victoria's ability to respond to scientific, technological and policy developments in cancer.

The new bill articulates functions of the Secretary to the Department of Health across the spectrum of health services and systems relating to cancer, and specifies the range of roles that are to be performed by the secretary in fulfilling these functions. The bill empowers the secretary to collect, use and disclose information in order to perform the secretary's functions with respect to cancer.

The bill continues the mandatory reporting of cancer diagnosis information. The bill also imposes a mandatory reporting obligation to facilitate the collection of information about cancer screening. Not only is this information useful to mitigate an individual's risks from cancer, it is also crucial to support the planning and funding of cancer prevention programs and services, as well as to inform cancer research. The details of the reporting obligations, including who is obliged to report and what information is to be reported, will be prescribed by regulation.

Information that is collected under this bill will be protected under health records legislation. Victorian privacy legislation has evolved in line with consumers' expectations that their health and personal information will not only be protected and used to support individual care, but also contribute to population health benefits through research, monitoring, evaluation, planning, quality and benchmarking activities. The health privacy principles establish clear provisions for an individual's right to access their information and to be informed of how it may be used. In addition, as part of operational implementation patients may elect not to receive reminders to undergo screening, and options for opting off will also be further considered as part of subordinate regulations. By clarifying the purposes for which cancer information is collected, and making clear the parameters surrounding its use and disclosure, the bill provides a clear framework for managing data relating to cancer. Better patient outcomes can now be achieved by facilitating appropriate data linkage and integration as well as supporting research.

A cancer plan for Victoria

A new act brings a new opportunity for government to set the directions for driving cancer control improvements and innovation for Victoria. As such, for the first time the bill requires the preparation of a regular four-yearly cancer plan, providing an essential strategic policy framework for cancer in Victoria; this is appropriate given the significant burden of cancer in our community. It is intended that the cancer plan will draw upon the information collected by the secretary in accordance with the new legislative scheme to:

report on the status and burden of cancer in Victoria;

establish Victoria's objectives and policy priorities with respect to cancer;

state how these objectives and policy priorities will be achieved based on the available evidence; and

specify how the state will work together with the sector and other stakeholders to achieve these objectives and policy priorities.

This important feature provides us with the means to identify and partner with key stakeholders across the cancer spectrum; engaging them in setting the agenda for reducing the cancer burden on Victorians and ensuring their participation as significant players in the implementation of the plan.

Acknowledgements

As we stand at the cusp of this new era of cancer control, I wish to take this opportunity to formally acknowledge the significant role of the Cancer Council Victoria and Peter MacCallum Cancer Institute. I applaud their efforts as longstanding leaders in their field and successful champions of best practice cancer research and treatment. Cancer Council Victoria and Peter MacCallum Cancer Institute: the Victorian government thanks you for your invaluable contribution, past, present and future. In addition, I would also like to recognise at this time the numerous players in the broader cancer sector:

Victorian public health services providing specialist cancer services: including the Victorian Comprehensive Cancer Centre, Olivia Newton-John Cancer and Wellness Centre, Monash Comprehensive Cancer Consortium, the Paediatric Cancer Service, Integrated Cancer Services, metropolitan and regional cancer centres;

private health services who provide specialist cancer care and support;

healthcare organisations including BreastScreen Victoria and the Victorian Cytology Service for their efforts to prevent and detect cancer early;

research institutes; and

a range of philanthropic and non-government organisations who raise money for cancer, fund services and research, and provide support and care —

amongst many others — for the difference they too make to the lives of Victorians living with cancer and their families. All of these individuals and organisations are our partners in the future of cancer control and we look forward to continuing to work collaboratively with you as we strive for better health outcomes for all Victorians.

I commend the bill to the house.

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

Debate adjourned until Thursday, 25 September.

CRIMES AMENDMENT (SEXUAL OFFENCES AND OTHER MATTERS) BILL 2014

Statement of compatibility

For Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation), Hon. D. K. Drum 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 Crimes Amendment (Sexual Offences and Other Matters) Bill 2014 (the bill).

In my opinion, 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 bill will make Victoria's sexual offence laws clearer, simpler and fairer by making various amendments to the definitions of key indictable sexual offences (including rape), removing redundant marriage exceptions to sexual offences against children, removing time limits on the prosecution of certain former sexual offences against children, introducing certain exceptions to child pornography offences for minors, and creating two new summary offences concerning distribution of intimate images. The bill will also provide for a 'course of conduct' charge for multiple incidents of sexual offending and other specified offences (e.g. fraud-related offences).

Human rights issues

Privacy and reputation

Section 13 of the charter act provides that '[a] person has the right — (a) not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and (b) not to have his or her reputation unlawfully attacked'.

The two new offences of distributing, or threatening to distribute, an intimate image, at clause 25 of the bill, promote the protection of a person's privacy and reputation while protecting the right to freedom of expression where an adult has consented to the distribution of their intimate image. The consent exception does not apply to children due to their greater vulnerability and need for protection.

Right to freedom of expression

Section 15 of the charter act provides that '[e]very person has the right to freedom of expression'. Section 15(3) of the charter act provides that the right to freedom of expression may be subject to lawful restrictions reasonably necessary to respect the rights and reputation of other persons or for the protection of national security, public order, public health or public morality.

Criminalising threats to commit sexual offences (at clause 4 of the bill) falls within the exception in section 15(3) for lawful restrictions reasonably necessary for respecting the rights of others. Accordingly, the offence is relevant to but does not limit the right to freedom of expression.

Criminalising the distribution of an intimate image or the threat to distribute an intimate image (at clause 25 of the bill) also comes within section 15(3) because the offences are restricted to conduct that is contrary to community standards of acceptable conduct and do not apply to an image of an adult who expressly or impliedly consented to that distribution. The consent exception does not apply to minors as they are more vulnerable and require additional protection.

Right to protection of families and children

Section 17(2) of the charter act provides that '[e]very 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'.

Persons who engage in repeated sexual abuse of a child over a period of time are among the worst abusers of the child's right to protection. The new 'course of conduct charge' (at clause 13 of the bill) promotes the protection of children by providing for a more effective mechanism for prosecuting this kind of sexual abuse of children.

The bill also promotes the protection of children by removing redundant but potentially misleading words concerning supposed exceptions to sexual offences against children under 16 years where the accused is married to the child (see clause 5 of the bill). These exceptions are redundant, since it is no longer possible for a person to be legally married in Australia under the age of 16.

The bill's new exceptions to child pornography offences enhance the protection of minors who engage in non-exploitative peer-to-peer sharing of images from unwarranted prosecution for child pornography offences (see clause 8 and clause 28 of the bill).

The new offence (at clause 25) of distributing an intimate image will not apply if the image is of an adult who has given express or implied consent to distribution, but this exception does not apply to children, recognising their greater need for protection. Further, the rights of children are protected by providing that age and vulnerability are relevant factors in determining whether the distribution is contrary to community standards of acceptable conduct.

Rights in criminal proceedings

Section 25(2)(a) of the charter act provides that '[a] person charged with a criminal offence is entitled without discrimination to the following minimum guarantees — to be informed promptly and in detail of the nature and reason for the charge in a language or, if necessary, a type of communication that he or she speaks or understands'.

The course of conduct charge allows the prosecution to charge a person with engaging in a course of conduct involving multiple incidents of a sexual offence or other specified offences (e.g. theft and obtaining a financial advantage by deception) without providing precise particulars of the incidents. This does not limit the right to details of charges under section 25 of the charter act. The accused's right to details of the charge is a right to know what the prosecution case against him or her will be. It is not a right to more details about the prosecution case than the prosecution itself is able to provide. The course of conduct charge will still disclose to the accused the nature of the charge, namely that the accused engaged in a course of conduct of offending. The prosecution will still need to prove that charge beyond reasonable doubt, and will not be at a forensic advantage. Where the course of conduct charge concerns repeated sexual offending, it is unfair to victims of such sustained sexual abuse to have their evidence systematically excluded because of a lack of specificity that may be due to the repeated nature of the offending itself.

Right against retrospective criminal laws

Section 27(1) of the charter act provides that '[a] person must not be found guilty of a criminal offence because of conduct that was not a criminal offence when it was engaged in'. The bill (at clause 10) retrospectively removes historical time limits on the prosecution of certain sexual offences against children committed prior to 1991. This repeal does not retrospectively create any criminal offence, because the conduct was (and remains) a criminal offence at the time the conduct was engaged in. Removing the immunity from prosecution that arose 12 months after the offending does not limit section 27(1) of the charter act because such changes to criminal procedure do not amount to the retrospective creation of criminal liability.

The house amendment to the bill also ensures that the removal of the time limits on prosecution does not apply where the person's conduct would not constitute an offence under Victorian law applicable at the time of the commencement of the bill. Further, where a person is charged with an historic offence because of the removal of the time limit on prosecution, that person may rely on the defences applicable to equivalent offences under the current law. These amendments ensure that the bill adopts the least restrictive means of achieving the purpose of the repeal of prosecution time limits.

Presumption of innocence

Section 25(1) of the charter act provides that '[a] person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law'. The bill provides for exceptions to certain sexual offences (at clause 4) and child pornography offences (at clause 8 and clause 28). For example, a person does not commit the offence of sexual assault if the touching was done in the course of a procedure carried out in good faith for medical or hygienic purposes. In accordance with section 72 of the Criminal Procedure Act 2009, an accused wishing to rely on such an exception will have an evidential burden of presenting or pointing to evidence that suggests a reasonable possibility of the existence of facts that would establish the exception. This does not limit the presumption of innocence, since it is an exception that narrows the scope of the offence, and the prosecution must prove beyond reasonable doubt that the exception has not been met, as well as all the elements of the offence.

The bill also provides, as does the current Crimes Act 1958, a list of circumstances in which a person is defined not to have consented to an act. This does not deem an element of the relevant offence to have been proved without evidence. The prosecution must still prove beyond reasonable doubt that the consent-negating circumstance existed. Moreover, those circumstances are not legal fictions concerning lack of consent. Rather they are circumstances where the person does not in fact consent.

The bill will also allow a trial judge to inform the jury that the fact that a person did not say or do anything to indicate consent is enough to show that they did not consent, and that if an accused knew or believed that a consent-negating circumstance existed, that knowledge or belief is enough to show that the accused did not reasonably believe that the other person consented. The provisions do not shift the burden of proof but are essentially indicating the degree of relevance and strength of such evidence. For these reasons, the bill is relevant to, but does not limit, the right to the presumption of innocence.

Where an accused wishes to rely on an exception to a child pornography offence by arguing that they believed on reasonable grounds that they were not more than two years older than the other minor depicted in the image, or that they believed on reasonable grounds that the image did not depict a criminal offence, then the accused (under new section 70AAA(7) of the Crimes Act 1958 and new subsection 57A(8) of the Classification (Publications, Films and Computer Games) (Enforcement) Act 1995 will bear the legal onus of proving that reasonable belief.

This does not limit the presumption of innocence because the matter concerns an exception, what is to be proved lies peculiarly within the knowledge of the accused, and the prosecution must still prove all the elements of the offence beyond reasonable doubt.

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. D. K. DRUM (Minister for Sport and Recreation).

Hon. D. K. DRUM (Minister for Sport and Recreation) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

Rape and sexual assault are among the most despicable crimes, which can cause severe and devastating harm to victims. The government is committed to better protecting the community from these horrible crimes, holding perpetrators to account and providing support to victims.

Existing sexual offence laws are highly complex and confusing to apply. Uncertainty in the law has led to numerous appeals and retrials, which is highly traumatic for victims and their families, and contributes to unnecessary court delays.

This bill introduces important reforms to Victoria's sexual offence laws to improve the effectiveness of the law and ensure that perpetrators of sexual offences are held to account. It will make sexual offence laws clearer and fairer, and improve the way that the law deals with cases of repeated and systematic sexual abuse.

These reforms are based on proposals by the Department of Justice in its *Review of Sexual Offences — Consultation Paper* released in October 2013.

The bill also addresses the phenomenon of 'sexting'. It implements recommendations made by the Victorian Parliament Law Reform Committee in its report on the inquiry into sexting. Sexting involves the sharing of sexually explicit images through the internet, mobile phones and social

media. It has become increasingly common, especially between teenagers. It is important that this practice is regulated to provide protection to both children and adults against exploitative sharing of intimate images, while ensuring that teenagers do not face unwarranted prosecution for child pornography offences.

Improvements to key sexual offences

The bill will introduce clearer and simpler sexual offences into the Crimes Act 1958 to cover:

rape;

rape by compelling sexual penetration;

sexual assault;

sexual assault by compelling sexual touching;

assault with intent to commit a sexual offence; and

threat to commit a sexual offence.

The bill will modernise outdated language in existing offences and make it easier for juries to determine whether or not an accused is guilty of these offences.

The bill will introduce a new fault element into these offences, which will apply when 'the accused does not reasonably believe that the other person consents' to the sexual activity. This means that the accused will come within the fault element if they did not believe that the complainant was consenting or, if they did have such a belief, it was not a reasonable one. This fault element is conceptually simpler than the current law, which is complex and confusing. It will be significantly easier for juries to understand and judges to apply, which will reduce the number of appeals and retrials.

The new fault element is also consistent with laws in other jurisdictions, including the United Kingdom, New Zealand and New South Wales, where the fault element has worked successfully for a number of years. It is also similar to the approach in Queensland, Tasmania and Western Australia. It means that offenders will not escape liability for committing sexual offences where their belief that the other person is consenting is unreasonable.

The new fault element requires a person to have objectively reasonable grounds for their belief that another person consents to sexual activity with them. It will not be a matter of what the accused thinks it is reasonable to believe. Instead, the courts will apply a more objective standard that reflects community standards of what is a reasonable belief. The bill provides that whether or not an accused reasonably believes that the other person is consenting to an act depends on the circumstances. This includes any steps that the accused has taken to find out whether the other person consents. The bill expressly excludes the accused's self-induced intoxication as a circumstance to consider. Otherwise, it will be a matter for the jury in each case to determine whether the accused's belief was reasonable in the circumstances.

The bill contains a list of circumstances in which a person is taken not to have consented to a sexual act. This reflects the current law and includes when a person is asleep or unconscious, and when they submit to an act because of force or fear of force. The bill provides that when an accused has knowledge that one of these circumstances exists, this is enough to show that he or she did not have a reasonable belief in consent.

The bill will also amend the Jury Directions Act 2013 to simplify jury directions in sexual offence trials. Under the bill, the parties may request that the trial judge direct the jury on the meaning of consent, the circumstances in which a person is taken not to have consented to a sexual act and reasonable belief in consent. This will allow directions to be tailored to the particular circumstances of the case. This will encourage shorter jury directions and minimise unnecessary and unhelpful directions.

Course of conduct charge

As the parliamentary Family and Community Development Committee's *Betrayal of Trust* report found, repeated and systematic sexual abuse of children is all too common. The government is committed to providing effective criminal law responses to this insidious problem.

Regrettably, the criminal law has not responded effectively to some of the most serious instances of repeated sexual abuse. At common law, a high degree of specificity in charges laid against an accused is traditionally required. This is difficult to satisfy in cases of repeated sexual abuse, as it is common for complainants to have trouble recalling precise details of each act of abuse.

In order to address this issue, the offence of maintaining a sexual relationship with a child under 16 years was introduced in section 47A of the Crimes Act in 1991. This offence is now called 'persistent sexual abuse of child under the age of 16'. This offence allows less specific evidence by a complainant to be sufficient to identify and prove a charge.

However, the applicability of the section 47A offence remains limited. Under section 47A, it is not sufficient for a complainant to give evidence about what the accused would typically or routinely do. Such evidence is admissible to prove a course of conduct. Instead, section 47A requires proof of three separate offences. This means that the complainant must remember details to distinguish between different acts of abuse. This requirement is difficult to satisfy where sexual abuse is ongoing, as complainants commonly find it difficult to remember precise details of each act of abuse.

The bill will address these limitations in the current law by introducing a new way of charging repeated sexual abuse. This reform is based on a similar approach used in the United Kingdom. The bill will enable the prosecution to file a 'course of conduct' charge alleging multiple incidents of sexual offending against the same complainant. Under this new approach, the prosecution will not need to prove particular incidents of abuse or identify distinctive features differentiating any of the incidents. Therefore the complainant will not need to provide details about separate incidents of abuse. This is a significant change, but the law remains fair because the prosecution will need to prove the course of conduct beyond reasonable doubt.

Where an accused has been found guilty of an offence in a course of conduct charge, the court will be required to impose a sentence reflecting the totality of the offending.

This important reform will ensure that the law responds effectively to cases of repeated and systematic sexual abuse, and that perpetrators of these horrible crimes can be brought to justice.

The course of conduct charge will also be available in relation to other specified offences such as theft, money laundering and obtaining a financial advantage by deception. While the need for this new approach is most pressing in relation to sexual offences, it will also have considerable value for charging high-volume offences which typically involve an element of dishonesty or deception, which can number in the hundreds or thousands. Charging a course of conduct of defrauding thousands of victims is more practical and better reflects the criminal behaviour than filing thousands of separate charges for each of the incidents.

Removing restrictions on prosecuting sexual offences committed prior to 1991

The bill will remove inappropriate time limitations which currently prevent the prosecution of certain sexual offences alleged to have been committed against children prior to 1991.

Prior to 1991, criminal prosecutions for sexual offences committed against children had to be commenced within 12 months from the alleged offence. Research shows that more than half of child sexual abuse victims do not complain to anyone for over 12 months. Although this time limit was removed from legislation in 1991, the restriction on commencing prosecution for offences committed before that time still applies. This effectively gives perpetrators of these heinous crimes immunity from prosecution, which is completely inappropriate.

The bill ensures that perpetrators of sexual crimes against children can be brought to justice by removing these inappropriate time limits. The removal of the time limitations has been drafted to ensure that a person whose past conduct would not be an offence under the current law would not be prosecuted. Further, defences available under the current law (for example, consent where there is reasonable mistake as to age) will also be available to persons charged because of the removal of the time limitations.

Exceptions to sexual offences against children under 16

The bill will remove the exceptions to sexual offences against children under 16 years, which purport to apply where the accused is married to the child. These exceptions are redundant, since it is no longer possible for a person to be legally married in Australia under the age of 16.

Removing the exceptions will make the law clearer and end unjustified community concern that these provisions create a 'loophole' through which children can be abused.

Exceptions to child pornography offences

In recent years, the growing phenomenon of 'sexting' has prompted concerns that teenagers may be inappropriately criminalised by existing child pornography laws. It is important that the criminal law is updated to reflect changing uses of technology, while providing protection against harmful behaviour.

Currently, any sexually explicit depiction of a person under 18 years old is potentially child pornography. Teenagers who create, possess or distribute explicit images of themselves or their peers commit a child pornography offence. Consequently, teenagers who engage in sexting risk a criminal conviction and possible registration on the sex offenders register. When non-exploitative, consensual sexting occurs between peers, these serious consequences are unwarranted.

To address this concern, the bill introduces four exceptions to the child pornography offences. The exceptions aim to capture non-predatory and non-exploitative sexting. They do so by focusing on age and the nature of the act depicted. In relation to age, the exceptions only apply to sexting by minors. Once a person turns 18, these exceptions will no longer be available. Further, where explicit images of minors are shared, the exceptions are limited to sharing between peers — that is, the minor must not be more than two years older than another minor depicted in the image (or reasonably believe this to be so).

In relation to the nature of the act depicted, the exceptions will not apply to an image that depicts a criminal offence punishable by imprisonment, unless the minor involved in the sexting is the victim of the offence depicted. It is important that the exceptions do not protect minors who create, possess or transmit child pornography that depicts a criminal activity.

The restrictions concerning age and the nature of the act depicted will ensure that child pornography offences continue to protect children against exploitative and predatory behaviour.

The four new exceptions will also apply to the publication and transmission of child pornography offences in the Classification (Publications, Films and Computer Games) (Enforcement) Act 1995.

New summary offences

Currently, the law provides limited protection against non-consensual distribution of intimate images. This behaviour can cause considerable harm, particularly if an image 'goes viral'. This bill creates two summary offences designed to protect individuals against such harm.

The first new offence prohibits intentional distribution of an intimate image where that distribution is contrary to community standards of acceptable conduct. This offence does not apply if the person in the image is an adult and has consented (expressly or impliedly) to the distribution. This exception does not apply to consent by children, due to their greater vulnerability and need for protection. The offence is punishable by a maximum of two years imprisonment.

The second offence prohibits a person from threatening to distribute an intimate image of another person depicted in the image, and the distribution would be contrary to community standards of acceptable conduct. The person who makes the threat must intend that the other person will believe, or will probably believe, that the person will carry out the threat. The offence is punishable by a maximum of one year's imprisonment.

The bill provides guidance to courts to determine the application of community standards of acceptable conduct in a particular case. The court is directed to consider the context in which the image was captured and distributed, the personal circumstances of the person depicted, and the degree to which their privacy is affected by the distribution. The purpose of the community standards test is to ensure that the offences do not unjustifiably interfere with individual privacy and freedom of expression, while at the same time targeting exploitative, harmful and non-consensual behaviour.

Conclusion

This bill makes significant improvements to sexual offence laws. It will hold offenders of horrible sexual crimes to account but make sure that minors are not inappropriately prosecuted for child pornography offences when they engage in sexting with their peers.

I commend the bill to the house.

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

Debate adjourned until Thursday, 25 September.

SENTENCING AMENDMENT (HISTORICAL HOMOSEXUAL CONVICTIONS EXPUNGEMENT) BILL 2014

Second reading

Hon. D. M. DAVIS (Minister for Health) — I advise the house that in relation to the Sentencing Amendment (Historical Homosexual Convictions Expungement) Bill 2014 the incorrect second-reading speech was incorporated into *Hansard* last night. I therefore wish to circulate a correct copy of the second-reading speech for the benefit of the house. By leave, I move:

That:

(1) the second-reading speech be incorporated into *Hansard*; and

(2) the second-reading speech incorporated on 17 September 2014 be expunged from *Hansard*.

The PRESIDENT — Order! A second-reading speech was incorporated into *Hansard* yesterday when this bill was brought into this house. A similar bill was subsequently brought into the Legislative Assembly, and a very similar second-reading speech was provided to the members of the Legislative Assembly. There were, however, some differences in a key paragraph, and the minister now seeks to correct the record so that those second-reading speeches are the same.

Motion agreed to.

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

That the bill be now read a second time.

Incorporated speech as follows:

Earlier this year the government announced that it would legislate to allow the criminal records of people who were convicted of criminal offences because, and only because, of homosexual conduct to be expunged. Victoria decriminalised homosexual conduct in 1981, but some Victorians continue to carry convictions related to their homosexuality that have hampered their opportunities to work, travel or volunteer.

It is now generally accepted that this consensual sex between adults should never have been a crime. While we cannot turn back the clock and undo what occurred in previous decades, we can act to ensure that Victorians do not have to continue to suffer from the legal consequences of what occurred.

This bill establishes a process that will allow people to apply to have historical homosexual convictions expunged. Once expunged, a conviction will be treated at law as if it were never imposed. It will not be released as part of a criminal history check and a person will be protected from ever having to reveal that conviction.

Although allowing historical convictions to be expunged is simple in concept, it presents a legally complex problem. The offences that have over the years been used to charge those engaged in consensual homosexual activities are often the same offences that were used to charge cases of truly criminal sexual assault.

We cannot tell from simply looking at a person's criminal record whether the convictions on that record relate to consensual adult behaviour, or conduct that would still be criminal today. It is very important that this scheme not expunge the criminal records of those who have committed serious criminal offences that remain crimes today. Furthermore, many of the offences with which persons were charged were offences that did not relate solely to homosexual activity, even where those offences were used to target homosexual activity.

Accordingly, the historical convictions expungement scheme is built around two tests. Was the applicant charged with the offence because of the homosexual nature of the conduct and, if so, would that conduct be legal today? Where both these tests are satisfied, the conviction will be expunged.

The scheme has been drafted broadly to allow those who believe they have such a conviction on their record to apply to have it expunged. A historical homosexual offence can be any sexual offence, or any public morality offence, that was used to punish homosexual behaviour.

The bill does not exhaustively list these eligible offences because of the large number of relevant offences that have applied over the years, and the varied range of offences that have been used to target homosexual behaviour. But the sexual offences will obviously include the old offences of buggery and gross indecency with a male. The public morality offences will capture loitering for homosexual purposes and behaving in an indecent or offensive manner. These offences have been defined broadly to ensure that the scheme can consider convictions for behaviour ranging from loitering at a known gay beat, to public displays of affection between same-sex couples.

Regardless of the historical homosexual offence that an applicant seeks to have expunged, the facts surrounding that conviction will have to be considered, and a decision made. The responsibility to make this decision will at first instance be that of the Secretary of the Department of Justice.

An applicant will provide the secretary with those details known to the applicant about the offence. This will allow the

secretary to search the relevant records from Victoria Police, the Office of Public Prosecutions and the courts.

Once the contemporaneous records have been collected, the secretary will apply the two tests referred to earlier. Was the applicant charged with the offence because of the homosexual nature of the conduct? Would that conduct be legal today?

The first test is to ensure that the scheme only expunges convictions that were the result of a person's homosexual conduct, and not convictions in circumstances where charges would have been laid and a conviction would have resulted regardless of whether the conduct was homosexual or heterosexual.

Offences can also, of course, only be expunged if the conduct would be legal today. In some cases the secretary will need to consider the age of those involved. In other cases, the secretary may need to consider whether behaviour once considered offensive because of its homosexual nature would still be considered offensive today. The secretary will be able to draw on the advice of legal experts, if necessary, to assist in making this decision.

Much will turn on the records of the original criminal conviction. These records may, in many cases, be old, incomplete or ambiguous. They may not be sufficient to allow the secretary to be satisfied, on the balance of probabilities, that the conduct would be legal today. The secretary in such cases will be able to return to the applicant to require further information, for example, information to demonstrate that the conduct was consensual.

As I noted earlier, it is important that this scheme not inadvertently expunge convictions for truly criminal behaviour and that those who committed serious sexual offences in the past cannot attempt to use this scheme to hide their convictions.

If the secretary is not satisfied of either of the two tests, the application will be refused and the conviction will stand. However, there will be a right of review to VCAT if the application is refused.

If the secretary is satisfied that the applicant was only charged because of the homosexual nature of the conduct and that the applicant's conduct would be legal today, then the offence will be expunged at a set time after the secretary's determination.

If an offence is expunged, then an applicant will in future be treated for all purposes in law as if they had never committed the offence.

The applicant is not required to answer any question in a legal proceeding that requires them to disclose information about the conviction, and may state, under oath, that they do not have a conviction for the offence. An expunged conviction can no longer be a bar to a person receiving any kind of licence or permission.

The applicant will be further protected by obligations that are placed on those within the police, the courts and the Office of Public Prosecutions who hold the official records of the conviction. These organisations may not disclose the fact that the applicant was charged with or convicted of the expunged conviction.

In addition to creating these legal rights, the bill ensures that the records themselves will be altered. This scheme will cover official records held by a court, VCAT, Victoria Police or the Office of Public Prosecutions. These are the documents that are used to generate a criminal history and so are the documents that must be addressed if a conviction is to be expunged.

The records will take many shapes — from electronic records on the LEAP data base through to written records in individual courts' ledgers. The bill requires that, once an application is approved, the secretary will inform those who control the relevant records and they will then be required by the legislation to expunge the entry relating to the conviction.

The records will be annotated with a statement to the effect that they relate to an expunged conviction. Electronic records that are not original records may be dealt with in a number of ways. The entry relating to the conviction may be removed completely; or may be altered so that it cannot be found; or may be de-identified so that the record cannot be linked to the individual in any search of that database.

When the records are altered, the secretary will be notified and will, in turn, notify the applicant. An applicant can be assured that, as far as possible, their conviction will no longer have any legal effect.

It is intended that this scheme will be established and ready to accept applications by mid-2015.

The Liberal government of Sir Rupert Hamer decriminalised homosexual conduct in the early 1980s. This government now recognises the social and psychological impacts of carrying old convictions for behaviour that has not been considered to be criminal for over 30 years. Many people have felt constrained from applying for jobs or from volunteering, and some have been unable to travel overseas. These convictions have been allowed to stand for far too long, and we are acting to rectify this.

I commend the bill to the house.

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

Debate adjourned until Wednesday, 1 October.

ADJOURNMENT

Hon. D. K. DRUM (Minister for Sport and Recreation) — I move:

That the house do now adjourn.

Indigenous employment programs

Mr LEANE (Eastern Metropolitan) — My adjournment matter is directed to Louise Asher in her capacity as Minister for Employment and Trade. Approximately 12 Indigenous employment programs operate across this state. They do wonderful work in partnership with the Indigenous community, government and industry.

As we speak, the immediate future of these fantastic programs is under threat because since approximately the middle of this year there has been a real lack of funding from the government and the department for these particular programs. The people who are engaged in and organise these programs are unsure why there has been such a cut in their funding. There is a serious and immediate threat of the closing of doors on some of these fantastic programs, which were well supported by the previous government and governments before that.

The action I seek is that the minister investigate why there has been a reduction in funding for these important projects and remedy the situation as soon as possible.

Mortlake, Derrinallum and Lismore small business

Ms PULFORD (Western Victoria) — I raise a matter for the attention of the Minister for Regional and Rural Development, Mr Ryan, and it relates to efforts being undertaken to support the Mortlake community following the April bomb explosion that resulted in the closure of the Hamilton Highway and traffic being diverted around the towns of Mortlake, Derrinallum and Lismore. Local businesses suffered significant financial loss as a result. The Hamilton Highway, with which I am all too familiar, brings significant income to local small businesses that provide goods and services to passing motorists. Following the explosion, the highway was closed for three weeks. The road closure occurred during the peak travel periods of school holidays, Easter and the Anzac Day long weekend.

I have been contacted by the Mortlake Community Development Committee, which has outlined its frustrations and those experienced by the neighbouring communities of Lismore and Derrinallum. When these communities approached the government seeking some compensation or assistance to deal with the significant losses suffered by small businesses during this time, they were advised that no funding and no support was available, as the explosion was not a natural disaster. The action I seek from the Minister for Regional and Rural Development is that he provide advice to small businesses in these three communities about opportunities for support for their businesses through the Regional Growth Fund.

Wedderburn aged care

Ms LEWIS (Northern Victoria) — My adjournment matter is for the attention of the Minister for Ageing. Wedderburn is one of several small towns in the shire of Loddon, a small rural shire about 70 kilometres north-west of Bendigo. The total population of the Loddon shire is approximately 7000 people, while Wedderburn has a population of just over 700. The town has a series of difficulties around health care and ageing. The Wedderburn hospital closed some years ago, and there is no longer a doctor in residence. The town is serviced by a doctor who drives from Inglewood several days a week. The nearest ambulances are stationed at Charlton, 30 kilometres to the north-west, and at Inglewood, 30 kilometres to the south-east.

To try to overcome problems relating to the lack of a local ambulance, a community emergency response team (CERT) was established in 2005. Today the CERT receives 200 call-outs per year. This remarkable volunteer group is even more remarkable when we consider the fact that 28 people each week are needed to staff the volunteer roster. Two volunteers are rostered on for each 12-hour period. Unfortunately, in a town of around 700 people, maintaining the number of volunteers required is frequently difficult.

The town has no aged-care facilities. If residents move into a care facility in Inglewood, there is only one return bus service per day that spouses and family members can use for visits. Wedderburn has an ageing population. In 2006, 40 per cent of the population was over 55 years old, and by 2011 this figure had risen to 48 per cent of the population. For some time now the community has been considering the potential establishment of an aged-care facility in Wedderburn. My request of the minister is that he meet with representatives of the Wedderburn community and provide them with advice and assistance to establish a small aged-care facility in this small and very needy community.

Ararat Rural City Council

Mr D. R. J. O'BRIEN (Western Victoria) — My adjournment matter is for the attention of the Minister for Local Government, the Honourable Tim Bull, and it arises from a matter brought to my attention by Cr Colin McKenzie of the Ararat Rural City Council in my electorate. He has asked that I ask the minister to investigate methods to encourage equity in regional shires — particularly his shire, the rural city of Ararat — in the election of rural and urban-based councillors.

I am in receipt of a letter addressed to Minister Bull, which I raise for the minister's attention. It refers to the Ararat Rural City Council at its ordinary meeting on 8 September 2014 discussing the electoral representation review proposed for 2015, which is to be

completed by 29 April 2016. The letter advises that the council resolved to request that the Ararat rural city be listed for the scheduled electoral representation review in 2015.

Councillor representation of the rural areas of the municipality has fallen from 12 representatives on the Ararat Rural Shire Council prior to amalgamation to just 1 councillor currently. There is concern that the downward trend will lead to no rural representation on the council. These issues of rural representation are complex. There are obviously competing concerns, but I request that the minister investigate the concerns raised by the very diligent and hardworking councillor, who I have known for some years in his capacity as a councillor, Mr Colin McKenzie from Lake Bolac in the rural city of Ararat.

Mentone Gardens aged-care facility

Ms MIKAKOS (Northern Metropolitan) — My matter this evening is for the Minister for Ageing, and it relates to Mentone Gardens aged-care facility, which I asked the minister about earlier today in question time. I asked him at the time to explain the discrepancy between the advice he provided to me in a letter, where he claimed the department first became aware of financial issues at Mentone Gardens in January 2013, and the information he provided to the ABC on Sunday, that his department knew of financial issues at Mentone Gardens as early as 2011.

The minister sought to explain or downplay this issue by trying to claim these were minor issues, but he did confirm that the issues related to security deposits. In fact the issues around security deposits are why Mentone Gardens went into liquidation in the first place. Despite knowing about these problems associated with security deposits, the minister's department subsequently renewed the registration of Mentone Gardens in July 2012, which is when Labor's tougher legislation, the Supported Residential Services (Private Proprietors) Act 2010, came into effect, providing stronger financial protections for residents in supported residential services (SRSs). The minister must have forgotten this earlier today, despite having spoken on the bill in 2010 welcoming Labor's changes. It is a requirement under the new act that all residents' security deposits be transferred into trust accounts for the protection of the residents. It appears that did not occur in this case, which is why the company went into liquidation and people are facing losses of up to $400 000 each from their security deposits.

These are quite serious issues, and I note that the Office of the Public Advocate's community visitors report, tabled in the Parliament today, expresses concerns about the issues associated with SRSs and the department's failure to fully utilise its powers under that legislation. Under the new act, Labor's act, powers are given to authorised officers in the minister's department to investigate possible contraventions of the act or regulations via what are called targeted compliance reviews. I ask the minister to advise whether his department undertook a targeted compliance review at Mentone Gardens at any point between July 2012 and September 2013, when the company went into liquidation, to ensure that residents' security deposits were being placed into trust accounts.

Responses

Hon. D. K. DRUM (Minister for Sport and Recreation) — Tonight we had five adjournment matters raised. Mr Leane raised an issue for the Minister for Employment and Trade, Ms Asher, in relation to Indigenous employment programs, and I will pass that on to her.

Ms Pulford raised an issue for the Minister for Regional and Rural Development, Peter Ryan, following the Mortlake explosion, the three-week closure of the highway going to that property and businesses in the three surrounding regions looking for compensation. I will pass that on to the minister.

Ms Lewis raised a matter for the Minister for Ageing, David Davis, in relation to a call for a Wedderburn aged-care facility. I will pass that on to the minister.

Mr David O'Brien raised a matter for the Minister for Local Government, Tim Bull, in relation to Ararat Rural City Council and commentary from a councillor about the disproportionate representation of councillors in the urban versus rural areas of the rural city of Ararat.

Ms Mikakos raised a matter for the Minister for Ageing, David Davis, in relation to Mentone Gardens and issues surrounding its liquidation. I will pass that on to the minister.

I have three written responses to adjournment matters: one for Ms Crozier from 6 August, one for Mr Somyurek from 7 August and one for Ms Pennicuik from 21 August.

The PRESIDENT — Order! The house stands adjourned.

House adjourned 7.04 p.m. until Tuesday, 14 October, at 12 noon.