PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SEVENTH PARLIAMENT

FIRST SESSION

Thursday, 21 August 2014

(Extract from book 11)

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By authority of the Victorian Government Printer

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The Honourable ALEX CHERNOV, AC, QC

The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

The ministry

(from 17 March 2014)

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Deputy Premier, Minister for State Development, and Minister for Regional and Rural Development	The Hon. P. J. Ryan, MP
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Minister for 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

CONTENTS

THURSDAY, 21 AUGUST 2014

Thursday, 21 August 2014

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

PAPERS

Laid on table by Acting Clerk:

Victorian Law Reform Commission — Report on the Review of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997.

Subordinate Legislation Act 1994 — Legislative Instruments and related documents under section 16B in respect of —

Ministerial Direction 142 of 18 August 2014 — Standing Application to amend an RTO's scope of Registration under the Education and Training Reform Act 2006.

Ministerial Order 769 of 18 August 2014 amending Ministerial Order 615 — Amendment to fixing of fees administered by the Victorian Registration and Qualifications Authority under the Education and Training Reform Act 2006.

Ministerial Direction 144 of 19 August 2014 — Amendment to Ministerial Direction 141 relating to Special Religious Instruction in Government Schools under the Education and Training Reform Act 2006.

NOTICES OF MOTION

Notices of motion given.

Mr FINN having given notice of motion:

The PRESIDENT — Order! I seek clarification from the Leader of the Opposition. I read in the newspapers that the Leader of the Opposition in the Assembly would now prefer to be known as Dan Andrews. I need to establish that — —

An honourable member interjected.

The PRESIDENT — Order! It is not a laughing matter. I need to establish that that is correct, in which case I think that motions and commentary in this place ought to reflect the Leader of the Opposition's wishes. Can I understand what his position is?

Mr LENDERS (Southern Metropolitan) — President, I think Dan and Daniel are interchangeable. From my perspective, I address him as Daniel, as I always have. I think there has been a fair bit of hype over nothing. My view is that the names are interchangeable.

Hon. D. M. DAVIS (Minister for Health) — President, you might want to seek further guidance on this matter. There may be some advice in *May* or other relevant sources of advice for this chamber, including the practice in other parliaments as to nomenclature and somebody changing their name in this way and how to refer to them.

The PRESIDENT — Order! On this occasion I will take the advice of the Leader of the Opposition, which I sought. Based on that guidance, unless we hear further from the opposition at another time, the names will be interchangeable.

Further notices of motion given.

BUSINESS OF THE HOUSE

Adjournment

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

That the council, at its rising, adjourn until Tuesday, 2 September 2014.

Motion agreed to.

MEMBERS STATEMENTS

Daffodil Day

Ms TIERNEY (Western Victoria) — I rise today to acknowledge an important date, which is near and dear to all our hearts: Cancer Council Australia's annual Daffodil Day, to be held tomorrow, Friday, 22 August. The impact of cancer within our society can only be described as widespread. Cancer does not discriminate by age, gender or even general health and wellbeing. Today, for example, 350 Australians will be diagnosed with a life-threatening form of cancer, and another 115 Australians will, sadly, lose their battle with cancer.

It is for these reasons that Daffodil Day and the good work of the cancer council are looked upon with much affection and appreciation by all of us. The cancer council is responsible for a range of initiatives, including patient support groups, detection and prevention programs, and the dissemination of important information to patients, doctors, and healthcare providers.

Cancer remains the leading cause of death in this country, and with an ageing population the rate of new cancer cases is set to rise by 17 per cent by the end of the decade. I am proud to stand in this house and say that appropriate and generous government funding of cancer services is an area of deep bipartisanship here in Victoria. Specifically, Victorian Labor holds an

ongoing commitment to providing a world-leading and innovative treatment, teaching and research cancer services precinct. As a representative of Western Victoria Region, I am particularly passionate about the provision of high-quality cancer services across our state's regional and rural communities. I encourage all Victorians to wear a daffodil on their lapel this Friday and support the 28th annual Daffodil Day.

Renewable energy target

Mr BARBER (Northern Metropolitan) — It is 100 days until the election, and I am looking forward to spending at least one of those days in Portland, in the heart of the Premier's electorate. Not only is it a beautiful part of the world, but it is an area that needs support from all political parties, because it is facing a job crisis brought on by the federal Liberal-Nationals coalition attack on the renewable energy target (RET). I will be attending a forum down there with none other than Dr John Hewson to talk about the impact and effect of the renewable energy target across Victoria.

Honourable members interjecting.

Mr BARBER — In the Portland newspaper under the headline 'Heads in the sand', the head of Keppel Prince, Steve Garner, warns of hundreds of jobs being at risk at his particular enterprise. He notes that Australia is currently the world's worst polluter per capita and is quoted as saying:

> The rest of the world is going gangbusters when it comes to renewable energy, and we're just sticking our heads in the sand …
>
> It's as if we're saying the rest of the world can pick up the slack and we'll just sit back and enjoy ourselves.

He said 100 to 150 jobs are at risk locally if the federal government panel recommends abolishing the RET.

Honourable members interjecting.

Mr BARBER — In that area, landholders have been told that they cannot host wind turbines even if they want to, but will be subject to gas drilling whether or not they want to. That is a pretty poor offer being put forward by the Liberal-Nationals government. The Greens are offering something much better, which I will put forward to the community of Portland on Sunday.

The PRESIDENT — Order! I allowed an extended time for Mr Barber because of the level of interjection during his 90-second statement. Members would be aware that during 90-second statements in particular, which are time constrained, members are permitted to read their item to make sure that they are able to convey the message they want to in that short time. I believe that as a courtesy members ought also to be able to proceed with a 90-second statement without interjections or with an absolute minimum of interjections, because it is very difficult in that time to get their message out effectively. All members owe that to other members as an entitlement. On that occasion I ignored the clock and would do so again if that happens.

Wilmot Road Primary School

Hon. W. A. LOVELL (Minister for Housing) — Last week I was thrilled to join 135 business and community leaders across Victoria who participated in the principal for a day initiative. The program aims to strengthen ties between schools, business and the wider community by giving leaders a real-world insight into the daily rewards and challenges of running a school. As principal for a day, I stepped into the shoes of principal Jenny Manuel at Shepparton's Wilmot Road Primary School. It is a fantastic school with a range of learning programs. This year 35 Victorian MPs participated, including the Minister for Education, Martin Dixon, who took part at his old school, Marcellin College in Bulleen.

Early childhood education conference

Hon. W. A. LOVELL — I was also pleased to officially open the ECMS Beyond Tomorrow conference entitled Inspiring Journeys. The conference provided a forum for early childhood professionals from across Australia to connect and share ideas and knowledge. Early childhood professionals do an amazing job of ensuring that our children have access to high-quality early learning and development programs. It is through opportunities such as this conference that they can be inspired by stories of excellence, leadership and innovation to guarantee we have a world-class early education sector.

Mrs Millar

Hon. W. A. LOVELL — I take this opportunity to congratulate my colleague Amanda Millar on the first anniversary of her swearing in as a member of this chamber. Since she was sworn in, Amanda has done fantastic work on the ground in our electorate and she is an outstanding local member.

Merbein P–10 College

Ms LEWIS (Northern Victoria) — The millennium drought had many far-reaching consequences for communities across rural and regional Victoria. Merbein is one such town. The decimation of the irrigated horticultural industry in the area saw a decline in enrolments at the local primary schools. As a result of the declining enrolment trend, the four Merbein schools came under pressure to merge and establish a P–10 school. While many concerns were expressed over the proposal, the community was assured that a new school facility would be provided over two stages. Stage 1 was to provide new classrooms for students from prep to year 10, and the science-technology, administration, library and gym facilities were to be left for stage 2.

A change of government in late 2010 saw the community dealt a major blow. Stage 2 funding never eventuated, and the school continues to struggle to provide a quality education program in buildings that are 25 years past their use-by date. The Victorian Auditor-General's report entitled *Access to Education for Rural Students* highlights the need to invest in rural education infrastructure to address the acknowledged difference in education, health and social outcomes between rural and metropolitan students. The Merbein community has lost confidence in the government, as a result particularly of the half-hearted funding provided to its school in the recent state budget, which can only provide a bandaid solution for the students and the ageing school buildings.

Ian Grattidge

Mr D. R. J. O'BRIEN (Western Victoria) — I rise to make some brief remarks on the passing of one of Victoria's greatest bass players, performers and teachers, Mr Ian Grattidge, who sadly passed away last week. Ian was an incredible player, performer and contributor to much of Melbourne's early jazz and progressive rock scene. In the 1960s and 1970s he played with the best Australian and overseas acts, such as Diana Ross and a young John Farnham. He played at venues such as the Argo and in later life at the Notting Hill Hotel. With his lovely wife on vocals, the equally talented Brenda Marsh, he fronted the legendary Spellbound and remained an institution in Melbourne's professional live music scene.

But it was as a bass teacher and music teacher at Xavier College that he came into my life. I was one of his first students in his 25 years of service as a music teacher at that school. Last year my colleague Jan Kronberg tabled an Education and Training Committee report into the importance of music education in schools, and I can say that Ian's importance in my life was profound. He was not only a teacher who taught me the technical aspects of playing the bass but he also provided me with valuable life advice. He introduced me to Ray Moore's country band, where I first learnt the most important lesson of bass playing, advocacy and perhaps life — that is, that sometimes less is more. He also provided valuable advice and told me to persist with my education and get a real job. I was grateful when he passed on to me his Australian-made, treasured 1960s Maton Ibis bass and earlier his phone amplifier.

Ian will be sorely missed by his wife, Brenda, and family, his many students and friends and the music industry in Victoria. Vale Ian Grattidge.

Country Fire Authority Marysville brigade

Ms DARVENIZA (Northern Victoria) — I wish to congratulate the 15 volunteer firefighters from the Marysville Country Fire Authority (CFA) brigade who have been honoured with bravery citations for their efforts during the Black Saturday bushfires in Victoria. They are Glen Fiske, Patrick Flannagan, Christopher Gleeson, Michael Gleeson, Susan Gleeson, Travis Gleeson, Christopher Haden, Mark Hamdorf, Pauline Harrow, John Malcolm, Roger Martin, Stewart Potter, John Ratcliffe, Kellan Fiske and Richard Uden.

The citation acknowledges that the brigade protected 250 people who had fled to the football oval during the Black Saturday fires. I congratulate each of the volunteers on receiving these citations. It is wonderful that citations have been given to these very brave firefighters who protected so many people on that very black Saturday.

Palmers–Leakes roads, Truganina

Mr ELSBURY (Western Metropolitan) — I was pleased to recently join Gary Blackwood, the member for Narracan in the Assembly and Parliamentary Secretary for Transport, at the corner of Palmers and Leakes roads in Truganina where we announced a $2.5 million upgrade to that intersection. The state government committed $2 million, the federal government committed $300 000 and there is $200 000 from Wyndham City Council. This is a very important project to improve an intersection which has had 23 major incidents.

I was also pleased to be able to take Gary out to Dohertys Road in Laverton North to show him the state of that road and raise with him the concerns that various businesses in that area have about that section of road.

Variety Bash

Mr ELSBURY — I would like to congratulate participants in the 2014 Variety Bash. I was happy to join with them on 14 August when they left Brimbank Park. They are heading to Noosa and will arrive there on 22 August — lucky for some! Today they are travelling from Tenterfield to Kingaroy. Last year Variety, the Children's Charity gave $1.3 million in grants to kids with disabilities.

Vietnam veterans

Mr ELSBURY — Finally, on Sunday I was proud to join Vietnam veterans at a dawn service. The Keilor East RSL put on a moving ceremony. Early on Monday morning I was pleased to join veterans at the Werribee cenotaph for another dawn service. We should be thankful for their service.

Watergardens railway station

Mr EIDEH (Western Metropolitan) — I rise to express my serious concern about the experiences of two of my constituents who are disabled and travel by train to and from Watergardens train station in Sydenham. My constituents were travelling by train to Watergardens in a wheelchair and a scooter on separate occasions but when they arrived they were unable to get off platforms 2 and 3 as the lifts had broken down. They were given no choice but to catch trains to Sunbury, which is 13 minutes away, and use the ramps there to travel back to Watergardens station and exit via platform 1. One of my constituents had travelled from St Albans for a 9.00 a.m. appointment with her doctor in Sydenham but had to reschedule her appointment to 10.30 a.m. because staff at the station told her to catch the train to Sunbury and then travel back to Watergardens so she could exit via platform 1. Unfortunately as a result of the extra travel time this woman waited 4 hours longer than necessary to find out that she has three broken bones in her arm.

It is absolutely disgraceful that wheelchair and scooter-bound commuters have to allow extra time in their day just to find a way to exit a train station because there is no clear and safe path, and I am advised that this has happened before. This situation shows a complete disregard for passengers, and it is disappointing. Commuters with a disability should have equally accessible means of exit available as able-bodied commuters. It is unfair, and there is absolutely no excuse for not having safe and easy access to train services, which people with disabilities rely on every day. I call on the Napthine government to take action to ensure that Watergardens train station and all stations are easily and safely accessible to all commuters without discrimination.

Bobby Bajram

Mrs COOTE (Southern Metropolitan) — I would like to acknowledge a very brave and courageous Victorian. His name is Bobby Bajram. Bobby has had multiple sclerosis (MS) since the age of 13. At times in his life he has been blind and in a wheelchair, and has had many, many visits to hospital for significant stays. However, most recently Bobby has climbed Kala Patthar in Nepal. This is a phenomenal achievement for anyone, but for someone who has MS and has faced such challenges in their life it is absolutely remarkable. Bobby is now 45 years old, and he went through an arduous training program to get fit enough to climb this mountain, which is 5550 metres high. It is an extraordinary achievement.

Bobby is hoping to go back in 2015 to climb Mount Everest. I have absolutely no doubt he will do it. He is an extraordinary individual, who did the climb against medical advice. The money he raised he gave to Sherpa families, many of whose members were lost in the recent avalanche. Bobby is an extraordinary individual. I suggest everybody in this place watch out for him, because he will get to Everest. If you get an opportunity to give him a vote of thanks, I suggest you do it. He is an extraordinary Victorian.

The PRESIDENT — Order! Bobby certainly sounds like a remarkable Victorian. I thank Mrs Coote for bringing him to the notice of the Parliament.

Greek Orthodox Community of Dandenong & Districts

Mr TARLAMIS (South Eastern Metropolitan) — Recently I had the honour of attending the festivities organised by the Greek Orthodox Community of Dandenong & Districts on the occasion of the community's 55th anniversary as well as the feast day of St Panteleimon, in honour of whom its church was named. I was joined by the Leader of the Opposition and member for Mulgrave in the Assembly, Daniel Andrews; the Labor candidate for Dandenong, Gabrielle Williams; mayor Jim Memeti; and thousands of others on what turned out to be a beautiful day to mark the occasion and enjoy great food, traditional Greek music and dancing, including performances by students from the school.

The community has achieved a great deal and contributed much to enrich the local community, and reaching this milestone is a testament to the strength of

the Greek community. Fifty-five years ago the founders of the community bought a block of land with a view to the future. The facilities that stand there today include a church, a community hall, community offices and a school catering for third and fourth generation Greek Australian children. I know my colleagues shared with me the joy of celebrating this important milestone with members of the Greek community who have contributed to the vibrancy and inclusiveness that exists in the community.

I would like to acknowledge the foresight, commitment, hard work and dedication of past and present committee members and volunteers of this organisation for all they have achieved to date, and wish those who will continue this great work best wishes for the continued growth the community envisages will occur. I would also like to extend this acknowledgement to all those members of the Greek community who have been actively involved over the last 55 years. I thank the president, Steven Karamoschos, his committee and all those who made this event the success it was in commemorating 55 years of civic engagement to the betterment of the Dandenong and wider community.

Western Health research report

Mr MELHEM (Western Metropolitan) — Last Thursday Western Health released its research report entitled *Locally Responsive. Globally Connected*. It is a great report, and credit goes to the chief executive, Associate Professor Alex Cockram, and the executive director medical services, Dr Mark Garwood. Some of the highlights of the report are that Western Health made 255 seminar and conference presentations, raised over $2 million from commercially sponsored clinical trials, approved 207 research projects and published 357 journal articles. I commend the medical and other staff of Western Health on the great work they perform for residents of the western suburbs.

A few weeks ago the chair of Western Health, the Honourable Ralph Willis, AO, retired. He has done a tremendous job over the past 10 years, and the Minister for Health was at his retirement, as were various members of the house. I also welcome the new chair, Bronwyn Pike, and congratulate her on her appointment. I am sure she will continue the good work of the former chair and staff. I congratulate all the staff at Western Health on the great work they do for the western suburbs.

ASSISTED REPRODUCTIVE TREATMENT FURTHER AMENDMENT BILL 2013

Second reading

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

Mr JENNINGS (South Eastern Metropolitan) — Thank you, President, for the opportunity of talking about the Assisted Reproductive Treatment Further Amendment Bill 2013 and the very important issues in the rights framework of the Victorian Parliament in terms of protecting the rights of our citizens who were born as a consequence of assisted reproductive technology. At the moment they do not have equal access to information that provides them with confidence and certainty about their lives because of the different legislative regimes that have applied over the last three decades in Victoria.

During that time Victoria set the lead internationally to establish a rights framework for assisted reproductive technology and the children who were born as a result of that technology. From a situation where Victoria was seen as a world leader, not only in the science but in terms of the legislative framework, there have been a number of occasions when the Parliament of Victoria has tried to catch up with contemporary thinking and the downstream consequences of that legislation.

In terms of what we could describe as the gestation of this piece of legislation before the house — to mix a metaphor — I suggest that the journey that has led us here was a consequence of a discussion that took place in 2008 during the committee stage of the substantive act. In this place on 2 December 2008 there was a lengthy exchange between Ms Pennicuik and me about the circumstances of donor-conceived people in Victoria who believed their rights had not been protected by the act. As I remember, during the committee stage Ms Pennicuik, at great length, took me to task as representing a government that was making amendments to the legislation in the name of opening up the scope, scale and opportunity for citizens in Victoria to use assisted reproductive technology.

At that time Ms Pennicuik and I were in total agreement about the value of opening up access and the rights framework for Victorian citizens in terms of their ability to use the technology to create family structures by being assisted to bring a child into life in the state of Victoria. We shared a huge scope of agreement during that committee stage. On behalf of people who felt they were disenfranchised by the three-tiered system that had been created for access to information about their

biological heritage Ms Pennicuik argued that it was unfair, inequitable and warranted further work. On behalf of the government at that time I gave undertakings during the course of the committee stage that further work would be undertaken.

We are talking about the journey leading to this legislation. On behalf of the Victorian government in this iteration, that journey started on the public record on 2 December 2008. During the second-reading debate on this bill there has also been commentary about how long that process has taken, which is now almost six years. The key stepping stone in that journey was that on 23 June 2010 — a little over four years ago — a reference was given, in accordance with the commitment that I made on behalf of the then government, for a process to review the law in Victoria and to find ways in which those inequalities could be remedied. On 23 June 2010 the Legislative Council adopted a reference to enable that work to commence.

Within three months the Parliament of Victoria had an interim report. That was tabled on 15 September 2010. It gave an indication about where the thinking was in terms of opening up the provisions of the legislation to enable greater access and equity before the law. Before the final report the parliamentary inquiry had to endure the rigours of the change of government at the end of 2010, and with that change came different priorities and different procedures. It was then a further year and a half after the interim report was tabled in September 2010 before a final report was tabled in the Parliament on 28 March 2012.

The extraordinary thing that the Parliament has to grapple with today is that in the report of 28 March 2012 the parliamentary committee had adopted a unanimous position on opening up the legislative framework to enable people born prior to 1988 to receive equitable and fair access to information about their biological heritage, their pedigree and their family connections, and opportunities to seek that information and to locate the donors of the biological material that ultimately, through the use of assisted reproductive technology, led to their birth.

Despite the fact that the committee determined as far back as 28 March 2012, in a report tabled in the Parliament, that there would be open access and limitations would not be placed on it, here we are some two and a half years later debating a bill that has been introduced by the current government and that falls short of what the committee's recommendations were. The journey of the consideration has been, I suggest, tortuous for the people who want their rights afforded to them and protected in Victorian legislation. It has been a tortuous journey. Since 2008 this Parliament has been constantly considering how to deal with these matters that are to be amended today. It has taken six years for us to get here.

From 28 March 2012 how has the government responded? The government responded in the first instance by issuing an interim report on 11 October 2012. In terms of the timeliness of this process, that was not too slow. In fact, at a rhetorical level the government gave every impression that it was going to give a fulsome response in consideration of the committee's recommendations. But it took 10 months after tabling the interim response for the government to come back with a final response to the Law Reform Committee's report, which started to wind back its response. Because of the delay in that response by the government, and in accordance with the ongoing and unswerving desire of the now adults who were born through assisted reproductive technology for access to greater information and to be able to make connections with their biological parents, the Labor Party responded in the intervening period.

In June 2013, about a year and a quarter ago, I had the opportunity, on behalf of the opposition, on behalf of those citizens of Victoria who are most concerned about this matter and in effect on behalf of the parliamentary committee that had made the recommendations, to table, support and seek to get the support of this chamber for a private members bill to implement the integrity of the recommendations that had come from the parliamentary committee and the integrity of the promise that had been made as far back as 2008. I am very disappointed to say that the connection that had been created between Ms Pennicuik and me and our various parties as far back as 2008 was not enough to enable the private members bill that was in my name to pass the Legislative Council and to become Victorian law.

It was very disappointing that the government did not take up that opportunity to embrace the recommendations of a parliamentary committee on which it had the majority and held the chair. The member for Prahran in the Legislative Assembly, on behalf of the committee, tabled quite eloquently and with a rhetorical flourish an endorsement of those recommendations. I do not dispute his philosophical and compassionate approach in this regard. Unfortunately his ability to provide the after-care of those recommendations has fallen short and continues to fall short, because the government bill that we are currently debating is again a reflection of the enthusiasm and momentum that has been established

within the Napthine government to deal with this matter.

After defeating Labor's bill in June 2013, the government introduced this legislation into the Parliament of Victoria on 11 December 2013, and we are debating it nine months later. For nine months this piece of legislation has sat dormant on the notice paper. When I started my contribution a few minutes ago I described this as the gestation period of this piece of legislation. This bill has been in the Parliament for nine months. It has gone full term, but it has gone full term in the context of commitments and undertakings that were made — admittedly by a Labor government — in 2008. It falls short of what those expectations were.

This bill does respond to heart-wrenching issues in our community and does improve the legislative framework and the support for Victorian citizens. It does move what had been a three-tiered system to a two-tiered system in terms of equity before Victorian law in accessing information about the biological parents of people who have been born in Victoria using assisted reproductive technology, which still is an unfortunate and I think an undesirable outcome. It still does not satisfy the guiding principles, the outline and the objectives of the original piece of legislation, which has been maintained all the way through the legislative reform and which is to keep the interests of the child paramount. It is the interests of the child who is born through the use of assisted reproductive technology that are supposed to be paramount.

If anyone wants to know my views on the subject at length, they are well documented. I will not go through and recast my position on these matters now, because there is a substantial body of evidence on my view, right back to 2008. It is possible to tell from 2 December 2008 pretty much what my view on this subject is. People can read *Hansard* of June 2013 which reveals what my view was in supporting the private members bill I introduced to fulfil those undertakings I made in 2008 that were consistent with the recommendations of the committee. They were my views then; they continue to be my views now.

I have travelled with many members of our community in terms of trying to address their heartfelt, intellectual and biological need to have some closure to these issues and some certainty so that they can plan their futures, can have familial connections, can feel better grounded in the community and can find loved ones who may touch their lives. Those motivations continue to this day. By and large those needs have two centres of gravity. One is the emotional wellbeing, stability and confidence that an individual may have in terms of knowing who they are, where they have come from, how they are connected and feeling grounded in their daily life. Emotional stability in our community and the ability of citizens in our state to have confidence about who they are and who they are connected to is a profound emotional issue. None of us should underestimate its significance in its own right.

Beyond that there is the question of what the biological need is. What is the need for modern science and medicine to be well informed in relation to the very DNA that makes up our physical being and what frailties that may have? What knowledge do we need to have to make sure that medicine can be tailored to meet the needs of every citizen in our community? Whether it be a simple thing, such as blood transfusions, or an issue about genetic defects which may lead to major and degenerative illnesses in a person's life, it is DNA that basically predetermines those things. To have confident knowledge about that is very important for the individual concerned.

There is also a heart-rending story that relates to Narelle Grech. Her story straddles both those emotional issues and biological issues. Narelle has been referred to in terms of the presentation of the private members bill that I introduced, and some people have come to remember that private members bill as 'Narelle's law'. Some people would know of Narelle's circumstances because she featured prominently in an ABC program that aired just recently, *Australian Story*, where her story in part was told. In contributions to debate on this legislation in the other place Narelle's story has also be mentioned.

The reason it is heart rending and profound and has an effect on us all — and in this case I even mean politicians, as sometimes we are removed from human connection, human frailty and human need, although in this instance I do not think we are — is that it is quite extraordinary how Narelle, a young woman, was driven for a number of years to find her biological father on the basis of her emotional need and her sense of psychological wellbeing. That was the original driver of the need she felt to discover her biological father, so her journey commenced well and truly along that path before she discovered that she had a terminal illness.

On her journey to discover who her biological father was she gathered information that enabled her to know that she had a number of siblings who had similarly been born through assisted reproductive technology. Those siblings shared the same father, and the biological defect that led to her cancer could have been prevalent in seven others in Victoria. She had a remarkable commitment to find the information

required and share that information with those siblings so they could be well armed to deal with their medical circumstances. As most informed people understand, the sooner cancers are detected, prevented and treated, the greater the likelihood of survival for any person. Narelle was driven not only by her huge desire to be better grounded and connected but also in the name of those seven siblings. It is a remarkable story of the determination of that young woman.

In many ways Narelle's story has a tragic ending, but in many ways it has a triumphant ending, with an emotional upwelling of desire, enthusiasm, attachment, connection and peace being generated by making a connection. But it is an extraordinary ending in that when she finally made that connection with her biological father, Ray Tonna, it was made by what was technically — and I do not want to make too much of a point about this — an unlawful intervention by the executive in Victoria. The executive acted out of compassion and for all the right emotional reasons — philosophically the moral, correct and right reasons — but in breach of Victorian law. It is an extraordinary thing that the decent, appropriate and moving outcome was only achieved in breach of Victorian law. The law should be remedied so that that degree of compassion and wisdom can be shown and that the correct thing, which occurred in this case, is not dependent upon the interventions of political figures. It should happen by default under the law.

That is something I will continue to try to achieve through my contribution today and in the amendments I will seek to make to this piece of legislation, because the difference between what the government has introduced to the Parliament of Victoria and what I introduced as a private members bill effectively boils down to the vigour, the determination and the default settings that apply to whose rights are protected first, whether it be the child who has been born or the donor who provided their information in accordance with the law. There is no dispute about the fact that the donor made their donation of biological material believing that it would always be shrouded in confidentiality and secrecy; that was the mutual undertaking entered into when that material was provided. Ultimately, in terms of the emotional, biological and medical needs I outlined and the contemporary thinking about the rights of the child, it is about whether that is an appropriate framework today. My argument is that it is not.

My argument is that we should establish a rights-based approach to elevate the rights of the child for all the reasons I have described. The unfortunate consequence of that is that the rights of the person who donated the material and the undertakings made to that person are relegated. I am not shying away from that; it is the logical consequence of what I am advocating for. I would be disappointed if that caused great distress to anybody in Victoria, but that is clearly what I am advocating. That is clearly the difference between the legislative framework I proposed and what is being proposed by the government. The amendments I will seek to make to the government's legislation will try to remedy that. The default setting should address whose rights come first under the law, the child's or the donor's. In the committee stage I will be attempting again to establish default settings that insert the rights of the child ahead of the rights of the donor.

The fundamental difference between the government's proposal and what was in my private members bill, and what I will again be advocating for when I put forward amendments to this legislation today, relates to the obligation of the clinic, the doctor or whoever is the holder of the original records to provide information. The government has made some moves in terms of trying to be more rigorous and develop better practices around the compilation, distribution and availability of information relating to this important register of who donated biological material that led to a child being born. We need to ensure greater confidence in that registration scheme. The government is endeavouring to do its best. The legislative framework says that that information may be provided, and I would suggest that the requirement should be that if that material exists, then it must be provided. That is a fundamental difference between what the government is proposing and what I will be seeking to do by amendment.

One of the extraordinary things in trying to get a balance in the legislation is trying to understand how the rights and obligations and the connections work. It would be worthwhile for people in the community, and certainly people in the Parliament, to have a look at the episode of the ABC's *Australian Story* program which considered the case study of Lauren Burns. It shows how Lauren's search for her biological father was facilitated not in breach of the law but through the support of her treating doctor, David de Kretser, in an elegant case of goodwill. Professor de Kretser subsequently moved on to become a world-leading scientist and the Governor of Victoria. He is a man of great humanity and compassion. Through his records he found a connection between Lauren and her biological father which facilitated their meeting.

Australian Story showed Lauren's passionate, emotional and quite appropriate need to find that connection to her biological father, whereas her biological father, Benedict Clark, whilst open to engaging with Lauren, had a more dispassionate view.

He donated biological material as a student at Monash University. It was clear that he believed it was for good scientific reasons, and it also assisted his income security. He did not think there was going to be any longstanding relationship formed as a result of his donation of biological material. To this day, even though he has met Lauren and developed a relationship with her, he is always, as he described it, one step removed from describing her as his daughter. He does not become confused about that. From Lauren's perspective, she does not become confused either. She does not overreach and refer to him as 'Dad' even though she understands him to be her biological father. There has been quite a dispassionate, reasonable, rational and yet familial connection created between the two of them. It was not distressing for Ben to have this connection made in his life some 25 years later.

To me the extraordinary thing about that program was not so much the connection Lauren made with her biological father — it is perhaps one step removed from an enduringly intimate father-daughter relationship, and her relationship with the mother who raised her is as strong and unswerving as ever — but rather the very moving connections she made with her siblings and extended paternal biological family. The sense of connection is not necessarily limited to the link between the donor and the child; the relationship with the donor may be the linchpin for broader connections that are nonetheless extremely familial, close, intimate and rewarding. If you consider this alongside the concern Narelle had about the biological defect that led to her cancer, it is all the more reason for those familial connections to be made — not only is there an emotional grounding for these connections, but they also have a biological and potentially medical validation.

Those are very powerful stories for the Victorian Parliament and community to understand as we try to work our way towards the desired outcomes. We are trying to achieve better connections. We are trying to insert a rights-based framework that, for the first time since 1988, creates as level a playing field as possible in relation to who has access to information fundamental to their sense of self, their sense of justice and their emotional and medical wellbeing. I know some of the members of the committee, particularly the Labor members for Brunswick and Ivanhoe in the other place and Ms Pennicuik and others across this chamber, have made very strong connections and friendships with those who did contribute and are greatly committed to the rights of those people, their families and their loved ones, and thus have a great desire to make this piece of legislation go as far as it possibly can.

It is on their advice that, though it is flawed and yet again places limits on their rights, the opposition will support the bill because it makes incremental and ongoing positive change. If the bill is amended in the form I will be putting to the committee, Labor will wholeheartedly and fulsomely support the bill for the reasons I have described and the basic humanity that is reflected in our position. That is the nature of my commitment and the commitment of my colleagues in the Labor Party. We want to go as far as we can to satisfy the undertakings we made as far back as 2 December 2008 and which we have consistently pursued through parliamentary inquiries, the tabling of private members bills and our amendments today. We encourage government members to join with us.

Opposition amendments circulated by Mr JENNINGS (South Eastern Metropolitan) pursuant to standing orders.

Mr JENNINGS — The government and Ms Pennicuik have had some degree of warning about these amendments, but they have had significant warning as to the subject matter that underpins them and the effect they are seeking. They are totally consistent with the journey that has been embarked upon by the parliamentary committee and the private members bill for which I sought the support of the Victorian Parliament 14 months ago.

Today the Victorian Parliament has an opportunity to do something that is profound, but I think it will probably fall short of that, just as it has fallen short on one or two occasions in the past. If I am proved wrong, I will congratulate anybody in the chamber for seeing the sense and humanity in pushing this scheme as far as we possibly can. I thank those who step up in anticipation of any cross-chamber support. If that does not occur, I cannot say that I wholeheartedly congratulate and support the government, because in my view the legislative framework is a diluted version of what it should be. Nonetheless, the bill will ultimately be supported by the Labor Party.

Ms CROZIER (Southern Metropolitan) — I am pleased to rise to contribute to this very important debate on the Assisted Reproductive Treatment Further Amendment Bill 2013. As I listened to Mr Jennings contribution, it was obvious to me that he has had a long-term interest in these matters, which are also of interest to many Victorians. It is an important debate for us to have.

The bill amends the Assisted Reproductive Treatment Act 2008, which was enacted by the previous government. The purpose of the bill is to provide that

information relating to treatment procedures using gametes donated prior to 1 July 1988 be included in a central register and to enable persons conceived from donations prior to 1 July 1988 to obtain information where available from the central register with the consent of the donor. The bill expands the functions of the Victorian Assisted Reproductive Treatment Authority (VARTA) to provide support, counselling and donor-linking intermediary services to persons seeking information and to subjects responding to requests for information. VARTA is an important authority in relation to these matters.

The bill has come about partly as a result of the work of the last Parliament's Law Reform Committee, as mentioned by Mr Jennings in his contribution to the debate, and through other discussions and debates, as he also indicated. At the outset I acknowledge the work of the former Law Reform Committee on its inquiry into access by donor-conceived people to information about donors. In particular I congratulate the committee's chair, Clem Newton-Brown, the member for Prahran in the Assembly; its deputy chair, Jane Garrett, the member for Brunswick in the Assembly; Russell Northe, the member for Morwell in the Assembly; Anthony Carbines, the member for Ivanhoe in the Assembly; and my former colleague Donna Petrovich, who was a member of this chamber for some time.

In its report the Law Reform Committee makes a number of recommendations for establishing a mechanism for donor-conceived individuals to access information about their donors. The issues addressed by the committee were very complex and have raised challenges from legal, ethical and practical aspects. The chair's foreword states:

> While the committee considered many issues during the course of this inquiry, the key questions that emerged were essentially ethical: should a donor-conceived person have the right to access information about his or her donor?
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> …
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> Currently, people who were conceived from gametes donated after 1998 are entitled under legislation to obtain identifying information about their donors when they reach adulthood. People conceived from gametes donated between 1988 and 1997 can only access identifying information about their donors with the donor's consent. However, people conceived from gametes donated prior to 1988 have no legislated right to obtain identifying information.

As has been mentioned, there is a three-tiered regime for this process. I acknowledge the many people involved in the inquiry, including individuals who gave evidence, particularly donor-conceived individuals and their families, and those persons who have been supporting donor-conceived people in their pursuit of highlighting these issues to the Victorian community. Those people highlighted many issues for the committee, and the committee's work and processes have been well documented. In his contribution to the debate on this bill in the other place, the committee's chair, Clem Newton-Brown, said:

> I am sure I speak on behalf of my colleagues on the committee when I say that Narelle Grech touched our lives and highlighted the humanity that is behind the dry business of law reform in this place.

Many Victorians are now aware of the story of Narelle Grech, particularly due to the airing of a documentary on *Australian Story* over the last two weeks. It is an excellent documentary about this issue and highlights the many emotions experienced by people who are affected by this issue, including some of the tragic circumstances surrounding them. However, as Mr Jennings said, what Narelle achieved during her time and through meeting up with her biological father, Ray Tonna, after the intervention of former Premier Ted Baillieu to allow her to access information, is very profound. Her story touched many Victorians and Australians who watched that program. Unfortunately I did not see the first part of the documentary — I only saw this week's part — but I too was touched by her story and that of Lauren Burns, who has been unyielding in her determination to pursue the right of donor-conceived people to have access to information regarding their genetic heritage. The two women in that documentary highlighted this complex issue, which is of paramount importance.

I note that in the program Lauren's biological father stated that Lauren was not his child socially. That is a very profound statement to make after he discovered that he had another daughter. Those individuals achieved a very good outcome, as did Narelle, who was reunited with her biological father shortly before she sadly succumbed to bowel cancer.

In his contribution to the debate Mr Jennings highlighted the issues of genetic traits, especially for people in similar circumstances to that of Narelle Grech. It is important to understand the need for donor-conceived people to find out about any genetic or hereditary disorders that may have dire health outcomes for them, as was the case with Narelle. The program highlighted that both Lauren and Narelle were born prior to 1988, and as we all know, people born prior to 1988 are currently not able to obtain identifying information about their biological parents or obtain information about hereditary or genetic traits or information about half siblings. This is a relevant matter to discuss because if a person were to enter into a

relationship, especially a sexual relationship, with a half sibling, it is important to look at the consequences of that. This is a very difficult and complex issue and a reason we are looking at this law.

As I said there are currently three separate regimes which regulate donor-conceived people's access to information about their donors. Over time we have seen attitudes in our community change in relation to understanding these issues. That was very well demonstrated in the program that was screened on Monday night. Some people's attitudes have changed, but others do not share the same view. There are donors in our community who at the time of donating thought they had anonymity and that their donation would remain confidential forever. That was understood to be the law at the time, and many people have the view that this is the way it should remain. We know some who donated at the time could have had a number of children. They could have six, seven, eight or more children, and we need to be mindful of that when understanding this issue. We know that for Lauren and Narelle their reunions with their donors were very good, but when confronted with the knowledge that they have additional children out there some people may not share similar views.

That is why a comprehensive review was undertaken with a number of stakeholders including the donor-conceived individuals themselves, the recipients, parents, donors and their families. The findings of the Victorian Assisted Reproduction Treatment Authority consultation process with pre-1998 donors were taken into consideration when formulating this bill. Interviews with the 42 donors who donated gametes in Victoria before 1988 were also taken into consideration during the review process. Their views were mixed, with more than half of them rejecting the Law Reform Committee's main recommendation that access should be available. In formulating this bill and taking into consideration all those complex areas the government believes the bill strikes the right balance with the range of views I have just highlighted.

This bill allows people who were born from donated gametes prior to 1988 to be able to request and receive information about their donor. This information, however, can only be obtained where their donor consents to its release. That is the important point to make. The release is done by an independent body that undertakes the request on behalf of the donor-conceived individual. In the case where a person's life may be in danger the bill allows for the release of relevant health information when deemed necessary. This information must be certified by a practising doctor to be disclosed in the event that it would save an individual's life. It may also be disclosed to alert a person to any genetic or hereditary trait that may have a significant health outcome or be harmful to that individual or to that person's descendants, as was highlighted in the case of Narelle Grech.

The bill does not allow for this information to be easily disclosed. That is quite deliberate. The safeguards within the bill in relation to having a certified practitioner undertake the process are absolutely necessary. Importantly, disclosure of the information is carefully undertaken by a registered assisted reproductive treatment provider. I reiterate to the chamber that this is a complex and difficult area in which to legislate, and the government has endeavoured to give it the consideration it deserves. The legislation needs to be formulated in a careful and considered manner in order to meet community expectations. As I have said, attitudes have changed, and we want to get this right for individuals who are seeking to have their information disclosed, but it has to be recognised that individuals donated material under quite a different law at the time and that there could be significant consequences for individuals who do not want information about themselves disclosed.

I think we are all in agreement that this is a very important debate that has been ongoing for some years. We sit in this place and have these debates to consider complex issues such as those we are discussing today and to look at the future needs of Victorians while recognising the circumstances that face Victorians today. I believe this is an important area, and I think the government has struck the right balance in suggesting that disclosure be allowed with the consent of the donor.

We all should be aware that other jurisdictions have looked at the recommendations in the report of the Law Reform Committee and are following what is happening here in Victoria. It is pleasing that Victoria is the first jurisdiction to recognise and address the needs of donor-conceived persons to have access to information regarding their heritage. I would like to again commend the committee for the work it undertook in this area.

Mr Jennings spoke of members in his party who developed relationships with donor-conceived people and their families, and from my understanding it is fair to say that all committee members took this issue very seriously. They were very moved by it and developed very close relationships. I met with some of the donor-conceived people, as did other members, and it was terrific to get their point of view firsthand. I am very pleased we are debating this issue today. Again, I thank

the people who came before the committee and all those who supported them through the process. It would not have been easy at all.

With those words, I reiterate that this is an important area of the law. It is complex and it has had due consideration, with many people having been consulted throughout the process. I believe the government has got the balance right in this area of the law, and I commend the bill to the house.

Ms PENNICUIK (Southern Metropolitan) — The bill before members is the result of a lot of community debate, including debate in this Parliament, particularly over the past six years, but I suppose it could be said that this issue arose 34 years ago when on 23 June 1980 the first child was born through an in-vitro fertilisation (IVF) process. That person was Candice Reed.

On 23 June 2010 I moved in this Parliament that the Law Reform Committee look into the issue of donor-conceived persons. That resulted in the committee's 2012 report. Before moving the referral motion I contacted Ms Reed to ask for her express permission to mention her name in the context of moving the motion. It was just a coincidence that I was moving the motion on that day but it seemed to me to be a very auspicious coincidence. She was very gracious in granting permission for me to mention her name in that context. As I said, 34 years ago the first person was born under the IVF process. The estimates are that since that time between 60 000 and 75 000 children have been born in Australia under that process.

I have mentioned before in the Parliament that I have had a concern about this issue for a long time. When the first IVF children were born I was in my early 20s. Like everybody else, I was happy that IVF children were being born to people who previously may not have been able to welcome children into their lives, but at the time I was concerned about the matter of anonymous donation. It seemed to me that that was fraught with issues, because even then it seemed that the adults involved — that is, the people wanting to have children and the sperm donors — were making all the decisions but they were not necessarily considering the rights of the children born as a result of IVF treatment.

I have also mentioned before that what I considered to be foreseeable problems have come to fruition. As I said, I was happy about IVF. But I was also angry. Looking back, now I am sorry that at the time I did not become more active on the issue. 'Fortunate' may not be the right word in the context, so I will say rather that I was pleased to be able to do something about the issue when it began to be raised in the Parliament as a result in particular of the introduction by the previous government of the Assisted Reproductive Treatment Bill 2008. I agree with Mr Jennings, who was behind the introduction of that bill, that it was good to open access to assisted reproductive treatment (ART) in the community. The Greens supported the then government in that regard.

The debate on the bill in the Legislative Council in December 2008 was a very long one. In those days we did not have the standing legislation committees that we have now but we did have the Legislation Committee, to which any legislation could be referred. The bill was referred to that committee, and it was given a thorough going-over by the committee. I consider that to have been a very good process and one that possibly should be followed a bit more often with regard to legislation presented in this house. A lot of issues were addressed in that bill, and the committee process allowed the issues to be thoroughly aired and debated. They included opening up not only access to ART but also access by donor-conceived persons to information.

As members know, section 59 of the principal act provides that the registrar must disclose information to a person if the person was conceived:

(i) using gametes donated after 31 December 1997; or

(ii) the person was conceived using gametes donated between 1 July 1988 and 31 December 1997 and the donor has given consent to the disclosure.

Section 59 of the current act provides for the three stages by which donor-conceived people are able to get access to information. Currently, those born before 1988 have no access or right to information under the law. It must be remembered that donor-conceived persons born before 1988 are now aged between 26 to 34. They are young adults, and obviously many of them now have their own families. Some of the donor-conceived people that we have met during the years of debating this issue through the Parliament have their own children; another generation is involved. Those born after 1988 and before 1998 are legally able to have identifying information about their donors if the donor consents. Those born after 1998 have the right to information whether or not the donor consents, because donors were informed that a donor-conceived person would be able to access that information. Currently, we have a three-tiered system, and this bill purports to put in place a flawed two-tiered system.

I will move a simple amendment to the bill, which if agreed to, would have the effect of removing section 59(b) from the act.

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

Ms PENNICUIK — The effect of removing section 59(b) from the act would be that all donor-conceived persons would have access to both non-identifying and identifying information about their donors. It would remove the three-tiered system. It would mean there would be no inequity or inequality amongst donor-conceived people with regard to their rights to access information, which currently is based solely on the year in which they were born.

I know many people do not agree with that position, but as I said, back in the 1980s I had concerns that donors were able to make anonymous donations. To me the creation of a life is about the most important thing that can happen, and the effect of the anonymous donation on the lives of donor-conceived people was not given due consideration. I see it as a mistake that was perhaps made because of misplaced moral standards at the time, but the effect on donor-conceived people has been profound. A mistake was made that needs to be rectified. It is much the same as the mistakes that were made in the past with regard to forced adoptions, and we have been through the process of apologising to people who endured forced adoptions. We also changed adoption laws so that where previously there was anonymity, retrospective legislation was introduced to remove that anonymity.

There should be equal access to information for all donor-conceived persons. The act says that the interests of the child are paramount. Section 59(b) of the act is inconsistent with that principle, and of course 'child', where it refers to those persons born before 1998, now relates to adults aged between 26 and 34.

During the 2008 debate on the Assisted Reproductive Treatment Bill I was able to achieve one amendment, which was that the Victorian Registry of Births, Deaths and Marriages would be able to attach a note to the birth certificate of a donor-conceived person to let them know that more information was available about their birth. One of the important issues raised by this debate is that many people may not know they are donor conceived. This situation is less common now, but there is still a cohort of people out there who may not know. I operate on the principle that it is best to be open and transparent with that sort of information and that people be told they are donor conceived.

Mr Jennings and Ms Crozier mentioned *Australian Story* and *Searching for C11*, parts 1 and 2, which were recently screened on the ABC. The timing of the airing of that show was coincidental with the debate today, with episode 2 shown only last Monday night. One of the things that struck me about Lauren Burns's story was that Ben Clark said he had told his children and his wife that he was a donor. I have had a long association with Lauren dating back to 2008 when she first approached me and other members of Parliament about her search for her donor father, who she refers to as her biological father. I thought that was very interesting.

One of the arguments we hear from many donors is that they do not wish to be approached by their donor-conceived offspring because they have not told their families about being donors. I have thought about this quite a lot. I suppose my answer to that argument would be, 'It would be good to do that, because it is the truth'. I have also made the point many times in the Parliament when we have been debating these issues that times have moved on. It is probably a lot less embarrassing to make this admission than it was deemed to be back in the 1980s, and it is always best that this type of information is out in the open.

I was struck by Ben Clark's comment. It was an interesting part of the show, which was about the experience of Lauren Burns in finding her family. Lauren's story is quite extraordinary in that eminent people have played a role in it, including no less a person than a former Governor of Victoria, and she has found that she is descended from Manning Clark. Tribute must be paid to Lauren for her forensic investigative work and her persistence in her search, to the organisations she is part of — TangledWebs, VANISH and the donor-conceived persons network. All these organisations have been pushing for reform for a very long time.

Despite the fact that I had some concerns with the 2008 bill and moved some amendments to it, including a similar amendment to the one I will be moving to this bill today, it was good legislation overall. The former government should be congratulated for it. At the time of debate on that bill, Mr Jennings gave the Parliament an undertaking that within 18 months of the passing of the bill there would be a review. That was in December 2008, and that is why I kept in contact with Lauren Burns and TangledWebs and of course Narelle Grech, Kimberley Springfield and Myfanwy Cummerford, who were very active in that group. I ran a forum in Parliament, to which many MPs came, in order to get support for the referral motion that I moved on 23 June.

I wanted to move the referral motion in June 2010 because it was 18 months since the passing of the ART bill and I had not yet seen any action from Mr Jennings, although that is not to say he is not very committed to this issue — he has shown that commitment, and I will get to that in a moment — so I moved the referral to the Law Reform Committee. As Mr Jennings said, within three months the committee, chaired at the time by Mr Scheffer, put out an interim report. To the present government's credit, the reference was picked up in the new Parliament and resulted in the report that was released in 2012 by the committee on its inquiry into access by donor-conceived people to information about donors. The committee was then chaired by Clem Newton-Brown, the member for Prahran in the Assembly, with Jane Garrett, the member for Brunswick in the Assembly, as deputy chair.

The overarching recommendation in the report was that the Victorian government introduce legislation to allow all donor-conceived people to obtain identifying information about their donors. A series of other recommendations followed — in fact there were another 29 recommendations in all — and some of those qualified the overarching first recommendation. However, I agree with the first recommendation that access to information should be equal for all donor-conceived persons.

As we know, the report was tabled in 2012 and people were very excited. I know those from TangledWebs et cetera were extremely excited that our committee had looked at the issue in detail and that so many people's minds had been changed by their submissions, just as those groups coming into the Parliament for the forum I ran before the referral had changed people's minds and made MPs aware that it would be a good thing to conduct an inquiry through the Law Reform Committee. But not much happened after the release of the report. I made representations. For example, two months after the tabling of the report I raised an adjournment matter for the Attorney-General asking for action on the report. I also put questions on notice to the minister in the chamber, Mr Davis, with regard to the protection of records, because that issue was raised in the report and had earlier been raised by me — that is, the keeping of records for people who were donor conceived before 1988 was of great concern.

However, we did not see any action at all. Therefore in 2013 Mr Jennings introduced a private members bill to amend the Assisted Reproductive Treatment Act 2008 in accordance with the recommendations of the report. Although I moved an amendment to Mr Jennings's private members bill along the lines of the amendment I will be moving today, the Greens supported that bill, which was not supported by the government. That was a missed opportunity.

The government then came up with its own bill, which has been before the Parliament since the end of last year but is only being debated now, as Mr Jennings said, nine months later. I am curious as to the cause of the delay, and in fact I asked the Attorney-General privately about the delay and was told, 'It will be coming soon'.

The bill before us takes some steps forward in relation to the issues but not as far forward as I and many in the donor-conceived community would like to see. The bill provides for access to information about donor siblings. It makes some moves towards requiring ART providers to make and keep records and to provide those records to the registrar. It enables the registrar to access information that is kept at the Public Record Office Victoria. Those are mainly records related to pre-1988 from the now defunct Prince Henry's Hospital, which were all sent to the public record office. The bill makes other amendments to do with donor-linking services, counsellors and counselling of donor-conceived people and donors with regard to the release of information, and also the release of medical information. It requires ART providers to provide records to the registrar within six months of the commencement of the act in June 2015, which would be by the end of next year, unless the amendment proposed by Mr Jennings to change the commencement date is agreed to.

That would be a good thing because over the course of debate in relation to this issue, whenever a small step has been taken the government of the day has made a statement that in 18 months or two years time it will look at how things are going. During that time people's lives go on, and they still do not have access to the information for which they have been advocating. I do not wish to verbal the minister, Mr Davis, but he indicated the same thing to me: that once the act is passed, in 18 months time we can see how things are going, and if it needs amendment, we will do it then. But I say, 'Let's do it now'. As Lauren Burns said on *Australian Story*, we still have not gone all the way. That is a lost opportunity. Even though people born before 1988 will, under the bill, now have the same rights as those born before 1998 and we are moving from a three-tiered to a two-tiered system, we still have inconsistencies with regard to equality of access to information based on the time at which a person was born.

The word 'balance' is used in relation to balancing the rights of stakeholders — the rights of the donors against the rights of the donor-conceived people. In my mind

the rights are not equal. There are the paramount rights of the child, which are enshrined in the act; the rights of children, which are enshrined in the United Nations Convention on the Rights of the Child; and the human right to know about your genetic identity, which I think is the more profound and stronger right that was, let us say, promised to donors, not by legislation but just by the providers who, at the time, were interested in progressing the technology and helping families, but not necessarily looking ahead to the interests of the children who were conceived by that technology.

In my mind the rights of those donors are not equal to the rights of the children to access the information. Time has moved on, and I would encourage all people who have been involved in donations as donors to tell their families about it and say, 'I made a donation in the 1980s. It is possible there are donor-conceived children out there, and it is possible that one might turn up on our doorstep or write a letter'. That does not mean that there has to be ongoing contact. In the same way as members of families who grow up together sometimes grow apart and do not have ongoing contact, it does not mean there has to be ongoing contact for these people. This is about the right to gain access to the information.

Any parents of donor-conceived children who have not told their children that they were donor conceived can make use of education programs such as those that are run by the Victorian Assisted Reproductive Treatment Authority to encourage that conversation, and that is the case more often than not these days, but there still may be parents out there who have not told their children, especially those aged between 26 and 34 who are now adults, that they are donor conceived. I would encourage any parents who have not done that to do so, because it is always best that the truth is known. It also raises a wider issue, which is that of the ethics of science and technology. Those involved in pursuing science and technology, whatever it might be — whether it be with regard to assisted reproductive technology or any other technology — always need to be sure that it does not ride roughshod over people's human rights.

I have previously mentioned Melbourne Anonymous Donors, MADMen, a group of donor fathers who say they want to know about their donor-conceived children and are happy to be contacted by them. I had suggested to them that they relieve the doctors of the promise as those doctors do not want to be held to that promise any longer.

Lauren Burns's story, *Searching for C11*, has been mentioned. Lauren's mother, Barbara Burns, is featured very much in that story. She has also been a long-term advocate for the rights of donor-conceived persons and for supporting people like herself, who are parents of donor-conceived persons. She has been a long-term and persistent advocate in this area. I pay tribute to her for her work and to those who work with her in the organisations I have already mentioned.

Narelle Grech's story is a very sad one. What happened to Narelle is the reason we need to make the information available to all donor-conceived persons. If there was any story that epitomised that need, it is her story. That is why I want to move my amendment. Narelle's quest was to achieve equality of information for all who were donor conceived. That was her goal. She was born prior to 1988, so she had no right to access any information. By the time she found out that she had bowel cancer, she had stage 4 bowel cancer and was terminally ill.

We know the story of the intervention of the Premier and how that led to Narelle finding her biological father, Ray Tonna, and how that worked out. A very poignant part of the story was their excitement when they found each other. Ray said he would have loved to have found her earlier, and that if only she had been allowed to contact him 15 years earlier, he would have been just as excited then. If they had been reunited 15 years earlier, when she was aged 15 rather than when she was 30, she could have then been informed about the family history of bowel cancer. At that age she could have been screened, as people who have that family history are, and her cancer would probably not have developed or it could have been prevented. Her story is inspiring but also very sad. There was the lack of information about her medical history and the lack of contact between two people who were happy to find each other, but her quest right up until the end to fight for equality when it comes to being able to access information is inspiring.

The story of Sarah Dingle was also featured as part of the program. Sarah is a journalist. When she found her record, she discovered that the record had actually been tampered with such that the code identifying the donor had been removed. This issue that medical records like that have been tampered with is very concerning. I know people are looking into what could have happened. That is why I raised more than two years ago, after the Law Reform Committee report had been tabled, the issue with regard to the histories and records held by the providers — that they be preserved and that the government take some action in that regard. We know that many of the records pertaining to those born before 1998 may in fact be non-existent or incomplete, or may have been tampered with. I would like to take the opportunity to say that somebody out there knows

what happened to those records. Somebody did something to them. The removal of the donor's code did not happen on its own; someone did that. Anybody who knows anything about that should come forward to rectify that situation.

The bill takes us a small step forward. We have taken a few steps every couple of years in this regard. We have had debates on this issue over the last six years. This bill still does not achieve for all donor-conceived persons full and equal rights to the information about their donors. That is my goal and the goal that I will continue to pursue. My goal is to achieve equal rights for all donor-conceived persons, no matter what time they were born. That is why I will move the amendment, and I commend that amendment to members of the house.

There were some problems when the retrospective amendments were made to adoption legislation, and there may be some problems caused in the lives of families or lives of some donors. However, that would not be as bad, as profound or as distressing as the ongoing lack of access to information for those people who were donor conceived. Those people who were donor conceived had no say in the law that was to prevail over their lives and decide whether or not they had access to information about their biological parents. They had no say in that. They are having a say now. I know that some donor-conceived people are not interested in that information, and that is fine, but there should not be a law on the statute book that prevents those donor-conceived people from accessing information. That access should be equal to all.

Even though the bill is flawed, I will try to amend it. I know Mr Jennings is intending to move some amendments. I have not got across all of the detail of all of them, but it looks like I will definitely support some of them. Some of them I may not support, but I think the bill will pass. It is not getting us all the way, as Lauren Burns said, so that is a missed opportunity, but even getting us some steps along the way is better than not progressing at all.

Mr EIDEH (Western Metropolitan) — I rise to make a brief contribution to the Assisted Reproductive Treatment Further Amendment Bill 2014 and state that we on this side of the house will not be opposing the bill. We will not be opposing it quite simply because we fundamentally believe that children who are conceived as a result of a donor are entitled to find out where they came from. We believe those people are entitled to have access to information about their donors regardless of when the donation took place. I have the utmost respect and admiration for those who are brave enough and, once this bill is passed, those who have not been in the past but are now inspired to enter on their journey of discovery to find out where exactly they come from and reconnect any pieces in their lives which may have been lost out of uncertainty.

I would like to thank my parliamentary colleagues who have made very valuable contributions to this debate and have acknowledged its importance in communities across Victoria. I would also like to acknowledge those who were a part of the former Law Reform Committee and the inquiry into access by donor-conceived people to information about donors. Its report states clearly the effects that the unknown has on donor-conceived people and why we need reform in this area to make this information accessible. I must state that it is extremely unfair, although hardly surprising, that this government has once again cherrypicked from the recommendations that were put forward by this inquiry. It is just another attempt by the government to rush through legislation in this Parliament's last sitting weeks.

We on this side of the house believe the Law Reform Committee's recommendations should be implemented in their entirety; instead, this bill continues to uphold inconsistent laws that will continue to make it difficult for people who are a part of the donor-conceived community. We on this side of the house believe that opening up the accessibility of vital information to donor-conceived people will finally give them the keys to unlock their cultural heritage and also provide an insight into their genetics and ultimately act as a preventive tool against potential genetic diseases.

Members of the house are well aware of the importance of genetic testing and choosing to undertake preventive approaches to ensure the greatest chance of success in fighting a serious disease. I am certain that no-one would disagree that it is our right to have access to this information, and this bill ensures that donor-conceived people share in that right too.

Motion agreed to.

Read second time.

Committed.

Committee

Clause 1 agreed to.

Clause 2

The ACTING PRESIDENT (**Mr Elasmar**) — Order! I call on Mr Jennings to move his amendment 1 to clause 2, which is a consequential amendment and is a test for his amendment 2.

Mr JENNINGS (South Eastern Metropolitan) — I move:

1. Clause 2, line 7, omit "subsection (2) and insert "subsections (2) and (3)".

The reason I move this amendment — and as you, Acting President, have identified, I am happy for amendment 2, the consequential amendment, to be tested by the vote on amendment 1 — is to try to bring the application of this legislation as far forward in time as is possible. Given that it is a very lengthy period in which we have been considering these issues, the operative date currently before Parliament does not seem as far ahead as it originally did when the bill was tabled in the Parliament nine months ago. When the bill was introduced nine months ago the opposition looked at it and prepared amendments that have been ready since December of last year in an attempt to bring the operative date forward. We would still like to do that. We would still like to look for the earliest opportunity for the bill to pass and receive royal assent, and our amendments are designed to amend this piece of legislation to enable an earlier date — not a later date — than 29 June 2015.

Hon. D. M. DAVIS (Minister for Health) — Whilst appreciating the points that Mr Jennings makes, the government will not on this occasion support his proposed amendment 1, which I understand acts as a test for his amendment 2. Mr Jennings has laid out a long time line, and I understand the history of this bill and the history of the issue. I am respectful of the points made by both Ms Pennicuik and Mr Jennings and more broadly the community.

The government makes no apology for the thoughtful and considered way in which this has been approached; firstly, after the Law Reform Committee tabled its report in terms of an interim response, and secondly, in terms of a further response after additional work had been undertaken by the Victorian Assisted Reproductive Treatment Authority (VARTA) at the request of the government. I accept there has been a thoughtful and considered approach here. I also accept the complexity of these matters and the genuineness with which people hold views — and often contrary views — and the legitimacy of those views. The government believes it has crafted a reasonable compromise, and when I look at this bill overall I think it has struck a balance between genuine competing rights and genuine competing desires that are completely legitimate.

In terms of the timing that Mr Jennings discussed, I put on the record that the Labor Party in the Legislative Assembly in recent months has obstructed the flow of business. This bill would have come to this chamber earlier without the obstruction of the Labor Party. It is important to put that on the record. I accept that there was a detailed and comprehensive process prior to that, but it is a little rich when the Labor Party has obstructed business in the lower house week after week, and that is unfortunate.

Ms PENNICUIK (Southern Metropolitan) — It is unfortunate that Mr Davis wants to make that sort of claim. Every week I look at the government business program in the Assembly, and I have not seen this bill included, so I take issue with that particular claim. This is an important piece of legislation, and it has been languishing in the Legislative Assembly for nine months. There is nothing in this bill that assisted reproductive treatment providers, VARTA or anybody else cannot comply with tomorrow. They all know what is in the bill, they all know what the debate has been about, and they all know about the bill that has been sitting in the other place for nine months. They have all been consulted, and they can comply with it tomorrow. There is no reason for any more delay.

As I mentioned in my contribution to the second-reading debate, there has been delay after delay in the introduction of reforms in this area to open up access to information for donor-conceived persons and to protect records about in-vitro fertilisation and assisted reproductive treatment (ART). No argument could possibly be put forward by the government for one more days delay in this respect. The Greens will be supporting Mr Jennings's amendment.

Hon. D. M. DAVIS (Minister for Health) — I thank Ms Pennicuik for the points she has made. As I said, there has been a period of detailed discussion on this bill. The bill is now here, and we are obviously seeking to pass it. It will take some time after the passage of the bill for the various ART providers to have their arrangements in order to manage the requirements and responsibilities in the bill.

Ms PENNICUIK (Southern Metropolitan) — I have to put on the record that ART providers will have

six months after the passage of the bill to get their arrangements in order. However, they already know what is coming, and they have known for nine months, so there is no need for this extra delay. In the interests of the persons who this bill deals with, we need those arrangements to be put it in place as soon as possible. There is no need for any delay.

Committee divided on amendment:

Ayes, 18

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

Noes, 20

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

Pairs

Viney, Mr	Elsbury, Mr

Amendment negatived.

Clause agreed to; clauses 3 to 5 agreed to.

Clause 6

The ACTING PRESIDENT (**Mr Elasmar**) — Order! I call Mr Jennings to move his amendment 3, which is a test for his amendments 5 and 6.

Mr JENNINGS (South Eastern Metropolitan) — I move:

3. Clause 6, lines 23 and 24, omit "**may be given to Registrar by individuals**" and insert "**to be given to Registrar**".

The reason that I, on behalf of the Labor Party, am moving this amendment is to try to add rigour to the scheme the government is introducing. Effectively it boils down to this. Under the government's scheme if a person holds information, whether they be a clinic, a doctor, an ART provider or what the bill describes as a natural person — and I will go to that issue with my next amendment — they may pass it on to the registrar. In our view that provision should be stronger, and we suggest the bill would be better if there were a mandatory requirement for the information to be provided. We are replacing the word 'may' with the word 'must' and applying a sanction. My amendment 6 applies a sanction of 60 penalty units if the holder of information does not disclose it to the registrar. The net effects of my amendments 3, 5 and 6 are to replace 'may' with 'must' and to put in place a penalty if the requirement is not complied with.

Hon. D. M. DAVIS (Minister for Health) — I note and understand the points made by Mr Jennings. The government believes the right balance has been struck in the bill and for that reason will not support his proposal. Notwithstanding that — and I mentioned this to Ms Pennicuik during the second-reading debate — the government is prepared, within two years of the act coming into operation, to look at the mechanics and operation of the act, review any difficulties there may be and look at any work that needs to be done to improve the operation of the act. I understand the points Mr Jennings has made, but a reasonable balance has to be struck, and the government believes it has been.

Ms PENNICUIK (Southern Metropolitan) — The Greens will support Mr Jennings's amendment. It improves the bill, given that the idea of the bill is not only to widen access to information but to make sure that information is available for people to access. At the moment, particularly with regard to persons conceived using gametes donated prior to 1988, information is held in disparate locations. It could be with former doctors or with clinics that were operated by one doctor and have since been taken over by another doctor. The whole idea of the regime is to have those records either transferred or copied to the central register — the Victorian Registry of Births, Deaths and Marriages or the Public Record Office Victoria, as the case may be. However, the bill also allows the registrar to have access to the information at the public record office, which is mainly the Prince Henry's information. The idea is to centralise the information so that it not only is accessible but is actually there as much as possible. If there is no requirement for that information to be transferred or copied to the register, it may not happen, and that would defeat the whole purpose of the bill.

Mr JENNINGS (South Eastern Metropolitan) — I would like the minister to outline to the house what he believes to be the status of the information that is gathered. Has the government taken the nearly four years that has been available to it to ascertain what the level of information is and what quality it is in? What support has the government given to the sector in terms of preparing for compliance with this legislation? After all this effort, what confidence can the minister convey

to the house about the status of the information that we currently think exists across the field?

Hon. D. M. DAVIS (Minister for Health) — The government is aware that there is available information out there, but not all that information is easily accessible. That will be a task that will occur after the bill has passed.

Mr JENNINGS (South Eastern Metropolitan) — When I was the minister I was asked by Ms Pennicuik at great length about these matters in December 2008. I think I was able to provide a more fulsome answer than the minister has just outlined to the house. I want to know what the government has been doing for four years. What resources have been allocated to this task that has been imminent since the recommendations to deal with this matter were tabled in 2010? The government inherited recommendations from the Parliament of Victoria on how to deal with this. How determined has the minister been to compile this information and provide more substantive answers than what I gave in 2008? Can the minister tell us what he has been doing for four years?

Hon. D. M. DAVIS (Minister for Health) — The point here is that information exists in a number of locations and compiling the information will be a significant task when the bill has passed.

Mr JENNINGS (South Eastern Metropolitan) — Is the paucity of the minister's answer confirmation that four years has been wasted and that the minister is not able to provide a more complete answer than I provided to the Parliament in 2010?

Hon. D. M. DAVIS (Minister for Health) — I will let that comment go through to the keeper.

Ms PENNICUIK (Southern Metropolitan) — In following up on Mr Jennings's issue with respect to his amendment, on 12 September 2012 I was provided with an answer to a question on notice to the then Minister for Health regarding the preservation of the records of donors, a matter which was raised in the Legislative Council on 23 June 2010 during the debate on my motion to refer the matter to the Law Reform Committee. I asked if any interim measures had been taken to preserve the records of donors, and if not, what plans the government had to protect these records. The answer to my question on notice told me where the known registers were with regard to the Victorian Assisted Reproductive Treatment Authority, the Public Record Office Victoria and the Victorian Registry of Births, Deaths and Marriages, but the minister also said:

> A further possible category of donor-related records pertains to information held by private practitioners who performed donor insemination procedures prior to the introduction of legislation. The collection and retention of these records was entirely at the discretion of the practitioners. It is unknown whether records generated by these practitioners were kept or destroyed. It is not possible to identify who these doctors are (were), whether they are still practising, what information (if any) they collected and whether or not any records created have been destroyed.

However, there was no response to what was actually being done about it.

Time is running out. It is 34 years since in-vitro fertilisation and assisted reproductive technology began. Many of the doctors who practised in that field are retired. We need to move quickly. We need to make it compulsory that those records are either copied or transferred to the central register and not, as the minister said, pass the bill in its current form and then undertake a review to see whether that is happening in 18 months or two years time. It needs to be put in place in the bill now. I urge all members of the chamber to consider this issue very seriously and to support Mr Jennings's amendment.

Hon. D. M. DAVIS (Minister for Health) — I appreciate the points made by Ms Pennicuik.

Committee divided on amendment:

Ayes, 18

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

Noes, 20

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

Pairs

Viney, Mr	O'Brien, Mr D. R. J.

Amendment negatived.

Business interrupted pursuant to standing orders.

QUESTIONS WITHOUT NOTICE

Hospital funding

Mr JENNINGS (South Eastern Metropolitan) — My question is to the Minister for Health. Earlier this week I asked the minister a series of questions about the outcome of his so-called negotiations with the commonwealth and the net position for Victorian health funding. He crowed about a $607 million increase he had achieved through those negotiations, yet the budget papers released in May show a $607 million increase, so perhaps the negotiations did not go quite as well as he purports. In previous years the published health funding guidelines have very clearly indicated what the commonwealth contribution through the national health reform agreement is to those funding arrangements, but in the guidelines released by the minister in the last week that figure is invisible. Can the minister explain to the house why that number has been taken out and why he has failed to show transparency about how much commonwealth money is coming into the health portfolio?

Hon. D. M. DAVIS (Minister for Health) — As always the member is a little sour about the fact our hospitals are getting more money. He is very unhappy that in his own region Monash Health, as we discussed the other day, is getting $70 million more — —

Mr Lenders — On a point of order, President, Mr Jennings asked the minister a question about government health administration, and the minister instantly launched into debate as to the motives of Mr Jennings asking him that question. I know this is only the start of his answer, but I put it to you that the minister opened his reply with a debating style and did not cease that style in so far as what he has given of his answer.

Hon. D. M. DAVIS — On the point of order, President, Mr Jennings asked about the funding guidelines that outline the amount of money each hospital and health service around the state gets. I was about to flesh that out with a real-life example from Mr Jennings's electorate.

The PRESIDENT — Order! On the point of order, the minister has only just commenced his contribution in response to this question. In posing the question Mr Jennings made some editorial commentary to support his question, therefore it is difficult for me to suggest that the minister might not respond in a similar way. At this point, as I said, he is very early in the response.

Hon. D. M. DAVIS — What is clear is that we have very significant increased health funding in Victoria. We have increased Victorian funding, we have increased commonwealth funding and there is growth funding. It is more; it is up, it is up, it is up. As always, Mr Jennings is sour, bitter and unhappy about a good result for Victoria. President, you will remember when Mr Jennings and Labor voted in favour of cuts for our hospitals. When former Prime Minister Julia Gillard and former health minister Tanya Plibersek cut $107 million out, those opposite supported those nasty and cruel cuts to our hospitals. But when our hospitals get more money, we get whinging, griping, moaning and groaning from the Labor Party.

As I said, the Monash example, from Mr Jennings's electorate, is a good one: $70 million more, more activity and the waiting list coming down. By the way, the snapshot showing our government performing better than the last health minister in the last government, based on Labor's little snapshot, which was put up by Labor on the web to show how hospitals and health services and the state are performing in terms of elective surgery outcomes — —

Mr Jennings interjected.

Hon. D. M. DAVIS — On the outcomes for the snapshot that you put up, our government is doing better than Daniel Andrews, the Leader of the Opposition in the Assembly.

Supplementary question

Mr JENNINGS (South Eastern Metropolitan) — President, you know that whilst I might editorialise I do not necessarily personalise the matter. Given that the minister cannot outline to us how much commonwealth money has come to Victoria for health, has failed in his guidelines and has failed in his series of answers to the Parliament, can the minister explain to us, so that at the very least the community knows, what the changes are to the classifications that justify the opaque nature of commonwealth funding? His justification may be that the classification system for the health system has changed in the guidelines that have been published in the last week.

Hon. D. M. DAVIS (Minister for Health) — I do not accept the characterisation of the member. He is off in some zone of his own, and I guess that is understandable in his case. But let us be very clear here. The funding has increased, the numbers are up and every hospital around the state is doing better. Hospitals in Mr Jennings's electorate — Dandenong, Monash, Moorabbin and Casey — are all doing better. Peninsula

is doing better. I do not know quite know what Mr Jennings's problem is, but let me be clear. When Mr Jennings had the opportunity to stand up for Victorian hospitals and health services, when Tanya Plibersek and Julia Gillard cut funding, he did not.

The PRESIDENT — Order! The minister has already covered that part in the substantive answer and is now very clearly debating. We have had a lot of that, particularly last year. It is done and dusted; that government has changed. I ask the minister to be more apposite.

Hon. D. M. DAVIS — Unfortunately the form is still there, President; that is the sad thing. But what is clear is that there is a better outcome for Victorian hospitals. We certainly will be working very hard to get the best outcome into the future, and we will not sell out Victoria like Labor did.

Healthcare workers

Mr FINN (Western Metropolitan) — My question without notice is directed to the Minister for Health, and I ask: will the minister update the house on any recent state government initiatives that improve safety and security for Victoria's health practitioners?

Hon. D. M. DAVIS (Minister for Health) — I indicate to the chamber that the government takes the safety and protection of healthcare workers very seriously. The sentencing bill that is being debated in the lower house this week is an important bill because it lays out a stronger set of penalties for those who assault or attack emergency workers, including paramedics and those in emergency departments, and lays out some very clear standards for the community.

But the government is going further than that. This week it introduced the Justice Legislation (Confiscation and Other Matters) Bill 2014 into the lower house. That bill will provide a further step to protect healthcare workers by providing for fines of 60 penalty units and up to six months imprisonment for those who assault a healthcare worker in the course of their work. These are very clear penalties. It is important to understand that inside our hospitals and health services we need to have healthcare workers who are safe and able to provide care in good safety.

Patients should also be safe in our healthcare institutions. The government has spent tens of millions of dollars improving the safety of our hospitals after the tawdry mess it found when it came to government, putting — —

Mr Leane — Tell us.

Hon. D. M. DAVIS — Let me tell you. Some 22 health services reported having both fixed trigger and personal duress buttons for staff that were not — —

Mr Leane interjected.

Hon. D. M. DAVIS — Yes, they are; they are going in all around the state. There will be more CCTV all around the state — in Maroondah, in Box Hill and in all our hospitals around the state. There are new design principles to make sure that new hospitals are safer. But we are also going to put penalties in place. This stands in stark contrast to the letter sent to Doug Travis on 20 November 2007 by the then Attorney-General in which he told the Australian Medical Association (AMA) that the government would not increase penalties for assaults on healthcare workers — a shameful and ridiculous letter that said, 'We won't increase penalties'.

Mr Jennings — It was superseded by government policy.

Hon. D. M. DAVIS — It was not. Labor did not bring in the increased penalties that the AMA was seeking. The AMA wanted stronger penalties, and Labor would not do it. Labor would not send a clear signal to people. Dan Andrews — Daniel or Dan Andrews — now the Leader of the Opposition in the Assembly, would not bring legislation forward to make healthcare workers safe. He left them high and dry. It is this government that is putting the legislation in, this government that is strengthening the arrangements, this government that is fixing the problems in our health services and this government that treats our healthcare workers seriously, unlike the previous government, which refused to do so to its — —

Mr Jennings — That's not true. You know it's not true.

Hon. D. M. DAVIS — It did. You refused to do it. That is what the AMA was told. That is what former Attorney-General, Rob Hulls, told the AMA; he said he would not increase the penalties.

Mr Jennings — But you know that was superseded.

Hon. D. M. DAVIS — It was not. That was not satisfactory. The AMA wanted these penalties, and it is very happy with the penalties. I pay tribute to the advocacy of the AMA Victorian branch in this area. I understand the significance of this matter to the AMA. I have met with it on this matter a number of times, and the Attorney-General has met with it on this matter. A legislative solution has been crafted which will

strengthen the penalties for those who assault healthcare workers. This stands in stark contrast to the weak, vacillating and hopeless activity by Labor when it was in government. It did not stick up for healthcare workers and was not prepared to be tough on those who assault healthcare workers.

Tarran Valley planning

Mr TEE (Eastern Metropolitan) — My question is to the Minister for Planning. It relates to planning amendment C36, which concerns a housing development proposed for 125 hectares in the Tarran Valley in Mount Alexander shire, just outside of Maldon. The planning scheme process was started some seven years ago, in 2007, and there is concern that events have transpired since, including the Black Saturday fires and the recommendations of the royal commission. There is also increased recognition in the area of the important values of the landscape, and this has been reflected by the council in its rural land study, which it adopted in 2014. Many in the community are concerned that the application that is before the minister does not give sufficient weight to the events of the last seven years. My question is: will the minister reject the current proposal so a new process which takes into account the issues that have emerged over the last seven years can commence?

Hon. M. J. GUY (Minister for Planning) — Let me get this right. In 2012 the member for Bendigo West in the Assembly, Maree Edwards, wanted me to allow houses to be built in bushfire-risk areas in spite of recommendations to the contrary, and now the Labor Party is saying that I should knock applications out in line with the recommendations Ms Edwards opposed back in 2012. I am struggling with the level of consistency here.

In 2012 I was asked by Ms Edwards to relax laws restricting development in water catchments. In 2013 I was asked for exemptions from bushfire planning rules for homes in bushfire-risk areas in Buntons Lane. Now, in 2014, Mr Tee asks for rezoning to be stopped because it is in an area of bushfire risk, which Ms Edwards has also been asking for. Also in 2014 we are being asked by the member for Bendigo West for rezoning to be stopped because it is present in water catchment areas. If we are going to look at the process in light of issues that have come to light today or in the last few months, which Mr Tee has asked me about, I will only say that a level of consistency should always be applied. Maybe at a first instance the level of consistency — —

Mr Jennings interjected.

Hon. M. J. GUY — Mr Jennings might learn something. Did not Mr Jennings just say that he does not play the man? Is that not what he said before? It is interesting. What I am saying about consistency relates to Mr Jennings saying, 'At least I don't play the man', which he does; or comments from Ms Edwards that if it is about bushfire-risk areas, 'Please build in those areas', and today, 'Don't build in those areas', or if it is about water catchment areas, 'Build in those areas', and today, 'Don't build in those areas'. Maybe the Labor Party needs to get a dictionary and look up the meaning of the word 'consistency'. Maybe the Labor Party should work out what on earth it stands for, because today I am being asked to oppose development that just a year or so ago Ms Edwards on her own policy guidelines was in favour of.

Supplementary question

Mr TEE (Eastern Metropolitan) — This is an important issue. It is an iconic part of Melbourne and I have visited the site. I have spoken to the locals, many of whom are here today. The minister has avoided the question I asked, which was to have a look at this issue with clear eyes and taking into account more recent events. I have been unable to persuade the minister to have a look at this in light of the bushfire recommendations and in light of other changes.

My question to the minister by way of supplementary is: will the minister take 5 minutes today to meet with the local representatives, who as I have said are here today, so they can have an opportunity to persuade him of the importance of preserving what is an iconic part of Victoria and an iconic landscape? Will the minister take 5 minutes today, meet with members of the community and give them an opportunity to persuade him to save this part of Victoria?

Hon. M. J. GUY (Minister for Planning) — This is just an old trick that we have seen about half a dozen times from Mr Tee when in fact Labor members are completely inconsistent on an issue. They roll up and say, 'Will you meet with someone on this or that?'. I had an advisory committee process that his local member asked for. He wanted an advisory — —

Mr Tee interjected.

The PRESIDENT — Order! Mr Tee is well aware that we do not refer to members of the gallery. The way in which he did that was certainly not courteous to the house.

Hon. M. J. GUY — As Mr Jennings interjected before, planning is not about lobbying the minister.

That is what the Labor Party says is what it should not be about.

Mr Tee — It is about the process.

Hon. M. J. GUY — It is about the process, as Mr Tee said. We have had an advisory committee process. It is an independent process that was asked for locally, was not influenced by me, was all done through a local process. It is a process that was set up by the Labor Party in government and which has been used for the last few years in this state. It was not set up by me. The advice has now been referred to the government after an independent advisory committee process that Labor itself asked for.

Ladder Hoddle Street

Mr ONDARCHIE (Northern Metropolitan) — My question is to the Honourable Wendy Lovell in her capacity as Minister for Housing, and I ask: can the minister update the house on any recent announcements that will support vulnerable young Victorians who are homeless or at risk of homelessness?

Hon. W. A. LOVELL (Minister for Housing) — I thank my good friend Mr Ondarchie for his question and for his ongoing interest in those who are less fortunate than ourselves. Last week I, together with a candidate for the Northern Metropolitan Region, Gladys Liu, was pleased to visit the Hoddle Street headquarters of Ladder to announce a $1.1 million investment to continue and expand the Ladder Hoddle Street program to support more vulnerable young people. Ladder is a partnership between the Napthine government, Ladder — which is an initiative of the AFL Players Association — Melbourne Citymission and Yarra Community Housing. It provides stable and affordable accommodation for two years for young people aged between 16 and 25, combined with day-to-day support, case management and a development program that supports young people to achieve their goals and aspirations by providing opportunities for employment, education and training and better health and wellbeing.

We were joined on the day by Melbourne players Jack Watts and Max Gawn. Max, Jack and I put together some kit furniture to fit out the new rooms that will be available to eight new additional residents at Ladder. This investment will continue the Ladder Hoddle Street program but will also expand it by 8 places from 12 to 20 places for young people so that they have an opportunity for accommodation and to continue their education. An evaluation of the program was carried out last year, and demonstrated excellent results, with all the young people, six months after leaving Ladder Hoddle Street, sustaining housing and also being engaged in employment or education or having completed educational qualifications. The Napthine government is building a better Victoria through its commitment to innovative, flexible ways of breaking the cycle of homelessness.

Hospital funding

Mr JENNINGS (South Eastern Metropolitan) — My question is to the Minister for Health. The flow of the minister's previous answer and the connection with this question may perhaps be lost, but on the last occasion he was on his feet indicating to us that everyone is doing better in hospitals. Can he explain to us why 23 hospitals in Victoria received a reduced increase in this year's budget, provided by funding from the Abbott federal government, compared to the Gillard federal government's funding that was provided the year before? Why is it that 23 hospitals actually received less growth than they had the year before from the government that was much maligned by him?

The PRESIDENT — Order! I wonder if the member could draw that question back to negotiations. In previous questions he has referred to negotiations between the state and federal governments, and I would like that to be implicit in the question asked on this occasion because I do not believe it is appropriate to move into areas where state ministers are asked to go outside their jurisdiction to explain a federal government policy. The member has implicitly asked for the minister to explain the Abbott government's policy and funding. I understand from the line of questions that the member has previously asked that there have been negotiations going on and that clearly that is the position from which he draws this question, but I wonder if on this occasion that question could be brought back to that, with just a remark.

Mr JENNINGS — Thank you, President, for the invitation to ask the minister the question again. Can the minister confirm that, on what they received the year before, in this year's Victorian hospital funding guidelines there are 23 hospitals that received a reduced percentage increase in their funding to deal with growth? As we understand, this year's funding is from the Abbott government's budget and last year's was from the Gillard government's budget. I am giving the minister the opportunity to explain why that may be the case. Given his portrayal that it is all good news, things are getting better and everything is growing, why is the growth rate slowing?

Hon. D. M. DAVIS (Minister for Health) — The member may not understand everything about commonwealth-state funding flows, but there are a number of components to those funding flows, and some of those funding flows relate to aged-care funding and to our health services that undertake a number of different services. In a number of areas 1 July this year saw funding from the previous government's aged-care package grow less strongly than many of our services would have liked. But what I would say is that we have also moved to a situation now with a new model where activity is a key determinant of outcomes, so hospitals and health services get paid more as they do more, year by year. Those with large growth rates in population and growth in activity will tend to grow more than others.

However, what is undeniably true is that we have a very good outcome in Victoria. We have increased growth in a number of key areas. If you look across the state, you see in aggregate there is a significant lift in funding. If you look at our health services across the state, you see they are being paid more this year than last year. That is a significant point. Increasing funding is what we are aiming to do. We are aiming to increase funding to our health services, but it is true to say that in our health services, particularly the smaller services which have a large aged-care component, commonwealth aged-care funding put in place by the previous federal government may impact on some services.

What I want to be quite clear about is that across the system there is a very significant increase in funding. I have been through the services in Mr Jennings's own electorate — Monash Health and Peninsula Health have had very significant increases in funding. There have been significant increases in funding in Mr Jennings's own electorate. There have been very good outcomes for health services across the state. There have been very good results for our hospitals around the state.

This stands in stark contrast to what Labor did when it had the opportunity to stand up for Victoria. What it did not do when the $107 million was taken was stand up. In fact it voted in favour of the cuts.

Supplementary question

Mr JENNINGS (South Eastern Metropolitan) — I will just take the opportunity, given that the minister is trying to share his overwhelming knowledge about these matters with me and the chamber, to encourage him to perhaps publish the details in the funding guidelines so that the hospital system and the communities it supports can well and truly understand what are the interlocking — perhaps confusing — items that the minister is describing to us, see how they stack up in dollar terms, how they translate from decisions of the federal and state governments and how they are rolled out to hospitals. Why does he not include them in the funding guidelines?

Hon. D. M. DAVIS (Minister for Health) — The government has published massive amounts of information about our hospitals and health services and about their performance and about their financial outcomes. Budgets come through each year, annual reports are tabled — and we are moving towards the annual report tabling season — —

Hon. D. K. Drum — Ramping data.

Hon. D. M. DAVIS — Yes, ramping data is very good. The previous government never released transfer time data.

Honourable members interjecting.

Hon. D. M. DAVIS — And transfer times are improving around the state. But let us be very clear here about when you assess the performance of the system overall and the performance snapshot. There was this thing called a performance snapshot that was put up on the web by the Labor Party. When you use the figures in the performance snapshot and you put the new figures for this financial year in there, you see the Victorian government now is doing better than the previous government. The performance snapshot shows a better performance — —

Mr Jennings — I'm glad you used my method, because when I used your method — —

Hon. D. M. DAVIS — I have to say — —

The PRESIDENT — Time!

Vietnam veterans

Mr RAMSAY (Western Victoria) — My question without notice is to the Minister for Veterans' Affairs. Could the minister inform the house on the Vietnam Veterans Day of remembrance that he attended earlier this week?

Hon. D. K. DRUM (Minister for Veterans' Affairs) — I thank Mr Ramsay for the question because it is an important period that we are in at the moment, as 18 August is universally acknowledged as the day when we pay our respects to our Vietnam veterans. It is just over 52 years since Australia, along with the United States and other allied forces, answered the call from South Vietnam for assistance to repel a growing

insurgence by North Vietnam. Australia's response to the war in Vietnam began with the arrival of the Australian Army Training Team Vietnam, and that happened in 1962. Over the duration of the next 13 years about 60 000 Australian army, navy and air force personnel served in Vietnam.

This Monday just gone we commemorated at the shrine, along with 500 or 600 Vietnam veterans, what happened 48 years ago. I was there with former Premier Ted Baillieu, who is the member for Hawthorn in the Assembly and heads up our Victorian Anzac Centenary Committee; Hugh Delahunty, the member for Lowan in the other place and a former Minister for Veterans' Affairs; and Dan Andrews, who is the member for Mulgrave in the other place and the Leader of the Opposition.

At the commemorative event we were able to relive some of the battles associated with the Vietnam conflict. The Vietnam commemorative date is set around the anniversary of the battle of Long Tan. While it was only one of the battles, it is one that has become synonymous with the conflict in Vietnam. Long Tan was a 4-hour battle in drenching torrential rain around a rubber plantation. Just over 100 Australian troops held off and defeated more than 2000 North Vietnamese personnel. They were supported by a couple of RAAF helicopters flying at treetop height. They supplied the forces with ammunition and blankets for the wounded. The date of the battle of Long Tan has come to be the day on which all those who served in Vietnam are remembered.

While a lot of statistics fly around in relation to the Vietnam War, the way in which our servicemen were treated upon their return should cause us a great deal of sorrow. Today it is up to every Victorian to acknowledge the individual hurt of our Vietnam veterans. It is a responsibility that we all need to take on board. We need to make it very clear that we are incredibly proud of the service and sacrifices of our veterans. We also need to acknowledge their incredible loyalty to each other, both to those who were not able to return and to those who did return. We need to acknowledge those who are going okay with their day-to-day life and those who are struggling with everyday pressures. We need to acknowledge their individual and unique sense of humour. It may be a shade darker than mainstream humour, but nevertheless it is unique. We also need to acknowledge their motto, which is 'Honour the dead but fight like hell for the living'.

Ambulance response times

Mr JENNINGS (South Eastern Metropolitan) — My question is to the Minister for Health. In October 2010 the Auditor-General recommended:

> That Ambulance Victoria publicly reports a comprehensive suite of response time indicators, including:
>
> > national measures of response times at the 50th and 90th percentiles
> >
> > a breakdown of performance by region/locality.

This recommendation was supported in principle by Ambulance Victoria, which said it would work with the minister's department to improve public reporting of response time data. How is the implementation of this recommendation being undertaken by the department and Ambulance Victoria?

Hon. D. M. DAVIS (Minister for Health) — The ambulance service is a very important part of our health system. The government has prioritised the strengthening of our ambulance service. We have put more than 539 additional paramedics on the road, and we have put additional capacity into the system, with new stations being built around the state, new capacities for our paramedics to deliver better services, the rollout of clot-busting drugs and the 10 mobile intensive care ambulance single-responder units in major country centres like Warrnambool, Horsham, Mildura and Shepparton. Those key steps have been taken to improve outcomes with Ambulance Victoria.

The government has also put more data into the public domain — survival rate data, including transfer time data that was never available under the previous government, and additional data in terms of outcomes for patients, in terms of pain relief outcomes and survival rates. These are all measures of outcomes for ambulance activity. Increasingly the government is focusing on actual results for patients, and the results are showing across the system with outcomes steadily improving. There are more staff, more resources and better outcomes.

I indicate very clearly to Mr Jennings that there is much more data in the public domain than was ever the case before. The government is determined to see good results for our ambulance service. The last health minister forced the merger of the old rural ambulance service and the metropolitan service. It was an unplanned and botched merger, and it has taken some years to repair the damage done by the previous health minister in this role. We have a stronger ambulance service now than we did three and a half years ago.

Mr Jennings — Release the information and show us.

Hon. D. M. DAVIS — You simply go to the website and you can see the status of emergency departments all over the state.

Mr Jennings — As they were three weeks ago.

Hon. D. M. DAVIS — No, as they are right now. Are they on bypass right now? We can go live to the performance website and see whether they are on the hospital early warning system (HEWS) or on bypass. Mr Jennings can look at real-time data about whether hospitals like St Vincents, the Monash or The Alfred are on bypass right now. That data was never available. Labor did not release the HEWS data once in its whole time in government. It was released to the Auditor-General in 2005, and that is the only time the HEWS data was released in Labor's entire period of government. It was hidden from the public, but now it is available in real time. We can now see whether The Alfred is on HEWS, we can see whether it is on bypass. We can see very clear outcomes in terms of performance time and outcomes for our major hospitals and the interface with the ambulance service. This is all important data that was hidden by Mr Jennings's government.

Supplementary question

Mr JENNINGS (South Eastern Metropolitan) — I specifically asked the minister a question about the 50th and 90th percentile and information relating to response times by locality. The minister in his answer did not respond to the question I asked. Is the minister aware, even though he ignored my question and ignored the substance of that information, that in fact as recently as last week Ambulance Victoria refused to release this information under FOI?

Hon. D. M. DAVIS (Minister for Health) — There are huge amounts of data published on ambulance performance, the interface with hospitals and the overall outcomes of ambulance service provision. The government has put more of that information in the public domain than ever before. HEWS data, transfer time data and emergency department data were never released by the previous government, but they have now been released. There is reporting in the budget. The release of performance data of various types in the system will continue under this government, unlike the former government.

Graffiti

Mrs KRONBERG (Eastern Metropolitan) — My question is directed to the Honourable Edward O'Donohue, Minister for Crime Prevention. Will the minister update the house about what the Napthine government is doing to help Victorians prevent and remove graffiti in their local communities?

Hon. E. J. O'DONOHUE (Minister for Crime Prevention) — Let me thank Mrs Kronberg for her question and her ongoing interest in the government's community safety agenda, particularly in the crime prevention portfolio. Graffiti is a scourge in our community. It affects people's perception of safety, and it is a crime, as Mrs Coote clearly articulated in her contribution earlier this week. The government has a very clear and comprehensive strategy when it comes to — —

Honourable members interjecting.

The PRESIDENT — Order! The minister to continue without assistance.

Hon. E. J. O'DONOHUE — Members of the opposition may scoff at the government's comprehensive strategy when it comes to tackling the scourge of graffiti, whether that be the 'Dob in a Tagger' campaign, the additional funding that the crime prevention portfolio has provided in partnering with VicRoads to remove graffiti on our freeway reservations or putting offenders to work to remove graffiti. I am very pleased we have removed over 2 million square metres of graffiti, or the equivalent of approximately 100 MCGs, as part of the graffiti removal program.

Mr Lenders interjected.

Hon. E. J. O'DONOHUE — To pick up Mr Lenders's interjection, the government is partnering with community organisations like the scouts to remove graffiti. Mr Lenders criticises such local initiatives and local campaigns. I know Mrs Millar has advocated for such partnerships, and she and I have worked with the scouts to develop that partnership.

We know where Labor stands on crime prevention, because it has sacked it from the shadow ministry. Under a Labor government there would be no crime prevention minister and these sorts of programs would not exist, because Labor does not understand crime prevention and does not understand community safety.

Another way that the crime prevention portfolio is partnering with the local community to respond to the

scourge of graffiti is by providing grants to local councils, which as a condition of this funding stream must partner with a local community organisation. I am very pleased to announce today that the coalition is providing almost $500 000 in funding for 26 projects across Victoria under the latest round of our graffiti prevention and removal grants. These grants provide an opportunity for councils to work together with the local community.

During the term of this government the coalition has provided more than $1.4 million for 83 projects to respond to and deal with the issue of graffiti. We are committed to partnering with local communities to tackle the scourge of graffiti. We believe in crime prevention. Unlike Labor, we believe in the value of a dedicated portfolio of crime prevention and partnering with local communities to respond to issues such as the scourge of graffiti in our community.

Fast-food outlets

Ms HARTLAND (Western Metropolitan) — My question is to the Minister for Health and is in regard to the report on the inquiry into environmental design and public health by the Environment and Planning References Committee, which was presented to this house in May 2012. As the minister would be aware, more than 62 groups made submissions to the committee, such as local government, health groups, transport et cetera. The committee made a number of important recommendations, such as asking the government to develop a planning mechanism that can be used by local governments to limit the oversupply of fast-food outlets in the community. As the government has not responded to this report, I ask: does the minister intend to do so?

Hon. D. M. DAVIS (Minister for Health) — As members will know, there is no formal mechanism for government to respond to Legislative Council committee reports. I suggest some questions may go to my colleague the Minister for Planning, Mr Guy, on some of the planning matters around the environmental design and health inquiry, and I believe a number of the points raised in that inquiry have found their way into aspects of Plan Melbourne. I would also say that it might well be a matter that the Procedure Committee might look at as we go forward.

However, fast-food outlets are a planning matter. I might add that the government is aware of views on those matters, but I think it is strictly a planning matter. Notwithstanding that, it may well be that steps can be taken in that area that would be of benefit to the community.

Supplementary question

Ms HARTLAND (Western Metropolitan) — Considering the campaign the minister launched last week on obesity, I would have thought that taking up this recommendation would have been quite obvious. It is about helping local governments develop a mechanism to limit the oversupply of fast-food outlets in the community. I know there was a certain amount of confusion in the government with the Minister for Health launching the anti-obesity campaign on the same day that the Treasurer seemed to be supporting McDonald's, but there is an important question about how governments deal across departments and ensure cooperation. How does the Minister for Health, who is obviously concerned about the issue of fast food, intend to deal with the issue of the oversupply of fast-food outlets in the community?

Hon. D. M. DAVIS (Minister for Health) — Some of these mechanisms do relate to the portfolio of my colleague and friend the Minister for Planning. I might add that he informs me, and I make this information available in the chamber, as I understand it, that in the Yarra Ranges he was the first planning minister in Australia to prevent fast-food outlets. I note that, so there you are. Ms Hartland might want to ask him questions about that point.

It is true that on Sunday the LiveLighter campaign was launched, and that is an important campaign. It has been recognised nationally as an important campaign. It is a campaign that engages with the community on a whole range of important messages about diet and exercise, and seeks to point to matters around obesity and overweight people and practical actions that people can take. I am very supportive of the campaign. I believe it will have a significant and useful impact across the community. I could, for example, indicate that this morning at the heart foundation — —

The PRESIDENT — Order! I thank the minister.

Regional Aviation Fund

Mrs MILLAR (Northern Victoria) — My question is to the Minister responsible for the Aviation Industry, the Honourable Gordon Rich-Phillips. I ask the minister to update the house on how the Napthine government is continuing to provide support for regional aviation assets in northern Victoria.

Hon. G. K. RICH-PHILLIPS (Minister responsible for the Aviation Industry) — I thank Mrs Millar for her question and her ongoing interest in the work of the Victorian government in upgrading

regional airports throughout Victoria. I have had the pleasure of joining Mrs Millar at a number of facilities in Northern Victoria Region over the last 18 months. In mid-July I was delighted to join Mrs Millar and Peter Walsh, the member for Swan Hill in the Assembly, in Kerang to announce that the Victorian government, through the Regional Aviation Fund, would contribute $626 000 to an upgrade of the Kerang Aerodrome. This facility is to receive a $776 000 upgrade, with the balance of the funding, $150 000, to come from Gannawarra shire.

I was delighted to join Mrs Millar, Mr Walsh and representatives of Gannawarra shire to announce that project in Kerang in mid-July. The project will deliver upgrades to the main north–south runway, resheeting of the east–west runway, upgraded fuel facilities, upgraded pilot-activated lighting facilities and the development of a new instrument approach system. These upgrades will ensure that the Kerang regional airport continues to be able to provide vital connectivity for the Kerang community. The project will ensure that the facility is available 24 hours a day and in all weather conditions.

The Victorian government appreciates the value of facilities like the Kerang airport to our regional communities. Following the project launch in mid-July I was delighted to receive from one of the ladies in the local community who had attended the launch a photograph of Kerang following the 2011 floods. The photograph clearly illustrates the value of the Kerang airport because it shows the Kerang township and airport surrounded by floodwater. It highlights that during that event in 2011 the airport was the only way in and out of the Kerang township. It was the only facility that could provide access to the township for the period in which the floodwaters surrounded Kerang.

The Victorian government, along with local communities, recognises the value of these facilities in supporting the operation and provision of emergency services, be it the police air wing or air ambulance operations, and supporting local commerce and tourism in those communities, as well as supporting aerial agriculture. The Kerang regional airport is a major hub for aerial agricultural operations in northern Victoria and, as was demonstrated very clearly in the photograph I received, in supporting fire and flood relief efforts.

Over the last four years through the Regional Aviation Fund the Victorian government has been delighted to support some 18 projects across Victoria, with contributions of more than $15 million. These projects stretch from Orbost in the east to Edenhope in the west and to Kerang and Cohuna in the north, among many others. These projects have been broadly supported across our regional communities. The Victorian government is delighted to partner with regional communities. We recognise the value of regional airports and we are delighted to work with local communities to ensure that they remain viable and sustainable.

Sitting suspended 12.56 p.m. until 2.03 p.m.

ASSISTED REPRODUCTIVE TREATMENT FURTHER AMENDMENT BILL 2013

Committee

Resumed; further discussion of clause 6.

Mr JENNINGS (South Eastern Metropolitan) — I move:

4. Clause 6, line 26, before "natural person" insert "registered ART provider, clinic, agency, medical practice or a".

Before question time and the lunch break I had led the committee through a number of changes to clause 6 that we were recommending to deal with the enforceability and the sanctions that may apply in terms of the release of information. Unfortunately from my perspective those amendments were not accepted by the government and therefore defeated in committee.

Notwithstanding that, I still think in clause 6 there is an opportunity for the bill to be more explicit in relation to the description of entities that may hold information and may have held information for the best part of 30 years, and to describe more fulsomely and a number of different ways in which to describe the holders of that information. The bill before the committee and indeed the act would refer to these holders of information as a 'natural person'. My amendment adds in a number of different categories, which include assisted reproductive treatment providers, clinicians and other organisations that may hold that information. That is the purpose: to enable a greater description of the entities that may hold this information and for the bill and the ultimate act to be more descriptive and more definite in who it applies to. That is the purpose of my moving amendment 4 to clause 6.

Ms PENNICUIK (Southern Metropolitan) — Again, given the urgency and the necessity to provide all information that is held not only by the assisted reproductive treatment providers who are mentioned in new section 52A, but also by a natural person, as in new section 52B, what Mr Jennings is proposing —

'registered ART providers, clinics, agencies, medical practices or a natural person' — does make it more of a catch-all and more specific as to the types of organisations that should be providing this information to the registrar.

Hon. D. M. DAVIS (Minister for Health) — I am informed that the matters regarding clinics are dealt with later, but the term 'natural person' requires all natural persons registered to take the actions required. There are only a small number of doctors, I am informed, who retain these records in their own right. Most of the records are held in fact by assisted reproductive treatment clinics at hospitals, or hospitals. Some family members of doctors who were once involved with ART may unknowingly retain these records after the death of the doctor. In these circumstances it is inappropriate for offences to apply to these records. Instead, it is proposed to approach relevant doctors and their personal representatives if necessary to ask them to provide any records they may have to the registrar.

Mr JENNINGS (South Eastern Metropolitan) — I thought the minister was temperamentally disposed to actually agree with the amendment, because it makes perfect sense, and it makes perfect sense even in the terms in which he has responded to me. In the terms of his response the bill limits this effect to natural persons. My suggestion to him is to take the burden off what is sitting as 'a natural person', which is what is in the bill, and put it on where the responsibility should lie, which is a registered ART provider, a clinic or a medical practice. It is bumping up from what is an individual offence to one that is actually a corporate offence in respect of where the information is to be held. I am likely to be helping the minister rather than hindering him in the administration of his legislation, in accordance with what he has just put to me.

Hon. D. M. DAVIS (Minister for Health) — I am informed that this section is designed to make the small number of doctors or their families who may retain records, and who are not connected with an ART provider, provide those records.

Mr JENNINGS (South Eastern Metropolitan) — Sometimes the minister patronises me to a great degree in the functions of the chamber. I do not want to patronise him, but I encourage him to look at the fact that I have not removed 'a natural person' from his clause. In fact I have inserted additional items beyond what is in his bill.

Hon. D. M. DAVIS (Minister for Health) — I am advised that the point is that the ART providers and clinics will tabulate material and provide it to the Victorian Registry of Births, Deaths and Marriages, but this section aims to enable those doctors and their families to provide it without being forced to tabulate it.

Ms PENNICUIK (Southern Metropolitan) — Where in the bill does it elsewhere refer to clinics, agencies or a medical practice, apart from a registered ART provider, having any obligation or encouragement to provide the information?

Hon. D. M. DAVIS (Minister for Health) — I am informed it is on page 3, part 2, section 5.

Ms PENNICUIK (Southern Metropolitan) — I am struggling to find that reference. In any case it does not do any harm because, as Mr Jennings has said, 'a natural person' is still there; and a medical clinic or agency might not associate themselves as being either an ART provider or a natural person. This amendment is helpful, and therefore the Greens will support it.

Committee divided on amendment:

Ayes, 17

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

Noes, 20

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

Pairs

Viney, Mr	Millar, Mrs

Amendment negatived.

Clause agreed to; clauses 7 to 9 agreed to.

Clause 10

The ACTING PRESIDENT (Mr Elasmar) — Order! I understand there are a few amendments from Mr Jennings and an amendment from Ms Pennicuik, but I will ask Mr Jennings to move his amendment 7 to clause 10.

Mr JENNINGS (South Eastern Metropolitan) — Acting President, thank you for giving me the call, given that the amendments I want to move, amendments 7 and 8 in my name, both impact on clause 10 and try to make it consistent with what I have argued in the debate so far, consistent with what I put to the Parliament in my private members bill and consistent with what is the effective operation as I would understand it of the government's intended legislative outcome, with the addition of providing additional benefits and rights to people born prior to 1988. I move:

7. Clause 10, after line 24 insert —

'(a) after "a donor treatment procedure," **insert** "regardless of when the gametes used in the procedure were donated,";'.

My variation to the regime that the government seeks to introduce is the practical implementation of providing for greater rights for people born prior to 1988, and that is the reason my amendment interlocks with the existing provisions of the legislation and the existing practice. People who were born during the period from 1988 to today have pre-existing protections in legislation and in practice in terms of compliance with the information that the legislation, or lack of legislation, in Victoria has allowed. If we allow different practices to develop in relation to the nature of information that is collected and as to what is accessible through those information sources, it will mean that in reality, even with our best intentions to create a one-tier system, there will be at the very minimum two systems on the basis of the changing legislative and accountability frameworks that will apply. My amendments are designed to try to simplify that and to make it more consistent but not to overturn that reality.

I put that on the public record in advocacy of my amendments 7 and 8, and also as an explanation for why I have a different policy intent in this regard from Ms Pennicuik, who will speak on her amendment in a minute. Her amendment would have the effect of repealing provisions in the act that would create a blanket system, but not in the practical implementation of it, being mindful of the variance in information that is available and has been gathered and of possible access to it. This is the reason I say I appreciate that I have the opportunity to speak first, because my amendment makes a simpler administrative change — a legislative framework change — to the government's bill and the act, as distinct from the far broader implications of Ms Pennicuik's amendment. In support of my amendments I have also given an indication of my response to Ms Pennicuik's amendment, but of course I do not want to stand in her way of moving it if she is afforded the opportunity.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! Before I call Ms Pennicuik and the minister, I wish to clarify that Mr Jennings has moved amendment 7 by itself, because amendment 8 is a different amendment; is that correct?

Mr JENNINGS — Yes, Acting President, and amendment 7 from my perspective tests amendment 8.

Ms PENNICUIK (Southern Metropolitan) — In terms of amendment 7 moved by Mr Jennings to insert the words 'regardless of when the gametes used in the procedure were donated' after the words 'a donor treatment procedure', I indicate that that wording is very much in the spirit of my entire argument, which is that there should be no distinction with regard to equality of access to information where it exists for all donor-conceived persons. I understand Mr Jennings's argument that his further amendment, amendment 8, will qualify that, but I think we are just talking about amendment 7 now, are we not?

The ACTING PRESIDENT (**Mr Elasmar**) — Order! We are talking about amendment 7, which is a test for amendment 8.

Mr JENNINGS (South Eastern Metropolitan) — I bundled the relevant issues together, and if I have caused some confusion, I apologise. I have moved amendment 7. I was talking not only about the effect of that amendment on my subsequent amendment 8 but also about the practical implementation of that and how it would differ from the arguments Ms Pennicuik may pursue in support of her amendment.

Ms PENNICUIK (Southern Metropolitan) — To confirm then, amendment 7 is a test for amendment 8. With regard to that, Mr Jennings and I are at one with amendment 7, and we do not depart far from each other with amendment 8, because I see amendment 8 as a more practical amendment. With regard to the previous amendments, we have been prosecuting issues concerning the existence of records and their location — in particular, noting that some of the pre-1988 records will not be on the central register. Under this bill there is only encouragement to send them to the register, so that problem will persist.

Given that, I anticipate that my amendment, which is due to be moved following Mr Jennings's amendment, will not be successful, and therefore the current situation will remain. My preference then is for Mr Jennings's amendments to the current situation rather than the current situation itself. Mr Jennings's

amendments are closer to my preferred position than the current situation is, so in that regard I will support Mr Jennings's amendment 7, which is a test for his amendment 8.

Hon. D. M. DAVIS (Minister for Health) — I thank both members for their points and for thrashing through the details of these matters quite clearly. Their amendments, as has been pointed out, move in the same direction. Mr Jennings's amendment does not go quite so far and focuses more on practical matters. The government will not be supporting either amendment, because it believes a balance has been struck in the bill that enables suitable outcomes. It will improve the situation for donor-conceived people, balancing rights and arrangements. To the extent that there will not be just one regime — in the sense of there being one set of arrangements, as Ms Pennicuik's amendment seeks to achieve — that is a reflection of the balance that has been struck in the bill.

I understand that people of genuine goodwill have quite different views in this area, and these are points that were discussed at great length through the inquiry process and the public consultation process. I have had a range of views in this area put to me directly in many meetings on these matters. But there is a balance to be struck, and the government believes the bill strikes the appropriate balance.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! I know it is a bit confusing, but I will put the question for Mr Jennings's amendment 7, which is a test for his amendment 8. If it fails, Ms Pennicuik will have the right to move her amendment, which is also to clause 10.

Committee divided on amendment:

Ayes, 17

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

Noes, 20

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

Pairs

Viney, Mr	Millar, Mrs

Amendment negatived.

Ms PENNICUIK (Southern Metropolitan) — I move:

> Clause 10, lines 28 to 30, omit all words and expressions on these lines and insert —
>
> "(b) paragraph (b) is **repealed**.".

The effect of this amendment would be to repeal section 59(b) of the principal act, which refers to the disclosure of information to a person born as a result of a donor treatment procedure. Section 59(b) sets up the three-tiered system for people to obtain information. All persons who were conceived using gametes donated after 31 December 1997 have full access to information. Persons conceived using gametes donated between 1 July 1988 and 31 December 1997 can receive information if the donor has given consent to the disclosure. All other persons — that is, those conceived between 1980 and 1988 — have no legal right to any information under the act.

The bill makes some changes in this regard, but it has always been my position that access to this information should be equal for all donor-conceived persons regardless of when they were conceived. That is why I have moved this amendment to the bill, as I have moved similar amendments to other bills in the Parliament.

Mr JENNINGS (South Eastern Metropolitan) — I feel somewhat conflicted because Ms Pennicuik has done the right thing by supporting me all the way, but I am going to baulk at supporting her all the way for the reasons I outlined when I spoke in support of amendment 7 in my name. The amendment I sought would have enabled the practical implementation of the current regime under the law. The unintended consequences of Ms Pennicuik's amendment would potentially make life difficult for many of the people who are providing information and could potentially lead to some unreasonable expectations about the reliability and the application of that information, because in the original forms of the legislation there is quite a wideranging disparity between the quality of the information and the purposes for which it has been gathered.

However, in terms of the spirit and philosophy behind what Ms Pennicuik started way back then and which

continues to this day, I support her. I look forward to the day when we can reconcile it in a legislative framework, but I do not think that is going to occur today.

Hon. D. M. DAVIS (Minister for Health) — I completely understand the sentiment behind Ms Pennicuik's amendment. In essence, this is a philosophical decision. Many in the community have differing views on this position, and I accept the sincerity and the significance of the view she is espousing here, just as in Mr Jennings's case I understand his longstanding advocacy in this area.

Equally I am aware of the points made by the Law Reform Committee in its inquiry and report. As the committee will appreciate, the government first brought down an interim response and then sought to do more work. The Victorian Assisted Reproductive Treatment Authority was commissioned to undertake work with 42 donors, and it found that there was no consensus on or discernible pattern of people's views on the pre-1988 period.

The government understands the natural enthusiasm and genuine need for people to have an understanding of their origins, as outlined in this bill. As I said, this is a genuinely philosophical discussion, but there are practical matters that affect donors who were given a clear indication and had a clear expectation that their identity would be not disclosed. These are legitimate points. The retrospective aspect of this bill is difficult for those people born prior to 1988, but it is one of those situations where things are balanced in a very delicate way.

I understand Ms Pennicuik's point that the right of donor-conceived people to have information about their heritage should be the prime consideration. I understand that philosophical point completely, but equally others hold a different view and believe that the commitments given to donors should take primacy. The work of VARTA and the wide consultation undertaken by the government has led the government to the view that this is the correct balance to strike because it is the correct position. It is without any rancour or disagreement with the sentiment with which Ms Pennicuik has moved this amendment that the government will unfortunately need to oppose it.

Ms PENNICUIK (Southern Metropolitan) — This is of course the core of the issue. It is more than a philosophical issue. One might say it is a philosophical issue, but it is also an issue about human rights. Section 59(b) is fundamentally inconsistent with the principles of the act to put the interests of the donor-conceived person first.

I thank Mr Jennings for his comments. I am disappointed he is unable to accept this amendment, but I accept the reasons he gave for not doing so. I do not think his amendment was all that different from mine; the only difference seems to be that his amendment 8 had a qualifying practical component to it. I first moved a similar amendment in 2008, five and a half years ago, and since then we have had a report from the Law Reform Committee and Mr Jennings's private members bill, which foreshadowed this bill, and lots of other discussions leading to more campaigning and more knowledge about the issue in the community.

Since 2008 we have also seen changes to the Victorian Assisted Reproductive Treatment Authority and the Victorian Registry of Births, Deaths and Marriages. The practical ability for these organisations to cope with the removal of this particular section of the act would be a lot better now that they have had more experience dealing with these issues. This bill gives VARTA a key role in counselling anyone who comes forward to request biological information, and the community has been canvassed much more widely on the issue to ensure that it understands the implications.

Lauren Burns said in her interview with *Australian Story* that access to biological information is the goal and will happen at some stage. I want to see it happen now, not in another two or four years when the next government, or whatever government is in place at the time, decides to review the changes to see how they are going. These people will be a few years older by then. More of them will have had children, and those children will also suffer the loss of that link with their biological family, including their grandparents, aunties and uncles.

The time has come for this amendment, which is why I am standing here insisting on moving it again. As I said, the community has moved ahead and knows more about it this time around. I repeat the point I made in the second-reading debate. I believe, just as with past practices for adoption, that mistakes were made, secrets were kept and people were barred from obtaining information about their biological parents. As we saw in that very emotional debate, it has ruined people's lives — as does this bill. That ruining of people's lives is the mistake we need to fix.

Lauren Burns said, 'It was almost like a splinter in my brain', and that she thought about it every single day. The donor is not going through that; they are not suffering at all. If they are confronted with the fact that

they made a donation and — surprise, surprise! — a real person was the product and wants to know about their biological heritage, the suffering they may experience pales into insignificance compared to that of the child. That is why this amendment should be supported, and I commend it to the house.

Hon. D. M. DAVIS (Minister for Health) — I completely understand the strong points made by Ms Pennicuik, and I too have seen the commentary of Lauren Burns. We are also all very familiar with the story of Narelle Grech and the positive steps that have since occurred on this matter. However, there are also different views. I was struck by an article by Alice Clarke that was published in the *Herald Sun*. Alice was Australia's first baby to be conceived through in-vitro fertilisation. She equally argued for those who have been donors, and I can understand those points as well.

This is one of those areas where you perhaps need the wisdom of Solomon to make what are difficult decisions. In this case the government has gone through a very thorough and sincere process. We have sought more information from donors — 42 donors provided extensive interviews and information to the Victorian Assisted Reproductive Treatment Authority, but there was no consensus position found even amongst that group. This bill has crafted a way to assist donor-conceived people. It will not answer every request that they have, which I think is correct, but it does strike a balance in a thoughtful way that seeks to preserve rights for donors while at the same time expand rights for donor-conceived people — though, I concede, it does not go as far as some would like.

Committee divided on amendment:

Ayes, 3

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

Noes, 33

Atkinson, Mr	Lewis, Ms
Coote, Mrs	Lovell, Ms
Crozier, Ms	Melhem, Mr
Dalla-Riva, Mr	Mikakos, Ms (*Teller*)
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 (*Teller*)
Elsbury, Mr	Pulford, Ms
Finn, Mr	Ramsay, Mr
Guy, Mr	Rich-Phillips, Mr
Jennings, Mr	Ronalds, Mr
Koch, Mr	Somyurek, Mr
Kronberg, Mrs	Tarlamis, Mr
Leane, Mr	Tee, Mr
Lenders, Mr	

Pairs

Millar, Mrs	Viney, Mr

Amendment negatived.

Clause agreed to.

New clause A

The ACTING PRESIDENT (**Mr Elasmar**) — Order! I call Mr Jennings to move his amendment 15, which is a test for his amendment 17 and proposes the insertion of a new clause to follow clause 10 relating to the disclosure of information. His amendment 17 is that a new clause follow clause 23.

Mr JENNINGS (South Eastern Metropolitan) — I move:

15. Insert the following New Clause to follow clause 10 —

'A New sections 59A and 59B inserted

After section 59 of the Principal Act **insert** —

"59A Contact veto by pre-1988 donor or person born as a result of a pre-1988 donor treatment procedure

(1) A person who donated gametes before 1 July 1988 may give the Registrar a contact veto that states that the person does not wish to be contacted by a person born as a result of a treatment procedure using the donor's gametes.

(2) A person born as a result of a pre-1988 donor treatment procedure may give the Registrar a contact veto that states that the person does not wish to be contacted by the donor of the gametes used in the treatment procedure.

(3) A contact veto lapses 5 years after it is given to the Registrar, unless it is earlier renewed or withdrawn.

59B Disclosure of identifying information if contact veto given to Registrar

(1) This section applies if —

(a) the Registrar receives an application under section 56 for information relating to a person who has given a contact veto; and

(b) the contact veto states the person does not wish to be contacted by the applicant; and

(c) the contact veto is currently in force under section 59A.

(2) The Registrar must not disclose identifying information to the applicant unless the applicant has received at least one counselling session about the implications of the contact veto from a counsellor —

(a) who provides counselling on behalf of a registered ART provider; or

(b) who provides counselling on behalf of the Authority.”.’

The reason I appreciate your assistance, Acting President, and the assistance of your support team at the table is to make sure that the committee is very clear about what we are doing. I am moving amendment 15 in my name. We have jumped a number of my amendments because, if successful, the new clause I am moving in amendment 15 would be inserted in the bill to follow clause 10. The logic of that insertion would be to provide for the establishment of contact vetoes under the regime of the legislation, which would provide for the rights of all parties to set limits about the way in which information would be available or flow from one party to the other.

Honourable members interjecting.

Mr JENNINGS — Ms Pennicuik is struggling to hear my contribution at this point, but I am pretty confident that Ms Pennicuik is not philosophically disposed to support my amendment, because she does not believe in contact vetoes and thinks that the onerous and highly personal and emotional act of being denied access to somebody from whom you have sought information would in its own way moderate behaviour. That may or may not be true. I can understand why it may be true, but under the law we need something better to provide those protections.

After consideration of these matters we in the Labor Party have established a series of amendments that ultimately elevate the status of the rights of the child, but we propose some protections for the donors in circumstances where donors may place limits on the information being available. For those reasons opposition members believe there should be appropriate protections in the legislation to provide for that. The effect of my amendment 15 is to create the regime through which contact vetoes would be put in place to protect the interests of either party, the child or the donor, and place a time limit on the application of those vetoes from when the registrar was advised of the veto, therefore placing limits about the transfer of information. That is why the opposition has moved that new sections 59A and 59B be added to the substantive act.

Chair, you have allowed me subsequently to argue that my amendment 17 would be similarly be tested. My amendment 17 proposes to insert an additional clause into the bill and add a new section in the substantive act, which is not only consistent with what I have described as the head of power to create contact vetoes but also provides for the way in which they would be understood to have effect by defining who they apply to and the sanctions that would apply if they were breached. In my logic, those are the reasons that those amendments are interconnected, even though they would sit in slightly different places within both the bill and the substantive act. Given that they are interlocking matters, if amendment 15 succeeds, for instance, there is a logic that the government would accept an implementation plan and the sanction that would apply to it. But if not, then I will seek other remedies if the government is not happy with that position. If government members come back to me and say they would prefer amendment 15 and not amendment 17, then I would fall on my sword in relation to amendment 17. But let us see what transpires in the next few minutes, because I am moving amendment 15 hoping it will test amendment 17.

Ms PENNICUIK (Southern Metropolitan) — Mr Jennings was correct; I did struggle to hear most of the first part of his contribution regarding this amendment because two of his colleagues were having a rather noisy conversation between him and me. It is sometimes an issue in the committee stage that you cannot hear what the mover of an amendment is saying about the amendment, particularly if you have not seen the amendments until the morning of the debate.

I think Mr Jennings was trying to explain to the committee why I may not support his amendment 15, which is a test for his amendment 17. There are a couple of reasons. The Greens have thought about this issue of contact vetoes quite a lot, in particular with regard to their inclusion in the Adoption Amendment Bill 2013, in terms of how they will work practically and the practical difference between them and a person making contact, whether directly or through a third party, and having a message conveyed to them, either directly or through a third party, that that person does not wish any further contact. I do not necessarily see a lot of difference between that system and a contact veto. I think some people think that allowing people to put a veto in place is a way of making it seem more acceptable.

In the existing three-tiered system those born between 1988 and 1998 are able to gather identifying information about their donors without any veto being able to be put in place. As this bill is just extending that

to the pre-1988 cohort of donor-conceived people, I do not really see why a new regime needs to be added on top of that. The point we made in the adoption debate was that if a person makes contact — whether they be a donor or donor conceived; or adoptee, adopter or relinquishing parent — and they are then told by the other person, 'I don't want any further contact' and they continue to make contact, we already have legislation in place to deal with that issue. We deal with that issue in the same way we deal with the issue for people who already know each other.

If one person says, 'I do not want you to contact me anymore' and the other person continues to do that, we have legislation in place to deal with it. I do not see why we need to add this extra level, particularly with the very large penalty of 60 penalty units as proposed in Mr Jennings's amendment 17. If you look at the Sentencing Act 1991, that level of penalty is usually applied to reasonably serious offences. I do not necessarily think it is appropriate in this context. This has been the consistent position of the Greens on the issue of contact vetoes.

As Mr Jennings said before, I have supported all his amendments to this bill so far. They are very good amendments and would have much improved the bill. It is a shame that the government did not accept the earlier amendments put forward by Mr Jennings, but I do not support his amendment 15.

Hon. D. M. DAVIS (Minister for Health) — I accept the concepts that Mr Jennings puts forward and I understand why he is putting them forward, but in this case the government does not believe it is necessary to add these additional clauses. The way the bill in its current form is structured means contact will only occur after VARTA goes through a careful process of finding records and assisting a donor-conceived person to find the likely donor. This would be done sensitively, and if there is no decision by the donor to allow contact or allow information, the issue should not arise in the way Mr Jennings suggests in putting forward the need for a contact veto. We believe the framework in the bill is sufficient.

In a sense I agree with Ms Pennicuik in that I am not sure that the sanctions proposed in Mr Jennings's amendment 17 are useful, and I understand the concerns some might have about them. This is a matter of striking a balance and creating an integrated framework in the bill. The government believes that balance has been struck — the bill improves the position of donor-conceived people in a way that is not unfair or unreasonable to donors. The amendment risks adding further intrusiveness into arrangements. If after the new act comes into operation practical matters come to light that need improvement, the government will be prepared to look at those. As I said earlier, we intend to review the act within a couple of years of operation, and if through that review there are matters that need to be improved, we will look at them at that time.

New clause negatived.

Clauses 11 to 14 agreed to.

New clause B

Mr JENNINGS (South Eastern Metropolitan) — I move:

16. Insert the following New Clause to follow clause 14 —

'B Consent

For section 67(2) of the Principal Act **substitute** —

"(2) If the person required to give consent —

(a) is dead; or

(b) cannot be found after the Registrar has made all enquiries that are reasonable in the circumstances of the case —

the consent may be given by the senior available next of kin of that person, within the meaning of the **Human Tissue Act 1982**."."

I encourage support for this new clause, because it is the 'keep hope alive' clause. It is moved to try to insert in the legislation a rigour and determination to get approval and consent for the release of information so that people will be better armed in seeking the knowledge that they crave in circumstances where the people from whom they need consent may no longer be with us or may not be able to provide that information. The provision I am seeking to add to the bill and the principal act relates to a situation where the person whose consent is required to release information is dead or cannot be found, so that people can try to get the release of that information through their next of kin consistent with other legislation in Victoria — that is, the Human Tissue Act 1982.

As I have just described it, this clause is about keeping hope alive; it is about keeping the options alive in terms of obtaining information that is seen to be precious and important to individuals. That is totally consistent with the principles of the act and the intention of this bill. I

would be absolutely amazed if this amendment were not supported overwhelmingly by the committee.

Ms PENNICUIK (Southern Metropolitan) — In the absence of the minister from the table, I take the opportunity to indicate the Greens enthusiastic support for Mr Jennings's amendment 16. It is a serious amendment because, as I have pointed out several times in the second-reading debate and in committee, time is moving on. It is 34 years since the first person was born under the in-vitro fertilisation process. By the time a future government may review the legislation it will be at least 36 years, and then it will be 38 or 40 years from the birth of the first IVF person. The possibility of the provisions of this new clause being needed already exists, but it will be needed even more as time goes on.

I say to the minister and the government that this is a good amendment which improves the bill. As Mr Jennings said, it will keep hope alive, and it provides further options for people who may well have been searching for a long time for information so that they do not have a barrier put before them that could easily be overcome if this very good amendment is agreed to.

Now that the minister has returned to the table, I indicate that I hope the government will support this very good amendment because, as I have just said, time is moving on — or, to put it another way, we are all getting older. The Greens will support the amendment.

Hon. D. M. DAVIS (Minister for Health) — I thank Mr Jennings for his amendment, which I concede does have some merit. I note the comments made by Ms Pennicuik. I am not trying to be difficult in saying that we have examined the amendment today for its practical effects. I have sought advice today on these matters and I am not in a position where I could indicate that we could support the amendment, although I do have a significant measure of sympathy with the objectives that Mr Jennings has here.

What I will indicate to Mr Jennings is that whilst we will not support the amendment at this point I will monitor the operation of the act if it is passed today to ensure, if this does seem to become a problem, that we will seek to deal with that. Certainly it would form part of a review after a period of operation of the act. So I have sympathy for the points Mr Jennings has made. I do not believe we have had the capacity to think through all the consequences at this point, but I do make a commitment to him that I will monitor this as the act is implemented.

Committee divided on new clause:

Ayes, 17

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

Noes, 20

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

Pairs

Viney, Mr	Millar, Mrs

New clause negatived.

Clause 15 agreed to.

Clause 16

Mr JENNINGS (South Eastern Metropolitan) — I move:

9. Clause 16, page 12, lines 3 to 8, omit all words and expressions on these lines.

I described my previous amendment as a 'keep hope alive amendment'. I now encourage members of the committee to have a look at the bill before us so they can understand the reason why I describe this as a 'delete the get out of jail card' amendment. Clause 16 of the bill seeks to insert proposed part 6A, which describes access to certain kinds of medical information. New section 68A is headed 'Application of Part'. New section 68B describes how a registered ART provider may disclose medical information, and various subsections describe how that should be done. New section 68C outlines the conditions by which the disclosure of medical information will occur — the various protocols by which the information will be released. New section 68D talks about the disclosure of information from the central register to a registered ART provider, so it covers the regulatory relationship between the registrar and the provider. So there we go; new sections 68A, B, C, D are all interlocking. Then we turn the page to new section 68E, which states:

68E Registered ART provider not required to disclose medical information under this Part

What is in that part? It goes on to say:

> Nothing in this Part requires a registered ART provider to disclose medical information to a person.
>
> _____".

What is the point of everything that has gone on before it? There are two pages of amendments to describe the flow of information and your rights and entitlements to get information, but then we turn the page and in one sentence it is taken away. Logic tells us that that is not a very good new section to have in the bill because, as I have described it, if information is being withheld, this new section totally defeats the effect of the two pages prior to it, which outline new sections with interlocking provisions and the mechanics applied to them. It is a 'get out of jail card', and that card should not be able to be played by anybody who wants to inappropriately withhold information.

Ms PENNICUIK (Southern Metropolitan) — The Greens strongly support this amendment as well. One of the reasons for the disclosure of information is to avoid the sort of situation that Narelle Grech found herself in, which was that because of a lack of any information about her donor she did not know she was at risk of bowel cancer. Not only did Narelle fight on her own behalf for changes to the legislation, she did it on behalf of the seven siblings she knew existed, who may also be at risk of bowel cancer and not know that — they may not even know they are donor conceived.

We owe it to persons like Narelle Grech and other persons in her situation to make sure that medical information that is known about a donor by the central register or by the treatment provider is passed on to those donor-conceived persons who may be seriously impacted upon by that information. That was one of the key findings of the Law Reform Committee's report entitled *Inquiry into Access by Donor-Conceived People to Information about Donors* and the reason to open up access to information. New section 68E is really the 'strikeout ball that comes before it' section and should not remain part of the bill, so the Greens will support Mr Jennings again — it is a very good amendment.

Hon. D. M. DAVIS (Minister for Health) — The point here is that the removal of new section 68E does not affect the proposed part 6A because new sections 68B and 68C are discretionary in operation. Registered ART providers have the necessary expertise, established processes and experience to respond to these requests, and registered ART providers are best placed to make decisions which have significant genetic, ethical and medical implications. It is appropriate that they have a discretion in determining when the release of information is appropriate.

Mr JENNINGS (South Eastern Metropolitan) — I am sufficiently literate to understand that new section 68B is headed 'Registered ART provider may disclose medical information'. The word 'may' conveys what the government's intention is there. The very first line of new section 68C(1) says, 'A registered ART provider may disclose medical information'. In fact those two provisions clearly indicate 'may' and enable the discretion to apply. What I do not like is a law that is written to not only say, in perhaps mealy-mouthed terms, that they may provide it, but then the government gives them a specific section that says they are not required to. The net effect of that change is to give a clear signal that we are not expecting you to give it up unless you wholeheartedly, 100 per cent, want to. That is the wrong signal to be giving in this legislation.

Hon. D. M. DAVIS (Minister for Health) — I do not accept the way Mr Jennings has construed this. I understand he may believe that is how it will operate. I do not believe it will. As I said, removal of new section 68E does not affect new section 68A, because the new sections 68B and 68C, as he has conceded, are discretionary in operation. Registered providers have the expertise, established processes and experience to respond to these requests and are best placed to make these decisions, given the significant medical, ethical and genetic implications. It is appropriate they have a discretion in determining when the release of information is appropriate.

Committee divided on amendment:

Ayes, 17

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

Noes, 20

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

Pairs

Viney, Mr	Millar, Mrs

Amendment negatived.

Clause agreed to; clauses 17 to 22 agreed to.

Heading to clause 23

The ACTING PRESIDENT (**Mr Elasmar**) — Order! I call Mr Jennings to move amendment 10, which proposes changes to the heading to clause 23. I consider this amendment a test for further amendments 11 to 13 relating to clause 23.

Mr JENNINGS (South Eastern Metropolitan) — I move:

10. Heading to clause 23, omit "**section 121A**" and insert "**sections 121A and 121B**".

As the Acting President has just outlined to the committee, it was my intention to formally move amendment 10 standing in my name, but the effect of this amendment is really given life by amendment 13. Amendment 13 outlines what the issue is, which is the concern of the opposition that at the moment there is no offence should anybody falsify, tamper with or contaminate the information that is now being required by law to be passed on to the registry. This amendment would add to the bill a sanction for falsifying records and then subsequently add that to the armoury of the act.

Given that the very first question I asked the minister today was about what confidence he has in the information set and what work he has done in four years to ascertain the validity, reliability and accessibility of the information that we are trying to seek through this legislation and that he was unable to provide me with an answer about what substantive work has been undertaken and the resources allocated to try to secure this information or make sure it is in a form that could easily be registered, four years have been lost in inactivity in relation to record keeping and compliance with this piece of legislation. This bill will be enacted imminently, but it has had one of the longest gestation periods in legislative history in Victoria.

We have serious concerns that either up until this point in time or from this point in time onwards until it is actually provided to the registry, some of that information may be diluted, contaminated or falsified in some way. We should make it very clear as a Parliament that we do not want that to occur and that we want the maximum integrity and reliability of that information. We should also insert such a provision in the principal act to that effect and provide a sanction for any falsification of records. That is the effect of my amendments 10, 11, 12 and 13.

Ms PENNICUIK (Southern Metropolitan) — The Greens will support Mr Jennings's amendment 10 to the heading to clause 23, which is a test for his amendments 11, 12 and 13. In amendment 13 to clause 23 Mr Jennings proposes to insert new section 121B headed 'Prohibition on falsification of or interfering with identifying records'. I agree with Mr Jennings. I raised earlier in the committee stage the fact that I had put questions on notice to the minister two years ago about this issue of the preservation of records held in various places around the state with regard to in-vitro fertilisation and assisted reproductive technology treatment.

A clear example of the need for this clause was brought to light in *Australian Story*, in the example of Sarah Dingle, a journalist who was donor conceived. She outlined the issues she had in making that discovery and not only making the discovery but finding that her records had been tampered with and the code of the donor removed from those records. As time passes records can be moved from one place to another, given that they may be held by one medical practitioner and then pass into the custody of another and still not make their way to a central register. Even if the records are held by a central register or in any other place, that does not preclude them from being tampered with. It is appropriate that there be some sanction against doing that because it is inappropriate to tamper with medical records. For those reasons the Greens support the amendment.

Hon. D. M. DAVIS (Minister for Health) — I understand what the member is seeking to do with this amendment, and I have some sympathy with it. I note that section 121 of the principal act contains a prohibition on the destruction of documents, and the member is seeking to add more in that regard, including at the bottom of new section 121A. Again I am not trying to make a point; I am just trying to explain that we probably would have been in a better position to accept the amendment if we had been given a bit more time to look at it and the implications in greater detail rather than only having received it today. Notwithstanding that, I understand the point the member is trying to make.

The government will monitor this; it will keep a close eye on it. It is true to say that part of this is in relation to those previous doctors who may have been involved in assisted reproductive treatment in the early days and who may now be older or their families may have their records. We want full cooperation from those people and individuals. That may not be assisted by a penalising method. However, as I said, I have a

measure of sympathy for this proposal, and we will monitor it closely.

Committee divided on amendment:

Ayes, 18

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

Noes, 20

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

Pairs

Viney, Mr	Millar, Mrs

Amendment negatived.

Clause 23 agreed to.

Clause 24

Mr JENNINGS (South Eastern Metropolitan) — I move the last amendment in my name that I will be moving today:

14. Clause 24, page 16, line 4, omit "6 months" and insert "3 months".

It was drafted about nine months ago, when the bill was originally introduced by the government. At that point in time I thought there was an urgency to make sure that we had the scheme up and running and that with the lead time of the implementation there would be an additional three months preparation time for the compilation of the information that is required and then the orderly transmission of it. I thought that in that lead time three months would probably be required after the act was enacted.

I was of that view then. Anybody who has been affected by the scope of this bill has seen this requirement coming for a very, very long time. Indeed, according to the provisions the government has, we still have a further 9 or 10 months until the government's act would be enacted and then a further 6 months before this current provision would kick into gear. So in effect this information would be transmitted 16 months from now. Let me say that I do not think my three-month amendment, which would bring that 16 months back to 13 months, is terribly unreasonable, and I encourage the committee to support it.

Ms PENNICUIK (Southern Metropolitan) — The Greens would support this amendment as well because earlier on I made the point that the bill has been in the Parliament for nine months and all the stakeholders who are going to be impacted upon by this bill absolutely know what is going to be happening, and if they are not geared up now one would be really amazed. I do not think the stakeholders need a further six months to get themselves ready, and possibly they already have in place some of the practices that the bill is codifying. I think three months is plenty.

Hon. D. M. DAVIS (Minister for Health) — The government will not support this amendment. I understand the points made by Mr Jennings and Ms Pennicuik. We believe this is a sensible set of steps. I have made my earlier points on these matters, and I do not believe there is a need to review those. But we will, as I have said, be monitoring the implementation, and also reviewing it within two years.

Amendment negatived.

Clause agreed to; clauses 25 and 26 agreed to.

Reported to house without amendment.

Report adopted.

Third reading

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

That the bill be now read a third time.

In doing so, I thank honourable members for their contributions. This is a foundational piece of change and reform. I place on the record my thanks in particular to the department, Estelle Frawley and others in the relevant section of the department, and the legal team in the department. I also particularly thank the Law Reform Committee for a very good bipartisan examination of this issue that provided a significant impetus for the process. As others have outlined in the chamber during the day, this is a process that has been much discussed for a long period.

It is my understanding that Victoria is the only jurisdiction to have legislated to provide donor-conceived individuals with retrospective access to

identifying information about their donors. I note the New South Wales government response to an inquiry released on 16 April 2014 mirrors many of the decisions of the Victorian government on these issues.

As I said earlier in the committee stage, this is a set of issues that are difficult to grapple with. People have very legitimate and honest opinions in this area. They have legitimate interests, and everyone can understand the desire of people to pursue their heritage. This legislation improves the situation. It puts a sensible regime around these issues and enables those who seek that information to, in many cases, obtain it. It equally respects many of the decisions that were made at an earlier point. As I have said a number of times through this process, I accept that people have a series of legitimate points here and people of goodwill have different concluding positions. It is important in this process to recognise that.

Having said that, I am very proud to have reached this position. I pay tribute particularly to Clem Newton-Brown, the member for Prahran in the Legislative Assembly, for his long advocacy in this area and to others in this chamber, particularly Ms Pennicuik and Mr Jennings, for their sincere views on these matters.

Motion agreed to.

Read third time.

LOCAL GOVERNMENT LEGISLATION AMENDMENT (ENVIRONMENTAL UPGRADE AGREEMENTS) BILL 2014

Second reading

Debate resumed from 7 August; motion of Hon. D. M. DAVIS (Minister for Health).

Mr TEE (Eastern Metropolitan) — I welcome the opportunity to speak on the Local Government Legislation Amendment (Environmental Upgrade Agreements) Bill 2014. The Labor Party is very pleased to see this bill, and it supports the bill. It builds on and expands on an initiative that the former government put in place. It does this by amending the Local Government Act 1989 so that all councils and not just the City of Melbourne can enter into environmental upgrade agreements.

These agreements are tripartite in nature between the council, the owner of the non-residential building and a lending body, which is usually a bank. Under the agreement the lending body will lend or advance money to the building owner to finance approved environmental upgrades. In turn the council levies a charge to cover the funds and repay the lending body. It is currently in existence for the City of Melbourne, and the repayment for the City of Melbourne is done through a rates charge. The current position is that these agreements are limited to the City of Melbourne, and this amendment is a simple amendment that enables all local government areas to enter into such agreements. As with the City of Melbourne process, it is entirely optional for the local government area to take up this initiative. As I said, it is an initiative of the former government. It has been extended by this government to cover all councils, and we welcome and support this extension.

This initiative is found in Plan Melbourne, and I am pleased that it has survived the process through which Plan Melbourne has been put, because as we know, Plan Melbourne has had a very chequered past. Many initiatives in Plan Melbourne were taken out by the Minister for Planning, who rewrote much of Plan Melbourne and who politicised much of Plan Melbourne by inserting his own views into the document. I am pleased that this part of the original Plan Melbourne survived the politicisation by the planning minister and his office.

I might add that on this side of the house we were quite concerned by the process that I have just outlined. It was a process that followed what the minister heralded in many a media release as an extensive process of consultation, which led to a draft document that included this recommendation. It also included a number of other initiatives which were cut out by the minister and his office. He then sought to insert a number of other initiatives including, as we now know, the dud east–west tunnel.

As I said, I am pleased that this provision survived the ministerial rewrite. I suppose I want to put on the record my concern that the minister saw fit to treat Plan Melbourne in this way. It disregarded the views of those in the community who had input into Plan Melbourne and the views of the committee members who drafted Plan Melbourne, five of the six of whom resigned, as we now know, in disgust at the rewrite. The remaining member, as we all know, has been moved on to another appointment by the minister.

This is a simple change, a welcome change and a remarkable change in view of the fact that it has survived the minister's unseemly intervention in the development of Plan Melbourne. This is a short bill, and my contribution and support will be equally short. As I said, we welcome this initiative.

Mr BARBER (Northern Metropolitan) — The Greens will be supporting this bill in the same way that we supported the scheme for environmental upgrade agreements (EUAs) that was established in the City of Melbourne Act 2001, and with this legislation that scheme will be rolled out to all councils in Victoria. An environmental upgrade agreement is a three-way agreement between the council, the building owner and the lending body. The lender finances environmental upgrades, the building owner — who could change over time — pays back the loan via their council rates, and the council charges an administration fee in return for being a, let us say, highly secured collector of revenue.

As I have talked about on a number of occasions in this place, we need programs like this that overcome the split incentive — that is, the lack of incentive for a landlord to pay for capital works that will benefit only the tenant, who pays the energy bills. My colleague Cr Leppert down at Melbourne City Council — a good friend of mine — says that EUAs are simply the best tool available to make the biggest emitter in Australian inner cities, the commercial building stock, more efficient.

It is likely that if this program, not only through the City of Melbourne now but throughout our local government areas, is successful, we will see a further drop in demand for electricity. This will have some interesting impacts on the electricity market. Against all the regular projections made by the Australian Energy Market Operator (AEMO), for the last five years energy use did not go up; it actually went sideways, and in the last part of that period it actually started to decline. The impact of that is that the AEMO has now had to revise its forecasts, and it informs us that for the foreseeable future there would be no risk whatsoever to energy security in Victoria and across Australia if as much as 7500 — and even under some of its scenarios, 12 000 — megawatts of power generation was to be withdrawn from the grid.

We know that right now a large proportion of fossil fuel-fired plants are either running at a very low rate or in mothballs. Today we saw the reporting from two major groups, Origin Energy and AGL. Origin reports that due to energy efficiency trends, historically warm winter weather — I wonder where that came from — and also the impact of solar energy in homes and businesses, its operating costs are increasing as its revenue is dropping.

Origin further broke down its drop in earnings, attributing $27 million of the reduction in sales volume to warm weather, $52 million to more structural changes from the uptake of solar photovoltaics (PV) and energy efficiency, and another large chunk to increased operating costs and loss of electricity customers to competitors. Overall earnings per electricity customer were down 23 per cent on the prior financial year. So making electricity-using fossil fuels is no longer anywhere near as profitable as it might have once been, while avoiding energy use, be it through efficiency or by generating it yourself on your own roof, is growing fast.

With figures just out, we see that in Victoria in June another almost 10 megawatts of solar PV was installed on roofs, despite the federal and state governments' best efforts to make it less attractive. Origin, which used to be part of that action, is now actually referring to something called 'revitalised solar business, smart meter technology, electric vehicles, distributed generation and storage' as its new direction — its new source of upsides that it can tell its investors about — but there is very little detail there.

It could be that a group like Origin — or maybe completely new firms will arise — will work together with other partners to take advantage of this bill that we are voting for here today. In fact the Property Council of Australia has already written to me, saying it is so worried about dangerous climate change that it wants this bill passed. No, sorry; in fact I lied about that. It said it would be an economic stimulus for the building upgrade industry. Either way, it is good to see it on board. It says this bill will have strong support from the property sector. Following consultation with its members, the property council has identified:

> … a series of further measures necessary to drive uptake of EUAs when the scheme is extended across all local government areas.

Those measures relate to the issue of implementation. The property council:

> … is concerned that the cost of implementing the scheme would be prohibitive for many local councils who may not have the adequate resources to administer the scheme.

It recommends the establishment of a central body to administer the scheme in Victoria in conjunction with the participating local councils. That is interesting because any time I propose a central body do anything I am accused of having some sort of socialist agenda, while the party of the free market to my left is right now running a protection racket for coal-fired power and the property council is asking us to develop a central body to administer this scheme.

Acting President, I am sure you are as enthusiastic as I am about the proposition of a Clean Energy Finance

Corporation model, which is the one Tony Abbott tried to get rid of at the federal level, being introduced here in Victoria. So far only the Greens are proposing it. We have called it a solar bank, but it would encompass investment dollars not only in solar but also in those areas of sustainability that do not necessarily attract mainstream finance from the usual institutions, which do not yet understand the products they would be investing in. Commercial energy efficiency is a classic example of what the bank proposed by the Greens could invest in. It could even work with other entities to provide extra private finance, as debt or equity, and also to catalyse the creation of the body the property council refers to.

The property council also refers to cultural and technical barriers. It says:

> … different owner types have different drivers for undertaking upgrades. As it stands, one of the biggest issues under the current scheme in operation is not being able to seize on the drivers for building owners to engage with EUAs. For instance, some building owners can see energy efficiency measures as an added burden to existing responsibilities …

The council has observed:

> … that owners of older and less energy efficiency buildings do not always possess the appropriate skills and technical expertise in building upgrades to benefit from EUAs.

Finally, the property council refers to the requirement for a tenant agreement. It believes:

> … an appropriate EUA mechanism could bridge the 'split incentive issue' that acts as a barrier to existing building upgrades …
>
> Unfortunately, the current requirement for a written agreement from tenants means the process serves as a big process risk for building owners who find the requirement onerous and time consuming.

There is still further work to be done by a government or a coalition of some sort with the energy and vision for this sort of thing.

It is likely that the implications will be far reaching. Inner cities, particularly in Melbourne with its growing population and employment, have been a large source of growth in demand, which distribution businesses have relished because it has allowed them to build up their networks and earn a regulatory profit and a bit of cream on top of that. This is happening particularly in one area of inner Melbourne, in Brunswick, where a massive electricity terminal station upgrade is occurring to meet this so-called need for extra energy. We could have avoided spending those millions of dollars as well as the disruption to the local community if a bill like this had come forward years ago or if a visionary minister — Peter Batchelor was certainly not that — had seen the opportunity to reduce energy use in the Melbourne CBD rather than just building bigger assets that we now have to pay for.

I have noticed — and this will be of interest to you, Acting President, with your background in the energy market — that distribution businesses are having another whack at it. They are about to enter into discussions with the regulator about how much they will get paid to run the poles and wires for the next five years. However, even before that argument starts, they are very quietly getting together and rewriting the rules under which the argument will be had. Given the focus in politics and across the community for many years on increasing energy bills, we should be surprised we are not hearing more about this. That would be because normal people do not spend a lot of time working their way through the Australian Energy Regulator's rather turgid website, nor do their eyes get caught by a document titled *AER Preliminary Positions on Replacement Framework and Approach for Victorian Businesses — May 2014*, but on some sleepless nights I work my way through obscure government websites.

I am always attracted to anything that has the names CitiPower or Powercor attached to it, and I have had a bit to say about those sorts of companies in the past. What I have discovered is that they are actually way ahead of me. They have seen what is happening in the energy market and the fact that them getting greedy meant consumers got smart. They are seeing the decline in demand and have a solution for that. Instead of being paid a certain amount for every kilowatt hour of electricity they sell, which has been the arrangement for the last five years, they are proposing that they just get paid full stop, no matter what. It is otherwise known as a revenue cap, as opposed to the average weighted price they have been getting in the past. It is interesting to read not only the regulator's proposal but also that distribution businesses have been actively and successfully lobbying to move down this road.

It is a somewhat nuanced submission from the relevant department here in Victoria — I cannot keep up with the names — which is having a bob each way on a few different things. There are some suggestions that streetlights do not necessarily have to be owned by poles and wires companies. There are a few councils, certainly in the electorate I share with you, Acting President, that would not mind running their own streetlight systems or at least getting them out of the claws of the poles and wires companies. The companies are not having that, according to their submissions, but the councils are making their views heard. The state

government is currently not backing them, but I would like to see it come out a bit stronger. It should not be just in new housing estates or where completely new assets are being created that services such as street lighting become something the community can own or at least something more providers can contest for rather than being the perpetual private monopoly that distribution businesses have been used to. Who knows, street lighting may even become the subject of an environmental upgrade agreement.

I could spend all day talking about the changes that are happening in the energy market and the resulting impacts not just on the economy but on the environment. I could talk about the changing mix of generation as we move towards cleaner sources and systematically, through the application of market competition, away from polluting energy sources and about the fact that once-passive power users are now becoming very smart about the way they use power and are even generating their own.

I could talk about the opportunities for more embedded generation demand management which, from what I can see, appears to be a very small part of the way the energy grid operates in Victoria. In a practical sense it appears that less than 100 to 200 megawatts of demand management are regularly deployed in Victoria. I could talk about the closure of the Point Henry smelter, the impact that has had on the operation of our energy supply and the fact that we are still collecting the smelter levy to the tune of some hundreds of millions of dollars each year although we are longer paying it out — at least not to Point Henry. I could talk about what some of that money could do to build a better future for Geelong rather than simply going into consolidated revenue to be used on the government's next pet project.

Alternatively, if the government is so concerned about energy prices, it could remove part of the levy and give it back to regular electricity bill payers. Take your pick; it is your choice. The government could spend it on a transition for Geelong or give it back to the consumers. These are issues that I am sure I will have a lot of opportunity to talk about over the next 100 days, not to mention over the coming years of Parliament. In the interests of moving this bill along, as it is a very important bill and one I support, I will end my contribution there.

Mr ELSBURY (Western Metropolitan) — It is a pleasure to rise this afternoon to speak on the Local Government Legislation Amendment (Environmental Upgrade Agreements) Bill 2014. Mr Barber said he could speak all day on the bill and it certainly felt as if he did.

In any case, I welcome the support of those opposite but lament the rhetorical gibberish of Mr Tee and the emotive embellishments of Mr Barber, because all this bill sets out to do is give local governments across Victoria the same powers that the City of Melbourne currently has to be able to enter into environmental upgrade agreements (EUAs). It amends the City of Melbourne Act 2001 to remove the EUAs from that act and place them in the Local Government Act 1989, hence enabling all Victorian municipalities, including the City of Melbourne, to have access.

What is an EUA? Certainly it sounds like yet another union, but it is actually a mechanism for enabling a commercial business to refit a commercial building by allowing a lender to provide finance for the upgrade of the building. Local councils collect the repayments as a property charge levied through the rate system. The council then passes on those funds to the lender as repayments. It is a bit of a convoluted system, but it provides for an important mechanism that will encourage lenders to provide small long-term low-interest-rate loans to building owners.

It allows the lender to receive the same benefits as a council would when the owner of the property defaults on the loan or enters bankruptcy by allowing lenders to have first charge on the land right. Lenders are able to enjoy the same protections of a council whereby, should someone be unable to pay their rates, the first debtor to get paid is the council. In this case it will be the council and the lender that gets that benefit.

This is going to provide for a huge number of projects. The City of Melbourne has been running the EUA scheme since 2011. It currently has a total of $12.6 million worth of works that have been undertaken in the city of Melbourne alone, providing $507 000 in energy savings each year. EUAs are currently available in New South Wales, where so far three have been signed, and South Australia has also committed to introducing them. It is vitally important to remain competitive and provide our community with the benefits that come with EUAs.

Some of the projects here include 460 Collins Street, which has replaced its existing chiller air conditioning system in order to reduce energy use. That was a $400 000 project that will deliver an $11 000 annual saving in energy bills. There is also 123 Queen Street, which will install a new 380-kilowatt trigeneration system to generate electricity, heating and cooling. There will be occupancy sensors and double glazing

installed as part of the retrofit. That is a $1.3 million investment by the company that owns the building. The environmental improvements will deliver a $180 000 annual reduction in energy bills. The list goes on. There are quite a number of projects happening in the city of Melbourne, and through this legislation the rest of the state can benefit as well. There are many buildings right across Victoria — in Bendigo, Ballarat and even in the western suburbs of Melbourne — that will benefit from this scheme.

The bill provides lenders with greater confidence to enter into relatively small long-term low-interest loans with commercial building owners who wish to undertake these types of refits to their properties. For the building owner the benefit flows through reduced energy, water and waste management costs.

It is not just the reduction in electricity use that can draw these benefits; saving water or reducing waste will also be supported by EUAs. More efficient water use is important and we should all be trying to use as little water as we possibly can, whether by modernising toilets, using rainwater to flush toilets or even installing new evaporative cooling equipment that uses less water. All those things can help in reducing demand on potable water supplies. They also give us greater use of our water resources without requiring us to use the desalination plant in Wonthaggi that is costing us $1.8 million per day for the next 26 years. Indeed it has already cost us quite enough.

Energy-saving light globes like fluorescent lights, light emitting diodes, or LEDs, halogen lights or any other technologies that might come forward in the next few years and could save on energy costs can be supported through this initiative. Waste reduction by way of re-using resources and materials could also be supported by the agreement, making it a very worthwhile initiative. EUAs do a lot for the building industry by increasing investment as well as protecting iconic buildings across Melbourne. I commend the bill to the house.

Motion agreed to.

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

Third reading

Motion agreed to.

Read third time.

FREEDOM OF INFORMATION AND VICTORIAN INSPECTORATE ACTS AMENDMENT BILL 2014

Second reading

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

Ms LEWIS (Northern Victoria) — The opposition will not be opposing the Freedom of Information and Victorian Inspectorate Acts Amendment Bill 2014. By any measure the government has not covered itself in glory with its handling of freedom of information, and the present bill seems to me to be another disingenuous exercise in window-dressing in an attempt to be seen to be doing something. As we know, the Cain Labor government introduced the first freedom of information legislation 32 years ago in 1982, and the contrast between those reforming years and the appalling record of the Baillieu and Napthine governments is stark.

Victorians have every right to have high expectations of the coalition because FOI was one area in which it did have a policy for the 2010 election; it was for genuine freedom of information. The coalition promised that there would be structural reform, and the centrepiece was the establishment of a specialised and appropriately resourced Freedom of Information Commissioner who would be independent of government and be empowered to monitor set standards and review departmental responses to FOI requests. That was a high-minded coalition promise from opposition.

In 2012 the government enacted legislation that did indeed create the FOI commissioner with the power to review agencies' FOI decisions so that unsatisfied applicants no longer needed to take their complaints to the Victorian Civil and Administrative Tribunal (VCAT). The idea was that the commissioner would complete the review within 30 days and that the procedure could be conducted in a more direct and informal way than is possible in the VCAT process. The act states that the departments and agencies whose decisions are being reviewed are required to assist the commissioner.

Under these amendments to the Freedom of Information Act 1982 the commissioner is empowered to hear complaints about the way in which an FOI application has been dealt with. For example, where an agency says that a document that an applicant is seeking does not exist or cannot be found, or where an agency delays the handover of the document, an applicant can bring their concerns to the commissioner. But let us not forget that the proclamation of the

amendments to the act in December 2012 was accompanied by furious criticism of the government's poor handling of its FOI responsibilities in the first two years of its administration.

At this point there is no-one in this state other than members of the government who believe that the coalition's election promises have been honoured. The new commissioner herself was placed under pressure over her allegedly poor FOI track record in her previous job of director of licensing approvals at the Victorian Commission for Gambling and Liquor Regulation. The sad reality is that the FOI regime of the Baillieu government was found wanting when contrasted with the fulsome coalition promises made during the 2010 election campaign. Government agencies stood accused of playing politics by holding up requests until the last possible moment so as to frustrate and discourage applicants, and there was widespread dissatisfaction with the logjam in the Premier's office itself.

In April 2012, a little over a year into the coalition's term, the Auditor-General confirmed what Victorians already knew — that the release of information under FOI was being significantly delayed by the Premier's private office and department. The Auditor-General documented evidence showing that FOI applications sent to the Premier's office were held up for 68 days and that the average delay was more than 40 days.

Those applications should have been turned around within a maximum of five days. This could have been achieved because, after all, they were only in the Premier's private office for noting, not for detailed processing and interrogation. It was becoming clear that it was unlikely that the establishment of an FOI commissioner would make a difference because, as the Auditor-General confirmed, the problems could not be addressed by a commissioner; they needed to be addressed by the government itself.

As the legislation was debated in the community it became very clear that the FOI commissioner was not the solution to FOI dysfunction, because the office was not empowered to review decisions made by ministerial officers, could not review agency claims that a document was cabinet in confidence and could not set enforceable standards.

Labor was concerned — and said so at the time — in late 2011 that the FOI commissioner legislation is flawed not only because the commissioner's jurisdiction is limited but also because it enables the government to change a decision while the FOI commissioner has a review underway, which undermines the process and permits delay. The government would have the power to frustrate the release of documents because it could appeal a decision of the FOI commissioner to VCAT. That is what the opposition said at the time this government was advancing its legislation to establish the Freedom of Information Commissioner.

I now fast-forward to the present bill, the Freedom of Information and Victorian Inspectorate Acts Amendment Bill, the purpose of which is to support and enhance Victoria's integrity regime by enabling the appointment of assistant freedom of information commissioners. Assistant FOI commissioners will have the same powers as the FOI commissioner to conduct reviews of decisions by government departments and agencies when complaints are made; will encourage as little formality as possible; will enable the commission, with the consent of the complainant, to provide a copy of the application for review; and will clarify the time limits and notification requirements of the review process.

As I understand it, the bill confirms the position I have mentioned whereby an agency, after a complaint is under review by the FOI commissioner, may on its own initiative make a new decision, thus restarting the clock, giving the agency another 45 days to make that decision. In the meantime the applicant has little choice but to cool their heels and wait for a determination on their initial application for a review.

The bill sets out the process for managing matters when conciliation is unsuccessful in resolving a complaint and specifies the penalties that apply when the FOI commissioner's office breaches the confidentiality of documents. I guess the motivation for this piece of legislation is the forlorn hope that it may somehow replicate the FOI commissioner so as to share the load and turn around the inadequacies of the government's mismanagement of FOI procedures.

The fact is that no-one is impressed with the government's efforts to fix the problems, as the government assured Victorians it would do at the last election when it fell into office. The FOI system has been characterised as being in disarray and struggling against a flood of complaints that have been made against government department officials whose ministers are preventing them from complying with the provisions of the FOI legislation.

Now, more than a year after the appointment of the FOI commissioner, the community is dismayed that matters are worse, not better. Difficulties arise from the fact that ministers' private office staff are involved in determining whether information should be provided.

Some applicants for reviews appear to prefer VCAT to the FOI commissioner because it is a quicker and more coherent process. The FOI commissioner's office is overloaded and falling further and further behind in processing the flood of applications for review owing to the lack of progress in requests which, as we know, ministerial staffers are delaying, presumably because they know they cannot release the requested documents and protect their ministers at the same time.

The disarray in which the government finds itself is entirely of its own making, because it has from the beginning failed to step up to government with anything like the necessary confidence. It has been unable to make decisions, hence the delays and prevarications that lead to cover-ups and secrecy. This is what has led the government to locate the FOI process in the Premier's office — because it does not trust that the public service will protect its shoddy and shabby process. This has led in turn to a politicisation of the process and the delays and consequent complaints government members are now up to their necks in.

The other matter the opposition has referred to in consideration of this bill is the budget allocated to the office of the FOI commissioner. We have seen reports that this has been drastically reduced, from $3.5 million in the 2012–13 budget to $2.7 million in the current year. Of course performance targets and productivity have suffered. The opposition will not be opposing this bill but it is difficult to see how its passage can extricate the government from the mess it has made of the FOI process in this state, which was once a national leader in open and transparent government.

Mr BARBER (Northern Metropolitan) — I know standing orders require that one votes either aye or no on a bill, but perhaps we could change that and create a third option: meh. There is almost nothing in this bill, or in fact in any FOI bill that I have seen in my time here, that does anything to serve the worthy and high-minded principles that were established by then Premier John Cain in the Freedom of Information Act 1982.

Mr Cain had a real struggle to get that legislation past his own public service in the very early days of his new government. During a conversation I had with him about this, he pointed out that the act itself has not been changed very much over the years. What has massively changed over that time is twofold. Firstly, the structure of government has changed. So many government services are now being delivered by the private sector in an outsourced or privatised way, but nevertheless with exactly the same level of Westminster accountability requirement for the delivery of those services, as well as the expenditure of taxpayer funds. The second change is in the attitude of the public servants who administer this act, they having received some very clear political guidance from a succession of Labor and Liberal governments.

It is absolutely fascinating to read the case law on this, because we see the names of opposition MPs at the time such as Bracks, Thwaites and Hulls. Those people went in to bat from a position of opposition to try to get documents under the FOI act, and once they were in government a new set of names started coming to the fore, such as Wells, Ryan and all the rest of them, as they went in to try to get good outcomes from what is a fundamentally broken system.

Mr D. R. J. O'Brien interjected.

Mr BARBER — There is the odd Barber. Thank you, Mr O'Brien. Interestingly, in my seven and a half years of using the act, despite finding it incredibly frustrating, I think I may have been a little more successful than others when it has come to getting the government to blink first and hand over what it should have handed over on day one.

I read the debate on this legislation in the lower house. Seemingly the Labor and Liberal parties had a debate about who is worse when it comes to administering the act. During the debate Ms Elizabeth Miller, the member for Bentleigh, spoke for quite some time on completely the wrong bill, which nobody seemed to notice she was doing. The debate moved on and Mr Pakula, the member for Lyndhurst, laid out what might be the length of some of the statutory processes under the existing act. He noted that the department has 45 days to respond to any request and that the FOI commissioner then has another 30 days to conduct a review.

Mr Pakula also noted that in many circumstances the FOI commissioner cannot process a request within 30 days, but the request is already up to 75 days old by that stage. The commissioner might refer the matter back to the department to make a fresh decision, and the department then has another 45 days, which brings it to 120 days. There are then three business days to advise the commissioner whether a fresh decision has been made. When the FOI commissioner is finally able to make a judgement, the department has 60 days to decide whether to appeal to the Victorian Civil and Administrative Tribunal (VCAT), or if the applicant is the loser, they can apply to VCAT. Mr Pakula said, 'By now we are up to 200 days plus'.

I notice the way that Mr Pakula, the speaker for the opposition, recoiled in horror at the idea that it might take 68 days to get a ministerial office to answer a request. When Mr Pakula was the Minister for Public Transport and his erstwhile friend and colleague Mr Pallas was heavily promoting the western half of the east–west link, I spent 18 months and $15 000 in legal fees only to be given the document I had sought, with a couple of little bits covered up, on the metaphorical courthouse steps. That was Victoria's submission to Infrastructure Australia when the government was seeking money for what even then was very clearly a completely dud western half of the east–west road tunnel.

Yet in the last week or so we have seen Labor opposition members going through this piece of theatre where they rush off to VCAT asking to see a copy of the business case. We have already seen the business case for the western half; it is on my website as we speak. Yet for all this prancing and high-minded talk about transparency and the invoking of the name of John Cain, there is not a skerrick of policy coming forward from the opposition on this, and there will not be.

It will be that cycle all over again, where members go from opposition into government and suddenly it is a matter of simply looking at any document and going through the act to find a convenient-sounding source of exemption so that a request can be refused and they can start to test whether the applicant is serious about pursuing this through the courts and how long it is going to take. For that matter, if they can simply delay the release of the information for a long period of time, until decisions and other political issues have overtaken it, then so much the better. I think it was Napoleon who said, 'It is not necessary to suppress information forever, just until it no longer matters that the information comes to light'. Acting President, if Napoleon did not say that, perhaps you could correct me as to the source of that quote.

The act and the exemptions contained within it have barely changed over the years despite a bit of tweaking. What has changed is the culture and that no party, Labor or Liberal, is interested in following the spirit of the act or, for that matter, adhering to the purpose of the act that we are amending here today — that is, to provide a presumption of the release of information unless very particular exemptions apply. In fact whenever that information is politically inconvenient the message goes down from the minister's office to a lowly FOI officer — I am not using the word 'lowly' in terms of their personal commitment but in terms of their status in the pecking order — and they are given a signal, 'No, we don't want that to go out. Just go through the act and find what might be the most convenient-sounding source of exemption'.

Those exemptions need to be dramatically cut back. The area of commercial-in-confidence information has been expanded dramatically through a series of bad case law. Exemptions in the area of personal information were intended to protect individuals in their private affairs, but when I put in an FOI request for the CCTV footage of ticket inspectors picking up a young woman and dropping her on her head in the middle of Flinders Street station I was told that information might contain the private affairs of an individual. Twenty CCTV cameras all pointed at the scene in the middle of a crowded station, but they said, 'That's private information; we can't give it to you'. They did eventually. That was simply one of the many try-ons they used during that particular exercise.

'Cabinet in confidence' now means anything the government wants it to. You can put a document on a trolley and wheel it through a cabinet room, and suddenly it forms part of the deliberations of cabinet. It should only be those deliberations themselves — that is, the argument that went back and forth between the ministers — that should be kept in confidence for that very narrow but important purpose of maintaining working relationships within the cabinet. Vast quantities of material, including business cases and consultancy reports that were prepared externally — not just for cabinet but for government itself — cannot just be piled up and be said to form part of the deliberations of cabinet. That has to be dramatically cut back on, or we will start to see cabinet meetings held in a document storage facility with tonnes of paper all around members of cabinet so that the entire business of government becomes secret and no longer accessible to the public.

The FOI commissioner's role in all of this has been absolutely minimal. In fact I have given up using the FOI commissioner, since most of my applications are overtime anyway due to the slowness of the government. I can appeal straight to VCAT on the grounds of a failure to determine and hence avoid the whole merry-go-round. I am yet to see an example of the department appealing against an FOI commissioner decision. It has simply added another time-consuming bureaucratic step to the process. So much for this bill's minor tinkering with the FOI act. There are some small matters in the bill relating to the Victorian Inspectorate, and these matters have been considered by my colleague Ms Pennicuik, who usually covers those matters.

The provisions proposed here are okay, although they bring us back to the same issues of concern that Ms Pennicuik has had in the past about minors having to appear before the Victorian Inspectorate. The bill ensures that in practice not only minors who are in the community can be summoned but also those in detention. Minors are particularly vulnerable individuals who must have access to a lawyer. It is hard to envisage when a particular circumstance would arise that someone aged 16 to 18 years should attend before the Victorian Inspectorate.

We note that in the statement of compatibility the minister says the process requires the Victorian Inspectorate to take the best interests of the child into account, and specific criteria have to be satisfied before a minor is summoned. Further, the statement says the Victorian Inspectorate process has scope for a child's interests to be represented by a legal representative, parent or guardian. It is essential the safeguards put in place by the government are upheld, and given the seriousness of appearing before the Victorian Inspectorate I suggest that a legal representative for the minor is crucial.

The bill contains minor amendments that deal with the withdrawal of complaints and to further facilitate the hearing of complaints and evidence from persons in detention. It confirms that a detained person may make a complaint to the Victorian Inspectorate and outlines the process for it. It also enables the Victorian Inspectorate to direct that a detained person who has been issued with a witness summons is to be delivered into police custody to attend before the inspectorate as required.

The bill also provides specific penalties for a corporation found guilty of an offence under the act, and provides for criminal liability if an officer of the corporation is knowingly concerned in or party to the commission of the offence.

Mr D. R. J. O'BRIEN (Western Victoria) — It is with great pleasure that I rise to make a brief contribution on the Freedom of Information and Victorian Inspectorate Acts Amendment Bill 2014. This important bill continues the coalition's commitment prior to the election, which it has fulfilled, to introduce the office of the Freedom of Information Commissioner and to end the abuse of FOIs that had occurred under the previous government, and which in fact pervaded that government. With our legislation and with the establishment for the first time in Victoria of an independent FOI commissioner the coalition government is endeavouring to continue with the most significant reforms to FOI legislation since its introduction more than 30 years ago.

Two members made contributions to the debate today. I was rather disappointed to note that a new member, Ms Lewis from the Labor Party, spent most of her contribution talking about ancient history and not about the bill. I believe she was confusing the administration of the bill under the Labor government with what she said was attributed to the coalition. Mr Barber in his contribution picked up a lot of that. He has had some involvement in this issue over the years.

What I want to do now is talk about the bill and the amendments it seeks to make to the operations of the FOI commissioner. I had a previous involvement as a lawyer in some FOI cases, but I will not go into ancient history about them — —

Mr Barber — How many members in this place have done an FOI?

Mr D. R. J. O'BRIEN — I have certainly done a number of FOI cases, Mr Barber. I would like to talk about what the bill does in relation to the office of the FOI commissioner, which was established on 1 December 2012. The bill provides that the Governor in Council may appoint one or more assistant commissioners to assist the FOI commissioner by, on referral from the FOI commissioner, conducting reviews of decisions of agencies in accordance with part VI of the Freedom of Information Act 1982 and, on referral of the FOI commissioner handling complaints in accordance with part VIA of the act, assisting the FOI commissioner in the management of the office and undertaking any other functions conferred under the act.

I am a member of Parliament's Accountability and Oversight Committee, which is another institution that has been created by the government. Mr Ronalds, who is in the house, is also a diligent member of the committee. It is chaired by the member for Kew in the other place, Mr McIntosh; the deputy chair is the member for Melbourne in the other place, Jennifer Kanis, and the member for Bellarine in the other place, Lisa Neville, is the other member of the committee. We are ably assisted by executive officer Sean Coley and research officer Scott Martin. That committee is in a sense the parliamentary accountability that is provided to the FOI commissioner and aspects of the Victorian Inspectorate, which is also touched on by this bill.

Without wanting to pre-empt the committee's report, the transcript of evidence provided by the FOI commissioner, Ms Bertolini, to the public hearings that

were conducted by the committee very briefly summarises some of the great innovations to the important role of the FOI commissioner. They include the educative role and the role of the FOI commissioner in relation to FOI applications in this state. As was said by Ms Bertolini:

> With respect to the strategic direction of the office, the role of the FOI commissioner, as you know, did not exist for the first 30 years of administration of FOI in Victoria, and because of that an initial responsibility has been to educate agencies covered by the act of what this significant change means for them. This has been done by a variety of methods, including addressing departmental secretaries, presenting at a forum organised by the Victorian Government Solicitor's Office, meeting with principal officers of the larger agencies covered by the act and sending written information to all agencies that are covered under the act.

With that and the assistance that will be provided by the assistant FOI commissioners, the bill tightens time limits and notification requirements for agencies that are reconsidering an earlier decision to refuse access to documents. The amendments do not extend the time frames for completing reviews; rather they clarify the steps for completing the process, including requiring an agency to inform an applicant of a fresh decision and requiring the applicant to notify the FOI commissioner within 28 days if the applicant does not agree with the decision.

The bill also gives the FOI commissioner a new discretion to allow an applicant or complainant to make an application for review or complaint out of time if the reason for the delay is an act or omission of the agency involved. Other amendments are made to improve the efficiency and operation of the office of the FOI commissioner in relation to delegation and also in making preliminary inquiries, conducting a review or complaint and making a fresh decision where the FOI commissioner may rely on advice and the assistance of the office's staff.

Finally, the bill also makes amendments to the Victorian Inspectorate Act 2011 to establish a process for detained persons to provide information or make a complaint to the Victorian Inspectorate, and it prescribes that the person in charge of the detained person must assist in that process. The bill also enables the Victorian Inspectorate to issue a summons to a detained person to appear before the inspectorate. These amendments will ensure that the Victorian Inspectorate is able to receive relevant information known to a person in detention.

The bill has been the subject of significant and targeted consultation with key stakeholders, including the FOI commissioner and the Victorian Inspectorate. With those words, I commend the bill to the house.

Motion agreed to.

Read second time.

Third reading

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

> That the bill be now read a third time.

I thank members for their contributions.

Motion agreed to.

Read third time.

CHILDREN, YOUTH AND FAMILIES AMENDMENT (PERMANENT CARE AND OTHER MATTERS) BILL 2014

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

> In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (the 'charter act'), I make this statement of compatibility with respect to the Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill 2014.
>
> In my opinion, the Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill as introduced to the Legislative Council, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.
>
> **Overview of bill**
>
> The bill makes a number of amendments to the Children, Youth and Families Act 2005 (the act), including:
>
> > Amendments to the provisions for the protection and permanent care of children. These amendments are directed at promoting more timely decision-making, improving permanency for children in care, simplifying protection orders and streamlining case planning.

Increase in penalties for offences relating to the protection of children.

Changing the time frame for lodging an application for breach of a good behaviour bond.

Providing consistent time frames for lodging court reports.

Abolishing the Youth Residential Board and transferring its functions to the Youth Parole Board.

Enabling the entering of private premises in the execution of a warrant issued on cancellation of parole of young persons.

Human rights issues

Provisions for protection and permanent care of children

Section 17(1) of the charter act recognises that families are the fundamental group unit of society and are entitled to be protected by society and the state. Section 17(2) of the act provides that every child has the right to such protection as is in his or her best interests and is needed by him or her by reason of being a child. Section 13 of the charter act provides that every person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Children's Court protection orders involve interference with families, but I consider that the interferences authorised by the bill are reasonable and justified, and achieve an appropriate balance between the rights of families and the rights of children.

The Children, Youth and Families Act and the amendments in the bill give effect to the principle in article 9 of the United Nations Convention on the Rights of the Child that 'children should not be separated from their parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child'. While the act and bill authorise the intervention in families where children are in need of protection, they do so subject always to the principle that the best interests of the child are paramount (section 10(1)). The basis for intervention in a family is clearly set out in the act as are the procedures for doing so. The Children's Court of Victoria is primarily responsible for making such orders. The act and amendments contained in the bill also recognise and protect the distinct cultural rights of Aboriginal persons contained in section 19(2) of the charter act. In particular, new section 176 inserted by clause 98 of the bill requires that case plans for Aboriginal children address the cultural support needs of the child, and new section 323 inserted by clause 62 imposes restrictions upon the making of permanent care orders in respect of Aboriginal children.

There are, however, two aspects of the bill that require more detailed consideration. Firstly, the bill provides for a greater emphasis on permanency for children who are the subject of child protection orders. Secondly, the bill makes amendments to the provisions relating to ongoing contact between a child and their family where permanent care orders are made.

Increased emphasis on permanency

The amendments contained in the bill retain and reinforce the importance of a child remaining in the care of their parents or other members of their family, where this is possible. The importance of the family is recognised as part of the best interests principles in section 10 of the act. Pursuant to new section 276(2) inserted by clause 17 the court may only make a protection order removing a child from the care of their parents where it has considered an order allowing a child to remain in the care of their parents and rejected such an order as being contrary to the child's best interests. In case planning, under new sections 167 to 169 inserted by clause 97, family preservation and family reunification are the preferred options (see new section 167(1)).

However, the bill makes amendments that place greater emphasis on the importance of permanency to the development and wellbeing of children. The *Protecting Victoria's Vulnerable Children Inquiry* report identified the need for more timely permanent care arrangements for a child who is unable to be reunited with their biological family. Delays in making decisions and providing alternative permanent or long-term care arrangements for children can be harmful and are not in their best interests. It is important in the best interests of the child that alternative permanent or long-term care arrangements are made if the child is not able to be permanently reunified with their family within a reasonable time. In practice, if family reunification is achievable, it usually occurs within the first 12 months. The chances of successful family reunification diminish significantly after that. If family reunification is not achieved within two years, it is highly unlikely to occur.

The bill provides for express recognition of the need for expeditious decision-making and 'permanency' in the protection and promotion of a child's best interest (clause 6). New section 276A, inserted by clause 18, directs the court to have regard to certain matters in determining whether to make a protection order. These matters bear upon whether family reunification is realistic and the desirability of minimising time in temporary care.

New section 287, inserted by clause 26, provides for a family reunification order. A family reunification order is one which confers parental responsibility and sole care of the child upon the secretary. The child is removed from the care of their parent(s) and placed in temporary care while the department works with the family with a view to reunifying the child with them. An initial order can be made for a period that has the effect of the child being placed in out-of-home care for up to 12 months. However, section 294A inserted by clause 34 places limits upon extensions. An extension may only be granted if there is compelling evidence that it is likely that a parent of the child will permanently resume care of the child during the period of the extension. An extension cannot be made if its effect would be to place the child in out-of-home care for a cumulative period of more than 24 months. Although a family reunification order cannot be made beyond two years, it does not necessarily preclude family reunification in the event that circumstances change (see, for example, new section 289(1)(d) inserted by clause 30).

New section 289, inserted by clause 30, provides for care by secretary orders. These orders confer parental responsibility on the secretary and remain in force for two years. Pursuant to new section 294A(2), inserted by clause 34, such orders can only be extended if neither a permanent care order nor long-term care order is appropriate, or if there are exceptional circumstances (new section 294A(3)).

I consider these provisions are compatible with human rights. Although they may be seen as involving greater interference

with family in that they will result in long-term and permanent care orders being made earlier, they do so for the protection of the best interests of children and are also intended to promote earlier family reunification.

Contact between children and their biological family where permanent care orders are made

A child's best interests are usually served by preserving their identity, connection to the culture of origin and relationships with their biological family. However, whether this is in fact the case, and the manner in which these goals are achieved, varies significantly for children who are in permanent care.

The bill includes a number of amendments to the provisions for the making of permanent care orders and the imposition of conditions relating to ongoing contact between a child and their biological family. Currently, section 321(1)(d) requires the court to include conditions concerning contact with the child's parents. In practice, these conditions have often proven to be inflexible and can end up operating in a manner that is contrary to the best interests of the child. In many cases regular direct contact with a parent can be extremely disruptive to a child in permanent care, and can end up being the cause of a breakdown in the placement.

The bill amends section 321 to include a range of measures that are designed to protect the child's ability to maintain a relationship with their family, while providing for greater flexibility in any conditions imposed to ensure the best interests of the child are served. In particular:

Clause 59 inserts a provision that requires the secretary to be satisfied that a person proposed as a permanent carer will, to the extent that it is appropriate and in the child's best interests, support and encourage the child's contact and relationship with the child's mother and father, siblings by birth and any other person of significance to the child.

Clause 60 provides for a mandatory condition that the person caring for the child must, in the best interests of the child and unless the court otherwise provides, preserve the child's identity and connection to the child's culture of origin; and the child's relationships with their biological family.

Clause 60 provides for the court to include conditions in the best interests of the child concerning contact with the child's parents. In imposing such a condition (or other conditions under sections 321(1)(e) or (f)) the court is directed to have regard to certain matters including relating to permanency, and ensuring sufficient flexibility over time.

I consider that these provisions, which place the emphasis on the child's best interests and recognise the role of permanent carers in protecting those interests, are compatible with the rights of families and children in section 17 and the right to privacy in section 13 of the charter act.

Disclosure of information

Section 13 of the charter act provides protection against unlawful and arbitrary interferences with privacy. This right is relevant to clause 136 of the bill which amends section 129 to clarify the power of the secretary to disclose records and information in relation to out-of-home carers, for the purpose of protecting a child.

I consider that the interference with privacy authorised by the amendment is neither unlawful nor arbitrary. The amendment is necessary and appropriate in order to ensure that children are able to be protected, as is their right under section 17 of the charter act.

Increase in penalties for offences relating to the protection of children

Clause 150 increases the penalties for a number of offences relating to the protection of children. This includes the offences in sections 496(1) and (3) of the act, which include an evidential onus on the accused to adduce or point to evidence of a lawful authority or excuse to remove a child. I consider that these evidential onuses are reasonable limits upon the right to be presumed innocent in section 25(1) of the charter act, and the increase in the penalty does not alter that assessment.

Changes to youth justice procedures

The bill makes a number of amendments to youth justice procedures, including extending the time for application for breaches of a good behaviour bond (clause 151) and altering the time requirements for various court reports (clauses 122 to 132). I consider that these provisions are compatible with the criminal procedure rights in section 25 of the charter act. The extension of time for breach proceedings is necessary to ensure that delays in Victoria Police becoming aware of a breach do not preclude an application being made. The time for making such an application is still relatively short and is consistent with the rights in section 25 of the charter act, particularly the right to be tried without unreasonable delay. The amendments to the time periods for filing court reports ensure consistency and require the filing of such reports no less than three working days before the return date, thereby enabling the court to have up-to-date reports while also ensuring an accused has a reasonable opportunity to consider the report. There is nothing preventing the adjournment of a case in the event an accused requires additional time in order to file material in response to such a report.

Transfer of functions of the Youth Residential Board to the Youth Parole Board

Part 5 of the bill abolishes the Youth Residential Board and transfers its functions to the Youth Parole Board. Both boards are prescribed by regulation as being exempt from being a public authority under the charter act. I do not consider that the provisions, which merely transfer the functions but do not alter them in any substantive way, raises any issue of compatibility with the rights in the charter act.

Power to enter private premises to execute warrants

Sections 456 and 460 of the act provide for the issuing of warrants to apprehend young persons and return them to a youth justice centre or youth residential centre. However, there is no express or implied power to enter private premises to execute such a warrant. This has resulted in young persons avoiding apprehension, and poses risk to the safety of the young person and members of the community. Clause 113 inserts a new provision into the act authorising entry into premises under warrant where the person is believed to be located and the use of reasonable force to do so. Although this involves interference with the privacy of the occupier of the premises, I consider that the interference is neither unlawful

nor arbitrary and is therefore compatible with the right to privacy in section 13 of the charter act.

Expansion of group conferences and powers to defer sentence and detain

Part 4 of the bill expands the availability of youth justice group conferences. This is a restorative justice-based program that enables the young person to meet with other persons who are impacted by the young person's offence, such as the victim or the victim's representative, members of the young person's family and other persons significant to the young person. The program has proved to be a powerful and cost-effective way of reducing the likelihood of a young person reoffending and resulted in positive outcomes for young persons with very serious offending.

The court is empowered to defer sentencing for up to four months. In the meantime, the child may be released either unconditionally or on bail or may be remanded in custody. If the child is remanded in custody, the court may only defer sentencing for up to two months.

I consider that these provisions are compatible with the criminal procedure rights in section 25 of the charter act. Although it results in some delay in sentencing, that delay is reasonable and necessary to promote the aims of the restorative justice program. I also consider that the power to remand the child in custody is compatible with the right to liberty in section 21 of the charter act. That power lies within the discretion of the court and is subject to a range of safeguards including time constraints (see clause 102 and new sections 414(2)(ab)(iii) and (4)) and a prohibition against refusal of bail on the sole ground that the child does not have any or any adequate accommodation (see new section 414(5)).

Clarification of obligation to consult

Clauses 157 to 160 amend the Commission for Children and Young People Act 2012. Section 48 of that act currently imposes a prohibition on the commission giving a report of an inquiry to a minister or the secretary if the report includes 'material that is adverse' to any person, health service, human service or school, without first giving that person or body an opportunity to comment on the material. As currently worded, section 48 is too broad and has the potential to stymie inquiries in circumstances where neither the principles of natural justice nor any rights in the charter act would require such consultation. Clause 158 amends that provision to refer instead to 'any comment or opinion that is adverse to any person' or specified body. This is not to say that the commission will never have to provide a person with the opportunity to comment upon other material contained in a report that is adverse to them. Whether that is required by the principles of natural justice or the rights in the charter act, particularly the right to privacy, will depend upon the particular circumstances including any impact upon the person's rights or interests.

Hon. Wendy Lovell, MLC
Minister for Housing

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

The bill amends the Children, Youth and Families Act 2005 (the act). The bill incorporates major reforms to strengthen the protection of vulnerable children and the functioning of the statutory service system, in particular, permanency planning for children subject to child protection involvement. In 2011, the coalition government commissioned the Protecting Victoria's Vulnerable Children Inquiry (the inquiry). The remit of the inquiry was to comprehensively investigate systematic problems in Victoria's child protection system and make recommendations to strengthen and improve protection and support.

The inquiry report was tabled in Parliament in February 2012 and made strong and compelling findings and recommendations for reform. The recommendations included the simplification of Children's Court orders; focusing the Children's Court's role on a narrower range of matters; simplifying case planning processes; and examining the delays in achieving permanency for children.

A major finding of the inquiry was that it takes too long to achieve alternate permanent care for children when it is recognised that there is little possibility of family reunification. For children unable to live safely with their parents, the inquiry found it takes, on average, five years to achieve permanent care from the time a child protection report is made to when a child is placed on a permanent care order. This is unacceptable and exposes children to additional and unnecessary trauma caused by uncertainty in their care arrangements.

This bill ensures that decisions regarding vulnerable children will be made in a timely way, to avoid children being in care without a timely response and to promote permanency of arrangements, as well as stability for the child.

These vulnerable children and young people are subject to Children's Court orders because they have experienced abuse and/or neglect. They are living in kinship care, foster care or residential care.

While every effort is made to provide them with stable and consistent care, the reality is that these children lack certainty, stability and permanence. They wait to see if their parents can demonstrate the necessary change to resume their care; they wait to see what the court will decide; and they wait with increasing uncertainty over time to see who will care for them when it is not possible for them to return home. In this situation, these children do not have predictability, security or permanency of care and must live with a high degree of uncertainty and anxiety, in addition to the significant trauma that led to the need for them to be cared for by the state.

This lack of security and predictability frequently results in further emotional and behavioural disturbance which can lead to placement breakdowns, and in turn exacerbate the challenges of securing alternative permanent carers for children. This is evidenced in the number of children who have been in care for two or more years without permanent alternative care having been arranged.

This bill proposes an alternative strategy to break this cycle of compounding instability for children. It ensures that decisions regarding vulnerable children will be made in a timely way, to avoid children being in care without a timely response and to promote permanency of care arrangements.

Care arrangements for vulnerable children need to be settled as quickly as possible. Ideally, permanency will be provided by the child's own parents. Where this is not possible within a reasonable time frame, it is critical for the child's stability that an alternate permanent carer is identified to care for them until adulthood, while maintaining the child's relationship and connection with their birth family and culture.

In order to meet these objectives, the main provisions of the bill will:

ensure more timely and better integrated case planning and decision-making;

create a simpler range of Children's Court protection orders that promote timely resolution of protective concerns;

clarify the rights and responsibilities of the secretary, parents and carers to make decisions regarding a child's care.

These provisions will address weaknesses identified in the act and deliver significant reform to act in the best interests of the child and improve the outcomes achieved by child protection intervention.

Changes to case planning requirements

The bill removes all references to stability and stability planning from the act and introduces the concept of permanency. 'Stability' was often interpreted as addressing immediate issues only. The change to 'permanency' will focus attention on plans for the child's long-term and permanent care arrangements.

Case planning, at the point child protection becomes involved, is critical to making timely permanency arrangements for the care of children. The bill requires that a case plan is developed as soon as abuse or neglect is substantiated.

The act currently only requires a case plan to be prepared after the Children's Court has made a final order. This can be more than a year after intervention commences where there are lengthy court adjournments. During that period, no purposeful planning is currently authorised by the act, so children and families are often uncertain about future care arrangements.

The bill requires the development of a single case plan, removing the need for a separate stability plan. The bill also requires a separate cultural plan to be developed for all Aboriginal children in out-of-home care, which aligns with the case plan.

The bill requires that a clear permanency objective be articulated for the case plan and case plans be reviewed annually or when there is a significant change in circumstances.

When a child has been placed in out-of-home care, the bill provides time frames for achieving case planning objectives. It will be incumbent on professionals and the family to work towards reuniting families, where possible, within 12 months or where progress has been made in the first 12 months, within two years in total. If progress does not occur or if the child is still in out-of-home care after two years with no prospect of reunification, the permanency objective of the case plan will change from family reunification to permanent care, adoption or long-term out-of-home care depending on the availability of suitable alternate care arrangements.

In line with creating a better fit between case planning and court decisions, a change of case plan objective will usually require a change of protection order. Adoption should be discussed in the small number of situations where it is clear that a parent will never be able to care for their child and is willing to consent to adoption.

The bill states that kinship placements are explicitly preferred to other placement types recognising the role the extended family can play in providing care, and can provide the best opportunities for maintaining family relationships and cultural connections.

Planning a course of action as promptly as possible, and mobilising resources and actions to support that plan, will help to address the current lengthy periods of harmful uncertainty currently experienced by many children and families.

Simplified orders

This bill proposes a new, simpler range of orders that will be available to the Children's Court. This suite of orders resolves many of the issues identified, such as the overlapping and unclear purpose of orders, the length of time applications are before the court, and conditions attached to orders that are inconsistent with the case plan or restrict the ability of case planners to make decisions in fast-changing situations.

Some existing orders will remain, but most will be replaced by new orders which are named to more accurately reflect their intention. This will provide clarity for children, families and professionals. The names of the new orders also align with the case planning objectives described in the permanency hierarchy.

The new final protection orders being introduced are:

A family preservation order that is similar to the current supervision order. This order preserves the child in the care of their parents, if it is safe to do so. Conditions that promote family preservation can be attached to these orders. A family preservation order made for a period of more than 12 months will be reviewed at least every 12 months.

A family reunification order will be made when a child has been placed in out-of-home care and the intent is to reunify the child with their parents. The order can be made for a total period up to 12 months. The order can be extended for a further 12-month period where there is evidence that progress is being made and reunification will occur in that time.

The focus of family reunification orders will be to mobilise supports and services to assist parents to resume permanent care of their child within one year, if possible, and at most within two years.

A care by secretary order will be made where the objective is to make arrangements for the permanent or long-term care of

the child when reunification is not possible. As is the case now with guardianship to secretary orders, conditions cannot be attached to this order and decisions relevant to the care of the child will be managed through the case planning process. Such orders can be made for two years during which time all efforts will be made to identify and match an alternate permanent or long-term carer for the child.

If required, care by secretary orders may be extended beyond two years in order to finalise permanent care arrangements or where there are exceptional circumstances.

A long-term care order is targeted to circumstances where a child remains under the long-term parental responsibility of the secretary with an identified carer able to care for the child until they reach 18 years. This order will generally be made when the carer requires the department's continued support and a permanent care order is therefore not an option. This order cannot be made if a child aged 10 or over opposes the order and the carer's consent is also necessary.

A permanent care order vests the parental responsibility of a child in an alternate carer to the exclusion of all others. The order will now require, as a standard condition, that the carer must preserve the child's identity, culture and relationships with birth parents and siblings.

The bill empowers the court to initially impose conditions for contact between the child and their birth parents up to a maximum of four times per year where this is considered necessary, with any further contact being agreed directly between the parties. A contact condition may also provide for no contact if the court believes this to be in the child's best interests. Birth parents will require leave of the court to apply to vary or revoke a permanent care order to avoid unnecessary disruption to the child's permanent care placement.

For some children it is not always possible for them to live with their siblings. It is recognised that maintaining contact with siblings is important for children growing up in care. Current arrangements that allow the court to order contact conditions with siblings are being retained. This bill will also enable siblings to apply to vary permanent care orders if this is needed to support their contact with the child.

The current orders that will continue are temporary assessment orders, undertakings, and interim accommodation orders. However, interim protection orders, custody to third party orders, supervised custody orders, and custody to secretary orders are being repealed.

While interim accommodation orders are retained, to reduce delays in making final orders, obligations will be introduced to conclude protection proceedings as expeditiously as possible and avoid the use of interim orders unless making a final order is not possible.

Interim protection orders were found to be generally ineffective in testing a course of action and resolving the way forward. They contribute to delays in making permanency decisions by deferring contests for the three-month duration of the order and do little to promote settlement in most cases.

The various current custody orders do not clearly link to specific case plans and their ambiguity has been found to be a significant barrier to timely permanency resolution.

Contact conditions

A significant current barrier to the resolution of alternate permanent care arrangements is the inflexibility of contact conditions. The bill contains amendments to contact conditions that will improve permanent care order contact arrangements and allow parties to better negotiate personal arrangements and vary conditions. This will support a more child-centred and flexible approach to contact throughout the child's life.

The court will be able to order contact between children and their birth parents up to four times per year, with any additional contact occurring by agreement. These conditions can be varied on application. While carers and children may seek to vary any conditions in respect of the permanent care order, the birth parents will only be able to do so in the first 12 months where there is a failure to comply with the conditions and thereafter with leave of the court. The court will assess any applications for leave according to legislated considerations to ensure the child's security is not undermined.

Where an application to vary a contact condition is successful, the court may order contact of more than four times per year after the first year if this is appropriate. In this way, a minimum level of contact is guaranteed, an approach based on agreement is promoted, and conditions can be changed over time as circumstances change.

Existing provisions that enable the court to make conditions about contact with siblings will be retained, as well as conditions about the maintenance of connection to community and culture for Aboriginal children.

There are occasionally unfortunate circumstances where the permanent carer dies and a child is left without a carer. Legal parental responsibility may revert to the child's birth parents in these circumstances and this will not always be desirable. The bill addresses this and states that the child will be deemed to be on a care by secretary order. This will allow ongoing care arrangements to be made in the child's best interests without the need for a court hearing at a time when parties may be grieving.

Considerations by the court

The Children's Court makes decisions in respect of applications for protection orders and about existing protection orders. Decisions made by the court provide the legal framework within which actions are taken to ensure children return to their parents' care or are provided with alternate permanent care in a timely way.

The bill provides an expanded set of matters to be taken into account by the court when making a protection order, in order to ensure timely decisions and a focus on permanency. It will also require the court to consider advice from the secretary about a number of matters where they are relevant to an application. These include:

the current case plan and the workability of any order under consideration;

applicable arrangements for the care of siblings;

the time the child has spent in out-of-home care during their life and the child's age;

the likelihood of permanent reunification occurring under an order that aims to achieve reunification;

the outcome of attempts to reunify any child within the family;

where a child has been in out-of-home care for 12 months and there is no realistic likelihood of permanent reunification in the following 12 months, the benefit of making an order that facilitates permanent alternate care;

where a parent has previously had a child permanently removed, the desirability of an early decision about permanent care for the child subject to the application; and

where a child is with the intended permanent carer, the desirability of making a permanent care order.

These considerations will assist the court in making decisions that promote timely resolution of permanent care arrangements for children in out-of-home care.

Parental responsibility

The bill replaces the terms 'custody' and 'guardianship' with the term 'parental responsibility'. This change reflects contemporary thinking about parental obligations and the bill clarifies what the secretary, the child's parents and the child's carer can decide in particular circumstances.

The bill also enables the secretary to authorise carers to make specified decisions, such as approving school excursions or routine medical care. This will normalise the experience of children in care who currently require a parent or a child protection case planner to make such authorisations which often results in children in out-of-home care missing out on social and learning activities, being embarrassed and feeling stigmatised. In order to avoid delay in implementing this change and so that children in care can enjoy the benefits sooner, the bill contains provisions for this change to occur under the current range of orders where a child is placed in out-of-home care, as well as subsequently under the new range of orders. This change will take effect from 1 December 2014.

Cultural support plans

It is acknowledged that cultural support plans, currently completed only in respect of Aboriginal children subject to guardianship orders, are not always aligned with case plans. The current requirement to prepare such plans only for children subject to guardianship orders means most Aboriginal children in out-of-home care do not benefit from such a plan.

The bill will require all Aboriginal children placed in out-of-home care to have a plan made to support their cultural needs when they are first placed in care. These plans will be built upon over time reflecting the child's changing developmental needs and individual circumstances.

Implementation will be supported by a review of existing arrangements for the completion of cultural support plans and by the development of a comprehensive training program for professionals involved in cultural support planning.

Other matters

The bill also contains provisions to address other matters.

The bill increases the penalties for child protection offences in the act. The offences relate to children being left unattended, for example, leaving a child locked in a hot car during warm weather or while parents are gambling. The offence of harbouring or concealing a child, for example hiding children subject to child protection orders from police and authorities, will be increased. Penalties for offences that relate to the sexual exploitation of children in out-of-home care are also increased through the bill. For example, inducing a child in out-of-home care to be absent without lawful authority, or entering, lurking and loitering around a child's placement.

The penalty for these offences will increase from 15 penalty units or three months imprisonment to 25 penalty units or six months imprisonment. This will more appropriately reflect government and community views about the seriousness of these matters.

Currently, any statement made by a child participating in a program under a therapeutic treatment order is not admissible in criminal proceedings of the child. However, children participating in treatment voluntarily are not afforded the same protection. This creates a disincentive to participate voluntarily. Where a willingness to participate voluntarily exists, this should be promoted and barriers removed. The bill amends the act to afford the same protections to children participating in treatment voluntarily as those subject to a therapeutic treatment order.

The bill also amends the Commission for Children and Young People Act 2012 to provide for the commission to conduct inquiries regarding services provided or omitted to be provided by a community service or child protection service, in addition to existing provisions which allow inquiries into health and human services and schools. Furthermore, amendments will clarify when the commission must give an opportunity to persons and services to respond to adverse comments or opinion within a report.

The bill contains some youth justice related amendments that seek to improve efficiencies and reduce bureaucratic processes, support Victoria Police in their work with young offenders and strengthen pathways to rehabilitation.

For example, the bill increases diversionary opportunities for young offenders by broadening the referral criteria for youth justice group conferencing. This responds to the findings of a youth justice group conferencing program evaluation that found the program was a powerful, cost-effective way to reduce the likelihood of a young person reoffending, and had demonstrated positive outcomes for young people and was positively regarded by victims of crime.

A small number of administrative amendments are also made in the bill to remove anachronistic, unnecessary and unworkable provisions and address anomalies in the registration of community service organisations in the child and family, and disability sectors.

Conclusion

In conclusion, the bill makes necessary changes to some minor and technical aspects of the act, but its main objective is the reform to child protection orders and case planning

requirements that will result in better permanency and stability outcomes for vulnerable children.

The reforms reflect the Victorian coalition government's commitment to provide better and timelier permanent arrangements for the care of vulnerable children.

The bill creates a consistent framework for decision-making by the Children's Court and by departmental case planners, and removes barriers to the timely resolution of cases. It ensures transparent decision-making by providing clarity about the objectives and time lines of state intervention to children, their families and professionals.

These reforms will significantly improve the state's child protection system and impact positively on the lives of Victoria's most vulnerable children.

I commend the bill to the house.

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

Debate adjourned until Thursday, 28 August.

GAMBLING AND LIQUOR LEGISLATION FURTHER AMENDMENT BILL 2014

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (the 'charter act'), I make this statement of compatibility with respect to the Gambling and Liquor Legislation Further Amendment Bill 2014.

In my opinion, the Gambling and Liquor Legislation Further Amendment Bill 2014, as introduced to the Legislative Council, is compatible with human rights as set out in the charter act. I base my opinion on the reasons outlined in this statement.

Human rights issues

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

Privacy rights — section 13

The bill creates a requirement for liquor licensees to report wholesale sales of alcohol in Victoria on an annual basis. This will mean that holders of a relevant liquor licence, which can include natural persons, may be required to provide information in the possession of the licensee in accordance with regulations to be made.

The requirement will not apply to a range of licence types that do not typically engage in wholesale alcohol sales, as well as licensees specified in a ministerial order. The ministerial order will allow the minister to specify types of licences, classes of licensees and individual licensees that are not subject to the requirement. This order will be used to ensure that small businesses are not subject to the requirement. Regulations will also restrict the purposes for which the information collected can be used.

Failure to comply with the requirement may be grounds for disciplinary action taken by the VCGLR. Disciplinary action that can be taken by the VCGLR includes a letter of censure, cancellation, suspension or variation of the licence or a fine.

In order to comply with section 13(a) of the charter act, a person's privacy must not be unlawfully or arbitrarily interfered with. The circumstances in which the bill requires liquor licensees to provide information is limited.

Large alcohol wholesalers will only be obliged to provide limited information for specific purposes. The collection of whole alcohol sales data will be very useful for the development, implementation and evaluation of alcohol-related policy.

The collection of wholesale alcohol sales data will contribute to minimising harm from the misuse and abuse of alcohol. The estimated annual cost of Victoria's alcohol-related harm is $4.3 billion.

Wholesale alcohol sales data is collected in other Australian jurisdictions and used to measure and monitor total consumption of different types of alcohol, how consumption changes over time, to provide evidence in relation to liquor licensing applications, to allocate resources for alcohol-related public health and treatment programs and to evaluate the success of liquor licensing restrictions and other policy interventions.

Additionally the bill requires a sports controlling body to notify the VCGLR of any changes to the sports controlling body's policies, rules, codes of conduct or other mechanisms designed to ensure the integrity of the sport, engaging the right to privacy.

It also requires the sports controlling body to notify the VCGLR of any breach of the mechanisms, the action taken by the body to investigate the breach and the result of the investigation. It is understood that all approved sports controlling bodies are incorporated entities and that the proposal does not engage rights under the charter.

In any case, the maintenance of public confidence in the integrity in sporting events is vital. In order to comply with section 13(a) of the charter act, a person's privacy must not be unlawfully or arbitrarily interfered with. The circumstances in which a sports controlling body must provide personal information is limited to the context of investigations into breaches of integrity mechanisms.

Any information received by the VCGLR will be treated in accordance with the Information Privacy Act 2000 and the confidentiality provisions of the Gambling Regulation Act 2003.

On this basis, the amendments do not unlawfully or arbitrarily interfere with a person's privacy.

Right to property — section 20

The bill requires venue operators to pay unclaimed winnings relating to gaming machines to the Treasurer. Previously, these unclaimed winnings would have been dealt with in accordance with the Unclaimed Money Act 2008. Notably, the provisions require the Treasurer to pay unclaimed winnings to any claimant that can demonstrate their right to the relevant amount. These provisions are consistent with the treatment of unclaimed winnings for wagering and betting, public lotteries and keno. The relevant provisions help to ensure that the property rights of the rightful owners of the unclaimed winnings are maintained.

The relevant provision does not limit a person's property rights.

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. G. K. RICH-PHILLIPS (Assistant Treasurer).

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

That the bill be now read a second time.

Incorporated speech as follows:

Since coming to government in 2010, the coalition government has been working to implement our comprehensive plan to restore integrity, probity and responsibility to the forefront of gambling regulation in Victoria and to implement our commitments made in the Victorian Liberal-Nationals coalition's plan for gaming and liquor licensing.

The coalition government has successfully established a combined regulator for liquor and gambling, the Victorian Commission for Gambling and Liquor Regulation, reducing unnecessary duplication and red tape for industry. We have established the Victorian Responsible Gambling Foundation, funded with a record $150 million over four years, placing Victoria at the forefront of reducing gambling-related harm. We have also worked with industry stakeholders to transition to the new gambling industry structure while reducing red tape and simplifying the operation of the legislation.

This bill continues to build on this important work by amending the Gambling Regulation Act 2003, the Liquor Control Reform Act 1998 and the Victorian Commission for Gambling and Liquor Regulation Act 2011.

The bill contains a number of important measures which will significantly reduce unnecessary burden on Victorian businesses without undermining the objectives of the gambling legislation.

Notably, the bill removes the requirement for Victorian businesses to obtain a permit from the VCGLR to conduct a trade promotion lottery. Trade promotion lotteries are designed to promote businesses. Each year, thousands of applications to conduct trade promotion lotteries are received and permits are issued by the VCGLR to businesses. Trade promotion lotteries can currently be conducted without a permit if the total prize pool is below $5000. The bill will remove the requirement to obtain a permit for all trade promotion lotteries, resulting in a significant saving for both small and large businesses.

It is important to note that existing conditions that protect consumers, including limitations on entry prices, restrictions on trade promotion lotteries and gaming machine play and standard terms and conditions for trade promotion lotteries will continue to apply. Businesses conducting trade promotion lotteries must also still comply with Australian Consumer Law.

The coalition government is focused on implementing its commitment to require precommitment to be available on all gaming machines in Victoria by 2015–16. The bill provides the power for the minister to specify standard terms for the arrangements between venue operators and the precommitment provider. This will reduce the administrative burden on venues by obviating the need for individual commercial negotiations between venue operators and the precommitment provider.

The bill also provides for the period of registration or licensing of a bookmaker, bookmaker's key employee, bingo centre operator and commercial raffle organiser to be extended from 5 to 10 years. This is consistent with the period of a range of other licences under the gambling legislation and will reduce the regulatory burden on those businesses.

The bill provides that authorised deposit-taking institutions may possess and dispose of gaming machines and gaming equipment by way of security under a financial agreement. This will assist venue operators entering into financial arrangements with financial institutions by removing the requirement for financial institutions to be listed on the roll of manufacturers, suppliers and testers in order to repossess gaming machines in the event of a financial default by the venue operator.

The bill also includes amendments designed to maintain and strengthen the integrity of the liquor and gaming sectors.

Mr Des Gleeson, former chairman of stewards for Racing Victoria, was commissioned by the Victorian coalition government to conduct a review of sports betting regulation and to provide advice on measures to enhance the existing regulatory regime. The bill includes amendments that will strengthen public confidence in the integrity of sporting events and sports betting.

The bill introduces new requirements for the monitoring of the integrity mechanisms of sports controlling bodies by the VCGLR. Currently the VCGLR has a range of monitoring functions for licences issued under the gambling and liquor legislation as well as a role in approving sports controlling bodies. The bill provides an explicit role for the VCGLR to monitor any integrity mechanisms introduced by a sports controlling body. This will assist in ensuring that sports controlling bodies are appropriately enforcing their own integrity mechanisms.

The bill will provide that a sports controlling body can make an application to the VCGLR for the banning of a particular bet type. In the event that a sports controlling body believes that a bet type or contingency carries integrity risks or is not in the public interest, the sports controlling body will be able

to apply to the VCGLR to consider banning the bet type or contingency. Any ban of a sports betting contingency made by the VCGLR will apply to all sports betting providers.

The bill also increases the penalty for offering betting on events without an agreement with the relevant sports controlling body in place, assisting to ensure that sporting bodies receive a fair share of the revenues from betting on sports.

The bill also provides for mutual recognition of sports controlling bodies approved in another Australian jurisdiction provided that the approval process in that jurisdiction is equivalent to that in Victoria. This will reduce the burden on sports controlling bodies seeking approval in multiple jurisdictions.

The bill amends the maximum commission rate that can be deducted under betting rules in relation to pooling arrangements with international totalisators for wagering events that are conducted outside Australia from 25 per cent to 40 per cent. This will enable the wagering and betting licensee to increase the range of products offered by facilitating entry into shared pools with operators in jurisdictions such as New Zealand, South Africa and Singapore. Notably, this will not affect the maximum commission rate for domestic totalisators.

The bill provides for the collection of unclaimed money from gaming machines to occur in accordance with the Gambling Regulation Act 2003 rather than the more complicated requirements of the Unclaimed Money Act 2008. This is consistent with the treatment of unclaimed money for other gambling licensees, and will not remove the right of patrons to recover any money owed.

The bill also clarifies the method for calculating gaming machine taxation to make it clear that tax is calculated on the basis of the number of gaming machines connected to the monitoring system. It is important to note that this amendment does not change how the tax has been or will be calculated, and does not increase the tax payable by venue operators.

The bill resolves an inconsistency in the Gambling Regulation Act 2003 to reflect the intention of the provision that clubs that fail to lodge a community benefit statement or fail to make the required community contribution are required to pay tax at the rate for hotel gaming machines.

Additionally, the bill modernises existing requirements, removes obsolete requirements and makes a number of minor and technical amendments to the gambling legislation.

One of the objectives of the Liquor Control Reform Act 1998 is to contribute to the development of the live music industry. The coalition government is strongly supportive of developing Victoria's live music industry, establishing the live music round table to provide a forum to discuss liquor licensing issues that affect the live music industry.

The impact of planning and amenity issues on their business is a primary concern for the live music industry. This bill contains an amendment that demonstrates the coalition government's commitment to the Victorian live music industry and builds on other reforms in this area. In considering any complaint about whether a live music venue is affecting the amenity of the area in which the licensed premises is situated, the VCGLR will have a legislative obligation to consider whether the licensee was operating before any change occurred to the local area which raises concern about amenity.

The bill creates a new power for the minister to require certain liquor licensees and employees to undertake advanced responsible service of alcohol training. The training will better equip late night licensees with the knowledge and skills to help reduce the risk of alcohol-related harm. It is intended that all new late-trading licensees will be required to undertake advanced RSA training, as well as any existing late-night licensees that incur a demerit point for a relevant breach of the regulatory framework.

The Victorian Auditor-General's report on the *Effectiveness of Justice Strategies in Preventing and Reducing Alcohol-Related Harm* estimated that the annual cost of alcohol-related harm in Victoria is $4.3 billion. The report recommended the collection and analysis of alcohol sales data.

The bill includes amendments that deliver on the Auditor-General's recommendation by providing for the collection of alcohol sales data from large wholesalers on an annual basis.

The bill makes it clear that these provisions will not apply to small businesses, such as small breweries, distillers and winemakers, and also will not apply to a range of liquor licence holders that do not engage in wholesale sales, such as clubs, hotels, packaged liquor licensees and late night licensees, and those holding general and on-premises licences. This will ensure that small businesses will not be subject to this additional compliance requirement.

It is intended that the definition of small business will be determined in consultation with industry, the Minister for Small Business and the Minister for Mental Health, and set out in a ministerial order. Industry will also be consulted during development of the regulations which will specify how the information will be reported, collected and used.

These amendments bring Victoria into line with other Australian jurisdictions that already collect this data, such as Queensland, Western Australia, Northern Territory and the Australian Capital Territory. Consistent with the objectives of the Liquor Control Reform Act 1998, these amendments will assist in the development, implementation and evaluation of policy relating to the regulation and consumption of liquor.

The bill allows the Governor in Council to appoint sessional commissioners of the VCGLR who will be able to undertake limited functions under the relevant legislation. This will increase the flexibility and efficiency of the new combined regulator.

Finally, the bill makes a number of amendments to assist to simplify and streamline the operation of gambling and liquor legislation.

I commend the bill to the house.

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

Debate adjourned until Thursday, 28 August.

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

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (the charter act), I make this statement of compatibility with respect to the Resources Legislation Amendment (BTEX Prohibition and Other Matters) Bill 2014 (the resources legislation amendment bill 2014).

In my opinion, the resources legislation amendment bill 2014, as introduced to the Legislative Council, is compatible with human rights as set out in the charter act. I base my opinion on the reasons outlined in this statement.

Overview

The resources legislation amendment bill 2014 amends 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 to prohibit the use of BTEX chemicals in hydraulic fracturing. The bill also makes amendments to a number of acts in order to improve the regulation of the earth resources sector.

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

Right to privacy

Section 13(a) of the charter act provides that all persons have the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. The right to privacy is relevant to a number of clauses within the bill. However, for the reasons outlined below, I consider that none of the clauses interfere with the right to privacy in an unlawful or arbitrary manner.

Entry to land and buildings without a warrant

The bill contains a number of clauses which permit entry to land without a warrant for a range of purposes.

Surveying land under the Mineral Resources (Sustainable Development) Act 1990

Clause 30 of the bill inserts a series of new requirements into the Mineral Resources (Sustainable Development) Act 1990 (MRSD act) regarding the conduct of a boundary survey prior to applying for a licence. Under new section 26AR(1) of the MRSD act, an applicant for a licence must survey the boundaries of the land proposed to be covered by the licence. Under new section 26AR(2), a person may enter land to conduct a boundary survey but only with the written consent of the owner or occupier, or with an authority in writing from the department head under new section 26AS. Under new section 26AS, the department head may grant an authority for a person to enter land if the department head is satisfied that the person has made reasonable attempts to obtain consent and has been unable to contact the owner or occupier or the owner or occupier has refused or failed to consent.

In most cases, the entry onto land authorised by clause 30 of the bill will not interfere with a person's privacy as generally entry will only occur where consent has been provided. However, even in circumstances where consent has not been provided and authority to enter has been granted under the new section 26AS, clause 30 also inserts a number of safeguards into the MRSD act which govern entry to land for the purpose of boundary surveying to ensure that entry without consent will neither be arbitrary nor unlawful. These include: creating an offence for a person entering land to fail to show a copy of their authority to do so if requested by the owner or occupier (new section 26AT); a person entering land must provide security to the department head against the risk of damage to the property due to the entry (new section 26AU); and a person entering land must be insured against any risk that might arise if the owner or occupier were to sustain a personal injury as a result of the person's entry (new section 26AV). For these reasons, I consider that clause 30 does not limit the right to privacy.

Unlicensed worksites under the MRSD act

Clause 54 of the bill amends section 94 of the MRSD act to provide that, as well as a power of entry to a 'worksite', as defined in the MRSD act, there is also a power for an inspector to, at any time during working hours, enter a place in which the inspector reasonably believes an activity is being or has been conducted in contravention of certain provisions of the MRSD act.

Clause 54 is relevant to the right to privacy insofar as section 94(1) permits entry to land without the owner or occupier's consent which may interfere with the privacy of individuals in some cases. However, importantly, the entry power does not permit entry to residential premises, where persons have a higher expectation of privacy, except with the occupier's consent or with a search warrant (section 95I of the MRSD act). Additionally, an inspector entering an unlicensed worksite without a warrant is required to notify the occupier of the entry and produce an identification card (section 95C). Further, on leaving the premises, the inspector must provide a detailed report to the occupier regarding the time and purpose of the entry, and the things done while at the premises (section 95D).

In my view, the clause does not limit the right to privacy as the entry power is appropriately circumscribed, and there are appropriate safeguards to ensure that the entry power is not exercised in an unlawful or arbitrary manner.

Searching for stone under the MRSD act

The bill modifies the regulation of searching for stone under the MRSD act. Clause 16 of the bill inserts a new

section 8AA into the MRSD act which makes it an offence for a person to search for stone on any private land without the consent of the owner or the authorisation of the minister under section 112 of the MRSD act, or on Crown land without the consent of the minister under new section 77A(1). Section 112, as amended by clause 58 of the bill, provides that the minister may authorise a person to enter land for the purpose of searching for stone on behalf of the department.

Clause 58 is relevant to the right to privacy insofar as section 112, as amended, permits entry to land without the owner or occupier's consent to search for stone, which may interfere with the privacy of individuals. However, in my view, clause 58 does not limit the right to privacy as the power to enter land under section 112 is appropriately circumscribed, and the bill contains appropriate safeguards to prevent the entry power from being exercised in an arbitrary manner. A person entering land must comply with a number of obligations under section 112, including: an obligation to cause as little harm, inconvenience and damage as possible; an obligation to remain on the land only for so long as is reasonably necessary; an obligation to leave the land, as nearly as possible, in the condition in which it was immediately before the entry; and an obligation to use best endeavours to cooperate with the owner and occupier.

Surveying land under the Pipelines Act 2005

Clause 90 of the bill inserts new sections 68A to 68K into the Pipelines Act 2005. A licensee who wishes to alter a pipeline authorised by a licence may enter land in order to conduct a survey of the proposed alteration. In most cases, entry onto land authorised by clause 90 of the bill will not interfere with a person's privacy as the bill provides that entry is to occur with the consent of the owner or occupier except where this is not possible. A licensee must give written notice to owners and occupiers of the land (and, in the case of Crown land, the Crown land minister), of the licensee's intention to enter land (new section 68D). The licensee must take all reasonable steps to reach agreement with each owner and occupier in relation to the entry (new section 68E). If there is a native title holder or occupier of Crown land, a person may only enter if the native title holder or occupier has agreed to the entry or the person obtains a further ministerial consent under section 68J (which requires more evidence in support).

In circumstances where consent is not provided, the bill permits entry to land only in limited circumstances. This ensures that any interference with privacy will neither be arbitrary nor unlawful. If the licensee has been unable to obtain consent, he or she may apply to the minister for authority to enter the land (new section 68G). An owner or occupier of land to which an application under new section 68G relates may advise the minister of their reasons for refusing to agree to the entry of the licensee onto the land for survey purposes (new section 68I). The minister may only consent to the entry if he/she is satisfied with the adequacy of the measures to be taken to address any adverse impact of the survey on safety or the environment, and that the owner and occupier were given the required statutory notice of the proposed entry to land (new section 68J). An authorisation to enter land under new sections 68F and 68J remains in force for one year after the day on which the consent is granted. For the reasons outlined above, I consider that clause 90 does not interfere with the right to privacy as any interference with privacy will be neither unlawful nor arbitrary.

Information sharing

Clause 67 of the bill inserts a new part 6.10 into the Offshore Petroleum and Greenhouse Gas Storage Act 2010 (OPGGS act) which provides for two-way information sharing with the commonwealth. The regime applies to information, including personal information, obtained by the minister, the commonwealth minister or the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) in the course of exercising a power or function under the OPGGS act or administering that act (offshore information). Under new section 718G, the minister, the commonwealth minister or NOPSEMA may provide offshore information to one another, and the recipient may use such information in the course of exercising a power or performing a function under the OPGGS act or administering that act. Under new section 718H, the minister may also provide offshore information to a range of state and commonwealth regulatory entities for use in the course of the exercise of the entity's powers or the performance of its functions under or for the purposes of a law. The information-sharing regime will enable appropriate regulatory agencies to carry out their functions, particularly in the circumstances of a joint investigation and prosecution.

Clause 67 is relevant to the right to privacy to the extent that offshore information may include personal information. However, in my view, the clause does not limit the right to privacy as the bill does not permit the arbitrary or unlawful use or disclosure of personal information. New section 718I provides that, in the case of offshore information that is personal information, an entity sharing the information must take reasonable steps to ensure that it is de-identified. Further, a recipient of offshore information may only use the information in the course of exercising its powers or functions. Finally, to the extent that offshore information contains personal or health information, its use and disclosure is regulated by the Privacy and Data Protection Act 2014 or the Health Records Act 2001.

The Hon. Damian Drum, MLC
Minister for Sport and Recreation

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

This bill seeks to further the government's commitment to maintaining an effective and robust regulatory framework for the earth resources sector in Victoria. The earth resources sector, including the mining and extractive industries, is a valuable part of the Victorian economy and provides an important source of economic growth and stability, particularly in regional Victoria.

The bill furthers this commitment by making a series of necessary facilitative amendments to legislation within the earth resources portfolio.

The bill introduces a statutory condition restricting the adding of BTEX chemicals into hydraulic fracturing fluids in the Mineral Resources (Sustainable Development) Act 1990, the Petroleum Act 1998, the Geothermal Energy Resources Act 2005 and the Greenhouse Gas Geological Sequestration Act 2008. BTEX refers to the chemicals benzene, toluene, ethylbenzene and xylene, which are naturally occurring compounds found in petroleum products. These chemicals have been known to have harmful effects on human health.

This amendment will provide Victorians with confidence that strong protections apply to the regulation of the earth resources sector, with a focus on the continued protection of our environment and our agricultural industries.

The bill amends the Mineral Resources (Sustainable Development) Act 1990 to offer enforceable undertakings to authority holders in relation to contraventions of the act or regulations. An enforceable undertaking is an agreement made between the regulator and the holder of an authority in lieu of prosecution for an offence under the act, whereby the authority holder voluntarily and publicly undertakes a course of remedial action.

The bill amends the Mineral Resources (Sustainable Development) Act 1990 to remove the requirement to mark out licences. Currently the marking of boundaries with posts and other markers must be maintained by a licensee. However, in reality, posts and markers can be removed, moved by other parties or may not be well maintained by licensees. The requirement to survey a licence area for prospecting, retention and mining licences will apply at the licence application stage rather than following the granting of a licence. Furthermore, the rise of technology, such as GPS, can position locations on the ground with less costs and more accuracy.

The bill also amends the Mineral Resources (Sustainable Development) Act 1990 to extend an inspector's power of entry to include unauthorised worksites. This amendment will ensure that inspectors have appropriate powers to gain access to illegal sites for the purposes of giving directions, gathering evidence and undertaking other compliance action.

The bill amends the Mineral Resources (Sustainable Development) Act 1990, the Petroleum Act 1998, the Geothermal Energy Resources Act 2005 and the Greenhouse Gas Geological Sequestration Act 2008, to provide for standard conditions on earth resources authorisations which will enable enforcement of obligations under the Traditional Owner Settlement Act 2010 (TOS act). The TOS act establishes a framework for recognising traditional owner groups based on their traditional and cultural associations to certain land in Victoria, by providing for the making of land use activity agreements between the state and traditional owner groups. For the earth resources sector, land use activity agreements may specify conditions on exploration authorisations and prospecting licences. Where these conditions have been agreed to by an earth resources authority holder the earth resource authorisation will require compliance with the conditions.

The bill makes a number of discrete amendments to the Pipelines Act 2005 to improve the administration and regulation of that act, including strengthening the provisions related to consultation plans to make sure that a plan is approved by the minister prior to a proponent of a pipeline engaging with affected landowners and clarifying the process for acquiring additional interest in the land where a significant alteration to a pipeline is proposed.

Finally, the bill amends the Offshore Petroleum and Greenhouse Gas Storage Act 2010 to mirror commonwealth information-sharing provisions, which will facilitate two-way sharing of regulatory information with the commonwealth and related parties.

The amendments in this bill demonstrate the government's commitment to reducing administrative and regulatory burden on industry, while maintaining an effective and robust regulatory framework for the earth resources sector in Victoria.

I commend the bill to the house.

Debate adjourned for Mr SCHEFFER (Eastern Victoria) on motion of Mr Leane.

Debate adjourned until Thursday, 28 August.

SENTENCING AMENDMENT (EMERGENCY WORKERS) BILL 2014

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006 (the 'charter act'), I make this statement of compatibility with respect to the Sentencing Amendment (Emergency Workers) 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 provides for the introduction of statutory minimum sentences for offenders convicted of violent offences against emergency workers on duty, the introduction of a baseline sentence of 30 years for murder of an emergency worker, and the creation of new indictable and summary assault offences against emergency workers on duty.

The bill delivers on the government's commitment to introduce higher sentences for offenders who injure or seriously injure emergency workers on duty, as announced on 12 April 2012. In addition, the changes proposed in the bill

partially implement the recommendations of the parliamentary Drugs and Crime Prevention Committee inquiry into violence and security arrangements in Victorian hospitals.

The bill will permit the courts to impose a sentence of imprisonment of up to two years and a community correction order (CCO) as the sentence for an offence. The bill also allows courts to combine a sentence of imprisonment of any length with a CCO when sentencing an offender convicted of an 'arson offence'. The existing definition of that term in the Sentencing Act 1991 will be adopted for this purpose, and will be augmented by the addition of two further serious arson offences.

The provisions of the bill that are relevant to the human rights set out in the charter act are as set out below.

Human rights issues

Protection from cruel, inhuman or degrading punishment and the right to a fair hearing

Section 10 of the charter act relevantly provides that a person must not be punished in a cruel, inhuman or degrading way. Section 24(1) provides that a person charged with a criminal offence has the right to have the charge decided by an independent and impartial court after a fair trial.

In my opinion, the bill does not limit these charter act rights. The proposed amendments introduce appropriate sentences to effectively protect, punish and deter violence against emergency workers performing their professional duties in circumstances where the offender knew or was reckless as to whether the victim was an emergency worker.

Statutory minimum sentences for violence against emergency workers on duty

The bill amends the Sentencing Act to introduce statutory minimum sentences for offenders who cause injury or serious injury to emergency workers in the course of performing their duties. Specifically, the bill requires a term of imprisonment to be imposed and the following minimum non-parole periods to be fixed by a court:

> five years for the offences of intentionally or recklessly causing serious injury in circumstances of gross violence;
>
> three years for the offence of intentionally causing serious injury;
>
> two years for the offence of recklessly causing serious injury.

The bill also introduces a six-month sentence of imprisonment for the offences of intentionally or recklessly causing injury.

These amendments are clearly confined by law to apply to offenders convicted of the violent offences specified in the bill and only in respect of a clearly defined class of victims, namely, emergency workers on duty where the prosecution proves that the offender knew or was reckless as to whether the victim was an emergency worker.

Protection from cruel, inhuman or degrading punishment (section 10)

In my opinion, the statutory minimum sentences introduced by the bill do not limit the protection from cruel, inhuman or degrading punishment, as they do not compel the imposition of a grossly disproportionate sentence. The bill does not compel — and indeed, contains safeguards that protect against — the imposition of a sentence of imprisonment that is inappropriate, unjust or disproportionate.

The safeguards include the availability of full sentencing discretion where a court is satisfied of the existence of a special reason in relation to an offender or the particular circumstances of a case as set out in section 10A of the Sentencing Act. The special reasons are:

> the offender assisted or has undertaken to assist in the investigation or prosecution of an offence;
>
> the offender was aged over 18 but under 21 years of age at the time of the commission of the offence and can prove that due to psychosocial immaturity was unable to regulate his or her behaviour;
>
> the offender can prove he or she has impaired mental functioning;
>
> the court makes a hospital security or residential treatment order; or
>
> there are substantial and compelling reasons that justify a departure from the statutory minimum sentence, having regard to Parliament's intention that the relevant minimum sentence should apply and whether the cumulative impact of the circumstances justify a lesser sentence.

For offences against section 18 of the Crimes Act, the bill broadens the special reasons to encompass young offenders who would otherwise be eligible for a youth justice centre order. The bill adopts the existing criteria in section 32 of the Sentencing Act, which permits a court to sentence an offender aged between 18 and up to 21 (a 'young offender') to detention in a youth justice centre rather than imprisonment in certain cases. This can occur if a court believes:

> that there are reasonable prospects for the rehabilitation of the young offender; or
>
> the young offender is particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison.

Under the bill, these criteria will operate in the same way as the special reasons, that is, as an exemption from the statutory sentence, for young offenders found guilty of causing injury to an emergency worker on duty. If either of the criteria is met, the court does not have to impose the statutory sentence of six months imprisonment, and may instead impose any sentence within its discretion.

For the more serious offences of intentionally or recklessly causing serious injury to an emergency worker on duty, the court may allow the offender to serve their statutory sentence in youth detention if the court believes the offender has reasonable prospects of rehabilitation or is particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison. This does not limit the availability of the existing special reasons provisions,

which if met, permit the court to impose any available sentence.

These provisions recognise particular issues relevant to the detention of young offenders, apply the threshold criteria currently available in section 32 of the Sentencing Act, and are consistent with the general sentencing principles dealing with youth. In addition, these provisions do not prevent the administrative transfer of prisoners from youth justice to prison or vice versa.

Existing safeguards in the Sentencing Act will also apply to the new provisions including that statutory minimum sentences do not apply to offenders who aid, abet or procure the commission of the offence or to offenders who are under 18 years of age at the time of the commission of the offence.

In my opinion, these amendments do not limit the right set out in section 10.

Right to a fair trial (section 24)

Section 24 of the charter act relevantly provides that a person charged with an offence has the right to have the charge decided by an independent and impartial court after a fair hearing.

While the bill prescribes the minimum sentence for the offences of intentionally or recklessly causing serious injury in a circumstance of gross violence, the court has discretion to impose any sentence within the parameters of the minimum and maximum sentences.

Furthermore, as outlined above, the bill's special reasons provisions allow the courts to take account of factors that reduce an offender's culpability to such a degree that the offender should not be subject to the statutory minimum sentence. I also note that the High Court has consistently held that provisions imposing mandatory minimum sentences, which this bill does not do given the special reasons provisions, do not constitute a usurpation of judicial power and, as such, are not constitutionally objectionable.

The bill applies statutory minimum sentences to several offences for the first time. It also applies the special reasons in section 10A for not applying statutory minimums to these offences.

Section 10A of the Sentencing Act, which outlines an exhaustive list of special reasons for which a judge may depart from the statutory minimum sentence, imposes a legal burden of proof in respect of the special reasons which apply to offenders with impaired mental functioning, and offenders who are aged between 18 and 20 years of age and who possess a diminished ability to regulate their conduct in comparison with the norm for persons their age.

In my opinion, these provisions do not limit the right to a fair trial under section 24 of the charter act. The matters to be proved by an offender who seeks to rely on either special reasons provision are matters which the offender is in the best position to prove. Conversely, it would be difficult and onerous for the Crown to investigate and disprove these matters beyond reasonable doubt. Furthermore, the legal burden imposed by each provision is comparable to the burden of proof which offenders must meet when seeking to prove mitigating circumstances and, from a practical perspective, they relate to matters which would be raised during the normal course of sentencing submissions for offences under the Crimes Act 1958.

For these reasons, I consider that the bill does not limit section 24 of the charter act.

Baseline sentence for murder of emergency workers on duty

The bill amends the Crimes Act 1958 to provide for the introduction of a 30-year baseline sentence for the murder of an emergency worker on duty. This bill builds on the proposed baseline sentencing provisions in the Sentencing Amendment (Baseline Sentences) Bill 2014 by introducing a 30-year baseline sentence for murder of an emergency worker on duty.

This means that, when dealing with one or multiple baseline offences, a sentencing court must sentence consistently with the proposition that the baseline sentence for an offence is the sentence that Parliament intends to be the median sentence for sentences imposed for the relevant offence. The baseline sentence operates as an additional factor in the sentencing process.

In each case, a sentencing court is compelled to provide reasons for why it has imposed a sentence equal to, greater or lesser than the baseline sentence. Further, a sentence imposed by a court in respect of a baseline offence must have a non-parole period fixed in compliance with the minimum ratios proposed in the Sentencing Amendment (Baseline Sentences) Bill 2014.

Section 21 of the charter act relevantly provides that a person must not be deprived of his or her liberty except on grounds, and in accordance with procedures, established by law. Section 24 relevantly provides that a person charged with an offence has the right to have the charge decided by an independent and impartial court after a fair hearing.

These rights are not limited. Any deprivation of liberty will arise, as it does now, from a sentence imposed after conviction for an offence by an independent court after a fair hearing. The bill introduces an additional statutory consideration (the baseline sentence) into the sentencing process. The bill does not otherwise affect judicial discretion. The bill does not introduce mandatory sentences for murder of an emergency worker and the baseline sentencing provisions do not alter the existing instinctive synthesis process for sentencing.

The baseline sentencing scheme contains a number of safeguards to protect the rights provided for in sections 21 and 24. For example, it does not limit the process for appeals against sentence. Also, it requires the provision of reasons for the sentence being greater or lesser than or equal to the baseline which promotes transparency and consistency in sentencing.

Prohibition on retrospective criminal penalties (section 27)

Section 27(2) of the charter act provides that a penalty must not be imposed on any person for a criminal offence that is greater than the penalty that applied to the offence when it was committed. In my opinion, the bill does not limit this right because the amendments do not change the penalty applicable to an offence.

Reforms to CCOs

The bill extends the existing three-month limit on a sentence of imprisonment that may be imposed in addition to a CCO in section 44 of the Sentencing Act to two years. This means that a court may impose a two-year jail sentence and then a

CCO of up to the maximum length that court is permitted to impose for a single offence or offences founded on the same facts. The amendments will apply immediately upon commencement and can be used by courts when sentencing an offender found guilty of an offence committed prior to the commencement date. The bill does not limit the right in section 27(2) because it does not increase the maximum penalty that applied to the offence when it was committed. Instead it creates flexibility to combine a CCO with a term of imprisonment between three months and two years. A CCO can only be imposed with the consent of the offender. The amendments facilitate the use of CCOs and provide greater flexibility to the courts to impose an appropriate combination sentence of CCO and imprisonment.

Sentencing for 'arson offences'

In addition, the bill provides sentencing courts with the power to combine a term of imprisonment of any duration with a CCO when sentencing an offender for an 'arson offence'. This power is of course subject to the maximum term of imprisonment applicable to the relevant arson offence.

This amendment will use the existing definition of 'arson offence' in clause 5 of schedule 1 of the Sentencing Act. That definition is relevant to part 2A of that act, which deals with sentencing for 'serious arson offenders'. The bill will also add to that definition by inserting two additional serious arson offences, namely:

> placing inflammable material for the purpose of causing fire contrary to section 66 of the Forests Act 1958; and
>
> causing fire in a country area with intent to cause damage in section 39C of the Country Fire Authority Act 1958.

The amended definition will apply to persons who are sentenced for either of the above offences after the commencement of these amendments, regardless of when the offence was committed or the finding of guilt made. The consequence is that the offender will be sentenced as a 'serious arson offender' in respect of that offence if they have previously been convicted of an arson offence and were sentenced to a term of imprisonment or detention in a youth justice centre. Persons deemed 'serious arson offenders' are subject to special rules on sentencing that may expose them to a heavier sentence. Accordingly, these amendments may be argued to contain an element of retrospectivity that is relevant to section 27(2) of the charter act.

In my opinion, this amendment does not limit section 27(2). The penalty to which section 27(2) refers is the maximum penalty prescribed for the offence (see, for example, *DPP v. Leys* [2012] VSCA 304, [130]). While the application of sections 6D and 6E of the Sentencing Act may result in a heavier sentence being imposed, depending upon how the sentencing discretion is exercised, nothing in part 2A alters the maximum penalty. Therefore, in my opinion, these amendments do not limit section 27(2) of the charter act.

Edward O'Donohue, MP
Minister for Liquor and Gaming Regulation
Minister for Corrections
Minister for Crime Prevention

Second reading

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — I advise the house that the bill was amended in the other place with respect to clause 15. The amendments omitted subclause 3 and inserted a new subclause 3 to repeal section 52 subclause 2 of the Summary Offences Act 1966. I move:

> That the second-reading speech be incorporated into *Hansard*.

Motion agreed to.

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

> That the bill be now read a second time.

Incorporated speech as follows:

> The Sentencing Amendment (Emergency Workers) Bill 2014 introduces a number of reforms that will improve sentencing processes and outcomes in Victoria. Key among these reforms is the introduction of stronger penalties for violent offences against emergency workers in the course of performing their duties.
>
> The reforms recognise the very special role played by Victoria's emergency workers, and the need to ensure they receive the full protection of the law when treating, caring for and protecting Victorians at times of emergency.
>
> In addition to the introduction of statutory minimum sentences for assaults, the bill introduces a baseline sentence of 30 years for murder of an emergency worker who is on duty, and creates new indictable and summary offences that will apply specifically to emergency workers performing their operational duties. The longer sentences reflect the opprobrium that the community attaches to acts of violence against emergency workers who put themselves on the line in emergency situations on behalf of the community. It sends a clear message to perpetrators of these acts that violence against emergency workers will not be tolerated and will be met with strong penalties.
>
> The categories of emergency workers protected under the bill include police and protective services officers, paramedics, persons who provide or support emergency treatment to patients in a hospital, employees of the Department of Environment and Primary Industries, Metropolitan Fire Brigade, Country Fire Authority, the Victoria State Emergency Service, Life Saving Victoria and other agencies who respond to emergencies. The reforms apply to emergency workers who are on duty at the time of the commission of an offence, to ensure that the higher sentences apply to offenders who perpetrate violence against emergency workers in operational settings.
>
> **Statutory minimum sentences for violent offences against emergency workers on duty**
>
> Part 2 of the bill establishes a statutory minimum sentencing regime for violent offences against emergency workers on duty. The bill amends the Sentencing Act 1991 to introduce provisions that compel a court to impose a statutory term of

imprisonment for offenders who are found guilty of causing injury or serious injury to emergency workers in the course of performing their professional duties. The prescribed statutory minimum non-parole periods for violent offences are five years for the offences of intentionally or recklessly causing serious injury in circumstances of gross violence, three years for the offence of intentionally causing serious injury, and two years for the offence of recklessly causing serious injury. The bill also requires a six-month term of imprisonment to be imposed for the offences of intentionally or recklessly causing injury to an emergency worker on duty.

Authorised departures from statutory minimum sentences

The imposition of a statutory minimum sentence is a requirement in all relevant cases unless a sentencing court is satisfied that a special reason as set out in section 10A of the Sentencing Act exists. If a special reason exists in relation to an offender or a particular case, the bill permits a sentencing court to impose any sentencing order available under the Sentencing Act. The special reasons are those that were developed as part of the gross violence reforms.

A court can find that a special reason exists where an offender assisted or has given an undertaking to assist in the investigation or prosecution of an offence and a discounted sentence is warranted; if an offender was aged 18 or over but under 21 at the time of the commission of the offence and due to a particular psychosocial immaturity, the offender's moral culpability for the offending is reduced; a court is satisfied that an offender had impaired mental functioning when the offence was committed; or where a court makes a hospital security or residential treatment order.

The bill also provides that a special reason exists if substantial and compelling circumstances apply to a particular case or offender that justify a departure from the prescribed statutory minimum sentence for the offence. Before making such a determination, the court must have regard to Parliament's intention that the sentence that should be imposed is the statutory minimum sentence provided in the bill. Additionally, a court must be satisfied that the cumulative impact of the relevant circumstances of the case justify a lesser sentence.

Young offenders and detention in a youth justice facility

The bill establishes a framework for dealing with young adult offenders aged 18 and up to 21 that is consistent with the existing provisions in the Sentencing Act. This framework holds young offenders accountable for their actions while recognising their particular characteristics and prospects for rehabilitation.

Currently, section 32 of the Sentencing Act permits a court to sentence an offender aged between 18 and up to 21 to detention in a youth justice facility if the court believes:

> that there are reasonable prospects for the rehabilitation of the young offender; or
>
> the young offender is particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison.

These criteria will operate as a new special reason only available to those young offenders found guilty of causing injury to an emergency worker on duty under s18 of the Crimes Act. If a young offender satisfies one of those criteria, the court will not be bound by the statutory minimum sentence and may impose any sentence that it considers appropriate.

For young offenders found guilty of the more serious offences of intentionally or recklessly causing serious injury under section 16 or 17 of the Crimes Act, this special reason will not be available, but a youth justice centre order may be imposed rather than a sentence of imprisonment. Provided the court receives a pre-sentence report from the Secretary of the Department of Human Services, it may impose a sentence of detention in a youth justice centre, rather than imprisonment, for the length specified for the particular offence. The offender will not be eligible to be released on parole by the Youth Parole Board until they have completed the statutory minimum term.

Baseline sentence for murder of an emergency worker on duty

The bill amends the Crimes Act 1958 to introduce a baseline sentence of 30 years for murder of an emergency worker on duty.

This reform augments the baseline sentencing provisions in the Sentencing Amendment (Baseline Sentences) Bill 2014 that propose the introduction of baseline sentences for specified violent offences and include a baseline sentence for the offence of murder of 25 years.

A higher baseline sentence will apply to offenders convicted of murder if the victim is an emergency worker on duty. This reflects the seriousness that the community, through Parliament, attaches to offences of this kind. In these cases, a court must impose a sentence that is consistent with the proposition that 30 years imprisonment is the sentence that the Parliament intends to be the median sentence.

New offences for assaults on emergency workers on duty

The bill will also revise and expand the range of offences applicable to assaults or threats against emergency workers that are of a less serious nature. The proposed changes amend the Crimes Act to introduce a new indictable offence that applies to assaults against emergency workers who are on duty, and consolidates existing assault offences under section 51 and 52 of the Summary Offences Act 1966 into a single offence that proscribes assaulting, resisting, obstructing, hindering or delaying an emergency worker on duty. While these new assault offences apply to less serious offending, they will nonetheless make clear that all offences perpetrated against emergency workers who are on duty are punishable under law.

Purpose and use of community correction orders

The CCO is a flexible community-based order that can be tailored to address a wide range of offending behaviour through the use of optional conditions. Since CCOs became available on 16 January 2012 and up to June 2013 over 11 000 offenders have received a CCO. All of the optional conditions are being successfully utilised across the court system.

The amendments to sections 5 and 36 of the Sentencing Act will facilitate even greater use of CCOs by highlighting their flexibility and suitability as a means of addressing offending in appropriate cases. For example, an offender at risk of

serving time in jail but whose rehabilitation is best met by a sentence served in the community could receive a CCO with restrictive conditions such as a curfew, or place or area exclusion. For offences sentenced in the higher courts, their compliance with these conditions can be electronically monitored including through GPS tracking. If the person does not comply, there is a wide range of measures that can be applied such as increased supervision by Corrections, infringement notices, the extension of the restrictive conditions, or taking the person back to court. A breach of a CCO is an offence that is punishable by three months imprisonment.

With a suspended sentence, none of this happens. Suspended sentences are often just a theoretical punishment because a person is not required to comply with any conditions to address their offending. There is no monitoring or supervision. The only time the offender will have any contact with authorities is if they reoffend or complete the order. While a suspended sentence is treated as being more serious than a CCO, the reality is that complying with a CCO with conditions is far more onerous for offenders and better protects the community from further harm. These amendments reinforce the fact that a CCO with stringent conditions can be an alternative to a jail sentence for some offenders.

Imposition of a sentence of imprisonment and CCOs

Under section 44 of the Sentencing Act, courts are able to impose a jail sentence and a CCO in respect of one or more offences. However, there is a three-month limit on the jail term.

To provide greater flexibility to the courts, the existing three-month limit on the jail sentence that can accompany a CCO will be increased to two years. This means a court could impose a 12-month jail sentence with a two-year CCO commencing immediately upon the offender's release from prison. Within two days of leaving prison, the offender will report to Community Correctional Services (CCS) and get started on their CCO. The existing procedures and processes with respect to CCOs will apply.

There is the potential for an offender to serve a jail sentence and parole and then go on to complete a CCO. Under the Sentencing Act, the courts have discretion to fix a non-parole period for sentences of imprisonment of 12 months and up to 2 years, but there is no requirement that a parole period be set. A court using section 44 to impose a jail sentence and a CCO need not fix a non-parole period. It is expected that in many cases the courts will opt for an offender to go straight from jail to a CCO.

However, in some cases, a court may determine that it is appropriate for a person to have a parole period. For example, the court may impose a two-year sentence with the option for the person to be released on parole after 18 months. Once the adult parole board determines whether the person should be released and on what conditions, the offender will be supervised on parole until the completion of their parole period. The person's CCO will start once they have served all parts of their jail sentence, including parole.

Sentencing of offenders who commit arson offences

The bill will also allow courts to combine a sentence of imprisonment of any length with a CCO when sentencing an offender for an arson offence, up to the maximum penalty for the offence.

This amendment will ensure that persons convicted of arson offences can be subject to a CCO with strict conditions after serving a lengthy period of imprisonment. For example, a sentencing judge may decide that an appropriate sentence for intentionally causing a bushfire, for which the maximum penalty is 15 years imprisonment, is 5 years imprisonment with a non-parole period of 3 years and 6 months, and 10 years on a CCO.

Like any CCO, a CCO imposed for an arson offence can be tailored to ensure the offender is properly supervised within the community. For example, the CCO component of a sentence imposed for intentionally causing a bushfire may include an electronic monitoring condition to monitor the offender's compliance with a place or area exclusion condition which prevents the offender from entering national parks. This recognises the threat that arson poses to our community, particularly on days of high fire danger, and reduces the risk that convicted arsonists will reoffend upon release.

This provision of the bill employs the existing definition of 'arson offence' in the Sentencing Act. That definition includes serious offences such as arson causing death and intentionally or recklessly causing a bushfire.

The bill also expands upon the existing definition of 'arson offence' to include two further offences — namely, placing inflammable material for the purpose of causing fire, and causing fire in a country area with intent to cause damage. These are serious offences attracting substantial penalties that capture a similar type of conduct to those offences already categorised as 'arson offences'.

This reform will highlight the gravity of arson offences. It will also serve to protect the community by ensuring that sentencing courts can impose a CCO with strict conditions in addition to imposing a significant custodial sentence for an arson offence.

Conclusion

This bill delivers the government's commitment to introduce stronger sentences for offences against emergency workers so that violence against those whom the community relies upon at times of emergency is reduced; and offenders are adequately punished. The bill also makes important reforms to community correction orders to facilitate their greater and more effective use as a sentencing disposition in Victoria.

I commend the bill to the house.

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

Debate adjourned until Thursday, 28 August.

TOBACCO AMENDMENT BILL 2014

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

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

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

Overview of bill

The purpose of the bill is to prohibit smoking in specified outdoor areas, to prohibit smoking in the vicinity of pedestrian access points to certain places, to increase the penalty in section 11A of the principal act and to amend the powers of inspectors in relation to monitoring compliance with, and investigating possible contravention of, certain provisions prohibiting smoking in outdoor areas. It is intended that the new smoking bans will further limit exposure to second-hand smoke, denormalise smoking, minimise littering and improve public amenity by providing for more smoke-free areas in Victoria.

Human rights issues

A charter right that is relevant to the bill is the right to privacy which is contained in section 13 of the charter act.

Clauses 12 and 13 of the bill clarify the circumstances in which inspectors may enter and search premises with consent and enter premises which are open to the public.

Clause 14 of the bill inserts a new section 36EA into the Tobacco Act 1987 (the principal act). This section empowers inspectors to enter school premises and premises where education and care services or children's services are provided in order to monitor compliance with or investigate a breach of a smoking ban which applies to outdoor areas of those premises.

The right to privacy is relevant to the new section 36EA. The bill clearly defines the circumstances in which an inspector may enter premises without a warrant and provides that an inspector may only exercise the power if the occupier of the premises consents to the entry and the inspector is accompanied by either the occupier or a person acting on the occupier's behalf. An occupier's consent must be informed and acknowledged in writing. These safeguards ensure that the interference with the right to privacy is kept to the minimum necessary to allow for inspectors to monitor compliance with and enforce the new outdoor smoking bans.

Hon. David Davis, MP
Minister for Health

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

Over 4000 Victorians lose their lives to smoking each year and the impact on our families, our communities and our economy is simply too high. Smoking remains the leading avoidable cause of cancer, heart disease and respiratory illness.

Our government's tobacco control agenda is to protect all Victorians, but especially our children and young people, from the harms of smoking.

Smoking is now banned on patrolled beaches, at and near outdoor public children's playground equipment, skate parks and sporting venues during organised underage sporting events, as well as in outdoor areas of public swimming pools.

This piece of legislation represents the next in a series of practical, sensible steps to extend outdoor smoking bans in Victoria.

Outdoor smoking bans work to further denormalise smoking in the community, particularly in the presence of children. Making outdoor areas smoke free also improves amenity and reduces butt litter.

The overwhelming majority of Victorians are non-smokers, and we know there is strong community support for these measures.

The Tobacco Amendment Bill 2014 will amend the Tobacco Act 1987 to ban smoking:

- within the grounds of, and at and near entrances to, all Victorian childcare centres, kindergartens or preschools, and primary and secondary schools;
- at and near entrances, to children's indoor play centres, and Victorian public premises, which are all Victorian public hospitals, registered community health centres and certain Victorian government buildings.

The bill will also make two minor and technical amendments to the Tobacco Act 1987 to:

- quadruple the penalty for possession of illicit tobacco by retailers and wholesalers to discourage trade in illicit tobacco;

amend the powers of entry for inspectors to enhance enforcement of outdoor smoking bans.

Outdoor smoking bans at childcare centres, kindergartens and schools

The government is determined that the places where our children learn and grow will be smoke free.

Children and young people are vulnerable to the health problems caused by second-hand smoke. They are also impressionable. Seeing adults smoke sends a message to children and young people that smoking is okay, rather than harmful.

Research shows that smoke-free areas can play an important role in changing attitudes to smoking among children and young people, reducing youth smoking uptake.

Nowhere is this more relevant than our children's education and care settings.

The bill will introduce legislative bans on smoking in outdoor areas at all Victorian childcare centres, kindergartens, and primary and secondary schools.

Coupled with the existing provisions within the Tobacco Act 1987 that prohibit smoking in indoor areas, these new bans will mean smoking is banned across each entire site.

This will ensure a uniform legislative approach across the government and non-government sectors.

In the case of primary and secondary schools, the ban on smoking in outdoor areas will apply to all schools within the meaning of the Education and Training Reform Act 2006.

The ban will apply to anyone present on school premises during and after school hours.

In the case of childcare centres and kindergartens, to ensure comprehensive coverage and alignment with existing legislation, the ban on smoking in outdoor areas will apply to all:

education and care service premises within the meaning of the Education and Care Services National Law (Victoria) with the exception of family day care; and

premises to which a licence to operate a children's service has been granted under the Children's Services Act 1996.

While the bans will apply to anyone present on the premises, they will apply only when the premises are being used to provide an education and care service or a children's service.

The bans are time limited in recognition of the often mixed use environments used to deliver child care, such as vacation care provided for employees' children in corporate offices.

Smoking will also be banned at, and within 4 metres of an entrance to, childcare centres, kindergartens, and primary and secondary schools.

Four metres was judged a safe, yet practical distance by the chief health officer on the basis of available evidence and bans in place in other jurisdictions.

There are over 2200 primary and secondary schools in Victoria and approximately 4200 kindergartens and childcare centres.

These important legislative reforms will ensure that our children enter and leave every single one of those premises without being exposed to second-hand smoke, or adult smoking behaviours.

Outdoor smoking bans at the entrance to indoor children's play centres and Victorian public premises

Smoking will also be banned at, and within 4 metres of an entrance to, all indoor children's play centres and Victorian public premises. Victorian public premises are defined as all Victorian public hospitals and registered community health centres, and certain Victorian government buildings.

Victorian government buildings in scope are the offices of all Victorian government departments and the Victorian Public Sector Commission, as well as all administrative offices and special bodies, such as the Victorian Auditor-General's Office and the Victorian Civil and Administrative Tribunal.

The ban will apply to buildings occupied by Parliament and the Victorian courts, including the Children's Court, the Coroners Court, the County Court, the Court of Appeal, the Magistrates Court and the Supreme Court.

The purpose of these bans is to ensure that the entrances to children's play centres as well as our essential Victorian government services are smoke free.

A consequence of the introduction of indoor smoking bans in Victoria in 2006 is the relocation of smokers to the area immediately outside building entrances. Research has shown that the concentration of second-hand smoke in these outside areas can be as high as levels experienced inside.

Requiring smokers to stand a minimum of 4 metres away from doorways will reduce people's exposure to cigarette smoke as they enter or leave a building, reduce the chance of smoke drifting into enclosed smoke-free areas and reduce butt litter.

These bans will also help encourage current smokers to quit smoking, and support recent quitters and those trying to cut down by reducing the visual cues and other inducements to smoking.

Educating the community to comply with the bans

To ensure that Victorians are informed about these new outdoor smoking bans, we will undertake an extensive public awareness and communication campaign.

This will involve radio, print and online advertising as well as the production of brochures, posters and fact sheets for use in educating the public about the new bans.

In addition, across all locations, there will be a requirement for occupiers to install 'No smoking' signs at all building entrances where the new outdoor smoking bans apply.

This means, for example, there will be signs at the school gate and at our hospital entrances.

The 'No smoking' signs will be supplied by the Department of Health at no cost.

Council inspectors appointed under the Tobacco Act 1987 will be empowered to educate the public about the bans and, where necessary, enforce the bans, including issuing an on-the-spot fine of $147. The maximum penalty for breaching a ban is over $730.

We know that community support for these bans is strong, and to this end, we are confident the community will respect and comply with the bans.

Over time it is expected the bans will achieve high levels of voluntary compliance with little need for intervention.

Minor and technical amendments to the Tobacco Act 1987

As I announced on 15 January 2014, the bill will amend section 11A of the Tobacco Act 1987 to quadruple the penalties for possession of illicit tobacco by tobacco retailers and wholesalers. The maximum penalty will increase to over $35 000 for a natural person and $177 000 for a body corporate. This amendment will provide a strong deterrent for those considering trading in illicit tobacco.

The bill will also amend inspectors' powers of entry under the Tobacco Act 1987 to enhance enforcement of outdoor smoking bans. Specifically, part 3A of the Tobacco Act 1987 will be amended to clarify inspectors' powers of entry that apply in different contexts.

Section 36D provides powers of entry that allow inspectors, with the occupier's permission, to enter and search premises to investigate suspected offences under the Tobacco Act 1987. This section has been amended to specify that these powers do not apply to outdoor smoking bans.

Section 36E provides powers of entry for inspectors to enter premises open to the public. Amendments to this section, coupled with the amendments to section 36D, clarify that inspectors have the power to enter public places to monitor compliance with outdoor smoking bans.

For example, this means that inspectors have the power to enter outdoor areas at a public swimming pool complex to monitor the smoking ban that applies to those premises.

Special provision has been made in the bill for childcare centres, kindergartens and schools that are not open to the public. A new section 36EA establishes the powers of entry for inspectors to enter, inspect, monitor and investigate compliance with bans on smoking in outdoor areas at these premises.

Reflective that inspectors will be exercising their powers in the presence of children, inspectors must have the occupier's consent to enter the premises, and be accompanied by the occupier or a person acting on behalf of the occupier while on the premises.

I commend the bill to the house.

Debate adjourned on motion of Ms LEWIS (Northern Victoria).

Debate adjourned until Thursday, 28 August.

TRANSFER OF LAND AMENDMENT BILL 2014

Introduction and first reading

Received from Assembly.

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

Statement of compatibility

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

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

In my opinion, the Transfer of Land Amendment Bill 2014 (the bill), as introduced to the Legislative Council, is compatible with the human rights protected by the charter act. I base my opinion on the reasons outlined in this statement.

Overview of bill

The proposed bill will:

(a) facilitate efficiencies in the conveyancing process by enabling the phasing out of paper certificates of title and the adoption of the same requirements for paper conveyancing as electronic conveyancing;

(b) facilitate nationally consistent conveyancing practices by enabling the registrar of titles to establish requirements for paper conveyancing which, as far as practicable, are consistent with those of other jurisdictions;

(c) improve the efficiency and equity of the compensation scheme under the Transfer of Land Act 1958 and improve stakeholder understanding of when the state is liable to pay compensation for mortgage fraud; and

(d) make several minor changes to the Transfer of Land Act 1958 so that it operates more effectively.

Human rights issues

Privacy

Section 13 of the charter act provides that a person has the right not to have his or her privacy unlawfully or arbitrarily interfered with.

A primary purpose of the Transfer of Land Amendment Bill 2014 is to enable the registrar of titles to establish requirements for paper conveyancing that those engaging in paper conveyancing must follow (for example, requirements for entering into client authorisation agreements with clients and verifying the identity of parties). It is intended that, as far as practicable, these requirements will be consistent with

those already in place for electronic conveyancing and with those of other jurisdictions.

Personal information, such as names and addresses, will be included in documents lodged for registration using the requirements determined by the registrar. Section 114 of the Transfer of Land Act 1958 provides that the general public can access the information and documents registered or recorded in the register.

Given that information of the type which will be recorded in documents lodged using the requirements is already publicly available, there is unlikely to be any expectation of privacy regarding this information. Additionally, the Transfer of Land Act 1958 contains provisions which regulate the collection and dissemination of information and documents. For example, section 104(1) of the Transfer of Land Act 1958 empowers the registrar to require any person to submit documents or give any information or comply with any requisition relating to any land. Consequently, creating a power for the registrar of titles to determine requirements for conveyancing is not an unlawful or arbitrary interference with the right to privacy.

One of the matters to be included in the requirements determined by the registrar will be the steps that conveyancers, lawyers and financial institutions preparing conveyancing instruments must take to verify the identity of their clients or the parties they are dealing with. The registrar will also issue requirements requiring persons undertaking their own conveyancing (i.e., without engaging a conveyancer or lawyer) to have their identity verified by an authorised identity verification service before lodging instruments with the registrar. Verifying the identity of persons will involve the provision of documents such as drivers licences and passports which will disclose personal information such as names, addresses, and dates of birth. Verifiers of identity will need to keep copies of the documents used to verify identity for a certain time period.

The verification of identity requirements will affect persons voluntarily choosing to engage in conveyancing transactions and the duty to provide this information is consistent with the reasonable expectations of persons engaged in lodging transactions affecting assets with a large monetary value within a regulated scheme. In most cases financial institutions, lawyers and conveyancers are already bound to comply with privacy laws. For those that are not, they are now required to comply with these laws as part of the electronic conveyancing legal framework. Additionally, the requirements will protect consumers by reducing the potential for fraudulent transactions obtained by a person impersonating another person. For these reasons, in my view the power to set verification of identity requirements does not limit the right to privacy.

Consequently, in my view, these provisions do not limit section 13 of the charter act.

Property

Section 20 of the charter act provides that a person must not be deprived of his or her property other than in accordance with law.

Section 40 of the Transfer of Land Act 1958 provides that instruments are not effectual to create, vary, extinguish or pass any estate or interest or encumbrance in, on or over any land until registered. It is possible that a person who refused to follow the requirements established by the registrar could not acquire and/or dispose of property as the registrar would not register an instrument where the registrar's requirements had not been followed (e.g. because identity had not been verified). Therefore the power for the registrar to set requirements could impact upon a person's ability to dispose of his or her property or a person's ability to acquire new property.

However, refusing registration of itself does not result in a deprivation of property rights, but rather ensures the integrity of the register. The requirements that the registrar will set relate to enforcing prudent conveyancing practice (for example, assuring that the identity of parties to the transaction and their right to deal in the land has been appropriately verified). The duty to abide by the requirements is consistent with the reasonable expectations of persons engaged in lodging transactions affecting assets with a large monetary value within a regulated scheme. Additionally, the requirements will protect consumers, in that they will serve to ensure that participants in paper conveyancing operate as intended and reduce the potential for fraudulent transactions being obtained by persons impersonating another person or without the appropriate authorisation of the person engaging in a conveyancing transaction.

Consequently, in my view, these provisions do not limit section 20 of the charter act.

The bill also inserts provisions providing that:

> a mortgage is void for the purposes of the Transfer of Land Act 1958 if the mortgage is fraudulent and the mortgagee did not adequately verify the identity of the mortgagor; or
>
> if the mortgagee did adequately verify identity but the mortgage was still fraudulent, the rate of interest due on the fraudulent mortgage is limited to the bank-accepted bills rate.

These provisions will remove property rights from mortgagees (generally financial institutions) as they will on the one hand no longer have an indefeasible interest in the land (the mortgage) and on the other be limited in what they can recoup when using the land as security. However, this removal of property rights will only occur in situations where the mortgagee has entered into a fraudulent mortgage and failed to take reasonable steps to identify the registered proprietor or entered into a fraudulent mortgage with interest rates in excess of normal market interest rates. These provisions will enhance the property rights of the legitimate owners of a property by reducing their exposure in situations where a fraudulent mortgage has been registered against their property. Furthermore, these provisions do not impact on the ability of a mortgagee to pursue legal action against the fraudster.

Consequently, in my view, these provisions do not limit section 20 of the charter act.

The bill also inserts a provision removing the requirement to lodge with the registrar a mortgagee's consent to an instrument and instead provide that an instrument is not binding on a mortgagee if the mortgagee did not consent to it. This provision will facilitate administrative efficiencies in the operation of the register but will not adversely impact on the

property rights of mortgagees. If a mortgagee exercises its power of sale (following default by the mortgagor), it will be able to have any instruments it did not consent to remove from the register. It could be said that a person benefiting from an instrument has their property rights affected in this case. However, they will be asked to provide evidence that the requisite consent was provided before the encumbrance is removed. There is no change to the current requirement that the benefiting party satisfy itself as to the mortgagee's consent.

Consequently, in my view, this provision does not limit section 20 of the charter act.

Matthew Guy, MLC
Minister for Planning

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

I am pleased to introduce this bill which will facilitate a number of improvements to the conveyancing process in Victoria. This bill:

facilitates efficiencies in the conveyancing process by enabling the phasing out of paper certificates of title and the adoption of the same requirements for paper conveyancing as electronic conveyancing;

facilitates nationally consistent conveyancing practices by enabling the registrar of titles to establish requirements for paper conveyancing which, as far as practicable, are consistent with those of other jurisdictions;

improves the efficiency and equity of the compensation scheme under the Transfer of Land Act 1958 (the TLA) and improves stakeholder understanding of when the state is liable to pay compensation for mortgage fraud; and

makes several minor changes to the TLA so that it operates more effectively.

Victoria's land registration system

Victoria boasts a highly effective and efficient system for registering and recording interests in freehold land. The processes for recording interests in land impact upon most Victorians at some time in their lives. For many Victorians, buying their home is the biggest purchase they ever make. Each year Land Victoria registers approximately 700 000 land transactions. A component of these transactions includes around $80 billion of private property transacted annually.

Improving the efficiency of conveyancing

A key part of Victoria's system for registering land is the conveyancing process. Conveyancing is the process of transferring interests in land. The most common example of conveyancing is when one party sells a parcel of land to another but the term also encompasses other actions including taking out a mortgage and placing caveats on land.

Conveyancing in Victoria can be accomplished either via paper conveyancing (which involves the physical exchange and lodgement of documents and cheques) or electronic conveyancing (where conveyancing is accomplished via the electronic submission of information). Electronic conveyancing has been available in Victoria since 2007 and the provision of electronic conveyancing in Victoria was enhanced in 2013 when legislative amendments to facilitate a national electronic conveyancing system took effect. Electronic conveyancing offers considerable cost and efficiency benefits to parties involved in land transactions and the use of electronic conveyancing is expected to increase significantly in the near future as the national electronic conveyancing system offers increased functionality. However, it is expected that a sizable percentage of conveyancing transactions will still be completed through paper conveyancing for the foreseeable future.

Currently, there are different requirements and procedures for electronic conveyancing compared to paper conveyancing. Establishing aligned requirements for paper and electronic conveyancing transactions will avoid the complexity and costs to the conveyancing industry in dealing with two separate processes and requirements.

To facilitate an alignment of electronic and paper conveyancing, the bill amends the TLA to give the registrar of titles the power to set verification of identity, client authorisation and certification requirements that conveyancers, financial institutions and lawyers must follow when engaged in paper conveyancing. The requirements the registrar of titles will set for paper conveyancing will be based on those already in place for electronic conveyancing. This will thereby achieve a substantial alignment between the requirements for electronic and paper conveyancing.

The requirements for electronic conveyancing are nationally consistent. Each Australian state and the Northern Territory has agreed to implement the requirements for electronic conveyancing determined by the Australian Registrars National Electronic Conveyancing Council, which has been established to oversee national electronic conveyancing. By aligning the procedures for paper conveyancing with those for electronic conveyancing, a substantial degree of national consistency will be achieved.

The bill also amends the TLA to facilitate the eventual phasing out of paper certificates of title. Currently, under the TLA, for a typical conveyancing transaction to proceed, the relevant paper certificate of title must be produced. Paper certificates of title cannot be used in electronic conveyancing. The alignment of requirements for paper and electronic conveyancing will mean that alternative safeguards including verification of identity, client authorisations and certifications will be employed as means of fraud protection. This will ultimately enable paper certificates of title to be phased out. Phasing out paper certificates of title also offers industry considerable cost savings. These savings relate to storage,

insurance and the costs associated with replacing lost certificates of title.

It is proposed to allow time for the new safeguards to be fully implemented within Victoria prior to paper certificates of title being phased out. After this bill becomes law, the registrar of titles plans to initiate a transition period where the use of paper certificates will be progressively phased out. Industry will be fully engaged in this transition process.

Changes to mortgage provisions

The TLA provides for the state to compensate innocent parties who incur losses as a result of the registration of a fraudulent or erroneous instrument.

There have been situations where a fraudulent mortgage was registered as a result of the financial institution failing to properly verify the identity of the party with whom it was transacting, thereby contributing to the fraud. It is inappropriate that the state should be expected to use public funds to compensate for a fraud that occurred because of a failure by the financial institution to properly verify identity.

To address this problem, the bill amends the TLA to provide that a mortgage will be held to be void for the purposes of the TLA if the mortgagee failed to properly verify the identity of the mortgagor. This will mean that the legitimate registered proprietor will no longer need to repay the fraudulent mortgage and will thus no longer need to claim compensation.

Similarly, there have been situations where financial institutions have entered into fraudulent mortgages with interest rates far in excess of normal market interest rates (in one recent case, nearly 40 per cent a year). When the financial institution has sought to enforce the mortgage against the innocent registered proprietor, the state has had to pay compensation accounting for the inflated interest rate. It is inappropriate that the state should be expected to use public funds to compensate for mortgages with interests rates grossly out of proportion to market rates.

To address this problem, the bill amends the TLA to provide that when a registered mortgage is fraudulent, the interest rate that the mortgagee can claim will not exceed the banks accepted bill rate (which approximates market interest rates). This will reduce the compensation that the state will be liable for to a reasonable level.

These changes will not prevent a financial institution that is a victim of fraud from pursuing legal action against the fraudster.

Introduction of priority notices

The bill also makes a number of other changes to the TLA to improve the efficiency of property transactions. One of these changes which I wish to mention is the introduction of priority notices in Victoria. A priority notice is a notification of intended dealings with land, which can be lodged electronically with the registrar of titles. Priority notices will be effective for 60 days from the date of lodgement. During this period the priority notice will prevent registration, but not lodgement, of instruments dealing with an estate or interest in the land, for example, an easement, a lease, a mortgage or a transfer of the land. A priority notice will automatically expire on the registration of the dealings that are the subject of the priority notice, or 60 days after lodgement of the priority notice, whichever is the sooner. A priority notice will not prevent the recording of a notification, for example, a caveat, a planning agreement, statutory charges or a warrant of seizure and sale.

Such notices are already used in both Queensland and Tasmania as well as the United Kingdom and they are expected to become a standard part of prudent conveyancing practice in Victoria. Priority notices offer an effective means of protecting the interest of parties to an intended instrument or transaction as well as alerting interested parties who search the register of land to the fact that an intended instrument or transaction is pending. In this way priority notices can serve as a fraud prevention tool. The bill provides safeguards to protect against the misuse of priority notices.

Consultation with stakeholders

Extensive consultation with relevant stakeholders occurred in developing the proposals in the bill.

A public consultation process commenced in October 2013 with the release of an introductory paper followed by the release of a consultation paper in November 2013. Key non-government stakeholders were sent copies of the introductory paper and consultation paper and provided submissions. Submissions from these non-government stakeholders on the proposals were considered in formulating the bill.

During consultation, non-government stakeholders expressed general support for the proposed amendments to align requirements for electronic and paper conveyancing and facilitate greater national consistency. A number of implementation issues were raised and the registrar of titles will work with stakeholders to address these implementation issues and ensure appropriate lead times are provided as the changes to the TLA are implemented.

Representatives of the finance industries have expressed concerns about the proposals to restrict the ability of mortgagees to claim compensation from the state in cases of mortgage fraud. However, the proposed amendments are necessary to clarify when the state is liable to pay compensation for mortgage fraud and that the compensation scheme operates in an equitable manner. The proposed amendments in relation to verification of identity will also make Victoria consistent with legislation and practices in New South Wales and Queensland.

Conclusion

In conclusion, the Transfer of Land Amendment Bill 2014 will facilitate a more efficient system for the creation, transfer and removal of estates and interests in land. This bill will offer many benefits to the numerous Victorians who, each year, are involved in property transactions.

I commend the bill to the house.

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

Debate adjourned until Thursday, 28 August.

ADJOURNMENT

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

That the house do now adjourn.

Western Metropolitan Region constituent

Mr MELHEM (Western Metropolitan) — My adjournment matter is for the attention of the Minister for Housing, the Honourable Ms Lovell. It is in relation to one of my constituents, Mrs Papadopoulos, who owns two units in Footscray which are rented to the department of housing. She experienced a lot of trouble with the tenants and also had some difficulties with the department failing to address these issues. I will not go through all the details because I undertake to email them to the minister in the next few minutes. They will include a comprehensive report that my office compiled after investigating this matter. That will be in the hands of the minister shortly to enable her to look into the matter.

The action I seek is that the minister investigate the matter and ask the department to take corrective action to rectify the damage caused by the tenants, who have vacated the premises, and return the properties to Mrs Papadopoulos in the same condition as when they were rented out to the department.

Hopkins Correctional Centre

Mr RAMSAY (Western Victoria) — My adjournment matter is for the Minister for Corrections, the Honourable Edward O'Donohue. The action I seek is for the minister to update the house on the progress of works at the Hopkins Correctional Centre, which in a former life was known as the Ararat jail. As a member of Parliament representing Western Victoria Region, I am aware that the Labor-initiated botched project to redevelop the Ararat jail to what is now known as the Hopkins Correctional Centre caused a significant amount of economic pain in the Ararat community. The public-private partnership was doomed to fail. It failed a whole lot of governance testing in relation to its initial set-up by Labor. When one of the partners ran into financial difficulty, the partnership basically fell over. We were left to pick up the pieces and put a new structure in place to allow the redevelopment to continue.

I mention this because I had a lot of subcontractors come to my office concerned that they were going to have trouble paying their workers. That had a ripple effect right through businesses in Ararat and Ballarat, where a number of builders were engaged in working on that site.

The good news — and this is a credit to the workers and the Ararat community — is that the coalition government rescued this failing project, and it is now being delivered on time. The 350-bed expansion will deliver essential prison beds and support jobs and local investment in Ararat. An expansion will create over 160 jobs. Construction is ongoing. There have been 500 to 600 workers on site, and there are currently about 400 to 450 on site. There is huge economic benefit flowing from this project back into the Ararat and Ballarat communities.

The reason I bring this matter to the minister is that significant work has been done, and it is important to advise the house of the progress as the project heads towards completion. I ask the minister to update the house on this matter.

Tarran Valley planning

Ms LEWIS (Northern Victoria) — The matter that I wish to raise today is for the Minister for Planning, and it relates to the proposed development on the outskirts of Maldon known as Tarran Valley estate. Maldon is a small rural town in central Victoria, and it is also Australia's first notable town. The majority of economic activity in Maldon is linked to tourism. I would like to place on the record the disappointment of Maldon residents who travelled to Melbourne today. In particular I note their disappointment at the minister's refusal to meet with them to discuss the Tarran Valley estate project.

The proposal for the development was first submitted to Mount Alexander Shire Council in 2006 and approved as planning scheme amendment C36 in 2009. The then Minister for Planning deferred a decision pending the outcome of the 2009 Victorian Bushfires Royal Commission. Nothing further was heard of this proposal until now — five years later when it has been resurrected.

In the intervening years there have been changes to the council's planning policies. In 2014 the rural land study was adopted. This study recommends that sites in the earlier 2006 rural living zone, which included Tarran Valley, are no longer appropriate for the zone. Section 21.04.4 of the council's municipal strategic statement (MSS) reiterates that the only areas specifically designated for rural living are around Castlemaine.

Some other objectives in the MSS highlight the unsuitability of Tarran Valley as a rural living zone. These include 21.04.4, which states, 'Avoid rural living development in significant water supply catchments', and 21.04.8, which states, 'Ensure that proposals for new housing development respect heritage and neighbourhood character'. Further, the planning minister's departmental *Planning Practice Note 37 — Rural Residential Development* from November 2013 states that there must be adequate assessment of landscape and heritage values and the potential impacts of rural residential developments on these values.

There are three known historical archaeological sites listed under Heritage Victoria's inventory within the proposed Tarran Valley development area. Therefore to be consistent with current planning policies and his own planning practice note, I request that the minister reject planning scheme amendment C36.

Level crossings

Mr FINN (Western Metropolitan) — I wish to raise a matter for the attention of the Minister for Public Transport and in so doing say how excited the people of St Albans and many parts of the western suburbs are at the imminent removal of the Main Road, St Albans, level crossing. This has been a long-running saga, and I am delighted, as are the people of the west delighted, that it is finally going to be resolved. Nobody likes level crossings, and I sincerely hope that very soon we will see the removal of the Buckley Street level crossing in Essendon, which is causing a great deal of trouble as well.

I understand there is a proposal on the table in some quarters to remove 50 level crossings in one go. My understanding is that the removal of level crossings is something that has to be done in a careful and planned way. Further, my understanding is that so far the removal of level crossings in the term of this government has been done so as not to cause chaos on our roads or on our public transport system. It is important that people are made aware that any proposal to remove 50 level crossings at once is something that could well cause a great deal of difficulty for a good many people.

It is something that concerns me. We already have a huge congestion problem on our roads, particularly on our main roads. The last thing we need to do is present that problem to some of our minor roads as well, particularly those which have level crossings on them. I ask the minister to provide some information for this house, and I think probably for the general community, to ensure that people are aware of what will happen if a great number of level crossings are eliminated in one hit — what it will mean to motorists, what it will mean to public transport users and what it will mean in terms of disruption to our general community. I am particularly concerned, for example, as I mentioned earlier with the Buckley Street, Essendon, level crossing, that it might cause a great deal of difficulty for the people of Essendon, Niddrie and surrounds if that were to be removed with others. I ask the minister to provide that information.

St Mary's House of Welcome

Mr TEE (Eastern Metropolitan) — I welcome the opportunity to put forward my adjournment matter, which relates to St Mary's House of Welcome. I was stunned when I received some correspondence to say that because of cutbacks in government funding St Mary's would have to close down on Saturdays. Having been to St Mary's and having served a meal there, I am very appreciative of the role that St Mary's plays in providing a very basic but important service. That includes things like providing a free lunch; free access to showers, including towels and toiletries; and providing a safe place to be. As I said, I was surprised to receive that correspondence. When I visited St Mary's I was surprised at the degree of dignity that was provided to community members who are down on their luck. I was stunned when I found that the service would no longer be provided to the 70 to 100 people who use it on a Saturday for breakfast or the 50 to 60 people who go there for lunch or who use its showers.

This is an incredibly important service. The cost of keeping it open is some $2000. My request to the Minister for Community Services, who has cut this funding, is that she reconsider that decision and ensure that there is some alternative provided, because a large amount of humanity, generosity and dignity is bestowed for that $2000, which is such a small amount of money. It seems incredible to me that this government could be so cruel as to cut that vital piece of social fabric and infrastructure. I ask the minister to show some heart and reconsider her decision.

Palais Theatre

Ms PENNICUIK (Southern Metropolitan) — My adjournment matter is for the Minister for Environment and Climate Change. It relates to the Palais Theatre in St Kilda, which is 87 years old. On Monday night I was there to see Bob Dylan, who is playing there again tonight, I understand.

The City of Port Phillip has released some information about the Palais Theatre, and anyone who has been there recently will know that it is covered in scaffolding at the moment. The City of Port Phillip informs us that the much-loved Palais is in need of urgent repairs and that if we do not act now, the Palais faces imminent closure, which would be a historical, cultural and iconic loss to the state. If Melbourne wants to remain the events capital of Australia, we need to repair and restore this iconic building.

The previous government made the mistake of tying the refurbishment of the Palais Theatre to whatever was done at the adjoining St Kilda Triangle site. This was a very unwise and unnecessary decision which resulted in neither happening. The Palais was not refurbished, except for some minor repairs, and nothing has happened at the St Kilda Triangle site. These two things should be decoupled. The state government, as the owner of the site, should take some responsibility for its upkeep and maintenance.

The City of Port Phillip has identified urgent repairs that need to be done within one to three weeks to bring the building into compliance with occupational health and safety laws and with the Disability Discrimination Act 1992. It has identified another list of repairs which will need to be undertaken in three to six months, which it has categorised as emergency and urgent work to keep the Palais operating. The City of Port Phillip has estimated that an immediate investment of $15 million is required to keep the building open in the short term and another $25 million will be needed in the medium term to bring the Palais up to compliance with current building standards.

My request to the minister is that he act urgently to work with the council in securing the funds in the short term and the long term to not only carry out the urgent repairs but also to refurbish the Palais As I mentioned, the Palais is 87 years old, needs to be brought up to speed and is much loved by the Melbourne community, the Victorian community, the Australian community and the international community. It is a state asset, and this government should be putting in funding and resources to maintain it.

Employment

Ms TIERNEY (Western Victoria) — My adjournment matter this evening is for the attention of the Minister for Employment and Trade and it is in relation to the recently released Australian Bureau of Statistics (ABS) unemployment rates. The ABS figures that were released on 7 August demonstrate that the unemployment rate in Victoria rose from 6.6 per cent to 7 per cent in the month of July. It was reported that this was the highest unemployment rate in 13 years. Our jobless rate is now higher than that of the United States of America, which is 6.2 per cent. The *Age* of 8 August reported that when the ABS unemployment figures were announced the Australian dollar plunged more than half a cent to below US93 cents.

Among the hardest hit are young people, who are finding it difficult to obtain skills in the light of TAFE funding cuts and who are then faced with the highest rate of youth unemployment when attempting to enter the job market. Since late 2008 employment for those aged under 25 years has declined by more than 6 per cent. That equates to one in five young people who are not able to find work. In terms of Geelong, statistics reported on the front page of the *Geelong Advertiser* last week indicate that 1 in 10 people in Geelong are out of work but want to work. We know that a number of companies have already said that they will be closing soon, so the unemployment rate is going to get worse before there is a possibility that it will get better.

The action that I seek from the minister, given that the unemployment figures are having a detrimental effect on individuals, families and communities, is to inform me about what this government is doing to alleviate the levels of unemployment in this state, whether it be in the adult sector or in youth unemployment, and what the government is doing to ensure that retrenched workers can get employment as soon as possible.

Responses

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) — In the adjournment debate this evening Mr Melhem raised a matter for the Minister for Housing. I will pass that on the minister.

Mr Ramsay raised a matter for the Minister for Corrections. I will pass that matter on to the minister.

Ms Lewis raised a matter for the Minister for Planning. I will pass that matter on to the minister.

Mr Finn raised a matter for the Minister for Public Transport about level crossings and the capacity of government to deliver a sensible level crossing program, similar to what this government has delivered over the last four years, in contrast to the magic pudding plans of those opposite, who claim they can deliver 50 level crossing removals in four years with no funding.

Mr Finn interjected.

Hon. G. K. RICH-PHILLIPS — It is nonsense, Mr Finn.

Ms Pennicuik raised a matter for the Minister for Environment and Climate Change, and I will pass that on to the minister.

Ms Tierney raised a matter for the Minister for Employment and Trade. She asked the minister to tell her what the government is doing about employment. I am happy to tell Ms Tierney today what the government is doing about employment in Victoria. This government is creating jobs. Over the course of four years — —

Mr Tee interjected.

Hon. G. K. RICH-PHILLIPS — Mr Tee can laugh, but he obviously cannot read statistics. Over the course of the four-year period this government has been in office employment in Victoria has increased by more than 78 000. There are an extra 78 000 Victorians with jobs in Victoria now compared with when the previous government, of which Mr Tee was a member, left office. There are 78 000 extra employed Victorians in this state now compared to when Labor was last in office. This government is working with Victorian employers and creating investment opportunities and job opportunities.

In addition to the 78 000 extra Victorians who are in work now compared to four years ago, this year's budget, which allocates a record $27 billion in infrastructure over the next 10 to 15 years — the biggest infrastructure program in Victoria's history — will create around 26 000 jobs through the construction phase. So there are an additional 78 000 jobs to date and 26 000 jobs to come through the infrastructure investment program. That is what this government is doing about employment; it is creating jobs. It has a great infrastructure program, and the Victorian people recognise the value of the work this government is doing in infrastructure creation.

The PRESIDENT — Order! The house stands adjourned.

House adjourned 5.29 p.m. until Tuesday, 2 September.