PARLIAMENT OF VICTORIA

PARLIAMENTARY DEBATES (HANSARD)

LEGISLATIVE COUNCIL

FIFTY-SEVENTH PARLIAMENT

FIRST SESSION

Thursday, 3 April 2014

(Extract from book 5)

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By authority of the Victorian Government Printer

The Governor

The Honourable ALEX CHERNOV, AC, QC

The Lieutenant-Governor

The Honourable Justice MARILYN WARREN, AC

The ministry

(from 17 March 2014)

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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 Lenders, Ms Pennicuik and Mr Viney

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

Parliamentary Services — Secretary: Mr P. Lochert

MEMBERS OF THE LEGISLATIVE COUNCIL

FIFTY-SEVENTH PARLIAMENT — FIRST SESSION

President: The Hon. B. N. ATKINSON

Deputy President: Mr M. VINEY

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

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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	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

[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

CONTENTS

THURSDAY, 3 APRIL 2014

Thursday, 3 April 2014

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

SALE OF LAND AMENDMENT BILL 2014

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. M. J. GUY (Minister for Planning); by leave, ordered to be read second time later this day.

AUSTRALIAN CATHOLIC UNIVERSITY and UNIVERSITY OF DIVINITY

Reports 2013

Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation), by leave, presented reports.

Laid on table.

PAPERS

Laid on table by Clerk:

Adult Multicultural Education Services — Report, 2013.

Auditor-General's Report on Access to Education for Rural Students, April 2014.

Bendigo TAFE — Report, 2013.

Box Hill Institute of TAFE — Report, 2013.

Central Gippsland Institute of TAFE — Report, 2013.

Centre for Adult Education — Report, 2013.

Chisholm Institute of TAFE — Report, 2013.

Deakin University — Report, 2013.

Driver Education Centre of Australia Ltd — Report, 2013.

Gordon Institute of TAFE — Report, 2013.

Goulburn Ovens Institute of TAFE — Report, 2013.

Holmesglen Institute of TAFE — Report, 2013.

Kangan Batman Institute of TAFE — Report, 2013.

La Trobe University — Report, 2013.

Monash University — Report, 2013.

RMIT University — Report, 2013.

South West Institute of TAFE — Report, 2013.

Subordinate Legislation Act 1994 — Documents under section 15 in respect of Notice No. 2/2014 pursuant to the Wildlife Act 1975.

Sunraysia Institute of TAFE — Report, 2013.

Swinburne University of Technology — Report, 2013.

University of Ballarat — Report, 2013.

University of Melbourne — Report, 2013.

Victoria University — Report, 2013.

William Angliss Institute of TAFE — Report, 2013.

Wodonga Institute of TAFE — Report, 2013.

BUSINESS OF THE HOUSE

Adjournment

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

That the Council, at its rising, adjourn until Tuesday, 6 May 2014.

Motion agreed to.

MEMBERS STATEMENTS

Government performance

Mr BARBER (Northern Metropolitan) — Socialist, pinko, commo, troglodytes, lazy, incompetent, basket case, shemozzle, reprehensible, appalling, embarrassing, militant, shameful, rogue, self-interest, corrupt, whingeing, whining, hardline, reign of terror, destruction, complicit, crazy, toadying, rabble-rousing, outrageous, ranting and raving, disgraceful, sycophants and ill-informed are just some of the pejoratives used by government MPs against their political opponents in two days of debate in this Parliament, yet at the end of the week they seem somewhat unhappy that the public is not hearing their positive record of achievement. I wonder why.

National Ride2School Day

Ms TIERNEY (Western Victoria) — On Wednesday, 19 March, I was at Ashby Primary School in Geelong West for National Ride2School Day. I have had the pleasure of attending Ashby Primary School on a number of occasions, and each time I visit the school the staff and students are brimming with enthusiasm and vigour. Last Wednesday was no different. Many students participated in National Ride2School Day by riding the whole way or part of the way to school.

The encouragement of active travel to school is important for our schoolchildren, with only 32 per cent of Australian students currently meeting the minimum physical activity guideline of 60 minutes of moderate to intensive physical activity per day. As well as improving the physical fitness and wellbeing of schoolchildren, active travel to school ensures that students arrive at school awake and alert, improving their concentration in class.

I take this opportunity to commend Ashby Primary School as well as every other school across Victoria that participated in this important program. I thank all the students who made me welcome on the day and the teachers who put in extra time and effort to support the ride to school program.

Geelong West Neighbourhood House

Ms TIERNEY — On another matter, I commend the Geelong West Neighbourhood House committee for its efforts in organising WestFEST last Sunday afternoon. It was a real local festival celebrating local artists, local produce and local activities. The festival vindicated the need for the committee, which is soundly committed to bringing the local community together, providing support and fostering engagement. I say to committee members: well done — your work is to be commended.

Australian Labor Party

Mr FINN (Western Metropolitan) — It has been said before that Labor neglects the west, and that is somewhat of a truism. There is no greater example of Labor's contempt for the people of the western suburbs in recent years than the farce that was Brimbank City Council. The shenanigans of Brimbank City Council brought local government in this state into disrepute. Brimbank became synonymous with corruption, bullying, payback and general shysterism. Every participant in this gangsterism had one thing in common: membership of the Australian Labor Party.

We had all hoped that Labor had learnt its lesson from that debacle, but it clearly has not. Labor has decided to revisit the disgrace that was Brimbank City Council by endorsing the former mayor of that sorry city for the new Assembly seat of St Albans. Natalie Suleyman presided over some of the most appalling activities ever seen in local government in this state, and now she is back in an attempt to represent the very people she treated so shabbily as mayor. This is a disgrace for the Labor Party and a disgrace on the people of the western suburbs. Whether or not the Leader of the Opposition, Daniel Andrews, is endorsed by the Construction, Forestry, Mining and Energy Union, he should follow the example of his predecessor as Labor leader and sack Natalie Suleyman now.

Whaling

Ms DARVENIZA (Northern Victoria) — I have some advice for Mr Barber. He needs to stop using Mr Finn's speechwriter when he is making his contributions in this place. His 90-second statement today was a dead giveaway.

I applaud the ruling by the International Court of Justice that Japan must cease its Southern Ocean whaling program immediately. I pay tribute to former federal Labor environment minister Peter Garrett, who instigated the case in 2010, and to former federal Labor Attorney-General Mark Dreyfus, who led Australia's legal challenge to Japan's scientific whaling program at the International Court of Justice in the Hague. The UN court ruled that Japan's whaling program was not, as Japan claims, conducted for scientific research and should cease with immediate effect.

Despite constant pressure from Greenpeace and Sea Shepherd, the whalers killed 10 439 minke whales and 15 fin whales under scientific permits from the 1986 moratorium until the end of the 2013 season, according to the International Fund for Animal Welfare. The 2013 figures are yet to be released. This ruling is a great result.

Ringwood Highland Games

Mrs KRONBERG (Eastern Metropolitan) — I rise to applaud and congratulate the organisers of the Ringwood Highland Games, which took place in East Ringwood on Sunday just gone. The contribution of Mrs Sue MacLeod as the president of Ringwood Highland Games Inc. is almost beyond peer. She has been dedicated to putting on these games for the last 18 years and should be applauded for her hard work and in some cases sheer physical effort to see that it is all organised. It is a busy event with a very crowded agenda and lots of activities for people attending.

I am very pleased to say that the chief of the clans who oversaw formalities was former federal Liberal Senator Rod Kemp. He came along wearing the Australian tartan, and it was very special to see him fitted out in that way. We saw haggis hurling, caber tossing and there was also a highland competition and Celtic dancing. The most awe-inspiring scene of all was the massed pipe bands.

The large crowds had a fantastic day in the sun, and I congratulate all the organisers. We missed the

passionfruit cream sponges of the Maroondah Country Women's Association, but I put on the record my thanks for its exemplary catering service in years past.

Manufacturing employment

Mr SOMYUREK (South Eastern Metropolitan) — The loss of hundreds of manufacturing jobs over the last couple of days is further evidence that manufacturers have lost confidence in the Napthine government and are continuing to shut up shop or drastically scale down operations in Victoria.

The February quarter Australian Bureau of Statistics employment data for the manufacturing industry released recently reveals that the Victorian manufacturing sector continues to haemorrhage jobs. Total manufacturing employment fell by 3.2 per cent over the 12-month period ending with the February quarter 2014 compared to the period ending with the February quarter 2013. A figure of 288 500 jobs went down to 279 200, a loss of 9300 jobs over that period.

On the other hand, total manufacturing jobs for Australia in the February quarter 2014 were 949 700 compared with 924 000 in February 2013, an increase of 25 700 or 2.8 per cent, so the figure is going up nationally. Queensland and South Australia also experienced significant increases in manufacturing jobs with Queensland's total manufacturing employment rising from 156 400 jobs in the February quarter 2013 to 178 500 in the February quarter 2014, an increase of 14.1 per cent.

The PRESIDENT — Order! The member's time has expired.

Public transport fares

Mrs PEULICH (South Eastern Metropolitan) — I commend the Premier and the Victorian coalition for introducing zone 1 fares that will apply across the entire metropolitan network from 1 January 2015. It will provide significant financial relief for families in Melbourne's south-east as commuters will be able to travel on buses and trains in zones 1 and 2 for the price of a zone 1 fare.

At the moment commuters travelling on the Dandenong, Cranbourne, Pakenham and Frankston lines to the city are required to pay a zone 1 and 2 daily fare, so this will mean substantial savings of the order of approximately $5 a day or $1200 each year. If they are using an annual myki pass they will save more than $750. This is just one of the many ways the government is providing financial relief for families, fixing Victoria's public transport system and providing more services to move more people more often.

It is in addition to the coalition government's announcement of a $2 billion to $2.5 billion rail project investment to cater for growth in Melbourne's south-east that will result in a 21st century rail service, 25 new high-capacity trains for the Cranbourne and Pakenham lines, 30 per cent more capacity to carry more people more often and improved technology and level crossing removal to allow more trains to run more often. The Victorian coalition is building a better future and fixing Labor's problems.

This is in addition to the substantial improvements to the road network that have been planned for by the coalition, including the full funding of the Dingley bypass, the Springvale Road grade separation and the planned Clayton grade separation.

Multicultural Harmony Festival

Mr LEANE (Eastern Metropolitan) — I am sure the President will join me, along with the Minister for Multicultural Affairs and Citizenship, Mr Guy, in congratulating the organisers of the Multicultural Harmony Festival that was held in the city of Knox last weekend. It was a fantastic festival with a great atmosphere created by the organisers. This is an annual event that features many different cultures from around the world, including Hungarian, Polish, Italian, Indian, Austrian, Egyptian, Filipino, Greek, Chinese, Chilean, Afghani, El Salvadorian, Sri Lankan, Iranian, Irish and of course Indigenous Australians. It was a fantastic festival, and I particularly enjoyed the German beer garden. It was very good.

The PRESIDENT — Order! The member's honesty is disarming. It was a very good day.

Construction, Forestry, Mining and Energy Union

Mr ONDARCHIE (Northern Metropolitan) — The Construction, Forestry, Mining and Energy Union (CFMEU) has been fined $1.25 million for illegal blockades at Melbourne construction sites in 2012. The union organised a four-day protest in defiance of a court order at the Grocon Myer Emporium site in Melbourne's CBD. The blockade sparked clashes with mounted police, who were called in to escort non-union workers onto that site on 28 August.

The fine is proof that Labor leader, Daniel Andrews, should cut ties with the union. He needs to stand up and sack the CFMEU from the Labor Party and stop

backing it. If he does not, it is a sign of weak leadership. Yesterday morning on Neil Mitchell's program he was asked if he should continue to take money from the CFMEU, and he said:

> Well, they remain affiliated to the Labor Party …

Neil Mitchell asked:

> So, that's a yes?

Mr Andrews said:

> Yes, like many other unions, they've got a role to play in representing their members.

Mr Andrews also said:

> Well, Neil, let's be very clear about this: they are affiliated with the Labor Party … Some will be supportive of that … but … I'm not going to walk away from —

that. Here is an opportunity for Daniel Andrews to stand up and commit to Victorian workers and not to his union mates. At the desalination plant in Wonthaggi the CFMEU also organised sex and drugs but, sadly, no rock and roll. This is a classic example of members of the Labor Party kowtowing to their union mates. Given their parliamentary affiliation with the CFMEU, maybe we should call them the Victorian Tee Party.

Newroz festival

Mr EIDEH (Western Metropolitan) — Last Sunday I attended the annual Newroz festival, which was well organised as usual, and hosted by the Kurdish Association of Victoria. Also in attendance were Kelvin Thomson, the federal member for Wills; Jane Garrett, the member for Brunswick in the Assembly; Greg Barber, the leader of the Victorian Greens; and councillors from the Moreland City Council.

Newroz is the national day for Kurdish people and has been celebrated for 2600 years. It is an important part of Kurdish history and is a celebration of not only the revival of nature after winter which brings about a new year but a celebration of freedom and victory over the adversity that has faced the Kurdish people in the past. I am proud to be part of this wonderfully multicultural state where we celebrate and promote our cultural diversity. I am also proud to live in a state which encourages communities to showcase their rich cultural histories by interacting with the wider community, because multiculturalism is about everyone, regardless of heritage.

It was great to see people of all ages and from a range of cultural backgrounds attending the festival. I was very impressed with the entertainment, which included Kurdish and non-Kurdish performers, exhibitions and traditional cuisine. Every year the Newroz festival brings the community together through their shared culture and history to celebrate this special event. The Kurdish Association of Victoria and its supporters deserve to be congratulated for putting much hard work and effort into this very important and symbolic celebration for the Kurdish community.

Old Geelong–Forsyth roads, Hoppers Crossing

Mr ELSBURY (Western Metropolitan) — In brief response to Mr Barber's statement earlier on this morning, I say: if the shoe fits!

I wish to highlight some great work that is being done by the coalition government in Hoppers Crossing, with the construction of an upgrade at the Old Geelong–Forsyth roads intersection. Some $1.2 million has been spent in that area to put in traffic lights and to improve the road and traffic flows.

Moonee Valley Relay for Life

Mr ELSBURY — I also take this opportunity to congratulate the organisers of the Moonee Valley Relay for Life, which was held for 24 hours from Friday to Saturday last weekend. This is the largest Relay for Life event in Melbourne, and I congratulate its organisers on being able to bring the community together for such a worthwhile cause.

Good Friday Appeal

Mr ELSBURY — I raise another worthwhile cause for the attention of those in the chamber and for anyone listening — the Good Friday Appeal. Being able to raise additional money for our friends at the Royal Children's Hospital is very important. I encourage anyone who is listening today and members in the chamber to do everything they can to support this very worthy cause.

Tarneit Auskick

Mr ELSBURY — Finally, I congratulate the organisers of Tarneit Auskick on putting together a fantastic family fun day last Sunday. To be able to see kids out enjoying sport in Active April was something that we should all be encouraging.

Mr Lenders — On a point of order, President, on the Filming Approval Bill 2014, which has been introduced into this house in the first instance, I do not have a problem with the bill being introduced — let me clarify that — but under section 62 of the Constitution

Act 1975 we have a degree of uncertainty at the moment over the status of such bills, which Ms Hartland's motion yesterday touched on. Mr Davis has a motion on the notice paper touching on it. I seek clarification from you on whether you have formed a view about whether this is in breach of section 62 or whether the minister has a view on whether it is in breach of section 62. I am simply asking whether anyone has formed a view. I am not prosecuting a view, but I think it appropriate to test this at this stage.

The PRESIDENT — Order! This is a very good point of order. The government, as I understand, has sought advice on each of the bills it is bringing forward in this regard to ensure that they are not money bills and that they therefore would not breach that section of the constitution. I have received assurances from the Leader of the Government in respect of the bills that are being brought forward. Certainly I have no problems with this particular bill, and through the clerks I am also scrutinising each of the bills that comes forward to establish my own view as to whether or not there might be a concern. If there were a concern with any of the bills, then I would be very quick to take that up with the government to ensure that the house is not put in a position of some difficulty in terms of debating a bill that had financial implications.

One of the interesting things the Clerk and I talked about today was that we are likely to receive messages from the Assembly today in respect of three bills that are already in this place, and the government would also need to consider the status of the bills that we currently have on our notice paper which are effectively duplicated by bills we anticipate may well come from the Assembly later today by way of message. There are some matters to be considered in this, but certainly, as I said, it is my understanding that the government has sought advice on each of the pieces of legislation it has brought into this place to ensure that it does not trespass on that section of the constitution.

Hon. D. M. Davis — Further on the point of order, President, I can confirm that there is no question about those bills. They have been through the process with the clerks and parliamentary counsel and so forth, and each of the bills would fit into the mode the Leader of the Opposition has referred to. In terms of Ms Hartland's motion 763, that is a slightly different point that can be discussed at the Procedure Committee at an appropriate time, but I can assure the house that these bills have met the normal test for introduction in the Legislative Council.

Mr Lenders — Further on the point of order, President, I thank the Leader of the Government for his assurance, and rather than me raising this separately on each bill as it comes in, I take it from your comments that you have formed the view from advice from the clerks that these bills are not in breach. If that is the case, I will not raise this point again. That is the procedure — that in each case section 62 has been tested?

The PRESIDENT — Order! It is a very good point of order. Yes, that is the case; each of these bills has been assessed by parliamentary counsel as well as by the Clerks in respect of their view and the view that I might form on those bills as well.

FILMING APPROVAL BILL 2014

Statement of compatibility

For Hon. G. K. RICH-PHILLIPS (Assistant Treasurer), Hon. E. J. O'Donohue 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 Filming Approval 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 establishes a consistent approach to the approval of filming on public land managed by public agencies, including local councils and state government entities. The bill prescribes 'film-friendly' principles that public agencies must comply with when performing any functions or duties or exercising any powers under any filming approval legislation in relation to commercial filming.

Human rights issues

The right to freedom of expression under s 15 of the charter act

Section 15 of the charter act provides that every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds orally, in writing, in print or by way of art or in another medium chosen by him or her, which includes film. The right to freedom of expression extends not just to the content of expression, but also to the conduct of expression. In regards to the medium of film, the scope of the right encompasses both the making of a film as well as the exhibition of that film. Accordingly, the right is relevant to any laws that regulate activities necessary to make a film.

The bill enhances the protection of freedom of expression by promoting and facilitating the approval of commercial filming permits and reducing the red tape, costs and delays in securing a permit. The bill implements prescribed criteria in

the schedule, titled 'the film-friendly principles' to which public agencies with discretion to approve or decline film permits must comply, subject to any other act. Principle 1 prohibits a public agency from unreasonably withholding approval of a film permit application. Principles 1.3 and 1.4 outline the reasons to which a permit may be declined, which are for public amenity, safety and security, environmental and heritage impacts and operational requirements of a public agency. The reasons for declining a permit do not limit the right to freedom of expression because they relate to reasonable concerns such as public convenience and safety, and do not relate to the content of a film, the viewpoint or ideas espoused by a permit applicant or the suppression of expression. Principle 3 requires that a public agency must give reasons to the applicant for any refusal to approve an application for a film permit, and principle 1.2 requires an agency to take reasonable steps to work with an applicant to identify alternative locations for filming.

The Hon. Gordon Rich-Phillips, MLC
Assistant Treasurer

Second reading

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

Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

Screen productions filmed in Victoria generate income, jobs and opportunities for Victorians and promote Victoria as a tourism destination.

The Victorian screen industry generates around $1.4 billion in economic activity annually for the state and employs more than 10 000 people on a full-time basis.

The economic impact also extends far beyond those companies directly employed in the screen industry — from accommodation providers, lighting suppliers, builders and tourism operators to artists, carpenters, sculptors, painters, fabricators, timber and paint suppliers and restaurants.

International production *I, Frankenstein* alone generated more than $35 million in production expenditure for Victoria, engaged more than 650 Victorian companies and more than a thousand Victorian cast and crew.

The screen industry also contributes to the state's cultural capital by sharing Victorian stories, including iconic television series such as *The Slap*, *Summer Heights High*, *Offspring*, *Kath & Kim*, *Jack Irish*, *The Secret Life of Us*, *SeaChange* and feature films *Animal Kingdom*, *Picnic at Hanging Rock*, *Kenny*, *The Man from Snowy River* and *The Castle*.

However, the international screen environment is highly competitive. To maintain a competitive edge in attracting film production, we need to continually improve the conditions that encourage local and international production activity in Victoria.

Securing footloose production is crucial to Victoria's screen industry. In the last three years, it has accounted for between a third and a half of Victoria's screen production expenditure.

The Victorian government is a strong supporter of the local screen industry. Since December 2010, through Film Victoria, the government has supported more than 140 film and television projects which are estimated to generate more than $560 million in production expenditure in the state.

In the 2013–14 state budget, the government also allocated $13.8 million over four years to support Victoria's television, animation and games sectors, and to ensure the Melbourne International Film Festival remains the most prestigious film event in Australia.

Yet we can do more.

The screen industry is highly competitive, deadline driven and cost sensitive. The ease of doing business is a key consideration for a footloose production in finalising its project location. International productions create entire budgets for up to eight territories before choosing a location, with permit and location fees regularly compared.

The 'film friendliness' of a location can make a significant difference in attracting and stimulating filming activity — attracting an extra 100 days of television production expenditure in Victoria could generate around $10 million in additional production expenditure for the state and a medium size international production could generate $20–50 million.

Each year, thousands of filming permits are issued in Victoria by public bodies for locations as diverse as suburban streets, beaches, cemeteries, museums and cultural institutions, national parks, zoos, gardens, courthouses, ports and sporting facilities.

A filming permit is an approval to undertake commercial filming on public land in accordance with local laws or other regulatory frameworks and is issued with terms and conditions that define the application of the permit.

A permit application is likely to include traffic, parking and pedestrian management plans, site plans with details about equipment or other infrastructure to be brought and utilised on location, a concise schedule with details about crew numbers and planned activities, a stakeholder communication plan, evidence of public liability insurance and, in many cases, permit fees that will need to be paid prior to a permit being issued.

On average, approximately 1500 to 3000 filming permits are currently issued to feature film and television productions each year in Victoria. This figure does not include permits sought for television commercials, or other non-television or feature filming events, such as sports filming, short films and corporate videos.

Depending on the nature and requirements of a production, permits and approvals are issued by local councils as well as government agencies, departments and authorities. All these bodies have different policies, procedures and processes in place to manage film permits and approvals. For example:

a. many councils and public land managers do not have dedicated film permit application forms;

b. filming guidelines vary from council to council;

c. permit fees vary considerably across public agencies and councils (from zero to over $1200 a day);

d. the majority of councils require the production to contact more than one department within the council;

e. turnaround times for assessing film permit applications vary from 24 hours to over one month; and

f. service standards are often inconsistent across and within councils largely due to the absence of formalised application processes for film permits.

Inconsistent practices and service standards across public bodies frustrate screen productions working in Victoria and cause uncertainty and unnecessary delays.

One of the strongest drivers for film production is certainty. Providing an assurance that the conditions for filming can be secured within short time frames is a significant incentive to choose one jurisdiction over another. For film producers and location managers, certainty of location and approval for its use in a short time frame is equivalent to time and money.

The New South Wales government realised this and in 2008 introduced a mandatory film approvals framework, backed by legislation.

In its 2010 innovation election policy, the Victorian coalition government committed to reviewing and reforming the granting of film production permits. The Filming Approval Bill 2014 delivers on that promise.

This bill will reduce red tape and make it easier for footloose and local screen production companies to do business in Victoria. The bill creates harmonised and streamlined approval processes for filming on public land managed by local councils and Victorian government agencies.

The bill establishes film-friendly principles that apply to commercial filming on public land. The principles generally relate to processing filming permit applications in a positive and consistent manner, and to provide the screen industry with streamlined access to public land managers and information on the application process.

Under clause 5 of the bill, local councils and state government entities that manage public land must comply with a set of film-friendly principles set out in schedule 1, which ensure commercial screen producers can expect transparent and responsive service when applying to film on public land.

Public land managers will need to approve or refuse a film permit application in a timely manner and take reasonable steps to respond to an application within five business days. This response may be a determination to grant or decline the application, where that is possible, or an acknowledgement of the application. Some applications may take longer to determine due to the complexity of filming and/or the resources of agencies.

Public land managers will retain the flexibility to decline commercial filming — or issue a permit subject to appropriate terms and conditions — to protect public amenity, safety, security, environmental or heritage concerns as well as operational matters such as commercial sponsorship agreements.

The film-friendly principles also require public land managers to set minimal fees for filming permit applications where the fee is not set by regulations or orders in council. When determining the fee, a public land manager must consider the broader economic benefits that filming will bring to the community and must not exceed cost recovery.

Clause 6 of the bill empowers the minister to make guidelines in relation to the film-friendly principles. Prior to commencement of the bill, the guidelines and other supporting material will be developed in consultation with public land managers and the screen industry, to support implementation of the new obligations.

Schedule 2 of the bill consequentially amends a number of acts to ensure that the film-friendly principles are applied where a public land manager has discretionary powers to grant or decline filming permits under existing legislation.

The screen industry is an important industry for Victoria, and facilitating filming is a responsibility of public land managers. This bill will make it easier for production companies to do business in Victoria by creating harmonised and streamlined approval processes for commercial filming on public land.

Local councils and public land managers have been provided with a draft of the film-friendly principles and advised that they may be incorporated into legislation.

Victoria has an excellent international reputation as a world-class screen production destination based on its highly skilled crews, diverse locations and outstanding production facilities. This bill will enhance Victoria's competitiveness as a screen production destination and reinforces our reputation as a centre for screen business in the region.

I commend the bill to the house.

Debate adjourned on motion of Mr SOMYUREK (South Eastern Metropolitan).

Debate adjourned until Thursday, 17 April.

GAMBLING AND LIQUOR LEGISLATION AMENDMENT (MODERNISATION) BILL 2014

Statement of compatibility

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

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

In my opinion, the Gambling and Liquor Legislation Amendment (Modernisation) Bill 2014, as introduced to the Legislative Council, is compatible with the human rights as

set out in the charter act. I base my opinion on the reasons outlined in this statement.

Overview of the bill

The Gambling and Liquor Legislation Amendment (Modernisation) Bill 2014 makes a number of amendments to simplify the operation of the Gambling Regulation Act 2003 and to implement recommendations made by the Victorian Auditor-General's Office to increase the effectiveness of the Liquor Control Reform Act 1998 in preventing and reducing alcohol-related harm.

Human rights issues

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

Privacy rights — section 13

The bill creates a new offence for a bookmaker to employ a person who is not a fit or proper person. This will restrict persons convicted of a serious offence within the last 10 years from working with a bookmaker. In order to satisfy the requirement not to employ persons in contravention of this offence, bookmakers may be required to collect personal information. The section 13(a) charter act right to privacy is relevant.

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 obliges bookmakers to collect personal information is limited. Bookmakers are only obliged to obtain information in relation to persons who have applied for employment with a bookmaker. The purpose of obtaining this information is to ensure that bookmakers and their employees are of good repute and to prevent unsuitable persons from entering the Victorian bookmaking industry. On this basis, the amendments do not unlawfully or arbitrarily interfere with a person's privacy.

The right to be presumed innocent — section 25(1) of the charter act

Section 25(1) of the charter act provides that a person charged with a criminal offence has the right to be presumed innocent until proven guilty according to law. This right requires that the burden of establishing guilt is borne by the prosecuting authority.

The bill will amend an existing reverse onus offence that prohibits a licensee or permittee from permitting a drunken and disorderly person to be on the licensed premises. The bill will amend the existing defence to provide that it is a defence to the offence if the licensee or permittee can provide that neither the accused nor an employee, agent or nominee of the accused knew that drunken or disorderly persons were on the premises and either the accused or employee, agent or nominee had taken reasonable steps to ensure that the drunken and disorderly persons were not on the premises.

The effect of the amendment is to extend the liability of the licensee or permittee for the offence to include the conduct and knowledge of their employees and agents who are on the premises. By imposing a legal burden on the defence to satisfy the court of this element of the offence, the bill may be considered to limit the right to be presumed innocent.

However, in my view, this amendment is reasonable and proportionate for the following reasons.

First, the offence reflects the importance of licensees assuming responsibility for managing their premises. The impact of alcohol-fuelled violence and antisocial behaviour on public safety and public health has been well documented. The offence, in part, seeks to address these issues and codify licensees' responsibilities and balances the rights of the licensees against the strong public interest in licensees responsibly managing alcohol consumption on their premises.

Secondly, the offence carries a relatively low penalty with no prospect of imprisonment.

Thirdly, whether the accused knew or had taken reasonable steps to ensure drunken or disorderly people were not on the premises will be entirely within that person's (or their agent's) knowledge. In the absence of requiring the accused to establish knowledge, it would be extremely difficult for the prosecutor to establish this element of the offence.

Fourthly, under the new provisions, the licensee or permittee continue to be liable for the offence. The bill does not extend the application of the offence beyond the licensee or permittee to other persons such as their employees or agents and therefore the scope of the offence is not significantly extended.

Finally, it is a legitimate objective of the regulatory scheme to minimise the harm arising from the misuse and abuse of alcohol by providing adequate controls over its supply and encouraging a culture of responsible consumption. Licensees and permittees participate in a highly regulated industry. As such, it is a generally accepted premise that there is an expectation of a higher level of regulation and accountability than in other contexts and participants may be expected to know their duties and obligations.

Consequently, whilst the clause does limit the rights to be presumed innocent by extending the existing reverse legal onus, it is reasonable and justified under section 7(2) of the charter act.

Finally, I note that there are no reasonably available alternative means by which the objectives of the offence provision could be achieved. Imposing an 'evidentiary' burden on the accused (as opposed to a legal burden), which would merely require the accused to point to evidence that may suggest the existence of a defence, would mean the burden would be too easily discharged by the accused. In such circumstances, and given the seriousness of the issue the offence seeks to address, it is imperative that the onus is on licensees and permittees to take appropriate steps to ensure that they can demonstrate compliance with the requirements of the bill.

Conclusion

I consider that the bill is compatible with the charter because it raises human rights issues but does not limit human 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. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation).

Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

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

This bill continues to build on the government's work by amending the Gambling Regulation Act 2003 and the Liquor Control Reform Act 1998 to implement the government's commitments and to respond to recommendations made by the Victorian Auditor-General's Office.

Modernisation of the prohibition on illegal gambling

The bill will simplify the Gambling Regulation Act 2003 by modernising the general prohibitions on illegal gambling contained in chapter 2 of the act.

The purpose of chapter 2 of the act is to impose a general prohibition on gambling and to create certain offences. Chapter 2 is largely derived from the Lotteries, Gaming and Betting Act 1966 which, in turn, incorporated significant portions of part IV of the Police Offences Act 1958. A number of the definitions and concepts in chapter 2 of the GRA can be directly traced back to the original Police Offences Act 1890.

Today, chapter 2 of the act is complex, difficult to interpret and outdated. Many of its provisions have not kept pace with the changes in Victorian government policy in relation to gambling that have occurred since 1990.

The bill simplifies and streamlines chapter 2 of the act by consolidating a range of prohibitions on various forms of gambling into provisions that prohibit the conduct, advertising and housing of all forms of gambling that are not authorised.

This approach accords with more modern consolidated gambling legislation in other jurisdictions.

The provisions are intended to simplify the prohibition on illegal gambling in Victoria to make it easier to understand by those regulated by it. It is not intended to prohibit activities that were previously permitted or to permit those previously prohibited. Rather they maintain the status quo.

Ministerial power to obtain information from commercial gambling licensees

The bill will create a new power for the minister to seek information from major commercial gambling licensees to support policy development, implementation and evaluation.

A review of the operation of gambling legislation identified that the minister's powers to obtain information from the various major commercial licensees varied significantly.

It is vital that the minister has sufficient power to obtain information from all major commercial gambling licensees to assist the proper development of policy in accordance with the objectives of the gambling legislation, including to foster responsible gambling and to ensure that minors are neither encouraged to gamble nor allowed to do so.

This power is limited to obtaining information that the minister considers will assist in the development of policy in accordance with the objectives of the gambling legislation.

This power may be used, for example, to obtain information relating to the implementation and evaluation of the government's precommitment scheme.

It is important to note that a licensee will not be in breach of the requirement to provide information if the information does not exist or is not held by the licensee.

Trade promotion lotteries

The bill will remove an existing prohibition on the holder of a keno licence from conducting a trade promotion lottery to promote keno games. The keno licence, which has been operated by Tabcorp Investments No. 5 Pty Ltd since 15 April 2012, authorises the conduct of keno games such as Keno Classic and Heads or Tails. The act currently restricts the keno licensee from conducting trade promotion lotteries to promote these keno games. The restriction is an oversight and the bill will allow the keno licensee, like other commercial gambling licensees, to conduct trade promotion lotteries to promote its business.

Employees of bookmakers

The bill amends the act to ensure that persons employed by a bookmaker are fit and proper persons to be associated with the business.

The racing integrity commissioner expressed concern that the employment of disreputable persons by bookmakers may undermine the integrity of Victorian bookmakers.

The bill creates a new offence for a bookmaker to employ a person who is not a fit or proper person. This will restrict persons convicted of a serious offence within the last 10 years from being employed or working with a bookmaker.

Similar offences for employing persons who are not fit and proper apply under the Motor Car Traders Act 1986 and the Estate Agents Act 1980. As with the bookmaking industry, the purpose of these offences is to maintain the integrity of those industries.

Increasing penalties that apply to the provision of alcohol to minors

The bill will double the penalties that apply to eight offences under the Liquor Control Reform Act 1998 to create consistency with similar offences under gambling legislation and the Tobacco Act 1987. The increased penalties only apply to offences relating to the supply of liquor by others to minors rather than to minors for possessing or obtaining liquor.

This is consistent with a recommendation made by the Victorian Auditor-General's Office in its report on the *Effectiveness of Justice Strategies in Preventing and Reducing Alcohol-Related Harm*.

Drunk and disorderly persons on licensed premises

The bill will resolve an issue identified with an existing offence under the liquor legislation of permitting drunken or disorderly persons to be on a licensed premises.

The Victorian Auditor-General identified that the offence was not being sufficiently enforced by Victoria Police and the Victorian Commission for Gambling and Liquor Regulation due to licensees being able to successfully defend an action on the grounds that they were not on the premises at the time of the offence and that their staff had completed responsible service of alcohol training.

The bill amends the existing defence to provide that the conduct and knowledge of relevant persons, for example, managers and employees of a liquor licensee, can be attributed to the licensee for the purposes of this defence. This means that the knowledge and conduct of an employee or agent of the licensee in knowing that a drunken or disorderly person is on a licensed premises and failing to remove that person can be attributed to the licensee.

This is appropriate as a liquor licensee is liable for the offence and must put in place sufficient arrangements to ensure that their employees and agents take all necessary steps to comply with the liquor legislation and to reduce alcohol-related harm.

I commend the bill to the house.

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

Debate adjourned until Thursday, 17 April.

ENERGY LEGISLATION AMENDMENT (CUSTOMER METERING PROTECTIONS AND OTHER MATTERS) BILL 2014

Statement of compatibility

For Hon. D. K. DRUM (Minister for Sport and Recreation), Hon. E. J. O'Donohue 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 Energy Legislation Amendment (Customer Metering Protections and Other Matters) Bill 2014 (the bill).

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

Human rights issues

There are no human rights protected under the charter act that are relevant to this bill. I therefore consider that this bill is compatible with the charter act.

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. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation).

Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The Energy Legislation Amendment (Customer Metering Protections and Other Matters) Bill 2014 will amend the Electricity Industry Act 2000, the Electricity Safety Act 1998, and the Gas Industry Act 2001.

Part 2 of the bill amends the Electricity Industry Act 2000 to ensure all consumers can benefit from the smart meter program by providing a financial incentive for electricity distributors to complete the rollout, and encouraging customers to accept smart meters.

The bill will enable orders that govern the smart meter rollout to require a distributor to rebate customers where the distributor fails to attempt to install a smart meter, while providing that customers who refuse or prevent the installation of a smart meter will not be entitled to the rebate. The orders will be able to prevent distribution business from recovering the costs of rebates from customers.

The orders may also provide that a distributor can recover the costs of manual metering services from customers who refuse the installation of a smart meter. This will ensure that the costs of this extra service will not be subsidised by households who have a smart meter.

Part 2 of the bill further amends the Electricity Industry Act 2000 to reduce feed-in tariff reporting obligations for licensed electricity retailers and distributors. This will cut compliance costs for the industry, while allowing the government to continue to monitor trends in solar uptake.

Part 3 of the bill amends the Electricity Safety Act 1998 to abolish the Equipment Advisory Committee, and clarify the application of voluntary electrical safety management schemes for owners of complex electrical installations. The need for the Equipment Advisory Committee to advise

Energy Safe Victoria on electrical equipment safety matters has been superseded, as the same function can be achieved through other existing consultation and communication methods.

Part 4 of the bill repeals several redundant provisions of the Gas Industry Act 2001 related to the transfer of functions from VENCorp to the Australian Energy Market Operator under the Energy Legislation Amendment (Australian Energy Market Operator) Act 2009.

I commend the bill to the house.

Debate adjourned on motion of Mr SOMYUREK (South Eastern Metropolitan).

Debate adjourned until Thursday, 17 April.

SALE OF LAND AMENDMENT BILL 2014

Statement of compatibility

For Hon. M. J. GUY (Minister for Planning), Hon. E. J. O'Donohue 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 Sale of Land Amendment Bill 2014.

In my opinion, the Sale of Land 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

Property (section 20)

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.

Part 2 of the bill requires vendors of land to disclose certain information about the land to prospective purchasers before entering into a contract to sell the land, and enables a purchaser to rescind a contract in certain circumstances.

A purchaser may not rescind a contract where a vendor has acted honestly and reasonably and ought fairly to be excused for a failure to disclose required information, and where the purchaser is substantially in as good a position as if all the required disclosure had taken place.

These provisions of the bill are relevant to property rights under section 20 of the charter act as they restrict a person's capacity to dispose of property unless certain disclosures have been made, and give a purchaser under a contract of sale rescission rights, in certain circumstances.

However, these provisions are not unreasonable or arbitrary, as they are intended to address information imbalances between vendors and purchasers in property transactions, and provide an avenue of redress in circumstances where, for example, required disclosures have not been made.

Accordingly, property rights under section 20 are not limited as any interference with property rights under the bill is neither unreasonable nor arbitrary and is in accordance with law.

Hon. Matthew Guy, MLC
Minister for Planning

Second reading

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

Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation) — I move:

That the bill be now read a second time.

Incorporated speech as follows:

The bill will amend the Sale of Land Act 1962 to reform and modernise Victoria's system of vendor disclosure, and make related and consequential amendments to the Owners Corporations Act 2006.

The requirements of section 32 of the Sale of Land Act will be re-enacted with improvements to increase efficiencies in the preparation of section 32 statements, improve the readability of section 32 statements, and bring greater clarity to, and refinement of, existing disclosure requirements. Redundant and outdated provisions in the legislation will not be re-enacted.

The amendments introduced by this bill will assist the government to meet its commitment to achieve significant red-tape reductions of 25 per cent by July 2014 by reducing the administrative compliance requirements associated with the preparation of section 32 statements.

Section 32 of the Sale of Land Act requires vendors selling land in Victoria to disclose certain information about the land for sale to prospective purchasers, through the provision of a section 32 statement.

The original policy rationale for section 32 was to improve the position of purchasers by increasing the amount of information available to assist them in the bargaining process. Requiring the vendor to disclose certain information to the purchaser before the purchaser signs the contract of sale acknowledges the potential for an information imbalance between the vendor and the purchaser, to the detriment of the purchaser.

While prospective purchasers can gather a great deal of relevant information themselves by undertaking physical inspections of a property, such inspections may not necessarily yield all the information they may need to determine whether they are paying a fair price or, fundamentally, if the property is the right one for their needs.

Lawyers and conveyancers, on behalf of their vendor and purchaser clients, are generally responsible for preparing and reviewing section 32 statements. These professionals, along with the estate agents who sell properties, have worked together to build a mature and successful vendor disclosure system in Victoria.

However, in the 30 years since its introduction, section 32 has been amended many times, increasing the level of disclosure, as well as the complexity and size of section 32 statements.

As a result, the government conducted a red-tape reduction review of section 32 to seek stakeholder views on potential areas for reform, principally to alleviate the administrative burden on vendors and purchasers and the lawyers and conveyancers who act for them.

During consultation on these reforms, stakeholder bodies representing lawyers, conveyancers, estate agents and owners corporations managers highlighted a number of areas for potential reform, and many of these stakeholder-initiated proposals are included in this bill.

The amendments to be made by the bill are estimated to deliver red-tape reduction savings by clarifying and simplifying the information that must be disclosed, updating key aspects to reflect modern conveyancing practices, reducing the size and number of statements required, and removing requirements that impose unnecessary delays in preparing section 32 statements.

However, it is important to note that the amendments will not diminish necessary protections for purchasers. The review confirmed the value of section 32 statements, but highlighted the need to refocus its content to information specific to the property for sale, and held by the vendor or obtainable from a third party.

I will turn now to the detail of the proposed bill.

The bill re-enacts the provisions of section 32 as division 2 of part II of the Sale of Land Act, thereby giving vendor disclosure the proper status it should accord in Victoria's sale of land regime.

Key features of the existing regime that provide protection to purchasers have been re-enacted. In particular, the requirement to provide the section 32 statement to a purchaser prior to a contract of sale being signed has been re-enacted, as have existing rights of rescission that may be relied upon by the purchaser in certain circumstances.

Many of the provisions have been re-enacted without amendment, where stakeholders advised that the current level of disclosure is appropriate. I will not focus further on these unchanged aspects of vendor disclosure, except to say that this bill has provided a welcome opportunity to re-enact provisions of section 32 in a modern drafting style, for example by grouping re-enacted requirements under key themes, to improve readability and comprehensibility.

Where necessary, provisions have been re-enacted with amendments to improve clarity, codify existing industry practices and remove unnecessary red tape.

Feedback from stakeholders about current conveyancing practices are reflected in the bill, which consolidates all disclosure requirements into one statement and removes the requirement for a second section 32 statement and accompanying certificates and documents to be annexed to the contract of sale.

The bill re-enacts existing requirements to attach evidence of the vendor's title to the land for sale to the section 32 statement, but has codified common practice in relation to land under the Transfer of Land Act 1958 by requiring a copy of the register search statement to be attached to the section 32 statement. This requirement replaces the current requirement to attach a copy of the certificate of title.

Existing requirements to provide copies of plans for proposed subdivisions and amendments to subdivided land have also been re-enacted with amendments to remove outdated language and clarify the extent of disclosure required.

The bill simplifies and clarifies planning disclosure requirements, ensuring that section 32 requirements keep pace with Victoria's current planning system.

The bill tightens disclosure requirements for — among other things — government notices, orders and approved proposals affecting the land. Vendors will now only need to disclose those documents that have a present-day application to the land. They will not be expected to disclose historical documents that may have once applied over the property, but which do not have any continuing impact on the land.

The bill will also specifically clarify the requirements for disclosure of land contaminated by agricultural chemicals or affected by livestock disease.

The bill introduces a new separate requirement for vendors (or their estate agent should they engage one) to make a due diligence checklist available to purchasers when a property is first offered for sale if the land includes a residence or is land on which a residence could be constructed.

Its introduction acknowledges and responds to stakeholder feedback that when purchasers commence looking at properties, generic information can assist purchasers in making their own enquiries to find out more information in areas of particular interest to them.

The due diligence checklist will be prepared by Consumer Affairs Victoria and made available on its website, with direct links to other websites with specialist content.

It is anticipated that estate agents will make hard copies of the due diligence checklist available to potential purchasers at open for inspection events, and will provide links from their websites to the website of Consumer Affairs Victoria, where it will be available.

The bill also makes amendments in relation to the disclosure of information about owners corporations at the point of sale.

Firstly, the bill increases flexibility for vendors in satisfying owners corporation disclosure requirements by allowing vendors to choose to either specify the required information in the section 32 statement, or provide a copy of the current owners corporation certificate.

This will replace the current requirement for an owners corporation certificate to be provided by a vendor whenever land is sold that is affected by an owners corporation, and is anticipated to deliver savings to vendors who take an active interest in their owners corporation and have the relevant information in their possession. Vendors who do not hold all

the relevant information will still need to obtain an owners corporation certificate to satisfy their disclosure requirements.

As it is important that there is no capacity for a purchaser to mistakenly believe that they are buying into an active and functioning owners corporation when in fact the opposite is true, the bill also makes it clear that the vendor will be expected to disclose in the section 32 statement when an owners corporation is inactive.

Secondly, the bill makes consequential and related amendments to the Owners Corporations Act, to enable a separate review of fees for owners corporation certificates to be undertaken.

A concern raised during the review was the current inflexibility of the prescribed fee for owners corporation certificates. The Owners Corporations Act only provides for one fee, with no capacity for the fee to be varied for certificates of different sizes, complexity or urgency.

As a result, it is proposed to reassess owners corporation certificate fees to allow the current costs to be examined and differential fees developed. To facilitate this, the bill amends the Owners Corporations Act to improve its fee-making powers.

The bill also makes it an offence for an owners corporation to charge more than the relevant prescribed fee for issuing an owners corporation certificate.

In concluding my remarks on this bill, I wish to acknowledge that stakeholders made very worthy contributions to the review of section 32 and, as a result, influenced the development of this bill. The amendments introduced by this bill aim to ensure that section 32 statements continue to hold pride of place as a major source of protection for purchasers of land in Victoria.

I commend the bill to the house.

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

Debate adjourned until Thursday, 10 April.

JUSTICE LEGISLATION AMENDMENT (DISCOVERY, DISCLOSURE AND OTHER MATTERS) BILL 2014

Second reading

Debate resumed from 27 March; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Ms MIKAKOS (Northern Metropolitan) — I rise to speak on the Justice Legislation Amendment (Discovery, Disclosure and Other Matters) Bill 2014. I advise the house at the outset that Labor does not oppose this bill. As its title suggests, the bill makes amendments to the Civil Procedure Act 2010 to provide the courts with further case management powers in relation to discovery and disclosure. It also amends the Corrections Amendment (Breach of Parole) Act 2013 and the Crimes Act 1958 in relation to arrest powers for breach of parole, as well as the Corrections Act 1986 and Serious Sex Offenders (Detention and Supervision) Act 2009 in relation to the disclosure of sexual offence victims' information and the administration of various orders.

Part 2 of the bill, which contains civil procedure discovery and disclosure amendments, aims to ensure that the courts, parties and legal practitioners are using the appropriate tools to reduce costs and delays associated with the discovery process. The amendments aim to reduce these costs, especially in complicated and large-scale cases where vast quantities of documents may be discoverable.

Many of the matters with which this bill is concerned are already the subject of judicial discretion, but the bill is intended to give judges more definitive powers; however, these powers remain facilitative rather than mandatory. Under this bill a court will be able to require the party requesting discovery to bear some or all of the costs involved. The minister explained in his second-reading speech that this is intended to ensure that the general principle, that the party who is responsible for causing a cost should bear that cost, is not altered. The court will be able to order or direct that party to prepare a statement of issues in dispute. This is prepared subject to the overarching purpose of the act, which is to facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute. Pleadings will continue to be used as the main mechanism through which the issues are defined. However, the statement of issues will allow the scope of discovery of documents to be limited and enable parties to prepare their cases.

Sanctions will apply for failing to comply with discovery obligations or engaging in conduct intended to delay, frustrate or avoid discovery. With the consent of the parties the court will also be able to order that all relevant documents be discovered even if those documents would not ordinarily be discoverable under the existing rules. This can only happen if the court is satisfied that the documents can reasonably be identified and located among other matters. However, parties still retain the right to exclude privileged documents. The requirement of consent from both parties is important to prevent the use of this power as a tactic to inconvenience one party over the other.

The court will also be able to order or direct a party to provide an affidavit setting out the volume and manner of storage of discoverable documents as well as information about the party's document management process more generally. The second-reading speech refers to this particular change as being able to assist

parties to large-scale commercial litigation where corporations have very complex information storage systems. The courts will also be able to make rules for each court in respect of discovery and disclosure.

The Labor opposition supports the reforms that reduce delays and expenses in our courts while preserving the rights of parties to litigation proceedings. In recognition of this, the previous Labor government instituted significant civil procedure reforms during its term in office that made it a requirement for parties to undertake alternative dispute resolution or mediation prior to any litigation. However, these reforms were immediately repealed when the Baillieu government came to office before the provisions even came into effect. The changes in this bill that require parties to identify the issues in a dispute before the matter is brought to court go some way to acknowledging the poor decision the government made in not seeing through the Brumby government's reforms. The coalition is making a major concession here by saying that our pretrial discovery reforms were correct after all and that after three years in office it has found a way to reintroduce them.

I note that the second-reading speech refers to the high costs of discovery as being a barrier to justice in commercial litigation. I note in this respect that the current Attorney-General has overseen major cuts to Victoria Legal Aid. If he has regard to ensuring that parties to commercial litigation do not have barriers to justice, he needs to ensure that the same applies to ordinary citizens of Victoria, for whom he has created enormous barriers to justice by slashing legal aid. I remind him that just last year he also removed legal aid in relation to young children obtaining independent legal aid in the Children's Court. This is also an issue about access and barriers to justice for those most unable to speak for themselves.

The bill also makes amendments to a number of other pieces of legislation for the purpose of providing greater clarity. The Corrections Amendment (Breach of Parole) Act 2013 and the Crimes Act 1958 will be amended to clarify the ability of police to arrest and detain people suspected of being in breach of parole. For example, a suspect who is held in police custody will be able to be questioned in relation to a breach of parole offence and any other reoffending at the same time and not be released until both matters are dealt with. I understand that is in fact the existing practice, and the purpose of this amendment is to ensure that there is legal clarity around that situation.

Changes to the Corrections Act 1986 and the Serious Sex Offenders (Detention and Supervision) Act 2009 relate to ensuring that the prohibition on reporting names of victims of sexual offences under section 4 of the Judicial Proceedings Reports Act 1958 does not prevent the use of such information in the administration of community correction orders, sentences of imprisonment and parole orders. As I said earlier, Labor is supportive of improvements to our justice system. For this reason we do not oppose the bill before the house.

Ms PENNICUIK (Southern Metropolitan) — The Justice Legislation Amendment (Discovery, Disclosure and Other Matters) Bill 2014 is a further example of legislation the title of which does not accurately reflect its content. You could be forgiven if upon reading the title of this bill you thought it was all about civil matters, but in fact two of the three amendments it makes to four acts are not about civil procedures at all. They are about amendments to the Corrections Amendment (Breach of Parole) Act 2013, the Corrections Act 1986 and the Serious Sex Offenders (Detention and Supervision) Act 2009. Whilst the changes are not more than minor amendments, particularly those to the Serious Sex Offenders (Detention and Supervision) Act, they could have ramifications about which I will raise some concerns. It would be useful for the public of Victoria in particular if the titles of bills actually reflected what they contain. In the case of this bill's title, 'other matters' are quite significant matters.

The amendments to the Civil Procedure Act 2010 made under this bill will provide for further case management powers in relation to the discovery and disclosure of documents in civil litigation. The Attorney-General said in his second-reading speech that for many years discovery has been regarded as one of the major sources of cost and delay in civil proceedings. He is probably correct in that regard. The Australian Law Reform Commission recently noted that discovery is often the largest single cost in commercial litigation and that the realities of discovery can amount to a huge public cost.

The bill enables courts to order parties in the first place to consult and prepare a statement of the key issues in dispute in the proceedings. When I read that, I thought it was interesting. That was a provision that was removed from the Civil Procedure Act by the government back in 2011. The prelitigation arrangements had been put in place by the previous government and had not yet been implemented. They were removed from the act before they were implemented. The whole idea of including those arrangements was to enable parties to consult and identify the key issues before going on to court

proceedings and also to perhaps come to some mediation before even needing to go into the court. That would have been a good way to prevent the costs of court cases, which the Attorney-General referred to in his second-reading speech.

The first thing I noticed was that the government is partially reinstating what it removed in 2011. The Civil Procedure and Legal Profession Amendment Bill 2011 was not supported by the Greens in that case, mainly because of the removal of the prelitigation and mediation processes, which would have gone some way to preventing people from taking up court time on civil litigation or, in some cases of civil litigation, to enabling them to come to some sort of agreement before going to court and taking up the court's time.

Clause 6 of the bill is one about which I have raised some concerns with the Attorney-General's office and have had some correspondence. Clause 6 allows courts the discretion to order that some or all of the costs of discovery be paid by the party requesting discovery in appropriate circumstances. In his second-reading speech the minister said:

> … these provisions are not intended to alter the general principle that the party whose conduct is responsible for causing a cost to be incurred should be required to bear that cost, but rather to provide additional mechanisms by which the general principle can be given effect … In short, a court will be able to say to a party that is seeking discovery of debatable or unclear merit, 'If you want it, you pay for it'.

In the second-reading speech the Attorney-General suggested that this will be applied when a party is seeking discovery of documents of debatable or unclear merit. However, that is not the way the provision reads. In fact the provision is a very wide discretion and does not mention debatable or unclear merit or unreasonable requests for documents. It leaves that discretion wide open for the court to order.

We have written to the Attorney-General's department and to the Attorney-General's office, and we have received some response to that. I will not read it in detail, but we asked the Attorney-General why clause 6 has left such a general discretion when the Attorney-General suggested it should only apply for requesting discovery with questionable merit. We asked in what circumstances outside a request that is lacking in merit for a party requesting discovery it would be deemed appropriate for the court to order the making-of-discovery requesting party to pay for that discovery. We also asked whether the general discretion in clause 6 allows for a situation where a party making the request for discovery can be made by the court to pay for that discovery even if it has merit, simply on the ground that the other party says it will cost them a great deal to search for and provide those documents.

We are particularly concerned with public interest litigation where a smaller, less financed party may seek discovery that has merit or is reasonable and the company states that it will cost them a great deal to search for and provide that documentation in an effort to prevent the discovery of that documentation or in an effort to have those costs transferred to the party seeking discovery. We are particularly concerned that this not be misused or inappropriately applied in such situations where a more powerful, more resourced party that uses those sorts of tactics may even suggest that the discovery request is unmeritorious or unreasonable and have those costs transferred to the less financed party. We are particularly interested in the areas of public interest.

We were told by the Attorney-General's office that an order of the kind provided for in clause 6 would be particularly useful in cases where a party requests discovery of questionable merit and the court considers that the requesting party should bear the cost of that discovery. It may also be used in some cases where a party requests particularly extensive discovery to encourage that party to limit the scope of a discovery request and focus on the real issues of the dispute. The problem with that answer is that it is using costs rather than some other method of negotiation or mediation to get to the issues at hand. Rather than threatening what could be a less resourced party, if they pursue requesting documents which another party, which may be more resourced and better financed, does not want to release, the issue of costs will be a deterrent.

The Attorney-General's office also said that in exercising its discretion the paramount consideration of the court would always be what is in the interests of justice — I absolutely accept that — that the broad discretion is consistent with the general principle reflected in the courts legislation that costs are in the discretion of the court and that the courts would be very unlikely to support a more limited power. I understand that the provisions in this bill have been run by the advisory group, some of whom we approached for advice and they did not provide advice because of their participation in that group.

The advice from the Attorney-General's office also says:

> … the Civil Procedure Act prevents parties from making applications for purely tactical reasons. An application by a better resourced party for the purpose of dissuading a less well-resourced party from pursuing a legitimate … request

could constitute a breach of the overarching obligations to which sanctions could attach.

I hear all that, but we still raise the concern that it is a very general discretion and does not reflect the rationale as given by the Attorney-General in his second-reading speech. I have had discussions with Mr O'Donohue, the Minister for Liquor and Gaming Regulation, and David O'Brien with regard to this issue, and they have assured me that they will make some comments about it. We are raising concerns that, in a nutshell, this provision could have adverse effects on less well-resourced parties in civil litigation.

Clause 7 enables a court to order with the consent of the parties that a party provides to another party all documents in its possession, regardless of whether the documents would have been discoverable pursuant to the rules of the court. As I said, it is with the consent of all parties that that provision would apply. It will mean that the providing party will not be required to review each of its documents for relevance or privilege prior to the production, saving the providing party considerable time and money. The bill includes appropriate safeguards to ensure that a party is not prejudiced by this process and that privilege claims in relation to the documents are preserved. Those are the changes to the Civil Procedure Act.

The changes to the Corrections Amendment (Breach of Parole) Act 2013 and the Crimes Act 1958 are to clarify that if parole is cancelled during an investigation, police have a reasonable time to complete that investigation into the suspect who is in custody without the need to obtain court permission, irrespective of whether it is an investigation into a breach of parole offence and any reoffending. They also insert a new provision such that if a court, bail justice or police member decides to release from custody a paroled prisoner who is suspected of having committed an offence, that decision does not take effect until the Adult Parole Board of Victoria orders that the prisoner be released or decides not to cancel the prisoner's parole.

I think this was an issue that I raised earlier this year in relation to another bill to make sure that there were no gaps or loopholes, in that case in relation to serious sex offenders. It is good that there is a clarification of that particular provision. The bill also provides for the Bail Act 1977 and provisions of the Crimes Act 1958 governing the detention and questioning of suspects in custody to apply to people arrested on suspicion of breach of parole.

The bill also amends the Corrections Act 1986 and the Serious Sex Offenders (Detention and Supervision) Act 2009 to clarify that section 4 of the Judicial Proceedings Reports Act 1958 — that is, the prohibition of reporting of names — does not prevent the disclosure of information, including the victim's identity, for the purpose of the administration of orders under those acts. In his second-reading speech the minister said this will apply to community correction orders, sentences of imprisonment, parole orders and the Serious Sex Offenders (Detention and Supervision) Act, including assessments of suitability and applications for those orders and, if made, the administration of those orders. For example, it will apply to existing orders, to any assessment as to whether such orders should be sought and to therapeutic treatment. Accurate information from courts about sex offenders and their offending, which can sometimes have the potential to identify a victim, is essential for the purposes of administering sentences or orders under these schemes.

It has always been a concern of mine and of the Greens that in the case of serious sex offences there is often a call for the release of information to the public that goes to the identification of serious sex offenders without people realising that that would result in the identification of victims. It sounds like a good thing until you go to the next step and realise that it could cause further and ongoing trauma to the victim of a crime.

I am assured that the application of this clause will be limited to the administration of those provisions that I have just mentioned, but we always need to be very cautious where the public identification of victims in these cases is a possibility, because of the ordeals they have already undergone and to avoid further traumatisation of those victims. With those concerns about the identification of victims and also the application of clause 6 of the bill, if those could be clarified, the Greens will support the bill.

Mr D. R. J. O'BRIEN (Western Victoria) — It is with great pleasure that I rise to make a contribution to the debate on the Justice Legislation Amendment (Discovery, Disclosure and Other Matters) Bill 2014. This is another important bill that the Attorney-General introduced into the other place, and hopefully with the speedy passage of this bill through this place it will be another important and incremental step towards improving access to justice and efficiency within the courts, thereby bringing great benefit not only to litigants but to members of the public who come into contact with the court system.

The purpose of the bill as set out, and the spirit of the bill, is to seek to resolve issues which are in dispute. I note that contributions from the members on the other side, particularly the initial part of the contribution of

Ms Mikakos, have in the most part been supportive of the bill. I will not seek to undo any of that support in my contribution but rather pick up the elements and, in the spirit of Peter Hall's legacy, reach out to the other parties and talk about what we agree about and then deal with some of the elements where unfortunately Ms Mikakos, Ms Pennicuik and I are not in agreement. I will get to those shortly.

The first important purpose of the bill is to amend the Civil Procedure Act 2010 to provide for further case management powers in relation to discovery and disclosure. The bill then sets out further amendments to the Corrections Act 1986 and the Corrections Amendment (Breach of Parole) Act 2013. To pick up a comment made by Ms Pennicuik, I think the title of the bill is appropriate — justice, first of all, and then discovery and disclosure and other matters. Discovery is a very time-consuming process within the civil procedure system. It is something that has been necessary and remains necessary to get to the heart of issues between parties and particularly to establish the evidence that underlies pleadings and witness statements and affidavits.

By way of background, the advent of electronic communications technology has in some instances, particularly in large commercial litigation, made what were the traditional processes of discovery extremely expensive and time consuming. In short, and this is set out in the second-reading speech of the Attorney-General, many more documents are available with electronic communications.

It used to be the case that parties sent a letter to another party and that letter may be discovered with maybe a couple of drafts. Now there can be a whole chain of emails and various inputs into the letter. It is no longer the formal letter itself that is interesting to a litigant, but also the various iterations of the letter, the inputs by various people who may have been copied into such a letter and the database of electronic communications to the extent necessary in the case, particularly if there are two competing versions of events to get to the heart of the matter and to get to the truth. That is one of the key reasons for the growth in documentary evidence that has caused the courts and litigants some degree of angst and expense in seeking to manage discovery.

I will pick up Ms Mikakos's analysis here: the bill is facilitative rather than mandatory in the sense that it respects many of the processes that have been instituted in the courts. I commend the Department of Justice for the extensive consultation it has undertaken, including with the profession, in the preparation of the bill and on the thoughtful way it has been put together. In that regard the bill implements suggestions that have been made by the Civil Procedure Advisory Group — for the benefit of the house, that group is chaired by the Chief Justice of the Supreme Court and is comprised of senior members of the Supreme, County and Magistrates courts, the Victorian Civil and Administrative Tribunal, the Victorian Bar, the Law Institute of Victoria, the Federation of Community Legal Centres, Victoria Legal Aid and the Australian Corporate Lawyers Association. A representative of the commercial bar has also participated in the discussions.

In being facilitative, the bill structures the powers and the discretions in an appropriate way to allow the courts to manage discovery and disclosure. In particular, it allows the courts to define the issues in dispute and allows documents to be provided in an affidavit of document management, which essentially allows parties to explain to the court how their documents are stored. Without permitting the other party to undertake a fishing expedition, as it is called in the industry, it allows them, prima facie, to have access to those records if the parties wish, but with appropriate protections that are set out in the legislation regarding privilege, relevance and costs, as has been discussed.

I turn briefly to one of the points Ms Mikakos incorrectly made. The Civil Procedure Act 2010 that was brought in by the previous government is not being reinstated by this legislation, contrary to Ms Mikakos's statements. The amendments that we made when we came into office through the Civil Procedure and Legal Profession Act 2011 were in relation to prelitigation obligations, which the profession opposed at the time and which we were very proud to remove from the Civil Procedure Act because they would have added to the cost of justice before a dispute had entered the courts. They were unnecessary steps. We are not reinstating those steps with this legislation; rather we are assisting the courts to facilitate litigation that has already commenced. I hope Ms Mikakos takes the opportunity to reflect on *Hansard* and, in the interests of resolving the issues in dispute, corrects her inadvertent — if it was inadvertent — misstatement to the house that the government is seeking to backtrack on what it has done. We are not doing that; rather we are continuing the process of listening to the courts and facilitating sensible reforms to improve access to justice.

The second point I would like to make is in relation to Ms Pennicuik's concerns in relation to clause 6, which in a sense are genuine concerns. This discovery process is a careful balancing act. Her concerns relate to the power of the court to award costs in appropriate cases and to whether those costs will be a particular problem

in public interest litigation where there is an imbalance of power between litigants before the courts. There has been some communication between the government and Ms Pennicuik on this issue. The government's considered response is that the bill as drafted is the appropriate way to proceed rather than seeking to refine that discretion any further by confining it in the manner that Ms Pennicuik seeks, albeit that the reasons she stated may be valid reasons. The reason we do not wish to further amend the bill from what has been put before the house is that these discretions are wide for a good reason — that is, the court is in the best position to consider all the circumstances of the case at discovery time. For that reason the discretion in relation to costs needs to remain broad.

From my practice and in regard to public interest litigation I recall one case I was involved in before the Supreme Court in the circumstances that Ms Pennicuik related. Costs were not awarded against an unsuccessful litigant at first instance because of the public interest nature of the litigation and also because of the manner in which it had been conducted, if I recall correctly. That was the Hilton Hotel case, in which the East Melbourne Group challenged the decision of then Minister for Planning, Mary Delahunty. The litigant was unsuccessful in the first instance but it was successful on appeal, and it resulted in a sensible outcome. In relation to costs and discretion I am reminded that only this week we saw the decision in relation to the Construction, Forestry, Mining and Energy Union. Without straying too far from the bill, I urge all parties before the court to respect the decisions of the court, because there is one very important value in this state — that is, respect for our institutions of justice. When a court has made a decision, particularly in relation to questions of contempt, those orders need to be respected.

With those words, and in the interests of brief advocacy on this bill, I thank members for bringing those concerns to the government. In particular I thank the Greens for taking the time to communicate their concerns to us. I trust that I have addressed Ms Pennicuik's concerns. I commend the department and the Attorney-General on their work in bringing the bill to the house, and I commend the bill to the house.

Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation) — I thank Ms Mikakos, the opposition in general and Ms Pennicuik for their support of the bill. I acknowledge Ms Pennicuik's comments in relation to the discovery process in particular. I thank Mr David O'Brien for addressing those points, and I hope that has provided some clarity for Ms Pennicuik. I thank Ms Pennicuik for citing in her contribution to the second-reading debate the latest information provided by the Attorney-General's office to her. We believe broad discretion in these matters is appropriate so that the court can make the appropriate decision on each case as it comes before it, taking into consideration a range of issues including the strength or otherwise of the litigant's case before the court. I thank members of the chamber for their support of this bill.

Motion agreed to.

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

Third reading

Motion agreed to.

Read third time.

WATER AMENDMENT (WATER TRADING) BILL 2014

Second reading

Debate resumed from 27 March; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Mr SCHEFFER (Eastern Victoria) — As the Water Amendment (Water Trading) Bill 2014 points out, its purpose is to amend the Water Act 1989 so that Victoria complies with the requirements of the Murray-Darling Basin Plan, which sets out the terms of the agreement between Queensland, New South Wales, Victoria and South Australia to coordinate the management of water use in the Murray-Darling river system.

Members will recall that the purpose of the plan is to limit the private use of water to sustainable environmental levels. This is worked out by determining the long-term average amount of water that can be taken from the natural system without imposing unsustainable stress on the environment. The plan is a framework that is to be rolled out over successive years and is designed to be adaptive. That is, it is understood that as the plan is implemented it will gather data and understandings that can in turn be used to improve future strategies.

Throughout this country's history profound environmental harm has been done out of ignorance and commercially motivated recklessness, and it is incumbent upon us to support every measure available to protect and sustain the environment. Chapter 12 of the Basin Plan 2012, on water trading rules, sets out the rules for trading and transfer of tradeable water rights in

relation to basin water resources, and as this chapter and the minister's second-reading speech reiterate, these rules will commence on 1 July this year.

The shadow Minister for Water, Martin Foley, the member for Albert Park in the Legislative Assembly, in leading the consideration of this bill for the opposition was concerned that the bill should not in any way adversely affect the environment, and he has received assurances from the Minister for Water and the Victorian Environmental Water Holder that the environment will not suffer through water trading. Mr Foley, in his contribution to the second-reading debate in the Legislative Assembly, made public the substance of a letter he had received from the Minister for Water indicating that any approvals a Minister for Water allowed would need to have regard to any adverse effects such a decision would have on the environmental water reserve. The Victorian Environmental Water Holder advised Mr Foley that the bill does not change the Victorian Environmental Water Holder's statutory objectives or functions, and that means maintaining Victoria's environmental water reserve and improving the environmental values and the health of our water ecosystems.

The Murray-Darling is a functioning river system — and it may even be a healthy river system on the one hand — but for irrigators and fruit producers it has been a site of protracted struggle for decades, and billions of dollars have been poured into finding a solution during that time. The current round, going back five years to the most recent crisis with the Coorong estuary, has been an especially ugly exercise. Back in 2009 scientists were warning of the unsustainable salinity levels in the southern lagoon caused by the lack of water available to the system to flush the salt water out to sea. Scientists warned that, without rain or significant fresh water released into the system by decreasing the amount of water taken out of it for irrigation, we were facing what they described as an environmental catastrophe.

A major multipronged study from CSIRO found that the Coorong faced wholesale destruction of waterbirds, fish, micro-organisms and plants and that the southern lagoon was almost devoid of life, owing to salinity levels. Scientists and expert groups, such as the Wentworth Group of Concerned Scientists, demonstrated that a minimum of 4000 gigalitres should be returned to the environment. However, irrigators said, with some justification, that this would annihilate towns in the basin.

It is worth remembering at this point the shocking events of 2010 that took place in towns along the Murray-Darling, when we witnessed on television very disturbing scenes of irrigators and townspeople turning out in their thousands to heap abuse on representatives of the Murray-Darling Basin Authority and even burn copies of the draft plan in the streets. The irrigators were understandably devastated at the prospect of having to change their way of life but, on the other hand, were prepared to risk the health of a vast river system and the myriad creatures that live in it. The enormity of the loss, the staggering tragedy of draining the river system of more than it could bear only to stave off the inevitable destruction of the agricultural economy, is hard to believe — and yet it happened.

Fortunately the drought broke in the spring of 2010 and spared the lower lakes and the Coorong. This had the effect of giving some respite from the stress on the environment and also on irrigators along the river system and, I expect, the negotiators seeking agreement of the Murray-Darling Basin Plan. The plan became law in November 2012 and the affected states progressively signed off after their special conditions had been negotiated. The final plan is for 2750 gigalitres of water to be returned to the environment, significantly less than the 4000 gigalitres that the science indicated is necessary to restore the river system to health.

I suspect that for the irrigators and the river towns this may be a pyrrhic victory, because if the scientific evidence is true, south-eastern Australia will continue to dry as a result of global warming and the overuse of the Murray-Darling water will reduce the quality of that water, will produce frequent algal blooms, will continue to increase salinity to hazardous levels and will make it harder for the plants, fish, amphibians, birds and other animals to survive. However, politics is the art of the possible, and at the end of the day the former Labor government was able to get a deal and, when all is said and done, this is a step in the right direction.

Work is under way so that under the plan a cap will be in place by 2019. There will be sustainable diversion limits that place an overall limit for the basin and also for individual catchments and aquifers. It is envisaged that this will help assess the water consumption needs of communities, agriculture and industry as well as the environment. Maybe not enough water will be returned to the environment to revitalise the river system, but there will be more. Given the adaptive nature of the plan, the opportunity is there to even up the proportion of water that goes to the environment.

The second-reading speech states that the agreement Victoria made with the commonwealth validates Victoria's longstanding view that a healthy basin can be

achieved alongside sustainable, productive and competitive irrigation. This can only be achieved through increased water productivity and through ensuring that natural environments are not only sustainable but are assisted to fully recover. This in turn will only be achieved if the country improves its capacity to mitigate the losses entailed in water diversion.

Almost a decade ago we knew that for all the diversions for irrigation across the Murray-Darling Basin, around 25 per cent was lost during conveyance in rivers, 15 per cent was lost in canals and 24-hour per cent on farms. This meant that only 36 per cent of all diverted water was delivered to crops. We also knew that we had to maximise the efficient use of water to grow more food with less water. The best way to achieve that was through water trading that would ensure that water could be traded from low-value to high-value crops, and this is why we as a nation and as a state introduced a water trading system. This bill is a further step along the way to improved water efficiency, and the opposition will not be opposing this bill.

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

Quorum formed.

Mr BARBER (Northern Metropolitan) — In brief summary, the purpose of this legislation is to give effect to some of Victoria's commitments regarding water trading under the Murray-Darling Basin Plan. Like The Nationals, the Greens have some reservations about water trading and a market mechanism to achieve either the environmental or economic outcomes. It depends very much on whether you are in opposition or government at the time.

The bill also provides for the Victorian Environmental Water Holder (VEWH) using water trading to achieve its aims. I hope this bill is not affecting its statutory duties and objectives. The Greens have been critical of some of the water allocations that have been sold back to farmers at the federal level, and there is a much broader range of issues to consider before determining a position on this bill, including notably the impact of climate change or even the state government's *State of the Environment Report* on inland river health.

Turning to each of those issues, the Victorian Environmental Water Holder is an independent statutory authority established in 2011. It works with catchment management authorities and Melbourne Water to ensure that environmental water entitlements are used to achieve the best outcomes with the water that is available — I emphasise, with the water that is available. The VEWH receives and manages the environmental water entitlements and assigns those allocations. The minister must approve those allocations, having regard to the adverse impact on other water users from the same water system and environmental water reserve.

If we look at the seasonal watering plan for the environmental water holder, we see a cautiously optimistic view of water trading from the perspective of its operations. There are some examples of using revenue raised through allocation being traded in one system to purchase water allocation in another system to achieve their outcomes. VEWH chairperson Denis Flett said:

> Management of the water holdings is focused on delivery of water to achieve environmental outcomes in priority river reaches, wetlands and flood plains. The use of management tools such as carryover and water trading are also important. However, taking advantage of these tools for environmental purposes is a relatively new undertaking and environmental water managers have much to learn in this area.

Certainly, having been there when that legislation was passed and having queried it at some considerable detail and even moved some amendments, I believe, I will be watching progress. Mr Flett also notes that:

> Over the past two years, seasonal conditions and water resource availability has meant the VEWH has been in a position to sell small amounts of allocation in northern Victoria and contribute to the purchase of a small amount of allocation in southern Victoria.

He even considers that delivery costs associated with priority watering actions or technical works to fund small priority structural works could be a useful purpose to put the subsequent revenue to. However, we are talking about an agency that is effectively running around with an eye-dropper, giving out little pieces of water here and there to achieve particular outcomes at particular moments because for the last few years we have had some high levels of rainfall and particularly high-level events, so agencies have ended up with a little bit of water that they have been able to bank, carry over, sell, trade or what have you to achieve those outcomes.

We should make no mistake and remember back to that long drought that characterised the majority of my first term here in Parliament. In that situation you have species and ecosystems on the verge of going extinct, with catchment management authorities and an underprovided environmental water holder running a triage operation, trying to keep a particular species in a particular place alive for another summer. There should be no great religious celebration or sense that these

things are now under control and that we can all kick back.

In the same way, the federal government's scrapping of the Murray River's listing as 'critically endangered' — one of the government's early acts — was driven completely by politics and not by science. Again, during drought we are told that we cannot afford water for these species and ecosystems and during the good times we are told that there is nothing to worry about and that they will lower the status.

Even to make that water available for human use the ecosystem itself has to be kept in a healthy manner. Just look at people around Victoria who at various times find that their drinking water or cattle water is unacceptable. Look at what happens when algal blooms start moving down from the Hume Dam to the Murray and the chaos that ensues with consumptive water users. They could move all the way down to Adelaide, if you like, and with the situation there with the slow death of the Coorong as well you would end up seeing that there is not any compromise to be made between the health of the ecosystem and consumptive use. Both simply have to be provided for.

Although there was to be no benefit to irrigators out of it, the government went through the exercise of delisting things from having critically endangered status. In any case, that status only applies to activities that would have had a significant impact on the whole ecosystem — that is, big construction, new water diversions, mines and so forth. The delisting was not going to affect the way most farmers run their farms, and it was done over the top of and against the advice of the independent Threatened Species Scientific Committee following its assessment, which underpins the listing. It was a solid piece of work done by that group.

Yet again, if the science is inconvenient, just toss it in the rubbish bin. How many times have we heard that just in recent weeks in debate in this place? Like Galileo's telescope, if it is showing you something that goes against your doctrine, reject the instrument as inaccurate rather than be prepared to adapt to and think about a new reality. Of course it is part of a pattern of decisions that is about finding anything that has to do with the environment anywhere and putting a bullet into it and getting rid of it. It is a purely ideological approach. The coalition is completely incapable of entering into environmental debate anymore. It has simply rebranded it all as green tape — something to be hunted down and eliminated, like foxes and feral goats. That was part of a whole chain of decisions, including coal board expansions, endangering the Great Barrier Reef and the return of — what is it?— 20 or 30 cows to the high country.

We know that water trading is an instrument, but it cannot deal with the enormity of the problems confronting the Murray-Darling Basin, particularly when you accept the science that was laid out very well in the Victorian Climate Change Adaptation Plan, produced by this Liberal government, which said that we are expecting less rainfall, more extreme rainfall and, with that, not just the quantum of rainfall itself but higher temperatures leading to higher evapotranspiration and therefore a dramatically lower rate of stream flow.

Those numbers — settled science by the CSIRO and constantly referred to in Victorian government adaptation plans — should be factored in as a sinking lid in any determination of a cap for the Murray-Darling Basin. To put it colloquially, we now have to understand that we are chasing a moving target downwards in terms of the water that is going to be available for ecosystems or for farms. This bill and these types of measures simply do not address that.

That being said, the bill itself incorporates a number of commitments that have been made by the government towards water trading rules as part of Murray-Darling Basin Plan commitments, and we will be supporting the bill.

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

Quorum formed.

Mr RAMSAY (Western Victoria) — It gives me great pleasure to speak in the debate on the Water Amendment (Water Trading) Bill 2014. When I was asked to lead on this bill it gave me some time for reflection on days gone by, when I was active in another role dealing with water. I say from the outset that I am pleased to see both Labor and the Greens supporting the bill this morning. It is interesting to note that my parliamentary colleague Mr Danny O'Brien, who is to speak to this bill, was in fact the CEO of the National Irrigators Council when, with the Victorian Farmers Federation (VFF), we were dissecting John Howard's $10 billion national water plan for Australia — $10 billion that he was willing to put forward to try to deal with the Murray-Darling Basin, which was suffering significant impacts of a long-term drought and issues around sustainability and environmental flows. Here we are, seven years on, debating a bill to free up water trading.

Mr Scheffer's contribution, fairly typically, did a bit of circle work around global warming but finally got to the bill itself. I was pleased that he commended the bill at the end of his contribution. Mr Barber homed straight in on the environmental water entitlements and environmental holders, then talked about foxes and cows and a few other things, but at the end of the day he commended the bill to the house.

I will briefly take the house through some of the technicalities of the bill. The main purpose of the Water Amendment (Water Trading) Bill 2014 is to make changes to the Water Act 1989 to promote compliance with key requirements of chapter 12 of the Basin Plan 2012, made under the commonwealth Water Act 2007. In particular the amendments provided for in clauses 4, 6, 7, 12, 13, 14 and 15 adhere to clause 12.07 of the Basin Plan, which provides that a person may trade a water access right free from restrictions as to class of persons.

The bill also amends the Water Act 1989 to promote Victoria's compliance with certain requirements of the water trading rules set out in chapter 12 of the Murray-Darling Basin Plan. It removes limitations in relation to the classes of persons to whom an allocation of water under water shares, bulk entitlements and environmental entitlements may be assigned and to whom a limited-term transfer of a water share may be given.

The bill will also remove indirect restrictions on trade by removing limitations on who the Victorian water register can record for holding allocations of water under a water share. It will enable, subject to the minister's approval, a holder of a water share to give a standing direction to the relevant water corporation for the whole of the right to the future water allocations under that share to be held by any other person for an ongoing period until the owner of the water share revokes the standing direction. The person holding a standing direction, being the holder of an allocation bank account in the water register, will then be able to assign water allocations they receive to other persons, subject to the minister's approval and trading rules.

On 5 June 2013 the Victorian government and the commonwealth government signed an intergovernmental agreement on implementing water reform in the Murray-Darling Basin and an associated funding agreement to support the implementation of the Basin Plan. These two agreements settle the responsibilities and costs of putting the Murray-Darling Basin Plan into action. The intergovernmental agreement reaffirmed the Victorian government's commitment to remove any remaining restrictions on water trade in accordance with the Murray-Darling Basin Plan. The bill gives effect to this commitment.

Both the intergovernmental agreement and its associated funding agreement work together to support the cost-effective implementation of the Basin Plan in Victoria, recognising the dual interests of balancing the need to improve basin health and continuing to sustainably grow our irrigation-based farming communities and food production industries.

For Victoria, the intergovernmental agreement has secured $14.3 million over three years to develop offset projects and to reduce the volume of water required to be recovered from productive use under the Basin Plan. The federal government will provide $47.4 million over eight years for start-up costs associated with implementing the Basin Plan and a commonwealth commitment of $25 million from its $100 million Murray-Darling Basin regional economic diversification program for assistance to communities affected by the Basin Plan.

The intergovernmental agreement validates Victoria's longstanding view that a healthy basin can be achieved alongside sustainable, productive and competitive irrigation. The bill refers to chapter 12 of the Basin Plan 2012 which sets water trading rules to govern the operation of water trading activity in the Murray-Darling Basin. Chapter 12 of the Basin Plan was due to commence on 1 July 2014. The Basin Plan trading rules set out in chapter 12 require the removal of restrictions on who can participate in the trade of allocations of water and tradeable water entitlements. Section 35 of the commonwealth Water Act 2007 imposes a duty on all agencies of a basin state, including ministers, to act consistently with the Basin Plan.

The bill amends Victoria's Water Act 1989 to improve the efficiency and scope of water trade. The bill removes limitations under the state Water Act relating to the classes of person to whom an allocation of water under a water share bulk entitlement and an environmental entitlement may be assigned and to whom a limited-term transfer of a water share may be given.

The bill also removes indirect restrictions on trade by removing limitations on who the water register can record as holding allocations of water under a water share. The bill creates greater flexibility for how the owner of a water share controls and manages their water share. Importantly, the owner of the water share may revoke the standing direction at any time. If the owner of the water share chooses to divide, consolidate,

cancel or surrender the water share, the standing direction will be cancelled.

The Basin Plan provides a high-level framework that sets standards for the Australian government, basin states and the Murray-Darling Basin Authority to manage the Murray-Darling Basin's water resources in a coordinated and sustainable way in collaboration with the community. It is based on managing basin water resources in the national interest, rather than on jurisdictional or sector-based views. The Victorian government has chosen Ballarat to lead the way in demonstrating a new approach to integrated water cycle management for regional cities. It has provided $1 million in funding to the Living Ballarat project for the local co-design of a whole-of-water-cycle management framework for Ballarat and its districts. I might say that it is working very well.

It is estimated that there is currently 9 gigalitres of water run-off in the city each year through stormwater and wastewater. We can put this water to better use. The framework will set out clear and evidence-based options to make the best use of the interconnected components of the water cycle. The Living Ballarat project will reflect community values and preferences to reduce Ballarat's reliance on water from agricultural catchments and make the city more self-sustaining. It will also help with the water levels in Lake Wendouree.

Those are the technical aspects of the bill. I commend the Minister for Water, Mr Walsh. In a past life I spent a considerable amount of time working through what was at the time a new Water Act constitution. During the term of the Howard government, when Malcolm Turnbull was Minister for Environment and Water, there was a lot of work being done through the National Irrigators Council and the VFF to try to find a way to provide a sustainable framework for the basin but to also protect the interests of Victorian irrigators in this state.

On my first day as president of the Victorian Farmers Federation I had a meeting with irrigators. They said to me, 'Given that you are a dryland farmer and know nothing about irrigation, we will help you and guide you in setting policy. However, if we do not agree with you, we're going to take our membership and walk out of the VFF'. About 3 hours later I had all the dryland upper catchment farmers come to me and say, 'If you give those irrigators any opportunity to take our water or reintroduce a farm dams bill that actually impedes our opportunity to collect water on our properties, we will take our membership away'. That was my first learning curve on water and politics in the VFF, and the agripolitics in relation to water have not changed. I remember the fight we had with John Brumby in relation to the national water plan about protecting the 4 per cent cap. I understand that will now be given up come 1 July. It was critical at that point in time to make sure we had the 4 per cent cap in place to at least allow water to be held in the district. I am sure this will not be the last time this chamber has a discussion about water amendments, but I believe this is a good step forward.

I applaud Minister Walsh for the way he has gone about this process, which has included the intergovernmental agreement and the sustainable diversion limits. He has found ways to use technology to improve the way we provide water for environmental sites while creating significant savings that can be offset to provide water for water users, particularly our food producers in the Murray-Darling Basin system. I am really pleased that this bill has come before the house and that both Labor and the Greens are supporting it. I wish it a speedy passage.

Mr D. D. O'BRIEN (Eastern Victoria) — It is a pleasure to rise to make my first contribution to debate on legislation in this place. As Mr Ramsay has pointed out, I have been chief executive of the National Irrigators Council. I am reminded of his comments a moment ago about the conflicts between farmers working in upper and lower catchments. I worked in politics before I started working for the National Irrigators Council, and people would often ask me if I missed politics. I would usually reply, 'I am in water. There is more politics in water than there is in politics'.

Mr Ramsay gave a very good outline of what the bill does. It makes rather minor amendments in many respects, but it ensures that our legislation is consistent with chapter 12 of the Basin Plan. Firstly, the bill will remove restrictions on who can hold a water share, and, secondly, it will allow a water share owner to issue a standing direction on who can receive the right to future water allocations from that share.

Those clauses, and the first one in particular, address an issue which has been part of a substantial debate in water politics for some time and concerns who is eligible to hold a water share. Previously under Victorian law, or as it currently stands before this bill goes through, someone who wanted to hold a water share had to have land. That was largely about concerns that there would be the development of so-called 'water barons', where people from Collins Street might buy up vast volumes of water entitlements, force the price up and restrict the ability of farmers to access that water — or indeed the environment, Mr Barber. We have seen that those fears were unfounded. We have not seen the establishment of water barons. There is a very good

economic reason for that, which is that if you own a water entitlement, in most situations it will be far more profitable to use the water to grow a crop, whether you are growing grass for dairy cows, a rice crop, peaches or citrus — any of those — than it will be to sit on the water and try to profit from its trading. There are limited examples in the depths of a drought where water trading would perhaps be profitable, but the best use of water in an economic sense is to put it to productive use and grow crops, so that fear has been unfounded.

This also provides some flexibility in the market for farmers who may choose to lease land, and it enables other innovations to occur in the water market. As Mr Ramsay mentioned, this bill does not deal with it, but we see the 4 per cent cap going. That was an important cap in the transition as governments were buying large swathes of water. It helped to ensure that the community had time to transition.

The second aspect to this bill involves a rather minor amendment, but it reduces red tape for farmers by allowing a standing direction to be given to a water authority and the minister that annual temporary trades can stay with a particular farmer. This reduces the need for annual temporary trades, which was difficult for many farmers, and particularly those where family trades and intercompany trades needed to occur.

Both amendments enable a stronger water trading system. I am disappointed that Mr Barber has misrepresented The Nationals views on water trading. Personally I am a firm believer in the water market, and I am a firm believer in markets generally. The water market ensures that water goes to its highest value. It puts a price on water and it makes sure that people conserve it, so it is actually a good thing for the environment. Long gone are the days when dairy farmers or any other farmer would let the Dethridge wheel go, milk the cows, do a bit of everything else, then come back when they felt like it and find that the water was running across the road. That has stopped because we have put a price and a value on water. We have given them a property right and given them value, so they act to look after water. That has been a good thing. It has been a good thing for the Murray-Darling Basin for the same reason — it has helped drive conservation of water.

Secondly, this whole Murray-Darling process has allowed governments to go in and buy water for the environment. That was critical. I know the Victorian government was very keen on it. When I was with the National Irrigators Council we argued very strongly that irrigators need to have a property right, that property rights should be respected and that if governments want water for any reason — mostly environmental reasons, of course — they should buy it and pay the fair market value.

Trading has also helped many irrigators, and it has helped irrigators survive the drought. We had situations where farmers had permanent plantings, and allocations were very low. They were able to buy water temporarily from other farmers, particularly rice growers and some dairy farmers who perhaps had an allocation that was not worth using to grow crop. That also gave those farmers a small cash income. It has been critically important to provide that property right. In the past in some areas the flexibility has been important. We do not have a situation where the entitlement to water is at the whim of a minister which can be removed at the stroke of a pen. Mr Ramsay referred to that sort of situation earlier. It was critical to ensure that we got that.

I acknowledge, and The Nationals have acknowledged, that water trading and the property right has not been popular for all. There are some who have seen water go out of their district, and that has been difficult. However, there has been that 4 per cent, which has provided a transition and ensured that communities have had the opportunity to transition.

I will make a few comments about Mr Scheffer's contribution. He said that in 2010 irrigators were burning copies of the Basin Plan and that they were rightly concerned. I am pleased that he acknowledged that irrigators had their concerns. It goes to what I mentioned in my maiden speech only last week — that there were very grave concerns in many of these Murray-Darling communities that they were being told what to do by a group of outsiders: bureaucrats, politicians, economists, environmental activists and scientists with little concern for the views of irrigators. It is important to address the views of the communities that are most affected by these sorts of decisions.

I know I have limited time to make my contribution, but I take up a couple of things that Mr Barber mentioned. One was the critically endangered listing of the Murray-Darling Basin or the lower reaches of the Murray-Darling Basin. His comment was that the federal coalition government's decision to remove this was purely political. This is rather ironic, given that the decision of the previous Labor government to list in the shadow of an election, without consulting with the affected communities, was entirely political in itself. It was purely a political decision. We have the Basin Plan, we are delivering on average 2750 gigalitres to the environment and the critically endangered listing, in my

view, was clearly a political decision in the shadow of an election.

Mr Barber — What did the scientists say?

Mr D. D. O'BRIEN — The scientists said many things, and the scientists will say many things because scientists are a bit like economists. You can never get a consensus view from them. What is important is that science is balanced with the social and economic impacts. If we made all our decisions in this place and in the federal Parliament based purely on science, Melbourne, Sydney, Canberra and Adelaide would not exist for a start, because everything humans do has an impact on the environment. The science would say the Yarra River would be much healthier if there was no Melbourne here. We will not get rid of Melbourne. Equally we should not be getting rid of Mildura, Griffith, Shepparton or any of those sorts of places.

The second point that has been thrown up a lot is whether the Basin Plan adequately addresses climate change impacts. One of the concerns I have had is that the Greens and many other parties have always fundamentally misunderstood water allocations. Irrigators get an entitlement to a share of the available pool of water. They do not get the water every year. If you have high-reliability shares, then in all likelihood, unless it is a very dry year, you will get 100 per cent in certain places, particularly Murrumbidgee Irrigation and downstream high-reliability areas in New South Wales and the Sunraysia district as well.

However, irrigators are not entitled to a volume of water every year. As climate change comes in and has an impact on the rainfall and the storages and the dams, irrigators allocations will be less, and the ecosystems will be less effective, as they would in any other year. In a completely natural system the Australian environment is a system of 'droughts and flooding rains', to use the quote. The science tells us that in a natural system, before we brought in dams and diverted water from the rivers, the rivers would go dry for years. In fact I am sure Mr Barber will acknowledge that the rivers actually need drying cycles; it is part of the natural cycle. It is clear that the allocations, as climate change comes in, will be reduced. The Nationals get it, the irrigators get it, the Liberals get it, and I think even the Labor Party gets it, but the Greens have never got it.

In summary, the Victorian coalition government has done a good job in getting the balance right between the environment and communities, irrigators, and our food and fibre production. Let us not forget that this is about food and fibre production. This bill is a small part of that outcome. I am pleased that the Labor Party and the Greens are supporting it. 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.

TRANSPORT (SAFETY SCHEMES COMPLIANCE AND ENFORCEMENT) BILL 2014

Second reading

Debate resumed from 27 March; motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

Mr TARLAMIS (South Eastern Metropolitan) — I rise to speak on the Transport (Safety Schemes Compliance and Enforcement) Bill 2014. This bill aligns the Victorian model of transport safety and compliance with the national rail and marine safety and compliance schemes set out by the Council of Australian Governments (COAG) in 2013. The purpose of the bill is to increase the enforcement powers of the Victorian safety director and Victoria's rail, bus and marine regulator in order to improve the standards of current monitoring, compliance and investigation processes in the area of transport safety, not only on land but also on water.

The Labor Party will not be opposing this bill, as it understands that there have been intensive discussions between Transport Safety Victoria, the Department of Transport, Planning and Local Infrastructure and the Office of the National Rail Safety Regulator about how these mechanisms will be implemented. However, we do still have some concerns, which I will deal with in a moment.

Far too many Victorians are killed or injured on our rail network, be they pedestrians or commuters. Rail safety is an important objective of this bill and it is also important to the Victorian public. It is essential that as elected representatives we ensure that we have both a national and a state-based regulatory system that will have the power to guarantee safety but also compels governments to make the right investments for the people of Victoria.

The system of our rail safety regulation came about when agreement was reached by the Council of Australian Governments in August 2012. This COAG agreement was to ensure that Australia had uniform regulation and a single national safety rail regulator. The national rail safety scheme shows the central role that COAG has in dealing with issues in which both the federal and state governments have roles and responsibilities. As I said, Labor is strongly committed to safety and compliance mechanisms, and as such it will not be opposing this bill. However, I will outline some of the concerns that the Labor Party still has.

I understand that the service level agreement between Transport Safety Victoria and the Office of the National Rail Safety Regulator has recently been signed, under which Transport Safety Victoria will be responsible for implementing the compliance and safety requirements set out in the national framework from May 2014 onwards. We ask the Minister for Public Transport and the department to take on board the issues that Transport Safety Victoria has flagged — for example, we seek assurances from the government that there will be no decrease in the level of safety provided to Victorians travelling on any of the modes of transport outlined in the bill.

As well, we seek an assurance that the dual safety system that will be enacted will not leave out any important areas for consideration. In other words, given we will now have a system where two bodies — the Office of the National Rail Safety Regulator and Transport Safety Victoria — will be responsible for transport safety compliance throughout the state, it is important that any oversights are properly dealt with and gaps in responsibility are closed. It is important when adopting what is effectively the nationalisation of a scheme to ensure that there is absolute clarity and certainty. Those were largely the issues that Transport Safety Victoria canvassed in its correspondence with both the minister and the national regulator, which is why we are seeking assurances about them today during this debate.

We seek assurances that in the service level agreement there has been no diminution of safety for Victorians, that there are no oversights in the operation of the dual safety system and that there is clarity around what is expected to be complied with in terms of both the Victorian and national requirements. Many of the measures in this bill seem likely to enhance the capacity of Transport Safety Victoria to administer what is called the dual safety system. There will be improved powers of entry and improved powers to give direction, to utilise equipment and to secure sites.

Likewise it seems it is both practical and appropriate to ensure that regulation of marine environments aligns with that of ports and waterways to ensure that we have not just comprehensive but consistent outcomes. Opposition members would like to place on the record that when it comes to ensuring transport safety, we will always support the application of the highest safety standards that are practicable, and we certainly note that the origins of this bill can be found in that aspiration.

The opposition asks that the service level agreement, spoken about earlier, provides clear guidelines about areas and levels of responsibility for each authority at state and federal level. That is important to reduce confusion about enforcement, such as which particular officers are exercising which particular powers and whether they are exercising a power under state or federal legislation. The opposition understands that advice was given to the minister approximately 18 months ago in correspondence from Transport Safety Victoria, that it sent to the national rail safety regulator project officer, pointing out some transitional issues that had been identified. We seek assurances that those issues have been addressed. There were also some issues raised with respect to risk registers and performance reporting processes and strategies. We seek confirmation from the government that those issues have also been resolved.

Another issue the opposition seeks to raise is that there was some concern being expressed by Transport Safety Victoria that its comments had not been taken into account in the independent assessment of the rail regulator and the risks and controls document that it undertook in 2012. Again, there were further concerns expressed by the department about IT systems. The department explained in some detail to the government about the fact that significant resources were being diverted in the process of negotiation and trying to resolve the issues. I acknowledge that this task has certainly borne the brunt of the impact on resources both within the department and Transport Safety Victoria. To reassure the chamber and the people of Victoria, the opposition seeks assurances that these concerns have been addressed by those opposite.

The bill also deals with some issues around directors liability. I am sure both sides of the house can agree that bringing directors liability provisions into line with national principles is a good thing. Collectivising responsibility for decision making and ensuring that those with the power and authority to make or not make decisions are held accountable and responsible for those decisions is absolutely essential for an effective and fair safety scheme. The opposition welcomes those amendments.

This bill contains worthwhile changes to the current regulatory framework when it comes to transport safety — something that those on this side of the house are very committed to. That is why Labor has a well-thought-out plan for public transport and road safety for Victoria which includes removing 50 of the worst level crossings in the state, building the Melbourne Metro rail tunnel as well as committing additional money to metropolitan and regional road improvements. That is in distinct contrast to the coalition government, which is making public transport and road infrastructure plans on the run and only has plans to remove a handful of level crossings across the state.

Removing level crossings will have a big impact on improving safety on our train lines and at our train stations. It will also relieve congestion across our rail network so people can get to work on time, drop their children off at school and go about their lives more safely and quickly. It is not only important to invest in our rail infrastructure and ensure safety across the rail network, which Labor's plan does, but it is also important to provide employment at a time when our state's economy is struggling and we are experiencing a jobs crisis as a result of inaction by this government. Our plan will deliver 10 000 jobs.

It is important to set up the regulatory regime, but if government does not resource that properly and does not put its money where its mouth is, the effectiveness of regulatory change and an attempt to simplify regulatory change will not be as effective as its initial aspirations would have led us to expect. That turns my mind to a concern of the opposition that Transport Safety Victoria should be properly funded to ensure that it can be effective in guaranteeing safety. To set up the regulatory regime is one matter, but if the government fails to allocate the appropriate amount of funding, the regulator will not be able to complete the task it was set out to do. The opposition calls on the government to properly resource that and other areas of the public sector.

It is a key difference between Labor and the coalition that Labor believes the government has an important role to play in supporting citizens to reach their full potential and regulating markets to ensure fairer outcomes. A Labor government would invest in public services, such as our rail network, and properly support regulators in ways that would range from ensuring safety on our transport network to making sure consumers are getting a fair deal.

In conclusion, I reiterate the opposition's support for this bill. However, we would like our concerns raised in this chamber today and in the other place last week to be addressed by the government to ensure that Transport Safety Victoria is adequately resourced and able to administer the dual safety scheme effectively. I commend the bill the house.

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

Quorum formed.

Mr BARBER (Northern Metropolitan) — The Greens will support the Transport (Safety Schemes Compliance and Enforcement) Bill 2014. It is a large bill covering a whole number of aspects of safety schemes, and as a general principle we support the national consistency of those schemes.

Public transport as a transport mode is a very safe way to travel as compared to the use of the motor vehicle. In fact when you compare the number of serious accidents that occur on public transport relative to the number of people who use it and the number of kilometres they travel, it is generally agreed that travelling by public transport is about six times safer than travelling for the same amount of time or distance by motor vehicle. While there are frequent and very unfortunate accidents in and around the public transport system, overall we must bear in mind that a city based on public transport for a larger proportion of its travel is inevitably going to be a safer city than one where we all rely on personal motor vehicles.

There are a whole range of issues at play at the moment in public transport. There are well-understood issues around level crossings and both pedestrians and motor vehicles being hit by trains. There are trips and falls in vehicles and in and from vehicles, such as from trams or trains or buses. The incidence of trips and falls within trams is growing, and that is not just in line with the extra patronage; by my estimate it is a function of the increased overcrowding and the fact that more and more people are now standing on trams, whereas in the past many of them would have had a seat. While the public transport safety regulator in Victoria does a very good job, it is hard to point to specific initiatives that the government or Public Transport Victoria has managed to roll out, with its private contractors, that have addressed this issue of trips and falls in and from vehicles.

Since the well-known rhinos campaign — that is, the publicity campaign around trams saying that they are very big and, like a rhino, very slow to stop — there has been a reduction in the number of collisions between people either on foot or in another vehicle and the tram.

But at the same time whenever I look at the figures, which come out quarterly, the numbers of trips and falls within or from vehicles are growing, and we need a program to address that. First of all we need more trams to reduce the overcrowding. The former government ordered 50 trams, some of which were due more than a year ago. They have now started to arrive over a year late, and there are only a handful of them out there. We need more measures to separate trams and vehicles on the road so that the tram driver does not have to constantly brake to avoid a collision with a car, in the process spilling all his passengers on top of each other or, in worse situations, causing them to go flying and injuring them.

We need to bring back tram conductors so that someone can be responsible for the safety of those passengers. The somewhat old-fashioned Mr Ramsay just laughed at my old-fashioned idea of bringing back tram conductors. I take the tram to work nearly every morning, and my tram goes past the hospitals. Often that is when I notice people with injuries struggling to get on and off the trams to get to their hospital appointments. Clearly they cannot drive themselves. I find myself almost acting in the role of a tram conductor, because if you remember back then the tram conductor used to wait until everybody was on and comfortably seated before ringing the bell, which signalled to the driver that it was safe for the vehicle to start moving. We do not have that anymore; we just have massive overcrowding.

The incidence of serious injury caused by trips and falls is increasing, and a recent study published in *Australian Journal of Emergency Management* detailed that. It is a particular problem for city commuters who use trams every day. But when I use trams, I usually find myself meeting tourists and country people who are occasional users of trams when they come to Melbourne. They are inexperienced in both how the tram works and how the ticketing system works, so the Greens policy of bringing back tram conductors would provide the greatest benefits to country people, tourists and occasional users of public transport — the precise groups that we would like to encourage to make better use of public transport when they come to Melbourne.

The reason this is important is that there is a principle in this bill that I am not entirely happy with, especially in the context of privately operated public transport, and that is, as detailed in the explanatory memorandum, implementation of nationally approved directors liability principles to safety schemes legislation. The explanatory memorandum states:

> Building on existing policy, the bill provides a platform for the continued implementation of nationally approved directors liability principles in Victoria.

And this is the key bit:

> Consistent with national principles, the changes reduce the potential for liability for officers of corporations in the event of corporate fault by limiting the offences for which an officer might be liable where an offence is committed by the corporation.

I have spoken on this subject in the chamber before, and I believe it is a retrograde step. When we talk about offences committed by the corporation to which the directors themselves should also be joined, we are not just talking about anything; we are not talking about technical breaches. In this bill we are talking about, for example, non-compliance with a transport safety undertaking, which is a very important tool used by transport safety regulators to improve performance. The reason I find this whole direction so unacceptable is that, when public transport was run by the public for public benefit, this principle would never have been accepted. Now that it is run by the government for the public but so often driven by the profitability of its operators, there is a direct incentive for those corporations to cut corners. What this trend from the national directors liability principles is doing is reversing the onus of proof and requiring the prosecutor to prove the elements of the offence, in particular the failure to exercise due diligence.

When there was a minister stepping up and taking responsibility for the performance of publicly owned and publicly run public transport, they would never have put forward that principle. They would never have said, 'You prove I did the wrong thing'. They would have said, 'It's my responsibility to make sure that the right thing is always done', and they would be held accountable in that way. Much of the way our public transport is run now is being pushed off to private operators, and when you see the responses of the minister, both this one and the whole string of them we saw under the former government, the response is the same, 'Don't ask me, I'm just the transport minister. That is a matter for the private operator. I have outsourced delivery, and now I'm going to try to outsource responsibility'. This trend that we see again in the legislation here is retrograde, in the opinion of the Greens.

We hope it never happens, but if a serious safety breach occurs and leads to a director of one of our transport operators being prosecuted for public transport safety breaches, we will see whether the minister can keep a political buffer between himself, the private operator and the injured members of the public or whether there

is no way to outsource ministerial accountability. In the meantime I hope this government starts to put forward some serious plans to improve safety on public transport, because as I said at the commencement of my speech, public transport is a much safer way to move large numbers of people than reliance on personal motor vehicles, with their emissions and the accidents that can occur. However, there is a lot more work to be done in the area of public transport safety.

Mr ELSBURY (Western Metropolitan) — I am pleased to rise to speak on the Transport (Safety Schemes Compliance and Enforcement) Bill 2014. Later on in my speech I will get back to some of the comments Mr Tarlamis made. Transport safety is of great concern and relevance to people across Victoria. Every day we interact with public transport, trucks on our roads, buses and any of the multitude of forms of traffic we travel in. Indeed we do not even need to leave our homes to interact with traffic — with trucks, buses and cars going past our homes.

We have this legislation before us today because of the harmonisation of transport safety legislation across Victoria, which was assisted last year by yet two more pieces of legislation passing through this Parliament — the Rail Safety National Law Application Bill 2013 and the Marine (Domestic Commercial Vessel National Law Application) Bill 2013. This saw Victoria become the second state to adopt commonwealth laws on the regulation of transport safety. This harmonisation does not cover trams and other light rail vehicles. This means that the Melbourne metropolitan tram network, tourist trams and heritage tram works remain under the control of the Victorian laws that govern our light rail system. However, the national laws cover freight and interstate railways and include V/Line and the metropolitan rail network.

The introduction of national law means that Transport Safety Victoria — the organisation that manages the safety of our transport networks — and its transport safety officers will shortly be fulfilling a service level agreement with the national regulator to regulate our railways and waterways. In relation to our national marine scheme powers, the state will retain regulation of our waterways, pilotage, port management requirements, alcohol standards and issues regarding drug impairment — that is, if you are in command of a boat you still need to obey the .05 limit, as you would with a motor vehicle, and if you are a charter operator you are not allowed to have any alcohol in your blood but have to maintain a 0.0 alcohol limit, just as you would if you were a bus driver. In relation to Transport Safety Victoria and its director, they will have delegated to them the ability to manage national maritime powers derived here in Victoria by the Marine (Domestic Commercial Vessel National Law Application) Act 2013.

The Transport (Safety Schemes Compliance and Enforcement) Bill 2014 provides transport safety officers with monitoring, compliance and enforcement powers so that these powers are more aligned with those of the national scheme. This will assist transport safety officers by improving their ability to enforce compliance with the national law when a vehicle or vessel is in Victoria. This legislation is needed to ensure that standards here in Victoria are aligned with the national law and do not fall below the standards that are in place.

Transport Safety Victoria has also faced some difficulty in the administration of maritime incidents where both the national law and the Victorian law apply. To assist Transport Safety Victoria the bill provides a more consistent approach to managing compliance between state and federal laws. The bill also provides Transport Safety Victoria with similar powers to those provided by the national scheme.

The bill re-enacts existing appointment, administrative and power provisions with a number of improvements. These are: the appointment of transport safety officers; powers of entry or boarding without consent or under warrant; powers to inspect, search, copy or seize evidence and make inquiries; directions powers about the movement of rolling stock, vessels and buses; the ability to use electronic equipment to access information; the power to secure evidence; constraints on power, such as requiring officers to cause as little inconvenience as possible; the ability to serve improvement, prohibition and non-disturbance notices; rules around enforceable voluntary undertakings; the ability to seek court orders to improve compliance; commercial benefits orders, supervisory intervention orders, exclusion orders and adverse publicity orders; provisions about infringement notices and safety work infringements — that is, rail alcohol offences; and evidentiary matters. That is quite an extensive list of changes we are making to the legislation and the powers of Transport Safety Victoria.

The bill also makes a number of improvements to the existing compliance and enforcement scheme. These include clarifying the definition of bus premises so that it is clearer where officers can exercise their powers. Entry may be made to adjoining premises to access public transport premises or marine premises if the matter is urgent — for example, if an accident occurs on a railway track bounded on both sides by private farmland. If no-one is present when officers enter

premises, notice of entry must be left giving details of the entry and what was done. This adds a new protection and also makes it easier for regulated parties to contact the safety director.

Other improvements include the power for officers to direct a person to move or stop rolling stock and other vehicles; a person can be required to give reasonable help, such as with the unloading of rolling stock or even providing a key to allow access so that an inspection can be undertaken; electronic equipment such as a laptop, storage device or document scanner can be taken onto premises and used; and securing a site is now tied to compliance and investigative purposes rather than just to offences or preserving evidence. This is wider and is a better description of why sites can be secured.

The improvements also include a new power to require people to answer questions, something that is useful when you are trying to find evidence as to why something has happened or why there has been a failure in the system. They also include a new power to serve a non-disturbance notice, which means that an operator of a train or bus can be required to preserve the vehicle and associated infrastructure pending an investigation; and a new power that enables the regulator to require works to be done or things to be provided in response to safety reports such as a coroner's report. All of these matters are dealt with in this bill.

Mr Tarlamis made some interesting statements earlier about safety on our public transport network. This government is providing 15 new trains on the Melbourne Metro network. These are new trains, not like the ones that were sold by the previous government only to be bought back and returned to service with a paint job and a new sound system. We are also rolling out new trams and buses on the network. With those few words, 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.

Business interrupted pursuant to standing orders.

QUESTIONS WITHOUT NOTICE

Health funding

Mr JENNINGS (South Eastern Metropolitan) — My question is for the Minister for Health. Today I have available for the minister's consideration — I can table documents if it assists him in his answer — commonwealth *Budget Paper 3*, page 24, which indicates that the allocation to Victoria in the budget was $3.4056 billion for the year 2013–14. I also have the midyear financial update which shows the allocation to Victoria through the hospital services agreement is $3.378 billion, indicating a reduction of $27 million for this financial year. If the minister would like these documents I could share them with him and I could table them. Does the minister need documentary evidence to prove any further that $27 million has been taken out of the Victorian hospital budget by the commonwealth government to December this year?

Hon. D. M. DAVIS (Minister for Health) — I thank the member for his question, and I think we are about to canvass terrain that was heavily canvassed yesterday and indeed the day before. I have also seen the relevant sections of the commonwealth budget, but as I said yesterday, the member appears to have his ears somewhat painted on. He does not seem to have listened to what I said. Parallel with that there were additional payments made by the commonwealth government and there were discussions at the time — —

Mr Jennings interjected.

Hon. D. M. DAVIS — I am just indicating very clearly that the commonwealth government understands the challenge. As I also indicated yesterday, these matters relate to indexation issues and to issues surrounding the national partnership agreement in terms of the longer term funding of a number of our health services across the state. The government is very prepared to prosecute heavily the case for funding for Victoria, and has done so. That stands in stark contrast to the behaviour of members of the opposition and other parties in this chamber who were prepared to — —

Mr Lenders — On a point of order, President, Mr Jennings asked Mr Davis specifically about the commonwealth budget and the impact on Victoria of a cut which relates to government administration. Mr Davis is now debating the question by referring to what other parties who are not part of government administration may think. I ask you to bring him back to the question on government administration and away

from debating what he thinks other parties may be doing.

Hon. D. M. DAVIS — On the point of order, President, I am putting some context around this. In particular the member is referring to the midyear economic and fiscal outlook (MYEFO) and to the federal budget. We have had a situation occur in the past where the MYEFO made adjustments. That is why I am putting this in context and referring to the previous occasion as a matter of contextual background.

The PRESIDENT — Order! I have an extraordinary sense of deja vu that runs back not just three days but quite a number of months. I have difficulty with this line of questioning because clearly Mr Jennings puts a set of figures and asks for impacts related to that set of figures that he puts to the house, and the Leader of the Government disputes the figures and puts a view supporting his position. Unfortunately the two do not intersect. I am certainly unable to tell the Leader of the Government how he should respond to the question. I understand the context. I am concerned when context becomes a matter of debating the question, and I indicate to the minister that I am not keen to see a debating position in his response. I am not in a position to direct the minister on how he should answer. I guess this is one of those Mexican stand-offs in terms of the opposition's proposition on the funding circumstance and the minister's response to that proposition.

Mr Jennings — Further on that point of order, President, you would realise that in my question I volunteered to table the documents that I was referring to. I am happy to volunteer to table them, to have them considered by the chamber and for it to be recognised formally in *Hansard* that they exist and the basis on which I believe I am presenting the factual situation. If the minister has alternative information that he can similarly table, then we may be of an equal footing, but up until now I am the only one who has volunteered to provide the house with any factual information on this matter.

The PRESIDENT — Order! I accept Mr Jennings's position, but the minister has on several days now indicated that, whilst those figures are accurate figures presented by Mr Jennings, they are part of a broader set of figures, if you like. The minister has used the word 'matrix' to indicate that there are other figures that surround this, including some increases in federal funding before some of the other figures are taken off. That is the proposition the minister has put, so I accept that the documentation Mr Jennings is putting to the house is accurate as far as it goes. The minister has indicated he is aware of those figures too and does not require them to be tabled as such, but I still have the dilemma that I am unable to direct the minister to respond specifically to the figures when he believes there is a broader aspect in the figures for health funding.

Hon. D. M. DAVIS — As I said, this is a matter of context, and it is useful to look at the context of these things occurring and to look at recent occasions where there have been MYEFO adjustments. On 13 November 2012 I moved a motion in this chamber, and it might be helpful for the house to understand the motion and the context. I moved:

> That this house —
>
> (1) expresses serious concern at the recently announced reduction in commonwealth health funding, changes which, if implemented, will result in retrospective, current year and future year reductions to state hospital funding which will seriously impact state budgets that have already been set;
>
> (2) expresses concern about the factual basis of the commonwealth's decision —

and how it dealt with the matters around that:

> (3) calls on the heads of treasuries to convene urgently to discuss the commonwealth Treasurer's determination … noting that the reductions in commonwealth funding for public hospitals will, unless reversed, be implemented in early December 2012 in the form of a … clawback of funding —

with additional money being taken out of the system, and:

> (4) further notes that six state health ministers —

including, I might add, two Labor ones —

> expressed concern about the announced reduction in commonwealth health funding at the recent Standing Council on Health meeting.

That gives some context to the background of this matter. The big difference this time is the federal Minister for Health, Mr Dutton, was prepared to have a discussion and to make some parallel adjustments. There is also an understanding that there will need to be discussion about the indexation matters, and there has also been — if I can describe it this way — significant argy-bargy about that indexation matter, and I believe the state has had a significant win on some of that indexation matter.

I have also pointed out as part of the matrix the state confronts here that the national partnership agreement on improving hospital services finishes on 30 June, and

the state is concerned about the impact there. There has been significant discussion amongst ministers on that matter, and we are seeking to prosecute these matters very strongly in the state's interests.

I also indicate that there are questions about backcasting and how backcasting may or may not be applied to the advantage of Victoria. The state is also prosecuting these matters very strongly. The whole matrix is a significant challenge for the state. The state is prosecuting that very strongly. That stands in stark contrast to Mr Jennings, who voted in favour of a cut in 2012.

Supplementary question

Mr JENNINGS (South Eastern Metropolitan) — President, I am a bit disappointed that I have to be seen to be asking another question, perhaps in the face of your expectation that this divide has not continued to be pursued, but I feel obliged to do so, given that I have volunteered to table documents that indicate that $27 million has been taken out this year. I could provide the house with the documentation that demonstrates that a further $51 million, $79 million the year after and $119.8 million will be cut out of Victorian hospital budgets in the years to come. I can prove through documentary evidence that that is the effect of the Abbott federal government cuts. I invite the minister to table or share with us any documentary evidence of the assertion that there are any facts associated with his matrix that he has referred to on a number of occasions. Where is the documentary evidence that there is going to be a different outcome?

Hon. D. M. DAVIS (Minister for Health) — Much of this is a matter in the public domain. The national partnership agreement details are in the public domain, the national health-care agreement is in the public domain and the application of backcasting through that detail is also in the public domain. The state's submissions to the Independent Hospital Pricing Authority are public documents as well, so all those documents are in the public domain.

I have to be clear. The member's ears are clearly still painted on. He does not listen carefully. The fact is this is a matrix of arguments or argy-bargy that will be had with a number of national bodies, with the commonwealth and with other states, and we are going to prosecute very heavily for additional funding for Victoria. That is an important point, and it stands in stark contrast to what the Labor Party treacherously did last year and the year before, when its members supported cuts by Tanya Plibersek and Julia Gillard. They have no right to speak about this matter given what they did.

Advance care planning

Mr D. D. O'BRIEN (Eastern Victoria) — My question is also to the Minister for Health, the Honourable David Davis. Can the minister inform the house of recent announcements concerning advance care planning?

Hon. D. M. DAVIS (Minister for Health) — I thank the member for his question and very much welcome him to the chamber. I think he is going to be a magnificent member and a great contributor, and I thank him for his question about advance care planning.

Victoria is very supportive of the rights of individuals to make choices about their own treatment and about implementing their wishes and preferences in terms of treatment. I pay tribute to work done over a longer period, particularly at the Austin Hospital, by the Respecting Patient Choices group, and the support that has been provided through my department and elsewhere for the choices that are available under the Medical Treatment Act 1988 to discuss people's treatment options and enable people to make choices and express their preferences about how they have treatments delivered, particularly at the end of life or at the beginning of a difficult course of treatment where a number of trajectories may be available or may occur.

The document entitled *Advance Care Planning — Have the Conversation — A Strategy for Victorian Health Services 2014–2018* says that additional materials and tools are provided for clinicians and others, and there is additional financial support for health services to implement those choices and arrangements. I can indicate that the state will be supporting GPs in making these decisions as well.

This is about having a broader conversation, enabling people to discuss what they want done with their health care and their preferences and choices for treatment. I make the point that this is not euthanasia. This is about treatment and the rights of people to make decisions about their own treatment, particularly where somebody may later be in a position where they are not able to exercise those thoughts and treatment preferences. By having a discussion with family and clinicians at the beginning of a course of treatment, by documenting those matters in a proper way, by recording the matters and by making sure that clinicians understand what the preferences of people are, they are able to make a greater set of choices and ensure that their choices are listened to.

The state is very aware of the need to have strong palliative care support. It has put in additional money and support through election commitments on palliative care over four years — the $34.4 million investment. Parallel with that, we have released this important strategy document which supports health services and is consistent with national objectives and consistent in every way with the law. It enables people to express their views in a way that is clinically relevant.

I pay tribute to the work done over a number of years at the Austin and elsewhere. I also pay tribute to the work done by my department, the Department of Health in this context, particularly Jackie Kearney for the enormous leadership she has shown, and the wide number of organisations — health professional organisations, patient advocacy organisations and clinical organisations of various types — that have been involved in the long process of producing what is a very important document and a document that has been incredibly widely welcomed across the Victorian community.

Hospital security

Mr JENNINGS (South Eastern Metropolitan) — My question is to the Minister for Health. Victorian nurses, doctors and patients continue to be concerned that despite the incoming government promising $21 million for better security in hospitals, the minister has not allocated this money, which has led to hospitals such as Dandenong Hospital making unreasonable demands on personal care attendants, which includes workers who may be physically small or mature older women to be called upon to take part in the security team in a code-grey threat response in their hospital. Does the minister believe it is an appropriate role for personal care attendants to be called upon in this way to make up for the failure of the government to improve security in hospitals?

Hon. D. M. DAVIS (Minister for Health) — What I can say is that the Victorian government takes the security of health-care workers and patients in our health services very seriously. The state government is determined to see that hospitals are a safer and more secure place than they were under the previous government. To that end we have committed significant money — more than $40 million over the forward estimates period — in safety and security initiatives. Let me be quite clear that it is money committed at budget level but also through other initiatives.

I was talking recently to someone in Portland about this. The government has put money from the Rural Capital Support Fund into CCTV initiatives at that location. There has also been a direct focus on ensuring that there are better duress buttons, better CCTV equipment and a capacity to monitor in our health services. An audit done not long after we came to government showed that 19 of our major health services did not have adequately functioning modern duress buttons. That was the legacy of the last government — a failure to put in place modern duress buttons and modern CCTV equipment. That is what we have been progressively addressing.

I can honestly indicate to the chamber that the government is very much determined to get better outcomes for our patients and for our staff in our hospitals. Hospitals are ultimately responsible for their own security, but the government is supporting those initiatives with training and other key supports. The Improving Hospital Safety and Security Ministerial Advisory Committee, chaired by John Mulder from Bendigo Health, has very significant recommendations that are being put into effect, including many relating to those matters around security and duress and CCTV.

There have also been matters put in place in terms of the design of buildings, and I pay tribute to the work that has been done by the Law Reform, Drugs and Crime Prevention Committee, chaired by Simon Ramsay. It is an important committee that made useful recommendations, and many of those are being steadily implemented, including those that relate to the design of new emergency departments and new hospital facilities which are being designed with a much stronger eye to the safety and security of staff.

We are working very closely with all the health services to try to get the best outcomes that can be achieved. We are working with health services to support them to put in place security measures and CCTV where appropriate, including at Monash Health. Additional capacity has been put into Dandenong and Monash and Casey at Monash Health. All those health services have had additional spending to improve the safety and security of staff.

I have to say that any incident that occurs in a hospital where a staff member is threatened or a staff member or patient is a victim of violence is simply unacceptable. The government is determined to try to provide as much support as possible and the safest possible environments. At Dandenong, at Monash, at Casey in Monash Health, at other health services, at country services and at emergency departments around the state, we are seeking to put in place better mechanisms, better prevention techniques and better support for staff. There is better training and there is better clarity about how these mechanisms can be put in place.

Supplementary question

Mr JENNINGS (South Eastern Metropolitan) — Within the minister's 4 minutes I did not detect whether he endorsed the policy of Dandenong Hospital for personal care attendants to be used in this fashion. I would like a simple clarification of that matter, on the way through to clarifying whether if a personal care attendant does not want to undertake these duties, will the minister ensure that their employment status and conditions are protected if they refuse to be the front-line security agencies within the Dandenong Hospital?

Hon. D. M. DAVIS (Minister for Health) — The member has characterised this in a certain manner. This is about broader security in our public hospitals. It is about ensuring that we have a safer environment overall. Certainly the installation of preventive measures like duress buttons and CCTV capacity and greater monitoring and support are all important steps. The hospitals are ultimately responsible for their exact mechanisms to put things in place.

Mr Jennings — So you don't care.

Hon. D. M. DAVIS — I care very much to see that health-care workers and patients are safe in our hospitals. Health-care workers should be able to work in that environment, and patients should be secure in that environment at a time when they are vulnerable. They should have the physical support to have that safety. The financial support has also been put in by this government, unlike the previous government.

Anzac Day centenary

Hon. R. A. DALLA-RIVA (Eastern Metropolitan) — My question without notice is to Mr Drum in his capacity as Minister for Veterans' Affairs. Could the minister inform the house on how the Victorian coalition government is delivering on the Anzac centenary?

Hon. D. K. DRUM (Minister for Veterans' Affairs) — I thank Mr Dalla-Riva for his question and his ongoing interest in the veterans affairs portfolio, specifically the centenary of the start of the First World War. As we know, the centenary will be upon us in the middle of this year, in early August. The government understands that it is going to be a defining moment in the history of Australia and of Victoria. It will be a unique opportunity for us to honour those who served during the First World War. The government is committed to educating and engaging with the broader community through a whole range of services to ensure that the sacrifice that was made by those who went before us, which has helped to shape our country, is well and truly acknowledged.

We see our role principally as one of supporting a whole raft of initiatives that are going to emanate from the community, and we need to make sure that the centenary is acknowledged in a meaningful and dignified way. We have a number of projects on the go at the moment. I spoke in this house recently about the Galleries of Remembrance project that we have been engaged with at the Shrine of Remembrance. We have made a significant contribution to it, and it will be an amazing project.

We have also developed a range of other programs, including the Anzac Centenary Major Grants program which is going to provide financial assistance for projects which commemorate, honour and remember the service and sacrifice of Victoria's World War I veterans. A whole range of their communities will be acknowledged as well. This program is designed to support significant projects of between $20 000 and $100 000. It will be weighted towards projects with an educational benefit that can help to inform Victoria's diverse communities.

Another program is in conjunction with the Victorian Veterans Council. The council has established a community grants program to commemorate the Anzac centenary, offering funding of up to $20 000 to eligible organisations that commemorate the service and sacrifice of World War I veterans and their communities. It will also inform and educate Victorians about the experiences of World War I veterans. That is another great project. It will support local projects in Victoria and, while it is separate, it will complement the other Anzac centenary grants programs delivered under the Victorian government. A range of federal members of Parliament are also out there in the community offering individual grants.

There are ample opportunities to get involved in a whole raft of these programs, in effect to make sure that there is a bipartisan, whole-of-community effort to commemorate the Anzacs in a dignified and special way. This is something we will continually talk about in this house, to make sure that, along with all the programs that the government is bringing to the table, community initiatives are backed and supported by this government. As we build up for this year's Anzac Day and through the rest of the year, we are going to offer each significant date the commemoration it deserves.

Hazelwood mine fire

Mr JENNINGS (South Eastern Metropolitan) — My question is for the Minister for Health. I refer to the situation of Carol and Brien Flint, who are residents of Morwell. The dream home that they created in their local community was covered in ash, soot and particles as a consequence of the Hazelwood fire. They contacted the government, the opposition and government agencies to talk about their circumstances and the circumstances of their neighbours and their community in relation to the clean-up that is required in their home. They were very distressed at the dimensions of that clean-up. They were bitterly disappointed that the limit of the support provided was a bucket, plastic gloves and a car wash voucher, which were offered to them and other members in their community. Can the minister tell us what he thinks the clean-up cost is and how he determined that that was an appropriate level of support?

Hon. D. M. DAVIS (Minister for Health) — I can give a general response on this matter. As the Minister for Health I am responsible for the health aspects. The recovery phase of this is the responsibility of the Department of Human Services (DHS). My department is of course working with DHS and assisting, where possible, in every way. I can provide the member with a detailed response in terms of what the DHS is providing there for him. I am very sympathetic to the position of people in Morwell — particularly Morwell South, where the impact of the fires has been very significant. The Minister for Community Services, Ms Wooldridge, is directly responsible for these matters, and I can take the detail of the question on notice. But I can indicate, as a more general point, that the government is very much prepared to support families in the Morwell South area. Obviously we have put enormous support into that area — —

Mr Jennings — They are not in Morwell South.

Hon. D. M. DAVIS — Obviously there is a particular location. If the member wants to provide me with details of that, I will also take that on notice for my colleague in the other chamber and seek to follow up in detail with their specific circumstances.

In terms of supporting people in Morwell, I know local members — Mr Ronalds and the member for Morwell in the Assembly, and others — have been very active in making points about this. Our general instructions to the Department of Human Services and relevant agencies providing assistance and recovery support is to be as generous as possible on these matters. I am very happy to take on notice the details of this issue for a response by my colleague. I can indicate the strong support of the government for the people who have been affected by the fire in what has obviously been a very difficult and trying period for them. The support provided through the health assessment centre and the respite centre was a direct response to the crisis by my department. The strong support that was provided to people through advisories and by the chief health officer, and also by me and others on occasions on advice of the chief health officer, was a part of the significant response. However, we are now into a recovery phase. The DHS people have a significant task to support the community, and they are very much determined to provide that support.

Supplementary question

Mr JENNINGS (South Eastern Metropolitan) — Perhaps if I had asked the minister to answer the question in his capacity as Leader of the Government he would have felt it was more incumbent on him to share or provide information. I am interested in further work being done by the government and whether it has recognised that there might be limits on the insurance cover of Morwell residents when they are trying to remedy these matters themselves. The Flints have received advice from their insurance company that if the fire had been in a building next door and it had led to the same damage to their property, their insurance policy would have covered them; yet in this circumstance their insurance policy will not. Is the government working determinedly with the insurance industry to extract the best outcome for residents of Morwell, or is it just allowing the market to determine the outcome? Is the government committed to this insurance issue as part of its responsibilities?

Hon. D. M. DAVIS (Minister for Health) — The reality is that insurance and related matters are the responsibility of the Treasurer. In this case they may also in part be the responsibility of the Minister for Community Services. However, I will take on board the matters that the member has raised and will pass them to the relevant minister.

As a more general point, it is true to say that where natural disasters and similar incidents have occurred insurance companies have not always been as cooperative as they ought to have been and insurance companies have not always stepped up to the plate in the way the community would expect. From time to time insurance companies have faced some significant jawboning by government ministers to make sure they do step up to the plate and live up to their obligations. I indicate that that is not my direct responsibility, but I

will make sure the matter is passed directly to the Treasurer and the community services minister to make sure that those matters in the public domain are attended to.

Social housing

Mr RAMSAY (Western Victoria) — My question without notice is to the Minister for Housing, the Honourable Wendy Lovell. Would the minister detail how the Victorian coalition government is providing better opportunities for tenants through the Victorian social housing framework?

Hon. W. A. LOVELL (Minister for Housing) — I thank the member for his question and his ongoing interest in the provision of social housing to those in this state who are less fortunate than ourselves and who need assistance with housing. As I have told the house on two occasions this week, we inherited a public housing system that was in crisis. The Auditor-General said nearly 10 000 properties were about to fall off the edge of a cliff. He said the situation was critical, the future of public housing was at risk and there was no long-term vision. He said this in a report on the 11 years of management of public housing by Labor. Richard Wynne, the member for Richmond in the Assembly and the former Minister for Housing, should hang his head in shame.

Last Friday we released our new social housing framework, which will put social housing on a sustainable footing into the future. The three key themes of the framework are: better assets, better communities and better opportunities for our tenants. Part of the framework under 'better opportunities' is providing opportunities for tenants to reach their aspirations. Tenants told us that they have aspirations to move out of the public housing system, but they find that they run into barriers when they try to do that. They do not have any rental history, and they find it difficult to enter the private rental market. One of the simple things we are doing as part of 'better opportunities' is providing rental references for tenants who have been good tenants, have paid their rent and have looked after their properties. This is something that will assist them to reach their aspirations.

We are also establishing a new housing website that will have a range of housing assistance options outlined on it for people who are looking for assistance with housing. We are also introducing a new concept called HomeConnect, which is a trial based around the Services Connect model and which will provide one-on-one assistance to our tenants and people on the waiting list who want to sit down and talk about their opportunities for housing.

We are also going to expand our work and learning centres by providing work and learning brokers who are to be located in public housing areas, where they can assist tenants to reach their aspiration of entering employment. One of our great examples of assisting tenants is through our New Norlane project in which, as part of the contract, we required builders to employ local people. I met six young people who had been employed as apprentices on that project, and one of them was telling me that he was going to purchase one of the homes he was building. These are young public housing tenants who now have jobs and aspirations to own their own home.

We know that more of our tenants have aspirations to own their own home, so we are going to expand the tenant sales program. We are going to reduce some of the requirements under that program from seven to five years to make it easier for public housing tenants to purchase the home they live in, and we are going to make some homes that may be earmarked for disposal by the department available for tenants to buy. We are also going to simplify the application process and make it easier for those most in need to get access to public housing.

These initiatives build on our work to date, the things we have been doing to provide better opportunities for Victorians in the public housing system — our youth foyers, which provide opportunities for young people who are unable to live at home to remain engaged in education and to build a better life for themselves; our work and learning centres, which have provided employment to hundreds of public housing tenants throughout the state; and our Victorian homelessness action plan, which is concentrated on early intervention and prevention of homelessness. This government is investing in public housing, and it is investing in the people of Victoria to improve their lives.

Questions interrupted.

DISTINGUISHED VISITORS

The PRESIDENT — Order! I take this opportunity to welcome a former minister in Victoria, the Honourable Kay Setches, who is with us in the gallery today. Welcome.

QUESTIONS WITHOUT NOTICE

Questions resumed.

Health funding

Mr JENNINGS (South Eastern Metropolitan) — My question is to the Minister for Health. In my previous question I asked about the circumstances of a family in Morwell. As the minister would be aware, last week Bernard Teague, who is heading up the inquiry into the circumstances of the Hazelwood mine fire and beyond, indicated that the health concerns were his major focus. Indeed, John Catford, who is also on the inquiry, indicated that mental health issues are significant things that should be addressed in real time by the government to make sure that medical services are provided. There are major concerns within the hospital system and the community health system about the level of resources and backup provided to deal with that emergency. I ask the minister: is there not potential, given the Abbott cuts to hospitals that have been announced, that $12.5 million may come out of hospitals in eastern Victoria? Can the minister protect their budgets from the savage cuts of the Abbott federal government's midyear adjustment?

Hon. D. M. DAVIS (Minister for Health) — I shall talk first about the inquiry. Mr Teague and, as Mr Jennings has indicated, Professor Catford and so forth will provide information about the response, and clearly health is one significant part of the inquiry's focus. From all of these natural disasters there can be significant learnings and significant improvements — lessons that will improve response — whether it be the floods that we had in 2011 and 2012, the fires in 2009 or, in this case, the unusual grassfire that spread to the mine, which obviously had a significant impact on the people of Morwell and surrounds. The member is quite right that there will be a significant matter for the board of inquiry to look at, and it will certainly come back with suggestions as appropriate about how responses can be improved. In terms of the member's suggestion — —

Mr Jennings interjected.

Hon. D. M. DAVIS — The Minister for Mental Health is very engaged in providing support to the community. Certainly the respite centre was under my responsibility, but the Minister for Mental Health is also closely involved in providing additional support and resources to the region as required to deal with the mental health issues that obviously are a part of any major incident of this type.

Further, the member seems to have the view that there is some reduction in the budgets of key health services. I assure the member that there has been no reduction in funding by this government to Latrobe Regional Hospital or other services around the area. In fact additional resources have been put in as this matter has gone forward. Ambulance Victoria, which played a key role in the departmental response, the emergency response, the respite centre and also the health assessment centre, had additional resources put in. That will be dealt with in the normal way these matters are dealt with, through a Treasury advance, as I understand it, for the relevant impact of the natural phenomenon that has occurred in this circumstance. Additional resources will be put in to back up the additional work put in by health services, including Ambulance Victoria. I pay tribute to its leadership and its work through this phase.

First of all, the premise of the member's question is flat wrong. The second point is that we will be certainly ensuring that our health services have adequate support, and more support has been put in every year to Latrobe Regional Hospital, to community health and to other key services across that region, as with the rest of the state. That will continue to be the case. I indicate that the member, unfortunately, along with his Labor colleagues, voted in 2012 to support cuts to our health services by then federal Minister for Health Tanya Plibersek and Prime Minister Julia Gillard. They voted to support them, thus treacherously undermining the state's effort.

I would have thought in this chamber we would have support from the Labor Party on this point. Those cuts were made by the former Labor government — by Tanya Plibersek and Julia Gillard. I am tempted to say the word 'toady', but I will not — —

The PRESIDENT — Order! The minister is out of time, so I am saved.

Supplementary question

Mr JENNINGS (South Eastern Metropolitan) — President, you may be safe at this minute, but when government members are forced to vote on a motion of a similar construction to that moved by Mr Davis, it will be very interesting to see how Mr Davis grapples with that problem. My question is: has the minister, by his answer, guaranteed that health services will be protected from the effects of the Abbott government cuts — $5.4 million from Latrobe Regional Hospital and $12.5 million across eastern Victoria — and that the Victorian government will not allow their budgets to be impacted by the Abbott government cuts?

Hon. D. M. DAVIS (Minister for Health) — The premise of the member's question is wrong. He says there are certain figures for cuts, but let me be clear that there are no such figures. Health services have the same budgets they had at the start of the year. The member has made it up. Thespian that he is, the member has made it up. It is all tosh; it is all nonsense. Those figures have no status. They came out of a word processor in the Labor Party office. They have no standing and no status, and they are flat wrong.

Internet connectivity

Mr D. R. J. O'BRIEN (Western Victoria) — My question is to the Minister for Technology, the Honourable Gordon Rich-Phillips. Could the minister update the house on the expansion of the free public wi-fi trial to regional Victoria?

Hon. G. K. RICH-PHILLIPS (Minister for Technology) — I thank Mr David O'Brien for his question and for his interest in the Victorian government's proposal to provide a trial of free public wi-fi to Victorians. Last month I was pleased to join the Premier and the Lord Mayor of Melbourne to announce the release of an expression-of-interest (EOI) process under which the Victorian government will seek expressions of interest from the private sector for a trial provision of public wi-fi in the Melbourne CBD. We recognise the value of public wi-fi access in the CBD. There are already a number of hot spots located around the CBD which have been used to good effect by citizens of Victoria and by visitors to Melbourne in accessing online services.

Through the EOI process, the government is seeking input from the private sector as to the best and most sustainable way to provide public access to free wi-fi on an ongoing basis. That will involve looking at the assets that, in this case, the City of Melbourne and the Victorian government can bring to the provision of that wi-fi service so that a sustainable model can be put in place which will allow that service to be provided free on an ongoing basis.

I am also pleased to advise the house that the trial of public wi-fi will include trials in the regional cities of Bendigo and Ballarat. I know Mr O'Brien and his colleagues in regional Victoria will be pleased to see a rollout of this free wi-fi trial in Ballarat and in Bendigo.

The EOI process for all three trials — for the Melbourne CBD, Ballarat and Bendigo — will close on 17 April. Already we have received a very strong response from the private sector to work with the Victorian government and municipalities for the provision of that free public wi-fi. More than 250 EOI documents have been downloaded, and earlier in the week a briefing for vendors under the EOI process was attended by more than 35 potential vendors.

We believe this trial of free public wi-fi in Melbourne's CBD, in Ballarat and in Bendigo is a great opportunity to highlight the strength of our technology sector and to put in place new innovative models to deliver free public wi-fi on a sustainable basis. We look forward to rolling out the trial across the CBD, Bendigo and Ballarat by the end of this calendar year.

Social housing

Ms HARTLAND (Western Metropolitan) — My question is to the Minister for Housing. The government has now released the long-awaited social housing framework. After extensive consultation and years in development, it fails to provide a vision for the growth of social housing into the future, and it fails to provide a solution for the 34 000 people on the waiting list. The government has announced $1.3 billion over five years for the upgrade and refurbishment of 9500 of the most aged and run-down properties. That is welcomed, but I am not sure how much is just a reannouncement or whether it is new expenditure. What is the government's current baseline capital expenditure on social housing, and how much of the $1.3 billion is new and additional expenditure, not reallocated recurrent expenditure?

Hon. W. A. LOVELL (Minister for Housing) — I thank the member for her question and her interest in the social housing framework, which is a document that will put public housing on a sustainable footing so we can ensure that it is continued into the future. As the Auditor-General said, 10 000 properties were about to fall off the edge of the cliff, and the future of public housing was at risk. We inherited a portfolio in crisis, and this is about putting it on a sustainable footing and ensuring that we are not losing properties out of the mix.

We have already acquired around 6800 properties since coming to government, and we have also renovated or refurbished around 4500 properties. The further 9500 properties will ensure that properties are not lost from the system. We could have spent money on acquiring new properties and going backwards if we did not invest in our current properties, which is exactly what the former government did when it was shedding more properties than it was actually acquiring. The $1.3 billion will be invested in maintenance, renovation and refurbishment of public housing over the next five years. It will save 9500 properties and ensure that our

asset base remains at a stable level. That represents $149 million in new spending in renovations and refurbishment.

Supplementary question

Ms HARTLAND (Western Metropolitan) — As the minister would be aware, Victoria is now one of the lowest spending governments in recurrent funding of social housing per head of population. My concern — —

Honourable members interjecting.

Ms HARTLAND — I do not know how the carbon tax is relevant. As a result of this funding announcement, can the minister guarantee the total expenditure on social housing by the Victorian government will increase in real terms over the next five years, or will it go backwards? It is quite clear that we are the lowest spender in the country. I understand that there are many dwellings that have to be repaired, but I am talking about new stock. Money needs to be spent on new dwellings to take people off the list — and there are 34 000 people on the waiting list currently.

Hon. W. A. LOVELL (Minister for Housing) — Let me tell members about the fine print of the 2007 budget. The former government said — it is in the fine print — it was disposing of 1200 properties to acquire 800 new properties. That is not the way to ensure that we have a sustainable basis into the future. In order to have a sustainable basis into the future we need to make sure that we are not losing properties out of the system. The Victorian government is investing in public housing, and it is ensuring that this vital human service can continue to be delivered in this state.

I know the Greens have been very interested in figures from the *Report on Government Services*, but it is very difficult to compare from state to state because different jurisdictions include different things in their reporting to government services. It is not always accurate, and the report actually says that comparisons cannot be made between jurisdictions.

Mornington Peninsula security cameras

Mr RONALDS (Eastern Victoria) — My question is to my colleague in Eastern Victoria Region, and my friend of course, the Honourable Edward O'Donohue, the Minister for Crime Prevention. Can the minister inform the house about progress towards the delivery of important community safety issues on the Mornington Peninsula?

Hon. E. J. O'DONOHUE (Minister for Crime Prevention) — I thank Mr Ronalds for his question and his strong interest in crime prevention, particularly in the electorate of Eastern Victoria Region that we share with Danny O'Brien, Johann Scheffer and Matt Viney. Across Victoria the Victorian government is partnering with local councils and local communities in a range of crime prevention initiatives, whether that be graffiti removal, partnering in Community Safety Fund grants that I have described to the house before — 422 grants in three rounds have been made by this government — or indeed a range of crime prevention initiatives to respond to the community's concerns about crime and the perceptions of crime.

A key plank of the crime prevention portfolio is the CCTV infrastructure the government has provided to a range of communities across Victoria. The communities the government has provided with CCTV infrastructure have welcomed that investment. Recently, with the Premier, we announced funding for CCTV infrastructure within the Kingston municipality, and a range of other CCTV projects have been delivered and welcomed by councils across Victoria. The Chief Commissioner of Police, Ken Lay, has endorsed CCTV cameras as a way to prevent crime and help solve crimes. It is a very efficient and effective tool.

It is extremely disappointing to report to the house that one of the projects remains incomplete some two and half years after the government agreed to provide funding for it. That project is meant to bring CCTV coverage to the towns of Hastings, Mount Eliza and Mount Martha on the Mornington Peninsula. Before the last election the coalition promised funding for CCTV infrastructure in those three towns. Since then, over the last three and a half years, there have been almost endless pledges of progress and completion from the Mornington Peninsula Shire Council, followed by endless excuses when that progress has not occurred. And still the cameras are not operating.

The lack of progress in Hastings in particular is of great concern to that community after the tragic death last year of local jeweller Dermot O'Toole. Following that tragedy the council promised the community that CCTV cameras would be installed in Hastings and operating prior to Christmas. As noted in this week's *Western Port News*, I have written to the council to urge it to settle this matter as quickly as possible. I expect, as do my colleagues in the other place David Morris, the member for Mornington, and Neale Burgess, the member for Hastings, the council to do as the community wishes and install these cameras as a matter of urgency.

These communities have been waiting for more than three years for the installation of the cameras following the election of the government. They should not have to wait any longer than is absolutely necessary. I call on the council to expedite this very important community safety infrastructure.

DISTINGUISHED VISITORS

The PRESIDENT — Order! I take this opportunity to welcome Senator Bridget McKenzie, a visitor to the gallery today.

QUESTIONS ON NOTICE

Answers

Hon. D. M. DAVIS (Minister for Health) — I have answers to the following questions on notice: 9912, 9941–3, 10 046, 10 055, 10 056, 10 060, 10 066, 10 087.

Sitting suspended 12.56 p.m. until 2.02 p.m.

CARBON TAX

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

That this house —

(1) notes the resolution of this house of 29 October 2013 calling on the federal opposition, other non-government parties and Independents in the federal Parliament to support the early abolition of the carbon tax, noting the federal coalition government's mandate to repeal the carbon tax;

(2) further notes the federal Labor opposition and federal Greens party continue to frustrate the federal coalition government's clear mandate to repeal the carbon tax;

(3) expresses its concern at the ongoing adverse impact of the carbon tax on Victorian families, individuals, senior citizens and businesses, particularly the additional costs added to —

(a) manufacturing and manufactured exports; and

(b) public and private health services; and

(4) confirms its support for the immediate repeal of the carbon tax legislation and calls on all Victorian political parties to recognise the clear view of the Australian people expressed at the last federal election and advocate for the immediate repeal of the carbon tax.

Mr Lenders — Acting President, I draw your attention to the state of the house.

Quorum formed.

Hon. D. M. DAVIS — The community has had long debates to and fro about the carbon tax, emissions trading schemes and how we manage climate change — —

Mr Lenders — Acting President, I draw your attention to the state of the house.

Quorum formed.

Hon. D. M. DAVIS — I note that when the last quorum was called for there was a full complement of Liberal Party and Nationals members but only two Labor Party members in the house. Clearly they are agitated and frustrated about this carbon tax motion. They are in hiding; they have fled the chamber. They are worried about the impact of this. Ms Tierney is coming back in now. It is good to see that at least one opposition member came in for the quorum. They are attempting to hide from an embarrassing carbon tax motion.

Let me be clear. There has been much debate to and fro in the community on the carbon tax, emissions trading, climate change and related matters. The Australian people have settled this matter. The Australian people voted very clearly. One of the two or three clearest issues during the last federal election campaign was the repeal of the carbon tax legislation, which former Prime Minister Julia Gillard had earlier promised would not be introduced. The community passed judgement on the decision by Ms Gillard and the Greens to put in place a carbon tax across the whole of the Australian economy. The election result was very decisive and clear. What that means is that a clear mandate was obtained by Prime Minister Tony Abbott and the coalition government. Nothing could be clearer. 'Repeal the carbon tax' was a mantra before the election. The Australian people have voted. The Australian people have given a mandate to Tony Abbott and his government.

As we have seen in recent days, the Labor Party and the Greens in the federal Senate have combined in a terrible alliance to defeat the will of the Australian people, to block the mandate of the Abbott government and to block the decision of the Australian people to repeal the carbon tax. This is a fundamentally antidemocratic decision of the federal Labor Party and the federal Greens. It is a shocking decision; they have thumbed their noses at the Australian people; they have given them the bird.

Mr Lenders — Acting President, I draw your attention to the state of the house.

Quorum formed.

Hon. D. M. DAVIS — The Labor Party is terrified of facing the Australian people on the carbon tax. It was voted out of office in part because of its carbon tax — the lie that was told to the Australian people during one election campaign. The Australian people passed judgement on that lie and said, 'We want the carbon tax repealed'. This house has sent a message once already on the carbon tax, indicating that the community does not want a carbon tax in Victoria. The Victorian community understands the impact of the carbon tax on the broad Victorian community.

Mr Lenders — Acting President, I draw your attention to the state of the house.

Mr D. R. J. O'Brien — On a point of order, Acting President, I was here.

The ACTING PRESIDENT (**Mr Melhem**) — There is no point of order.

Hon. D. M. DAVIS — The key point here is that the Labor Party and the Greens have tried to defy the Australian people. The impact of the carbon tax on our economy is broad and deep. Many people argue that it is not the best way to deal with the issues relating to climate change, which some argue are so important. Even if you believe in climate change, even if you believe that the scientific evidence points one way, the question is, what is the best way to manage this?

The coalition took a policy of direct action to the election. That aside, the real question is that even if you believe a certain mechanism is the best way to deal with climate change and the challenges around it, the Australian people have made a decision. We live in a democracy. Parties go to a major general election with clear policy positions, and the elected party should have a mandate to implement the major policies they have taken to the election. No-one could argue that this was not a very clear policy. No-one could argue that Tony Abbott and his team did not go to an election with that clear policy.

As I said, the impact of the carbon tax on the economy is deep. It affects the manufacturing industry, the construction industry, the health sector — —

Mr D. R. J. O'Brien — Jobs.

Hon. D. M. DAVIS — Mr David O'Brien makes the very clear point that jobs are a key impact here — exports and jobs. There will be a tactical and financial advantage for our competitors internationally if a carbon tax is put on industry in Victoria. It will undoubtedly increase the cost structure of Victorian industry. There is no question about that. The carbon tax is meant to increase the cost structures of Victorian industry. It is meant to put a tax on businesses, on families, on the whole economy. That is what the Rudd-Gillard government did. It put a tax on the Australian economy, and that tax is having a significant impact on all manner of industries across the state.

Mr Lenders — Acting President, I draw your attention to the state of the house.

Quorum formed.

Mr D. R. J. O'Brien — On a point of order, Acting President, Mr Lenders has twice sought to initiate a quorum when I, as The Nationals Whip, and the acting Government Whip, in the absence of Mr Koch, were in the bowels of the chamber doing our duties. He withdrew the first quorum and then started a second one. I ask that Mr Lenders consider the duties of the whip, which are to summon members into the house and to converse with people in the bowels of the chambers. To persist in frivolous — —

The ACTING PRESIDENT (**Mr Melhem**) — Order! There is no point of order. I ask Mr O'Brien to sit down. He was not in sight when the quorum was called.

Hon. D. M. DAVIS — It is very clear that members of the Labor Party are deeply embarrassed by the decision of their federal colleagues to vote against what the Australian people have decided. In my portfolio of health there has been a very significant impact. Let us not be unclear in any way about this. The impact of the carbon tax on the health sector is very deep. There is no question that the carbon tax has forced up energy costs for our major hospitals and health services. There is no question that it has forced up the costs through the direct imposition of a carbon charge. It is quite remarkable to see on the bills of health services across the state that a carbon charge is levied, whether it is a carbon charge at the Peter MacCallum Cancer Centre, the Royal Children's Hospital or the Austin Hospital, which paid $1.4 million in carbon tax in 2012–13.

Why on earth would you put a carbon tax on hospitals? Why on earth would you put a carbon tax on health services? Why on earth would you try to make bush nursing hospitals pay a carbon tax? Why would you make the Royal District Nursing Service pay a carbon tax? Why on earth would you demand that a carbon tax be put on major not-for-profit hospitals like Cabrini and Epworth? Why on earth would you put a carbon tax on pharmacies, on GP practices and right through the economy that is designed to penalise and make health — —

Honourable members interjecting.

Hon. D. M. DAVIS — The impact across the economy is going to be very significant. We have seen a number of manufacturing concerns that have been impacted by the carbon tax, and that will impact upon jobs.

If we look at many of the health services, we see that Barwon Health in the 2012–13 financial year paid a carbon tax bill of $494 000; Ballarat Health Services, $502 000; the Alfred, $814 000; Albury Wodonga Health, $208 000; Bendigo Health Care Group, $412 000; Central Gippsland Health Service, $146 000; Eastern Health, $688 000; Goulburn Valley Health, $257 000; and Monash Health, our biggest health service, $1.3 million. That carbon tax of $1.3 million was supported by Labor Party members in and around the Monash Health area — in the Casey area, the Dandenong Hospital area and around the Monash Medical Centre. It is extraordinary that $1.3 million in carbon tax has been put on those health services.

Peninsula Health paid $462 000 in carbon tax, levied on it by electricity and gas providers in the 2012–13 period due to the Gillard-Rudd carbon tax. Carbon tax of $364 000 was paid by Peter Mac. Why on earth you would put a carbon tax on a cancer hospital I do not know. Some $629 000 was paid by St Vincent's Hospital, $729 000 by the Royal Children's Hospital and $110 000 by the Royal Victorian Eye and Ear Hospital. Why you would put a carbon tax on a children's hospital is beyond me. It seems to me that members of the Labor government could have thought of a better system in this respect. If they had wanted to, they could have used the GST model. When the GST came in health was exempt, and you paid the tax but you claimed it back. That is not the model that they have used here; they have just put the tax directly on.

Mr Barber interjected.

Hon. D. M. DAVIS — I am watching for Mr Barber's response to this. He will talk about energy efficiency, I agree with him about energy efficiency — it is good business practice to lower your energy costs — but let us be clear about this: for any level of energy efficiency, it does not matter how low you push your energy efficiency or how efficient you become. The carbon tax goes on top. Whatever level you get down to, the carbon tax is extra. It is on top; it is super. You will still pay the carbon tax no matter what level of energy efficiency you achieve.

I know that members of the community do not support this carbon tax, because the majority of the Australian people voted against it. We live in a democracy, and Labor and the Greens are thumbing their noses at the democracy that we have in this country. They should get out of the way and let the elected government implement its mandate.

I know the community will also be looking at how this carbon tax can be removed. I am very concerned that it appears that the federal opposition and the Greens at a federal level are determined to defy what the community wants. That attempt to defy ought to be exposed. It ought to be quite clear that that should not be tolerated in our democratic polity. Our community will over time wake up to the Labor Party and the Greens and will fight back on these matters. They will be prepared to — —

Mr Leane interjected.

Hon. D. M. DAVIS — The member mentions climate change, and there are scientific views about this. The government has put a whole series of views about these matters. I say to Mr Leane that I do not know that putting a carbon tax on Eastern Health, which is in his area, is going to make a big difference to climate change. I do not believe that a carbon tax of $688 000 put on the Angliss, Maroondah and Box Hill hospitals is going to make a big difference. I know Mr Leane wants to tax Box Hill Hospital, that he voted to do that and that he wants to put a tax on Maroondah Hospital and a carbon tax on the Angliss Hospital. I do not think it is the right thing to do, and neither did the Victorian community or the Australian community in the recent election. Mr Leane, who is leaving the chamber, might be voting in favour of a carbon tax on Eastern Health, but I do not believe the community will support it. This is a clear chance for the chamber to send a message to the federal Labor Party and to the federal Greens and to individuals at a federal level that we want this carbon tax removed, and we have the full support of the Australian people.

A number of other international jurisdictions are closely reconsidering their involvement with carbon pricing. We need to make sure that we have a fair system that leads to sensible outcomes. The opportunity is there to use the direct action approach that the federal coalition has gone to the election with, and that direct action approach will deliver some dividends. We can well go forward and address a number of these key matters. Some think that it is not — —

Mr Barber interjected.

Hon. D. M. DAVIS — I know Mr Barber is not a fan of direct action. He prefers the carbon tax. The

problem for him is that the Australian people voted differently. Even if we accept the sincerity of Mr Barber's view, which I do, this is a democratic contest and a decision was made at a national level, and there is no doubt the coalition was very clear about its intention to abolish the carbon tax. I do not believe that even Mr Barber will argue that members of the federal government held back or were secretive about their desire to repeal the carbon tax. He would concede that. This is an important motion and an important chance to send a signal to our federal colleagues of all stripes that the will of the Australian people should not be defied.

Mr LENDERS (Southern Metropolitan) — I will be brief in my comments on this motion. Let us look at what it is. This is a self-congratulatory motion from Mr Davis, who firstly wants to note that this house passed a motion a couple of months ago, so let us look at this. This is a contested political debate on which parties have views, and it is a delusion for this man to assume that somehow or other a partisan vote in Victoria of 21 Liberal-Nationals MPs versus 19 other MPs will sway a single person in Canberra. It is a waste of time.

The second thing I say is that we are here in broad daylight today debating this inane, pathetic and stupid motion before the house — I use those words deliberately and invite a single government MP to raise a point of order on them — yet Tuesday a week ago, when we were debating the Mental Health Bill 2014, which tens of thousands of Victorians cared about, this minister and this government kept us here until 2.30 in the morning because it was urgent. Last Thursday ministers were reading speeches; today we are debating this crazed motion from the Leader of the Government.

Late last Tuesday night there were queues of people, almost 100 long, into the dining room. They were waiting to eat the trays of food that the hardworking staff had prepared in order to feed MPs and the other 70 or 80 people in this building, all at a cost of $5000 an hour. I repeat: it costs $5000 an hour to feed the MPs and pay the staff overtime — but forget about that. This minister put every staff member and MP in this place under duress, working crazy hours to debate the most serious bill, according to many in our community, that this house would face. The priorities of this minister with this inane motion are to stifle debate on issues that matter to Victorians and then to have a debate in this house on a motion he thinks is popular.

I was watching the captive government MPs who were called here by quorum count after quorum count. The whips basically had to be standing at the door with their arms crossed to keep them in. Not a single one of them was making eye contact with their minister.

Mr Elsbury — On a point of order, Acting President, the Leader of the Opposition is misleading the house. There were several members of the government who stayed in this house without any of the sort of coercion that would happen in the Labor Party.

The ACTING PRESIDENT (**Mr Melhem**) — Order! There is no point of order, so we will move on.

Mr LENDERS — If Mr Elsbury is excited about being in this house and watching Mr Davis — —

Mr D. R. J. O'Brien — On a point of order, Acting President, I believe the President has made a number of rulings on occasion advising members to refrain from making commentary about how members are sitting in the house and what sorts of expressions they may or may not have as it can mislead the house, as was raised in the first point of order.

The ACTING PRESIDENT (**Mr Melhem**) — Order! That is not a point of order, and I remind the member that members of the government made similar remarks not long ago. We will just move on. There is no point of order.

Mr LENDERS — I will not reflect any further on the captive MPs entrapped in the chamber, but what I will say is why I treat this motion with contempt. I treat it with contempt because it is a politician using the numbers because he thinks that somehow or other a person waiting for an ambulance on a ramp in some part of Victoria — a person in some part of Victoria looking for some care or compassion in the health system — will care the slightest skerrick about the morbid fascination for numbers the Minister for Health has, even though nobody is listening. His own people resent it, except Mr Elsbury, who is obviously in rapt enthusiasm listening to the words. Mr Davis has one fan. Nobody else is listening. It is so off-beam when the carbon tax will be repealed on 1 July, and anybody who follows politics knows that.

The will of the Victorian Legislative Council will have even less effect on the federal Senate than my words will have on Mr David Davis. Therefore we are indulging the house on this occasion because of this minister's ego. We put 100 people through duress late last Tuesday at 2.30 a.m. to debate a serious piece of legislation in this house because this minister's priorities are to play puerile campus politics with the Legislative Council. So we had that debate. It cost the taxpayer $5000 an hour. This minister can rant about the cost of the carbon tax, but in his own hands the

Legislative Council budget is diminished by $5000 an hour each hour he keeps this house sitting after midnight. If this is his sense of priorities, no wonder the ambulance system is in chaos. No wonder the hospital emergency department system is in chaos. No wonder he cannot even tell to the nearest billion dollars the size of the health budget.

I reject this motion from this minister as a stunt. It has nothing to do with this house, and if this minister actually took his role seriously we would be debating legislation that protects Victorians now, not wasting time before he and his 18 coalition colleagues scurry out of here to go to hear John Howard speak at 7.00 p.m. tonight at a 500 Club meeting.

Mr BARBER (Northern Metropolitan) — It was my intention to dismiss this motion with just a few words, noting that the substance of the motion is to encourage a purely symbolic re-run of a vote that has already occurred in the right jurisdiction, the federal Senate, where the issue for the time being has of course been determined. However, I was encouraged and inspired this morning by the statement from our newest member in this place, and that is why I have some residual affection for The Nationals despite many of their policies.

Our newest member, the other Mr O'Brien, stated — if I heard it correctly — that he believed climate change was happening and that the impact of that would be a reduction of the available water in the Murray-Darling Basin. The reason Mr O'Brien — the new Mr O'Brien — —

Mr D. R. J. O'Brien — On a point of order, Acting President, I do not want to make this difficult, but with two Mr O'Briens it would be easier if Mr Barber referred to us by our first names so that Hansard and others know which O'Brien he is talking about.

The ACTING PRESIDENT (**Mr Melhem**) — Order! It is important that Mr Barber refer to Danny O'Brien or David O'Brien.

Mr BARBER — It remains to be seen what Mr David O'Brien thinks about climate change, because he has kept his head a little bit lower on this question in the last three and a quarter years than Mr Daniel O'Brien has. Mr Daniel O'Brien, having acknowledged the existence of climate change and the likelihood of reduced surface water availability, was willing to enter into a debate about the appropriate course of action to deal with that; it was the beginnings of a debate between me and him as to how rules for water trading in the Murray-Darling Basin might be adjusted or weighted to deal with the effects of climate change on surface water availability. That is what has given me further encouragement to come back here today and debate this motion from a particular point of view, which is about the effect climate change will have on Australia if measures such as the carbon tax are not taken as part of a global cooperation to reduce greenhouse gas emissions.

Just as this debate was commencing we had a new release from the Intergovernmental Panel on Climate Change (IPCC). That is the second volume of its fifth assessment report dealing with the impacts of climate change. Of interest, I would have thought, to members in this place would have been the projection that Australia could become a net importer of wheat under some of the more severe scenarios being modelled for climate change. This was occurring simultaneously with the Victorian Farmers Federation (VFF) annual grains conference. I am sure a range of issues were being debated there. I see that the VFF called for the coalition and the Labor Party to commit to funds for rail upgrades, but I wonder whether the words 'climate change' were discussed in light of that simultaneous report and the VFF grains conference this week.

In summary, the IPCC fifth assessment report found that there will be significant impacts, including coral bleaching, coral death and a range of coral diseases, noting that these natural ecosystems have little ability to adapt and that other than reducing other detrimental effects, such as nutrient run-off — I will come back to that one another day — there seems to be little we can do about it in the short term. Extreme events, such as floods, heatwaves and bushfires, are all set to increase in both frequency and intensity. Without serious mitigation, increases of up to 200 per cent by 2090 in extreme rainfall events in some regions of Australia are projected in some models.

There are two more key threats, the severity of which will depend on how the various possible climate scenarios play out in the future. If sea levels rise by a metre by the end of the century, which is within the range of model projections, the consequences for those who live in coastal towns and cities would be immense. This is a particular problem for Australia and New Zealand, where the majority of the population is clustered in coastal areas. Similarly, the dry scenarios projected by some models could affect Australia's food productivity in its major food-producing regions — the Murray-Darling Basin, the far south-west and the far south-east. Our heavy dependence on these regions as the nation's food bowls means that these risks, although at the lower end of the probability spectrum, must be taken seriously. These less likely but more extreme

scenarios project declines in annual rainfall of up to 30 per cent by 2070 in South Australia, with some larger declines seasonally.

We have reason to be afraid of this but, in my opinion, no reason to despair. Working together as a community, we can come up with measures to adapt to the inevitable climate change which is already built in from the carbon pollution that has already occurred. Equally, we can work together and take collective steps to reduce our emissions, along with other countries around the world.

At the beginning of the week I talked about the economic crisis and that famous statement that we have nothing to fear but fear itself. I think the coalition understands that people are rightly afraid of climate change. The only thing that it can come back with is more fear about how it will all be over for the economy if the carbon tax continues. Mr Davis is pretty good at fear — although he is no Tony Abbott, I will give him that — but I do not think it is working. I think the message the public wants to hear is that we can get together as a community to cut our emissions and insure ourselves against the worst effects of climate change. For that reason I reject the motion.

Mrs PEULICH (South Eastern Metropolitan) — I point out that while we have this motion about the carbon tax, which is costing thousands of businesses an enormous amount of money nation-wide, forcing many to the wall, to the brink and into extinction — especially during a process of transition in our economy, in particular the transition of the manufacturing sector — there is only one member of the Labor Party, aside from you, Acting President, sitting in this chamber. Every day opposition members wax lyrical about jobs in Victoria, the manufacturing sector and a whole range of other matters that they want to run, often on behalf of their puppet-masters — the unions who donate, provide manpower for their elections and dictate policy. That includes the Construction, Forestry, Mining and Energy Union, about which the opposition has been absolutely, deathly silent. Opposition members wax lyrical on issues that suit their industrial agenda, but when it comes to debate they are nowhere to be found. Not a single opposition member, apart from the Acting President and Mr Leane, the Opposition Whip, sits in this chamber.

I mention in particular my upper house colleague Mr Jennings, who we have heard prosecute health funding as a precursor to the bringing down of the state and federal budgets — hypothesising and preaching doom and gloom. He is here at question time day in, day out, yet he is not present to talk about this very important motion and the dramatic impact that the carbon tax has had on the health sector.

I commend Mr David Davis, the Minister for Health, for this motion, which is designed to highlight and expose first and foremost the Labor Party's hypocrisy. In addition to that, it highlights the danger of having a Labor and Greens alliance. We have seen that in play federally, where they blocked the repeal of the carbon tax in the Senate. We heard Mr Barber, a key member of the Greens, talk about mandates; there is no dispute that the carbon tax was a key federal election issue and that the vast majority of Australians supported its repeal. Yet that alliance is more than happy to act against a mandate implied in the last federal election and use that as some sort of high moral ground on other issues.

In addition to that, the Leader of the Opposition in the upper house, Mr Lenders, who is really nothing more than a political apparatchik — and has been the beneficiary of that for his entire political career — has been using the standing orders to call quorums, yet all members of the Labor Party have been absent from this chamber, forcing all members of the government to make sure they are in attendance. That defeats the courtesies of the house, as was pointed out by the President a couple of days ago when members of the Labor Party absented themselves from the adjournment debate. Those courtesies are not being extended in this chamber.

The Labor Party is struggling to find the high moral ground when it is sinking in the abyss of its own moral ineptitude and hypocrisy, as well as the toxic relationship between the Greens and the Labor Party federally. We are looking forward to a change of circumstance as of 1 July. While I do not believe that it is a lay-down misère, we certainly hope that it is and that Western Australians will vote very strongly for measures such as the repeal of the carbon tax. I hope that we will see common sense prevail in the Senate and that the repeal will proceed as of 1 July. That is not just in terms of its impact on health but also in terms of its impact on businesses, our economy and jobs — something the Labor Party claims is at the heart of its policy convictions. Clearly this motion reveals that the situation is otherwise. It reveals the Labor Party's hypocrisy and the toxicity of having Labor and the Greens determine the direction of this state and this nation. God help us if they achieve a majority in the upper house in the next election. I will be citing this debate, chapter and verse, as an example of how the complicity of the alliance of Labor and the Greens — —

Mr Finn — The coalition of the damned!

Mrs PEULICH — The coalition of the damned works against the interests of ordinary Victorians and works against the interests of people who I present in the South Eastern Metropolitan Region.

Mr Lenders also attacked the Minister for Health, Mr David Davis, who has championed this motion, for ranting and playing campus politics, yet it was Mr Lenders who minute after minute called for quorums in this chamber, playing his own puerile brand of politics on an issue that is so important to all Victorians but particularly to the people of the south-east.

We have had to clean up the policy bungling of the Labor Party and the mess it left behind, and we continue to do so, as well as trying to build a future to cope with the rising expectations and growing population of a modern society. This requires all of the conviction, common sense and good policy the coalition has been attempting to bring to bear since the election in 2010.

Specifically in this motion Mr Davis states:

> That this house —
>
> (1) notes the resolution of this house of 29 October 2013 calling on the federal opposition —

at the time —

> other non-government parties and Independents in the federal Parliament to support the early abolition of the carbon tax, noting the federal coalition government's mandate to repeal the carbon tax …

It is deplorable that the Labor-Greens alliance has stood in the way of delivering a much-needed reprieve to the health sector, as well as to our business and economy, by standing in the way of common sense.

The motion goes on that the house:

> (2) further notes the federal Labor opposition and federal Greens party continue to frustrate the federal coalition government's clear mandate to repeal the carbon tax;
>
> (3) expresses its concern at the ongoing adverse impact of the carbon tax on Victorian families, individuals, senior citizens and businesses, particularly the additional costs added to —
>
> (a) manufacturing and manufactured exports; and
>
> (b) public and private health services; and
>
> (4) confirms its support for the immediate repeal of the carbon tax legislation and calls on all Victorian political parties to recognise the clear view of the Australian people expressed at the last federal election and advocate for the immediate repeal of the carbon tax.

Specifically in relation to the impact of carbon pricing on the health-care system, the Victorian Department of Health has determined that the impact of the former commonwealth government's carbon pricing scheme on public hospital energy use for the first year of the scheme was $13.5 million, and Ambulance Victoria incurred additional costs of $0.3 million for aviation fuel and energy. The carbon price has increased the energy cost of health services by in the range of 9 per cent to 23 per cent, and there has been an average increase of 15 per cent in energy costs across all public health services, which is a huge hit on the budget. It also exposes as hypocrisy the attempts by the Labor Party and the shadow Minister for Health, Mr Jennings, to prosecute health funding issues, and it shows their lack of commitment to improved health outcomes for Victorians and the south-east in particular.

Funding agreements across the former commonwealth government provide no adjustment or compensation for the impact of the carbon tax. Despite increased demand for health services, the health system has contained energy demand. The Economy and Infrastructure Legislation Committee is undertaking an inquiry into the impact of the carbon tax on health services, and it will present its final report shortly. I look forward to that report being tabled and to the committee's deliberations contributing to ongoing debate on this issue. There should not be an ongoing debate — the repeal of the carbon tax should be supported by all parties in this chamber.

The Victorian government wrote to the former commonwealth government seeking compensation for the carbon price through an adjustment of the national efficient price. An audit of public hospital energy and billing data for the period 1 July 2012 to 30 June 2013 has determined that the cost of the carbon tax to public hospitals over this period was $13.5 million, of which $11.6 million — or 86 per cent — was derived from the actual billing data sourced from energy retailers. When we look at the some of the stats across the state for the same period, I would like to pick out those which are particularly relevant to the area that I represent. These include stats relating to Monash Health, which has campuses in Casey and Clayton. The impact of the carbon cost on the budget for Monash Health was $1 299 009. That is 15 per cent of its budget, which is a phenomenal impact. Dandenong Hospital is also in the cluster of Monash Health campuses. We have heard Mr Jennings prosecute some issues in relation to Monash Health, including the Dandenong campus, yet he is not here to participate in the debate on this policy

failing that the Labor Party and the Greens continue to support and which imposes additional cost burdens on our health providers.

I have also heard nothing from Mr Jude Perera, the member for Cranbourne in the Assembly, who missed his vote the other night. He was asleep on the job. I understand that he was taking a grandpa nap during a crucial vote in the lower house. We have also heard nothing from Mr Luke Donnellan, the member for Narre Warren North in the Assembly, who continues to live 34 kilometres away from his own electorate. Councillor and deputy mayor Amanda Stapleton is the Liberal candidate for that electorate for the next state election, and she has a real commitment to the local area. She will no doubt take an active part in vigorously and robustly representing the interests of the Narre Warren North electorate, which has suffered as a result of not having local champions — people who actually care about the local area and care enough to live in the local community.

We have also not heard from the member for Narre Warren South in the Assembly, Ms Judith Graley. She was silent on a range of issues during the 11 years of a Labor government. Suddenly in opposition these members care, but they do not care enough to back the measures that really make a difference and can have a significant impact on key services that are valued by the community.

Earlier I mentioned my upper house colleagues Mr Jennings, Mr Tarlamis and Mr Somyurek, with whom I generally have a very good relationship. I know that deep down Mr Somyurek in particular is constrained by his own party policy regarding the negative impact the carbon tax has on the manufacturing sector that he is very passionate about. If I were him, I would also be too ashamed to front up to the debate in this chamber. I would be listening in my room to the debate through the assistance of the audio system because I would be too ashamed to be supporting the retention of the carbon tax, especially given its impact on South Eastern Metropolitan Region, which he also represents. Mr Tarlamis represents that area too. He attends this chamber regularly and frequently, but he is not here today. I too would be ashamed to front up to defend Labor on this particular motion.

I will mention a couple of other health providers. Peninsula Health took an 18 per cent hit to its budget bottom line for the same period. The Royal Children's Hospital, the Royal Victorian Eye and Ear Hospital and the Royal Women's Hospital are all suffering hits of between 19 and 14 per cent to their budgets as a result of the carbon tax. Labor Party members should hang their heads in shame for defending something that the Victorian public and the Australian population do not support and which continues to cause additional stress on our health providers.

We all know that people value their health services highly, irrespective of whether they need them. There is nothing more important than our health and wellbeing and that of our families and communities, yet the Labor Party continues to support a failed policy which continues to add financial stress to our service providers. Labor members for South Eastern Metropolitan Region are not here to defend what their federal counterparts — their federal bosses and their union puppeteers — have obviously been supporting. They are like pussycats or lap-dogs, having to jump into the laps of their federal masters and the Construction, Forestry, Mining and Energy Union, and their behaviour is deplorable — —

Mr Leane interjected.

Mr Elsbury — On a point of order, Acting President, Mr Leane is not in his place and is making quite a bit of a racket.

The ACTING PRESIDENT (**Mr Melhem**) — Order! That is a fair point. Mr Leane needs to resume his seat.

Mrs PEULICH — With those few words, I commend the motion to the house.

Mr D. R. J. O'BRIEN (Western Victoria) — It is with great pleasure that I rise to make a contribution to the debate on what is a very important motion and what is a very disappointing response from members of the Labor Party and the Greens. This is a very serious motion. The Minister for Health has delivered significant funding boosts to the Victorian health system and well before the most recent federal election he called upon the Labor Party to do the right thing in relation to the carbon tax. Given the urgency of the situation for many Australian businesses, he has rightly taken up a timely opportunity to repeat the call, as I now do, for Labor Party members to finally admit that they got this one wrong and that they badly misread the focus groups. They know they got it wrong, because they have admitted it before. Former Prime Minister Gillard knew it was such a bad policy that she fully represented — almost swore — to the Australian people before the 2010 election — —

Ms Crozier — Misrepresented?

Mr D. R. J. O'BRIEN — Whether she was lying intentionally at the time or whether she lied afterwards, she clearly misrepresented the situation. Nevertheless she started with that representation on the eve of a critical election that ended up being determined only by the very poor decision of a number of Independents and an even worse decision by the Labor Party to get into bed with the Greens. That resulted in the Prime Minister saying that there would be no carbon tax under a government she led. Yet before the government had reached into the legislative agenda a deal had been done with the Greens to bring forward not just a carbon tax and not just an emissions trading scheme but the largest carbon tax in the known world. That is the most appalling part of this policy.

There was then the cheek of a person named Craig Emerson, the former federal trade minister, trying to do a dance, saying that the carbon tax is not going to cause any problems in Whyalla. But what have we seen? We have seen evidence of the struggle of manufacturers in my electorate of Western Victoria Region to survive and compete with their overseas competitors in the face of this carbon tax that has clobbered Australian jobs, is clobbering Australian hospitals and that ought to be repealed and confined to history as a sorry tale in reverse tariff policy. There is very simple basis for this argument.

Mr Barber is somewhat amused that Mr Daniel O'Brien has different views to what Mr Barber, in his pigeonholed vision of what a Nationals MP or even an O'Brien might be, thought he would have. Certainly Mr Daniel O'Brien can put his views and will do so from time to time. Mr Barber then said to me that I might like to put my views. My views on climate change and the opportunities for carbon policy are very clear; they were in my maiden speech. As I have said to Mr Barber, I rely on the work of Essential Economics and its future cities work that says that wherever you can relocate people to regional areas and help regional jobs, as Mr Koch and the Premier have said, you actually reduce carbon emissions in this state, and you do so by a considerable margin.

I believe we should give the environment the benefit of the doubt wherever possible and that we should construct a raft of policies that look after our environment, consistent with Australia's economic position. This is where the Greens and the Labor Party get it wrong, because they equate the need for policies to care for the environment, regionalise our state and provide jobs and investment support with the need to jump to not simply a carbon tax but the highest carbon tax in the world. In doing so, they put a tax on our jobs. Assuming carbon pollution is a real problem — and I am prepared to assume it is — we should give the environment the benefit of the doubt. Contrary to what some may say — I know there are diverse ranges of views among members of The Nationals on this — wherever possible we should give the environment the benefit of the doubt.

However, if it is a global problem, then why did we put a tax on Australian businesses and not those of other countries? Why did we impose a reverse tariff of $28 when Europe was trading between $7 and $4, and many other developed countries at that stage, including our good friends in many Asian countries, had not imposed any carbon tax at all? That was a tax on Australian jobs. Assuming for the purposes of this argument that global warming is happening — and as I have said, I am prepared to make that assumption — you are actually doing the reverse of solving the problem by taxing a country which has done many good things to encourage efficient environmental business and farming practice and which has led the way with many direct action policies that have been proved to work and will continue to work.

What is the result of sending these jobs overseas to countries that do not have a carbon tax? I love having a debate about this with Mr Barber, who I note is absent from the house. I can only presume he is having a conversion on the road to Damascus. Maybe Daniel O'Brien has finally persuaded him to see some sense on this issue and he is on the phone to his friends in Canberra telling them they have got this wrong. It is probably an unrealistic hope that he is saying to his federal leader, 'Christine, if we are going to win the rural vote' — as they sometimes seem to want to do — 'we are going to have to get rid of that carbon tax'.

However, I have some hope the absence from the chamber of some members of the Labor Party right now can be explained by the fact that they are on the phone to their factional leaders, their friends in Canberra, the faceless men and women, and saying, 'We have some problems here. We need to get rid of this carbon tax'. I have hope. If there is a vote on this motion, as there probably will be, I invite them, even just one of them, to come over and vote with us, to follow the lead of Senator Joyce, who was not afraid to speak up on this issue when it was unpopular and who is continuing to lead the way in his delivery of federal agriculture portfolio initiatives. I live in the hope that members of the Labor Party might do that.

This reversed tariff aspect of the carbon tax is terrible for our exporters, for dairying, for manufacturing and for anything that involves energy. The problem with the

carbon tax is that it is a tax on efficiencies that already occur. There is no industry or section of the economy where this is more cruelly played out than in our health sector. Even hospitals that have brought in laudable climate-efficient policies — and Ms Crozier, in her excellent work as Parliamentary Secretary for Health, is well aware of them — and that deliver intensive care and cancer treatment, are still getting clobbered with the carbon tax, to use the words of the Minister for Health, Mr Davis. We have the evidence for that, because we have the receipts.

I have been kindly provided with a receipt for hospital payments relating to Barwon Health at 45 Ballarat Road, North Geelong, 3215. The energy usage is 6733 units and the total charge is $27 332.96. The carbon unit charge is on the invoice, and I am happy to provide this to Labor Party members, particularly those who purport to represent Geelong and who talk about the issues facing manufacturing and other industries competing in Geelong. I know my colleagues Mr Koch and Mr Ramsay are well familiar with these burdens, as is the new federal member for Corangamite, who did an excellent job in dislodging the former member, Mr Cheeseman, who tried to blame some of these issues on the high value of the Australian dollar. They will be well pleased to hear the figure for the carbon unit charge.

Mr Ramsay interjected.

Mr D. R. J. O'BRIEN — Mr Ramsay may well say, 'God save the Governor-General', because nothing will save the ALP members until they get on board, come on over to our side, leave the Greens behind and abandon that God-forsaken carbon tax. That is the essential point. So far as Barwon Health's invoice is concerned, there are $7556.09 reasons, on a $27 000 bill, why they need to get on board. They need to get on board and repeal this God-forsaken carbon tax. That is what this motion calls for.

It is not just at Barwon Health. The minister's office has prepared a list of invoices that could go across the entire health sector, including for many services in Western Victoria Region. I understand that about 86 per cent of this information is prepared from actual invoices while the others are estimates. One of them is Austin Health. Its excellent work is well known to members, particularly Ms Crozier and also the minister. Austin Health has paid a carbon tax bill for the year 2012–13 of more than $1 440 000. That is a tax on health.

The carbon cost in other areas of western Victoria include at Ballarat Health Services, $502 735, and at Barwon Health, $494 120. I now refer to Beaufort and Skipton Health Service. It hits the little guys. As someone has said, it is the kind of tax that, when it hits the fan, it gets in everywhere and it affects everyone. It is a great big tax on everything, and it is to go right through. The Beaufort and Skipton Health Service has a tax of $8485. The Casterton Memorial Hospital — —

Ms Crozier interjected.

Mr D. R. J. O'BRIEN — An excellent hospital. Ms Crozier would know it very well, as would Mr Koch.

Ms Crozier — Yes, I worked there.

Mr D. R. J. O'BRIEN — Ms Crozier worked there. She would be disappointed to understand it has paid a tax of $15 286. Colac Area Health has paid a tax of $60 019. The East Grampians Health Service has paid a tax of $66 773 and the East Wimmera Health Service, $28 000. Edenhope and District Hospital is an excellent hospital. I will not say more about it at this point in time, for other reasons, but it has paid a tax of $12 542. Hepburn Health Service has paid $30 163; Heywood Rural Health, $8000; Kyneton District Health Service, $21 000; and Lorne Community Hospital, $7444.

Mr Ramsay interjected.

Mr D. R. J. O'BRIEN — I am referring just to the ones in Western Victoria Region. I am reading them out on Mr Ramsay's behalf as well. As he well knows, it is a team effort, and I am a team player.

The Maryborough District Health Service has paid $50 000 in round terms; Monash Health, $1 299 000; Moyne Health Services, 19 000; and Otway Health and Community Services, $4000. We all know about the work of the Peter MacCallum Cancer Institute. It is a very fine institution. We all know about the tragedies it deals with, and I do not want in any way to humorously politicise what goes on in that hospital, but it has paid a disgraceful tax of $364 000. Portland District Health has paid $50 000; South West Healthcare, $214 000; Stawell Regional Health, an excellent hospital, $36 000; Terang and Mortlake Health Service $10 000; Timboon, $6000; and West Wimmera Health Service, $79 000.

Despite the contribution to Western District Health Service of a relation of mine, Desi O'Brien, who donated $400 000 to that service, the service has now returned $145 000 into the carbon tax black hole. That is absolutely disgraceful. I send my regards to Desi, Sandy and all in his family, as he is currently a patient of that health service and receiving excellent care. The Wimmera health group is the final one, at $145 689.

I am happy to have those figures checked. I am happy to have the Labor Party review those figures and tell me if I am out by a couple of cents, because my eyesight found it a bit difficult to read them all at times. I hear the noise of crickets from the other side, because most Labor members are not in the house. They cannot bear to hear about the absolute urgency of taking action on climate change, which is to repeal the carbon tax so that Australia's competitive edge can be returned, so that businesses that do a great job, use environmentally friendly practices in the main and respect the environment and the climate are allowed to operate and not be shut down.

I return to my friend Mr Barber, who asked the other day by way of an interjection about how Australian business Dex Audio is going. It does not like the carbon tax. It is hurting that company. It sends its record production off to China. It can do it here, but if it is uncompetitive, it will send it across to China. That company needs the tax repealed, and I have had that confirmed.

I ask Mr Barber to finally face up to the folly of his Green-led policies on this carbon tax. I make a request of the Labor Party. Mr Leane is the only member of the party who has ever worked in a construction job. He is the only one in the chamber. He is the only hope. He knows what it is like to have worked on a site. I am not sure what he thinks of the Construction, Forestry, Mining and Energy Union, but I ask him to come over to our side of the chamber and vote on this important motion. I commend the minister for bringing the motion to the house, and I urge the house to vote in favour of it.

Mr FINN (Western Metropolitan) — The dangers of the carbon tax are not new to me. As members of this house would be aware, I have been talking about the carbon tax now for about three and a half years, and what has happened as a result of the implementation of the carbon tax across Australia does not surprise me greatly. I made a number of predictions in the lead-up to the introduction of the carbon tax that, sadly, have come true. We have seen a large number of factories either shed jobs, go to the wall or go offshore, all to avoid the carbon tax or to reduce its impact. I said that would happen. I said we would see the sort of recession we appear to be heading toward at the moment. It is very largely as a result of that iniquitous tax.

That tax, as Mr David O'Brien said, is a great big tax on everything and produces absolutely nothing. It is a tax that was implemented for no reason at all, apart from making the coalition of the damned — the Labor Party and the Greens — feel good about themselves, which I would have thought would be quite a challenge in itself. We all remember former Prime Minister Julia Gillard, who after the following statement copped the nickname 'Juliar', which was not entirely surprising, because she looked into the camera and said, 'There will be no carbon tax under the government I lead'. That was just before the 2010 election. She just scraped in. She did not actually win, because Tony Abbott got more seats and more votes, but due to a couple of very shonky Independents she managed to get back into the Lodge, which I think Australians will regret for many years. She looked into a camera just days before the election in 2010 and said, 'There will be no carbon tax under the government I lead'.

I would have thought it was a fair guarantee that her government would follow that through. I do not recall a more blatant lie during an election campaign than that one delivered by Julia Gillard just days before — —

Hon. D. M. Davis interjected.

Mr FINN — It was more than a whopper, Mr Davis, and that is something Australia is still suffering from.

I jump forward three years, from 2010 to September 2013 and the lead-up to the federal election. I want members to consider the words of our now Prime Minister, then Leader of the Opposition, Tony Abbott, who had been saying for months, perhaps years, before the election on 7 September last year — for quite some significant time — that there were three things he would do as Prime Minister. He said he would stop the boats, and I congratulate him. I particularly congratulate the federal Minister for Immigration and Border Protection, Scott Morrison, who is proving himself to be an outstanding immigration minister in the work he has done. Mr Abbott said he would scrap the carbon tax, and he has tried to do that. He said he would get the budget back in working order, and he is working on that as well very clearly.

The Prime Minister and the coalition government in Canberra have attempted to implement the policy of scrapping the carbon tax, but the coalition of the damned — the Labor Party and the Greens — continue to block that in the Senate, which is very strange indeed when you consider some of the material that was set out by none other than Bill Shorten before the election. Bill Shorten, now the federal Leader of the Opposition and leader of the Labor Party, sent out material in his own electorate telling the voters in Maribyrnong that the Labor Party had scrapped the carbon tax; it had axed the carbon tax.

We should remember that the Labor Party said there was nothing to worry about. 'We have axed the carbon tax, the carbon tax is gone', said Bill Shorten. He was well and truly living up to his initials, because not only is the carbon tax very much still with us but to this very day 'Bull' is out there defending and supporting the carbon tax. At any time all the Labor Party has to do to get rid of the carbon tax is vote with the government. It does not have to listen to the Greens anymore, because it is not in government and does not have to be held hostage by the fruit loops of Australian politics. If Labor Party members are concerned about what is happening here in Australia, of their own free will they can vote with the government and the carbon tax will be gone — like that! It can disappear. It would be gone very quickly indeed.

I suggest very strongly that Mr Shorten consider his conscience. In fact I suggest that Mr Shorten might like to get a conscience and then follow it, because if he does, he would support the abolition of the carbon tax, just as he said he would prior to the election, even though he went a bit further and said Labor had already abolished it. As we know, at election time — most times actually — members of the Labor Party are not good with the truth, and that is to understate things somewhat. They are liars quite frankly, and that is just the way they operate. It is something we have to take into account when they say these things.

Speaking of people who get things wrong, I am reminded of the former head of the Climate Commission, Tim 'Sandbags' Flannery. Sandbags Flannery got the nickname 'Sandbags' because he predicted that it would never rain again. He said the rain that fell from the sky would never fill the dams again. Try telling that to the people in Brisbane, who were almost wiped out in their entirety as a result of the dam almost breaching its wall and the water that came flooding through Brisbane. Then a little later water came flooding through Sydney, Gippsland, northern Victoria and South Australia.

Wherever we went there were floods, but there was no apology from Sandbags. There is no way known that good old Sandbags would apologise — he was too busy! He had his hand out so that the Australian taxpayer could cross his palm with gold, not just silver. He wanted gold and he got it. He has had his hand in the Australian taxpayers pocket right up until the time that Prime Minister Tony Abbott and federal Minister for the Environment Greg Hunt gave him a call, the day after they were sworn in, and said, 'Excuse me, Sandbags, would you like to leave now because we are about to throw you into the street bodily?'. I would have been very happy to assist them in doing that, but unfortunately was not given the opportunity. I would have been down there with bells on, because if ever anybody deserved to lose their job, it was Sandbags Flannery and the crowd at the Climate Commission.

What a mob of shonks they were. They led us up the garden path for years, telling us all sorts of stories. Do not forget that we have that desalination plant — the one down in Gippsland, on the flood plain. We found it was on a flood plain because when it rained — the rain that Sandbags said would never come — it went under water. Only the Labor Party would build a desalination plant on a flood plain. All the desalination plants — the one in Gippsland, the one in New South Wales, the one in Queensland — were all built because Labor governments were told by Sandbags that it would never rain again. It is not just a matter of the money that he took directly from the Australian taxpayer; he is still costing the Victorian taxpayer, the New South Wales taxpayer, the Queensland taxpayer and I think the South Australian taxpayer — maybe even the West Australian taxpayer — a significant amount of money because we still have to pay for the desalination plants that, sadly, we do not need. The rain that would not come did come — and in very large quantities.

I could get onto Al Gore at this point, who is possibly one of the greatest shysters the world has ever seen — a very inconvenient truth! This is the man who gets around the world on his jumbo jet telling people that the end is nigh — —

Mr Koch interjected.

Mr FINN — Mr Koch has just told me the same thing. He is on the money. Unfortunately I could go into Mr Gore significantly, because if ever there was a bloke who should be locked up for fraud it is that bloke. He is a shocker.

I could talk about the ABC, I could talk about the *Age*, I could talk about the Greens. I should mention Mr Barber, who complained bitterly to me one day that the carbon tax was only $23 a tonne. I said, 'How much do you want?', and he said, 'I want $73 a tonne'. The Greens have no hesitation in saying that. They would wipe out every job in the country. They would wipe out every business in the country. They do not care about employment. They do not care about growth. In fact I am not entirely sure what they care about. They have an agenda that is — —

Mrs Coote — Frogs!

Mr FINN — It is frogs; yes, it is. I have to say to Mrs Coote that it is frogs. It is not the sort of language I would have expected from her, but I have to agree.

Having said that, it is my very great pleasure to support this motion. I wish it a speedy passage. I am hoping that the coalition of the damned in Canberra will listen to it and that Mr Shorten, the man who said before the last federal election that the carbon tax should be abolished, will fulfil the promise he made and that his party will vote to abolish this appalling tax.

Mrs MILLAR (Northern Victoria) — Mr Finn is a hard act to follow, but I will do my best. I am very pleased to rise today to speak on this motion in relation to repealing the carbon tax. Firstly, I will comment on how sad it is to see the opposition benches with only one member sitting on them, apart from the member in the chair today. Since coming to this role it has often surprised me how many people watch the live streaming of Parliament and how many people comment on that coverage. Sometimes I think we underestimate that while there are a few of us in this house, the impact of the Parliament is much greater than that. I hope those people watching think carefully about the meaning of this afternoon and what it is to have only one member on the opposition benches.

Every word that is said in Parliament is an important word and we should remember that a little bit more carefully than we do. The moments that we spend in here are precious. The opportunities that we have to rise to our feet to speak pass very quickly, and every one of them makes a difference. What a shame it is to have a whole afternoon with only one person sitting on the opposition benches. I hope those members who are sitting in their offices think carefully about the role of the Parliament and what it means not only to those in this house. It is not all about political games; it is about representing the people of Victoria. The people of Victoria place their trust in us very carefully when they vote at election time. They expect us to be in here, and they expect us to be giving the Parliament and the processes of this Parliament the greatest of respect.

Whatever name you give it, the carbon tax is a tax. It is designed to make individuals and businesses produce less carbon because the government is charging them more for it. Does this go even one bit closer to reducing carbon emissions? No, it does not. All it does is cost Victorian families and businesses more. Every day it is damaging the economy, but it is not saving the environment. The way to amend people's conduct is through their hearts and minds, not tax. To impose any tax, governments need a very compelling reason. To take money which is rightly private wealth away from individuals and businesses needs a very high benchmark. In my view, that case is not made with the carbon tax — a tax which is not amending behaviour but just costs us more. In the words of William Weld:

> I think coercive taxation is theft, and government has a moral duty to keep it to a minimum.

This is the overriding principle that we on this side of the house understand, and governments need to commit firmly to it.

In my electorate of Northern Victoria Region the carbon tax hurts a range of businesses every single day. One such business is D&R Henderson Pty Ltd, which produces laminated particleboard and other products. Based in Benalla, D&R Henderson is responsible for diverting 90 000 tonnes away from landfill since 2004. I wonder how many of us really understand the seriousness of the landfill issue and how much product we are pouring every day into landfill. This company, however, is doing something about the problem. But its executive director, David Henderson, is quoted in the *Border Mail* as having estimated that the carbon tax is costing his business $1 million a year. This is a business that does things to make a measurable difference to the environment and for local jobs in Benalla. But Labor and the Greens have imposed this tax on the company which prevents their business from expanding even further and tackling the problem of landfill.

In relation to other issues affecting Northern Victoria Region, I wish to comment on the stance on repealing the carbon tax taken by the Independent federal member for Indi, Ms Cathy McGowan. We talk about the damage being done to Australian businesses and families by this tax imposed by Labor and the Greens. But the list of those perpetrating this does not stop there. Independents are dangerous for one primary reason — you never know what you are voting for — and Ms McGowan is no exception.

Since being elected to federal Parliament only a few short months ago, Ms McGowan has already let down the voters of Indi, walking away from commitments she made to them in the lead-up to the election, when voters were led to believe that Ms McGowan was Liberal or Nationals leaning. Many voters I have spoken to now feel this was a complete fabrication — a throwaway line to get herself elected. Some of Ms McGowan's supporters are known to have gone around stating that Ms McGowan was Liberal or Nationals leaning, but this was a hoax on the voters of Indi. This also applies to local government elections. You just do not know what you will get when you vote for an Independent, and this is why Independents do not last in politics, because their constituents feel betrayed.

In the case of Ms McGowan, there was lots of hype and orange smoke, but it was all smoke and mirrors. Voters were led to believe that Ms McGowan would vote to

repeal the carbon tax, but that is like all her other backflips, like removing the Australian flag from the front of her office, which has made the people of Wangaratta very hurt and upset. She has backflipped, just like former Prime Minister Julia Gillard, who said to us, 'There will be no carbon tax under the government I lead'. Ms McGowan now supports the carbon tax as well, stating that while it is not perfect it is something. Ms McGowan is no conservative. Her decision showed complete disregard for Indi business owners, farmers, manufacturers and families. The voters of Indi are seething, increasingly disappointed and angry. Ms McGowan cannot deliver on any of her promises, and her constituents are left feeling duped and betrayed — and, let us face it, they have been.

The carbon tax hurts individuals, seniors, families and business, including the retail, hospitality and manufacturing sectors. The cost of living matters greatly to us all, and for many of the most vulnerable in our society it is the cost of energy that hits so hard. Jobs in regional areas are precious indeed, and the carbon tax has created a further barrier to employment and the establishment of new businesses. Frankly, we cannot afford this, especially in the context that the measure does not — even to the smallest extent — reduce the carbon emissions it sets out to address. There are other ways and better ways to do this — hearts and minds. While the carbon tax is in place, Australia continues to be uncompetitive in an increasingly competitive world. This is hurting Australia and is impacting measurably on jobs — let us be clear about that. For these reasons I am pleased to support the motion.

Hon. D. M. DAVIS (Minister for Health) — I rise in reply to briefly say that this is a sensible, practical motion that sends a clear signal from this chamber. I am disappointed by the opposition's attitude, because it is an important motion. The carbon tax has had a significant impact on seniors, Victorian businesses and health services across the entire economy. Importantly, whatever members' views about the carbon tax might be, the Australian people have already had their say. As a whole they voted, and they made their position clear. The mandate that Prime Minister Tony Abbott and the federal coalition have is a clear one. I ask all parties to respect that and to support wholeheartedly the decision of the Australian people to repeal the carbon tax.

House divided on motion:

Ayes, 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'Brien, Mr D. R. J. (*Teller*)
Drum, Mr	O'Donohue, Mr
Elsbury, Mr (*Teller*)	Ondarchie, Mr
Finn, Mr	Peulich, Mrs
Guy, Mr	Rich-Phillips, Mr
Koch, Mr	Ronalds, Mr

Noes, 18

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

Pairs

Ramsay, Mr	Viney, Mr

Motion agreed to.

CHILDREN, YOUTH AND FAMILIES AMENDMENT (SECURITY MEASURES) BILL 2013

Committee

Resumed from 1 April; further discussion of clause 1.

Hon. W. A. LOVELL (Minister for Housing) — Acting President, I seek leave to have Mrs Coote join me at the table.

Leave granted.

Ms MIKAKOS (Northern Metropolitan) — I am very pleased to be able to continue to ask some further questions of the Minister for Housing on this very important bill. On Tuesday I asked the minister about the five-year out-of-home care plan the Minister for Community Services, Ms Wooldridge, announced on 25 March, and whether that was going to fund any additional welfare places. The minister responded that there were going to be two 8-bed units with secure beds in them but they were not secure welfare facilities. When we are talking about secure beds, what does this mean?

Hon. W. A. LOVELL (Minister for Housing) — On 25 March the government announced a new plan to improve the out-of-home care system and $128 million

in investment to enhance residential care services. As one component of the new investment, the government committed to develop two 8-bed units to accommodate young people, with both regular and secure care available on site.

It is not the government's intention to develop further secure welfare services in the form that we know them. Rather, we intend over the next 12 months to design and develop a model that is capable of providing an alternative to secure welfare for high-risk young people or a step-down transitional option for those who may be frequently admitted to secure welfare. Development of this model will consider the need for secure arrangements, such as the capacity to lock down certain parts of the accommodation for limited periods of time as part of individual therapeutic behaviour management plans for children, and will involve the input of stakeholder groups in the design.

Should it be proposed that any new accommodation services have any lock-up facilities, this will require either further legislative amendment or gazettal, subject to the design that is ultimately agreed upon.

Ms MIKAKOS (Northern Metropolitan) — Minister Wooldridge's release dated 25 March states that the two 8-bed units will include both 'regular and secure care available on site'. Can the minister advise what the breakdown of the regular and secure beds will be?

Hon. W. A. LOVELL (Minister for Housing) — That will be subject to consultation and design work over the next 12 months.

Ms MIKAKOS (Northern Metropolitan) — If it is to go forward over the next 12 months, is it proposed that these units will not be open before the conclusion of the next 12 months?

Hon. W. A. LOVELL (Minister for Housing) — That is correct.

Ms MIKAKOS (Northern Metropolitan) — When will they be open?

Hon. W. A. LOVELL (Minister for Housing) — It will take about two years for them to become operational.

Ms MIKAKOS (Northern Metropolitan) — Where will these secure beds be located?

Hon. W. A. LOVELL (Minister for Housing) — The location has not been decided yet.

Ms MIKAKOS (Northern Metropolitan) — Has it been decided who will manage these secure beds? Will the units be managed by the Department of Human Services (DHS) or by community service organisations?

Hon. W. A. LOVELL (Minister for Housing) — I am informed that that is subject to further consultation.

Ms MIKAKOS (Northern Metropolitan) — There does not seem to be a great deal that has been concluded in this five-year plan. Can the minister advise whether these new secure beds will be subject to the provisions in this bill that relate to searches of residents, seizure of goods and the seclusion of residents?

Hon. W. A. LOVELL (Minister for Housing) — Only if they were to be gazetted as secure welfare services.

Ms MIKAKOS (Northern Metropolitan) — Earlier the minister said these new secure beds are not going to be secure welfare facilities, so she has now left open the possibility that they could be gazetted to become secure facilities. Can the minister give a definitive response as to whether or not these new 16 beds are going to be secure welfare facilities?

Hon. W. A. LOVELL (Minister for Housing) — As I said earlier, it is not the government's intention to develop further secure welfare services in the form that we know them. Rather, we intend over the next 12 months to design and develop a model that is capable of providing an alternative to secure welfare for high-risk young people or a step-down transitional option for those who may be frequently admitted to secure welfare. They are still in the design stage, and it would only be if some of those beds were to come under the secure welfare services.

Ms MIKAKOS (Northern Metropolitan) — The minister has referred to an alternative arrangement, but she has not exactly spelt out what that means. Can the minister advise whether, once these beds are up and running in the period beyond two years, a young person in that facility will be able to leave the facility? I am assuming that 'secure beds' means that the facility is in some way locked and that the young person is not able to leave. Will they have free entry in and out of the building?

Hon. W. A. LOVELL (Minister for Housing) — As I advised Ms Mikakos earlier, this is subject to consultation over the next 12 months and to design elements, so it would be decided in the consultation.

Ms MIKAKOS (Northern Metropolitan) — Has it not been concluded whether the young people in these secure beds will be able to go to school or to medical appointments? When the minister uses the word 'secure', that has certain connotations, so could the minister provide some further advice as to what ability children will have to leave the premises?

Hon. W. A. LOVELL (Minister for Housing) — I am advised that development of this model will consider the need for secure arrangements, such as capacity to lock down certain parts of the accommodation for limited periods of time as part of individual therapeutic behaviour management plans for children, and will involve the input of stakeholder groups in the design. Should it be proposed that any new accommodation service have any lockup facility, this will require either further legislative amendment or gazettal subject to the ultimate design that is agreed, as I told Ms Mikakos earlier.

Ms MIKAKOS (Northern Metropolitan) — As I understand it, they would only require gazettal. Why would it require legislative change in order for those facilities to be regarded as secure welfare facilities?

Hon. W. A. LOVELL (Minister for Housing) — In my answer I said to Ms Mikakos either legislative change or gazettal. If we were proposing something new, we would bring it back for legislative change, subject to the ultimate design that is agreed.

Ms MIKAKOS (Northern Metropolitan) — I am not finding the minister's answers very helpful. That is not very precise; either they need legislative change or they do not. Can the minister advise whether the secure beds would need to have legislative change? At the moment, the minister has indicated that they are not intended to be secure welfare facilities, but she has left open the door that they could become secure welfare facilities. If they are to do so, is the minister saying that they may or may not require legislation? Can she be a little bit more precise than that?

Hon. W. A. LOVELL (Minister for Housing) — As I advised Ms Mikakos, it will be subject to the ultimate design that is agreed. If we were to propose something new, we would bring it back for legislative amendment.

Ms MIKAKOS (Northern Metropolitan) — I am not getting very far here. Can the minister confirm whether the new secure beds will be subject to the reasonable force provisions set out in part 3 of this bill?

Hon. W. A. LOVELL (Minister for Housing) — Yes, they would be.

Ms MIKAKOS (Northern Metropolitan) — If that is the case, given that the minister has not advised whether these are going to be managed by Department of Human Services staff or by community service organisations, will the minister be endeavouring to ensure either that the agency trains its staff or that departmental staff are adequately trained in the application of these reasonable force provisions? Can the minister give me that assurance?

Hon. W. A. LOVELL (Minister for Housing) — Of course we will.

Ms MIKAKOS (Northern Metropolitan) — On Tuesday the minister referred to a proposed new community visitors program for secure welfare facilities. Will the community visitors be able to visit children in these secure beds?

Hon. W. A. LOVELL (Minister for Housing) — That would be subject to the design elements of this proposal over the next 12 months.

Ms MIKAKOS (Northern Metropolitan) — I find all of these answers astounding, given that the government was expected to announce its five-year plan late last year but announced it last week. There is a whole lot of detail that is yet to be concluded. With Minister Wooldridge's apparent focus in the out-of-home care plan on moving to a therapeutic care model for vulnerable children, what is the purpose of setting up another 16 secure welfare beds if the government is saying that it is moving away from that to a therapeutic care model?

Hon. W. A. LOVELL (Minister for Housing) — It is to increase the number of therapeutic supports for all children and also to provide a step-down option for those children who are repeat visitors to secure welfare services.

Ms MIKAKOS (Northern Metropolitan) — On Tuesday the minister said that the average occupancy across the two secure welfare facilities that exist at the moment is only 58 per cent. Why then does the government feel it is necessary to develop additional secure welfare beds?

Hon. W. A. LOVELL (Minister for Housing) — The numbers we gave the other day are averages, and on occasion the facilities are full. Sometimes children are required to stay longer than 21 days, and this provides a step-down version for those children who need support for longer than 21 days.

Ms MIKAKOS (Northern Metropolitan) — I accept that 58 per cent is an average. Is the minister

anticipating a spike in the number of children requiring further protection and therefore placement in a secure welfare bed?

Hon. W. A. LOVELL (Minister for Housing) — No.

Ms MIKAKOS (Northern Metropolitan) — Can a child challenge a decision to place them in these new secure welfare beds? To whom do they complain if they do not want to be placed there?

Hon. W. A. LOVELL (Minister for Housing) — Children can always challenge these decisions. They can formally challenge them, or they can make a complaint to their child protection worker. They can even complain to the Commission for Children and Young People or to the Ombudsman.

Ms MIKAKOS (Northern Metropolitan) — Presumably there is a poster on the wall where they can get Bernie Geary's phone number.

Hon. W. A. LOVELL (Minister for Housing) — Yes. We said that the other night.

Ms MIKAKOS (Northern Metropolitan) — On Tuesday the minister advised the chamber that a child would be placed in secure welfare because they were 'at substantial and immediate risk of harm'. The minister also confirmed that there had been occasions where a child had been removed from a residential care unit into secure welfare to get them away from paedophiles. Has a child who was placed in a secure welfare unit for this reason then been returned to the same residential care unit they came from?

Hon. W. A. LOVELL (Minister for Housing) — A child would only be returned to the same facility if there had been a comprehensive risk management assessment done and it were deemed safe to do so.

Ms MIKAKOS (Northern Metropolitan) — It has been put to me by the sector that that is a very regular occurrence — that children go into secure welfare for a few days and then are returned to the exact same residential unit they came from. That is because of a lack of capacity and a lack of alternatives in terms of placing a child in another facility. It has been put to me that that has also occurred in these types of situations where children have been placed in secure welfare because there have been paedophile rings preying on these children. Is the minister saying, then, that there has never been a situation where a child has been returned to the same residential care unit they had come from after they had been placed in secure welfare to get them away from paedophile rings?

Hon. W. A. LOVELL (Minister for Housing) — As I told the member, children are sometimes returned to the same residential facility but only after a comprehensive risk analysis is undertaken and it is deemed safe to do so.

Ms MIKAKOS (Northern Metropolitan) — Is the minister saying that this comprehensive risk analysis would take into consideration the fact that the child has been preyed on by paedophiles? Can the minister advise on that?

Hon. W. A. LOVELL (Minister for Housing) — I am advised that all the risk factors are considered, so yes, that would be taken into consideration.

Ms MIKAKOS (Northern Metropolitan) — Despite this risk analysis having been undertaken, have there been situations where children have been returned to the same residential unit they came from despite the department knowing that there had been paedophiles preying on these children?

Mr Lenders — Acting President, I draw your attention to the state of the chamber.

Quorum formed.

Hon. W. A. LOVELL (Minister for Housing) — Only where it has been deemed safe to do so.

Ms MIKAKOS (Northern Metropolitan) — How does the minister then explain cases where children have in fact been returned to the same residential unit they came from despite the knowledge that the department has had and that agencies have had about paedophile rings being in operation? How does the minister explain how that has happened despite the fact that this so-called risk analysis has occurred?

Hon. W. A. LOVELL (Minister for Housing) — Because it has been deemed safe to do so. It may be that the paedophile has been removed and so it has been deemed safe for the child's return.

Ms MIKAKOS (Northern Metropolitan) — Can the minister give me a guarantee then that no child has been returned to a residential care unit from a secure welfare facility when they were put in that facility in the first place as a result of paedophile rings?

Hon. W. A. LOVELL (Minister for Housing) — This legislation is dealing with the safety of children. This is about going to all lengths to make sure that children are safe. The questions that are being asked are not actually part of this bill at the moment. I would

have thought Ms Mikakos would have more questions to ask that actually relate to the bill.

Ms MIKAKOS (Northern Metropolitan) — I know that the government does not want to answer questions about this. These are very important issues. They are absolutely critical to the safety of Victorian children. This bill is about security arrangements for secure welfare services. If we cannot understand in what circumstances children go into secure welfare — why they are there in the first place — then the minister is failing in her duty to explain to the chamber what this legislation is about. I ask the minister to address the question.

Hon. W. A. LOVELL (Minister for Housing) — This bill is actually about dealing with children when they are in secure welfare services. It goes to the very heart of ensuring that children are safe, particularly while they are in secure welfare services.

Ms MIKAKOS (Northern Metropolitan) — It is absolutely critical that children are placed in a secure and safe environment. We have had the Minister for Community Services, Mary Wooldridge, admit that in the past 18 months she has known of paedophile rings preying on children in residential care units. One way these children can be made safe is by being placed in these secure welfare units. But if people in the sector are reporting that children are then going back to the same residential care unit that they came from — and this is not funny, Minister.

Hon. W. A. Lovell — I am not laughing.

Ms MIKAKOS — I want the minister to listen to my question.

Hon. W. A. Lovell — On a point of order, Acting President, I am very concerned that the member is reflecting on me by saying that I am not taking this seriously and that I am laughing when I am not. This is a serious matter, and I think we should return to the bill and get on with what is actually in it.

The ACTING PRESIDENT (**Mr Elasmar**) — Ms Mikakos to continue.

Ms MIKAKOS — It is very important that we get some clarity around these issues. This bill is about secure welfare facilities — the purpose of the bill is around secure welfare services — so we need to understand in what circumstances children are placed there and in what circumstances they are removed from these services as well. The minister is refusing to provide a guarantee — —

Honourable members interjecting.

Ms MIKAKOS — I think members of the government should be listening to this. The minister is refusing to provide a guarantee that children are not being placed back into a dangerous environment — into residential care units where they were preyed on by paedophiles in the first place. I ask the minister to provide that guarantee that children are not being returned into that unsafe environment.

Hon. W. A. LOVELL (Minister for Housing) — As I said, I can guarantee that before any child is returned to any residential unit there is a comprehensive risk management analysis done, and they are only returned when it is deemed safe to do so.

Ms MIKAKOS (Northern Metropolitan) — I note that the minister will not respond to my question. Clearly this risk analysis is failing children, because children have been returned, children have been at risk and children have been preyed upon. Clearly there is a problem here that the minister is failing to acknowledge.

I note that the Minister for Community Services, Mary Woodridge, in question time in the Assembly on 12 March acknowledged that she had had knowledge of these matters for 18 months. I ask the minister: would Minister Wooldridge have been advised through the category 1 incident reports when a child was being returned to residential care and the so-called risk analysis had taken place?

Hon. W. A. LOVELL (Minister for Housing) — I am advised that the minister receives category 1 reports on incidents and is briefed regularly on incidents, but she would not be briefed routinely on a child returning to a residential unit because a comprehensive risk management assessment would have been done and the child would only be returning if it was deemed safe to do so.

Ms MIKAKOS (Northern Metropolitan) — I note that on 12 March, in response to a question from the Leader of the Opposition, Minister Woodridge said the following:

> Category 1 incident reports come to me every single week with a review not only of what has occurred but of what has the response been, whether it has been effective and whether we have an assessment of what else needs to happen to make sure those children are safe and that there has been an appropriate response. On an ongoing basis I have had alerts in relation to each of these situations and an assessment of whether the response has been appropriate.

How can Minister Wooldridge be assured that the response has been appropriate if she has not been advised as to the suitability of the child being returned to a residential care unit?

Hon. W. A. LOVELL (Minister for Housing) — I am advised that if it is a category 1 incident, the minister is advised of actions that are taken for that child, but not every admission to a secure welfare service is a category 1 and therefore the minister is not routinely advised of the outcome.

Ms MIKAKOS (Northern Metropolitan) — In today's *Herald Sun* there is a report that states:

> Intervention orders have been taken out against seven men believed to be involved in the criminal network targeting young teens in care.

The *Herald Sun* further reports that several children have disclosed allegations of rapes and drug activities in state care. I understand that there were a number of children involved in these intervention order applications. I am not asking the minister to identify the children of course, but I ask if any of these children were previously placed in secure welfare to protect them from this paedophile ring.

Hon. W. A. LOVELL (Minister for Housing) — I am advised that those incident reports are not to do with this bill and that that information is an individual client matter that cannot be revealed.

Ms MIKAKOS (Northern Metropolitan) — The minister is refusing to say whether these children were placed in secure welfare for their protection. I note that the *Herald Sun* reported on 12 March that paedophile rings were operating in Dandenong, Shepparton and Melbourne's west. Had children in residential care in these locations been transferred to secure welfare to protect them from what is an obvious 'substantial and immediate risk of harm'?

Hon. W. A. LOVELL (Minister for Housing) — I am sorry that I cannot provide information. It concerns me that the member is asking about individual locations. There will be a small number of locations, and these could identify the children concerned.

Ms MIKAKOS (Northern Metropolitan) — According to the Auditor-General's report, at the time the report was prepared 504 children were in residential care. There have been allegations about paedophile rings in a number of suburbs of Melbourne and also in regional areas. I would have thought it would be difficult to identify the children given the number of locations involved. Is the minister refusing to indicate whether any of these children were placed in secure welfare for their protection?

Hon. W. A. LOVELL (Minister for Housing) — I am sorry, but we are not going to speak about individual cases.

Ms MIKAKOS (Northern Metropolitan) — I have not asked the minister to identify any children, and I am not asking her to identify their names or locations, but rather to advise whether they were placed in secure welfare for their protection. I note the minister's refusal to respond. I will move on to another question.

The Victorian Auditor-General's report into residential care services for children notes on page 27:

> Inappropriate placements, based on bed availability rather than on matching the needs of a child with the needs of children already in a unit, was one of the most common issues raised by CSOs during the audit.

If a child has been moved from a residential care unit because they are being preyed upon by paedophile rings and then they are returned to the same unit, is this not contrary to what the minister said on Tuesday when she claimed that children were not being placed in inappropriate placements?

Hon. W. A. LOVELL (Minister for Housing) — I am advised that the best available decision is always made for each individual child. The Victorian Auditor-General's Office (VAGO) report did not include the conclusion that the member is describing or alluding to. What the VAGO report does state is that the residential care system is operating over capacity. It states:

> Insufficient capacity affects the quality of care children receive. For example, placement decisions are often based on bed availability, rather than on matching the needs of highly vulnerable children with the needs and behavioural characteristics of the children who are already in residential care units. Poor placement can lead to an incompatible mix of children in a residential unit, with implications for safety and children's ability to achieve positive outcomes.

The VAGO report refers to secure welfare services in the section on children who are high risk only by way of description of the service. On page 12 the report states:

> Another strategy to manage children who are at high risk is to place them in secure welfare services. There are two single-sex secure welfare services in Victoria, each accommodating 10 children for a period of no more than 21 days. A lack of adequate accommodation is not by itself a sufficient reason for placing a child in a secure welfare service — the child has to be at substantial and immediate risk of harm.

> Absconding and substance abuse are the two most common reasons for children being placed into secure welfare. For a child at substantial and immediate risk of harm, placement in a secure setting provides the only suitable option for ensuring the child's safety and wellbeing.

Ms MIKAKOS (Northern Metropolitan) — I think that was the answer to another question. I was not asking the minister about inappropriate placements in secure welfare; rather, I was asking about inappropriate placements in residential care units. I note that the Auditor-General commented on concerns expressed by community service organisations that inappropriate placements are occurring in residential care units. However, I find the minister's answer quite concerning, because if this is reflective of the government's attitude and the department's approach to the Auditor-General's report, it is obvious why they have missed the point in their out-of-home care plan.

I will recite the Auditor-General's words on page xi of the report. He is not here commenting on the sector's view. The report states:

> Insufficient capacity affects the quality of care children receive. For example, placement decisions are often based on bed availability, rather than on matching the needs of highly vulnerable children with the needs and behavioural characteristics of the children who are already in residential care units. Poor placement can lead to an incompatible mix of children in a residential unit, with implications for safety and children's ability to achieve positive outcomes.

I have heard of cases, which have been reported in the media, of children being placed in inappropriate placements — for example, young children being placed in units with older children who display sexualised behaviour. In some cases these older children are then grooming the younger children on behalf of paedophiles. This is exposing these children to great and grave risks of harm. I am very concerned that the minister is putting to me, the chamber and the public that there is not a problem here in relation to inappropriate placements, when clearly the Auditor-General has identified that as an issue in his report.

Clearly the minister got it wrong on Tuesday when she claimed that there was not an issue of inappropriate placements. She is repeating that now. She is talking about secure welfare. I ask her: does she acknowledge that inappropriate placements are occurring, as identified by the Auditor-General? I will then ask the minister a further question.

Hon. W. A. LOVELL (Minister for Housing) — The placement of children is always made within the best mix of options that are available. This bill actually strengthens support for these children and improves the system that was left to it by the Labor government. It was obviously a broken system. That is why the Auditor-General had a look at this system, and that is what the Minister for Community Services is trying to clean up.

Ms MIKAKOS (Northern Metropolitan) — I know the standard response to any problem is to ignore the fact that this government has been in office for three and a half years. I note that the peak body for the sector, the Centre for Excellence in Child and Family Welfare, in its media release on 12 March called on the government to take 'immediate, decisive action' in response to these media revelations of paedophile rings. It particularly called on the government to immediately:

> … improve the level of supervision and support available for children in residential care units by ensuring that at least two staff members are on duty at any one time.

It is therefore disappointing that the minister's five-year out-of-home care plan does not address this issue. There is no funding in the plan to lift staffing levels in what are referred to as RP-2 units, which have only a single staff member available to supervise children, to the higher level RP-3 units, which have two staff members available. Where there is only one staff member available and a child goes missing, the staff member cannot leave the unit to go looking for them.

The Auditor-General's report refers to this on page 10, where it shows a 49 per cent increase in the number of category 1 incidents reported in residential care from 2011–12 to 2012–13. I note for the benefit of the Minister for Housing, who has responsibility for this bill in this chamber, that that was during this government's watch — during its term of government. The Auditor-General said:

> This was mainly due to a marked increase in absent/missing person reports.

He went on to say:

> Missing children are at a heightened risk of sexual exploitation.

Given that there are so many children absconding and given that there are reports of paedophile rings, which the minister has admitted she has known about for 18 months, I am astounded that the minister in this chamber advised on Tuesday and has repeated today that there is only 58 per cent occupancy in secure welfare. I ask the minister: is the government confident that of the 504 children in residential care only an average of 11 of them — given that there are only 20 beds in the system — need to be protected from paedophile rings by being placed in secure welfare?

Hon. W. A. LOVELL (Minister for Housing) — I think the member is actually mixing up a whole lot of things here. She is asking about the average number of children who are in those facilities, and I am not about to speculate on average numbers compared to the total number of children at any given time.

Ms MIKAKOS (Northern Metropolitan) — It comes down to the issue of the operations of the facilities and whether or not they are at full occupancy. The minister has indicated to the chamber that there is an average of 58 per cent occupancy in secure welfare. The Auditor-General has said there were 504 children in residential care as at 30 June 2013. We know also that there are only 20 beds in secure welfare facilities at the present time. So, using that average of 58 per cent, that would mean there would be an average of only 11 children in secure welfare facilities.

People are saying there is an endemic problem of paedophile rings preying on children in residential care; therefore, I find it astounding that there are 504 children in the system but only an average of 11 children have been identified as needing to be protected from paedophile rings at any one time and being placed in secure welfare. Can the minister say she is confident, if this is the case, that the remaining number of children in residential care are actually safe?

Hon. W. A. LOVELL (Minister for Housing) — What I am prepared to say is that every care is taken to make sure that a child is safe, and they have a case plan that goes to every length to assure this.

Ms MIKAKOS (Northern Metropolitan) — I put it to the minister that clearly the system is not working. If there are children who, as recently as yesterday, have gone to Children's Court and obtained intervention orders, clearly the system has failed those children. It is of the utmost seriousness that there are so many children in residential care at the moment who are falling victim to sexual predators. The fact that the government has not even responded to these issues in its out-of-home care plan is just appalling. The government had an opportunity, after these revelations came out, to address these issues and respond to them, and it has failed to do so. I put it to the minister that the out-of-home care plan is a failure. It will not meet the increasing demand over the next five years, but most seriously it will not address this issue of paedophile rings.

Hon. W. A. LOVELL (Minister for Housing) — What I can say is that this minister inherited a system that was in crisis and was not working. This minister initiated the vulnerable children inquiry, and that inquiry has made a number of recommendations, which this minister is implementing. This minister cares about children in Victoria. She cares about their safety. They were failed by the Labor government, and she is cleaning up Labor's mess.

Ms MIKAKOS (Northern Metropolitan) — That is an extraordinary claim. There are recommendations of the Cummins inquiry that are yet to be implemented. One of those recommendations was the development of the five-year out-of-home care plan. It took two years to get that plan. In relation to Aboriginal children, those children are still waiting. They represent one-fifth of the population in out-of-home care. There are more than 1000 Aboriginal children in out-of-home care at the moment, and there is no plan for those children. Therefore I put to the minister that the Minister for Community Services, Minister Wooldridge, has indeed failed children in the child protection system.

Hon. W. A. LOVELL (Minister for Housing) — I disagree with the member and the way she describes this matter. These things take time to implement and change. Labor had 11 years in which it failed these children, and it did not even conduct an inquiry into the mess it was creating. This minister is working through these recommendations from the vulnerable children's report, and she will implement them and provide greater safety for children in Victoria.

Ms MIKAKOS (Northern Metropolitan) — I will allow Ms Hartland to ask her questions in a moment, but I say that Minister Wooldridge has not addressed this issue of paedophile rings. I am very disappointed by the responses of the Minister for Housing to a number of the questions I have put to her tonight in respect of those issues. I ask the government to reflect on this matter and the concerns that have been expressed by the sector and the fact that the fundamental issue about staffing levels is not in the plan. Despite whatever rhetoric might have come out subsequently, that is not in the plan; there is no funding to address that particular issue. We have a state budget coming in a few weeks time. I will be watching to see whether the minister addresses this issue in that state budget.

Ms HARTLAND (Western Metropolitan) — Ms Mikakos has asked a number of questions that I had intended to ask. I will follow up from what she has said by saying that I think her questions have been incredibly important. Nothing is more serious than child protection. It is one of those portfolios that, no matter which government has it, is an incredibly difficult portfolio. We should not politicise it by saying

one government or the other got it wrong; it is hard for everybody.

My question is about the issue of reasonable force. It is an issue I raised during the briefing. I would like some definitions around what reasonable force is. I have particular concerns about especially frisks and unclothed searches, which I call and will continue to call strip searches. What are we defining as reasonable force?

Hon. W. A. LOVELL (Minister for Housing) — In the unclothed searches there will be no force applied. A child will be counselled and advised what will happen to them during the unclothed search. They will be counselled and hopefully participate willingly in it because it will be explained to them in detail. The department has ways of dealing with children that do not require force when it comes to those unclothed searches.

In relation to the definition of 'reasonable force', the bill will provide that physical force by carers, including corporal punishment or intimidation, is prohibited in secure welfare services and more broadly in out-of-home care. Reasonable force is used as a therapeutic tool and in particular circumstances to support and care for children and young people in secure welfare services and in out-of-home care. The bill will enable, in limited circumstances, the use of reasonable force when it is necessary to prevent children from harming themselves or others, or where a child's behaviour presents an immediate threat to property which may pose a significant risk of harm to the child or others. Reasonable force does not include corporal punishment or physical abuse as those actions are prohibited in the bill's provisions, which are modelled on the prohibited actions applicable in youth justice custodial services that have been in force since 2007.

Examples of when reasonable force may be used include grabbing a child to prevent them from running onto the road, holding a child to prevent them from self-harming and shepherding a child away from harm. Reasonable force is a term which is well understood at common law. Force is reasonable where it is proportionate and reasonably necessary to effect the desired result — for example, to prevent harm to others. It is preferable to use this term, which has an extensive body of case law behind it, rather than attempt to define in legislation what is reasonable in every context. On almost all occasions it will not be reasonable to use any force at all as there will be another more effective, less coercive option available which makes it unnecessary to use any force. It is intended that having physical force prohibited, except in limited circumstances, along with an explicit ban on corporal punishment and physical abuse, will help to protect children in out-of-home care from physical force that is in any way unnecessary or excessive.

The provisions in the bill state clearly where physical force must not be used and therefore both limit the use of force and strengthen the advice to carers about its use. Common-law provisions would apply in addition to disciplinary proceedings. All reports of physical assault must be reported to police. Each use of reasonable force will be recorded in the department's incident reporting management system.

Ms HARTLAND (Western Metropolitan) — I asked the minister a really simple question: what is reasonable force? Is it a child being kept in a prone position on the floor? Is it a child being held against a wall? Is it a child being restrained? Again, I ask: what is reasonable force? I understand all the issues around case law et cetera. I asked this question in the briefing. I do not think it is that difficult. Someone should be able to tell me what the bill means by reasonable force. Let us start with the prone position. Will the prone position be used?

Hon. W. A. LOVELL (Minister for Housing) — I am advised that reasonable force is what is reasonable commensurate with the child's behaviour. I will just go through again a few examples of when reasonable force may be used. They include grabbing a child to prevent them from running onto the road, holding a child to prevent them from self-harming and shepherding a child away from self-harm. As I also said before, reasonable force is a term well understood at common law and force is reasonable when it is proportionate and reasonably necessary to effect the desired result — for example, to prevent harm to others. It is preferable to use this term, which has an extensive body of case law behind it, rather than attempt to define in legislation what is reasonable in every context. It has to be commensurate with the level of the child's behaviour.

Ms HARTLAND (Western Metropolitan) — I thank the minister for reading the same answer. I asked the minister if, in any circumstances, the prone position would be used as a means of reasonable force?

Hon. W. A. LOVELL (Minister for Housing) — The department advises that it needs to have a definition of Ms Hartland's version of the prone position because that may make a difference to the answer.

Ms HARTLAND (Western Metropolitan) — I define the prone position as being when a child is put on the ground, face down and being forced into that position. It is a position that is often used and referred to as reasonable force in other circumstances. That is the position to which I am referring.

Hon. W. A. LOVELL (Minister for Housing) — I am advised that only if it was appropriate to do so and it would be dependent on the age of the child, the size of the child and the circumstances of the situation.

Ms HARTLAND (Western Metropolitan) — That really concerns me because I can only presume that the minister and the department are aware of the fact that the prone position is extremely dangerous and there have been at least two deaths that I am aware of: one in a supported residential service; and one at the Crown Casino, I think it was approximately 18 months ago, when a person was kept in the prone position and suffocated. I really need this to be defined. This is really serious.

Hon. W. A. LOVELL (Minister for Housing) — I agree that this is really serious. The safety of the child is the most serious thing, and reasonable force is what is needed to ensure the safety of the child. If that child is about to jump off a bridge or run under a car, reasonable force may be necessary to save the child's life.

Ms HARTLAND (Western Metropolitan) — I totally acknowledge what the minister is saying. To assist a child in that situation by grabbing their hand or moving them out of danger is entirely different from what I am talking about. I am talking about the prone position, where more harm can be done. What I am hearing from the minister and the department is that in some circumstances the department is prepared to say that the prone position and reasonable force are acceptable.

Hon. W. A. LOVELL (Minister for Housing) — I am advised that the use of force is subject to assessment of a child's treatment needs. If restraint is used, it is generally approved by mental health treaters. Prone positions are not utilised without specialist input and are very rarely utilised.

Ms MIKAKOS (Northern Metropolitan) — I am pleased that Ms Hartland has raised some very good questions, which I was intending to pursue in discussion of clause 8. Given that we are on this issue, and given the examples the minister has given and the way she has tried to portray the definition of 'reasonable force', I point out that in new section 161B, inserted by clause 8, which relates to reasonable force, there is a reference to 'damaging property'. This is something that concerns me greatly. We talked a little about this on Tuesday. Essentially this clause enables reasonable force to be used if the child is not harming themselves or another person but is only damaging property. That is a very different scenario to the examples the minister has just given. I ask the minister to advise whether reasonable force could be used against a child in out-of-home care — because part 3 does not just relate to secure welfare; it relates to children in any type of out-of-home care — only because they are damaging property at the time.

Hon. W. A. LOVELL (Minister for Housing) — The property damage needs to be taken into account with the risk to the child as well. As we said on Tuesday, if a child is on a rampage and damaging property, that rampage is putting the child at risk as well. If they are breaking windows, it is putting the child at risk of slashing themselves while they are doing that. It is not just about kicking a desk and breaking a leg off it or smashing a chair; it is about a situation where the child would be putting themselves in danger by damaging property.

Ms MIKAKOS (Northern Metropolitan) — I read that clause differently from the minister. Essentially that clause has three alternative limbs to it. It enables reasonable force to be used because a child is either harming themselves or is in danger of harming another person or is damaging property. In the examples the minister has just given, there would have been no need to include a reference to damaging property in that clause at all because it could have been picked up by the first part of that clause, which relates to harming himself or herself. Given that the clause is so broad and has those three options, it is possible from the way I read this — and it is going to be legal — for reasonable force to be used only because a child has broken a piece of furniture. Can the minister provide further advice on this?

Hon. W. A. LOVELL (Minister for Housing) — I am advised that reasonable force is used as a therapeutic tool in particular circumstances to support and care for children who may be at immediate risk of injury or harm or where no other option to resolve the situation is available. I am told that the experts know the signs of what would be the beginning of further problems for a child. Things like them ripping off skirting boards et cetera may be the beginning, but they know that that child's behaviour will heighten from there, and it is better to apply reasonable force at that point than to wait until the child has harmed themselves.

Ms MIKAKOS (Northern Metropolitan) — That is a mind-boggling answer that the minister has just given. The minister has said that reasonable force is a therapeutic tool. I find that extraordinary. I am shocked by that. Here we are encouraging parents not to smack their children, but the minister is saying that it is therapeutic for the kids to have reasonable force applied to them because they are in out-of-home care. I find that extraordinary.

I come now to looking at the wording of the clause, which talks about reasonable force being able to be used to prevent a child — —

Hon. W. A. Lovell — On a point of order, Acting President, I think we are still on clause 1 of the bill, yet we are talking about clause 8 and new section 161B.

Ms MIKAKOS — On the point of order, Acting President, I am happy to leave that until we get to clause 8. I am pursuing this because Ms Harland was asking questions around the definition of 'reasonable force'. I am happy to wait until whatever point in the committee stage the minister would like to respond to this. I am happy to wait until later in the day, perhaps much later in the day.

Honourable members interjecting.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! Ms Mikakos! I ask members to come to order. I call Ms Mikakos and ask her to confine her questions to clause 1.

Ms MIKAKOS — I am absolutely determined to ensure that we get some clarity around this particular bill.

Honourable members interjecting.

Ms MIKAKOS — If the minister's colleagues are not interested, then that says a lot about them.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! I ask Ms Mikakos to come back to the bill.

Ms Hartland — On a point of order, Acting President, this is a really serious bill and I am trying to listen to both the questions from Ms Mikakos and the answers from the minister. The commentary makes it very difficult and makes me think that government members do not think this is a very serious bill. Could you bring them to order so I can hear the answers from both sides?

The ACTING PRESIDENT (**Mr Elasmar**) — Order! I think we have dealt with this issue.

Honourable members interjecting.

Ms MIKAKOS — I am not quite — —

Ms Hartland — On a point of order, Acting President, I am really trying to listen to the questions and answers. I ask you to bring those on the other side of the chamber to order so that I can listen to the questions and answers.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! I say to the members of the government that I understand how important this bill is. We all need to listen. I call Ms Mikakos again, without any interjections.

Ms MIKAKOS — I am not quite clear whether the minister wishes me to wait to pursue this question until we get to clause 8. We are discussing this issue, and it seemed the most logical point for me to pursue it.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! I ask Ms Mikakos to ask questions relating to clause 1.

Ms MIKAKOS — I will come back to this issue when we deal with clause 8.

Hon. W. A. LOVELL (Minister for Housing) — I would just like to make a comment. This is an extremely serious issue. We are happy to sit here all night and answer questions on this issue because the coalition takes it so seriously. That is why so many of my colleagues are here listening to this debate, because they are interested. I note that there are not too many of Ms Mikakos's colleagues in the chamber. It is disappointing that Ms Mikakos has just indicated that she is not here because of the seriousness of the bill. She intends to keep Parliament going because she thinks she can prevent some of our members from attending a dinner that they might wish to attend. To keep Parliament going — —

Ms Mikakos — On a point of order, Acting President, that is an extraordinary claim by the minister.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! There is no point of order. Are there any further questions on clause 1?

Ms Mikakos — The point that I was making is that some members opposite might prefer to be at the dinner — —

The ACTING PRESIDENT (**Mr Elasmar**) — Order! There is no point of order. Are there any further questions on clause 1?

Ms HARTLAND (Western Metropolitan) — If I could ask my question without assistance, this is an incredibly serious bill and I am trying to understand it. I was very concerned, as was Ms Mikakos, when the minister used the term 'reasonable force has a therapeutic benefit'. I would like the minister to explain what she means by 'therapeutic benefit' when she combines it with reasonable force. I do not understand that either.

Hon. W. A. LOVELL (Minister for Housing) — What is meant by therapeutic is that it is part of a holistic approach to the child's safety. It would be part of their therapeutic plan, which would be developed in consultation with the therapist in the interests of the child's safety.

Ms HARTLAND (Western Metropolitan) — I still do not understand what the minister means. Could she give an example of when reasonable force is used in a therapeutic setting?

Hon. W. A. LOVELL (Minister for Housing) — Can the member repeat the question?

Ms HARTLAND (Western Metropolitan) — I do not understand how reasonable force would be used in a therapeutic setting. I would like an example of what the minister means by that.

Hon. W. A. LOVELL (Minister for Housing) — I have given several examples already. Reasonable force may include grabbing a child to prevent them from running onto a road, holding a child to prevent them from harming themselves or restraining a child who is attempting to assault another child.

Ms HARTLAND (Western Metropolitan) — I completely understand all those examples, but they are about preventing a child from harming themselves. I am asking the minister a very narrow question about how this has been talked about as somehow being part of a therapeutic process. What the minister has described is stopping a child from harming themselves. I am asking the minister: how is reasonable force used in a therapeutic way?

Hon. W. A. LOVELL (Minister for Housing) — I am advised that, as I said, it is part of a child's therapeutic plan. It is early intervention to stop them from escalating their behaviour to the point where they do harm themselves.

Ms HARTLAND (Western Metropolitan) — Reasonable force and therapeutic setting — I understand why reasonable force could be used to stop a child from harming themselves. I do not understand what the minister means by using this in a therapeutic situation.

An honourable member interjected.

Ms HARTLAND — If I could be allowed to ask the question without commentary, I think this is an incredibly serious bill and it should be debated without politics. It is about the care of children. I would like to be able to understand this. It is very, very important. I do not think it is an unreasonable question.

Hon. W. A. LOVELL (Minister for Housing) — As I have already said, it is part of a holistic plan for the management of the child's behaviour. It is early intervention to stop it from escalating to a point where the child harms themselves. The therapeutic plan would be put together by the specialist who is assisting the child, a person who would know the child's behaviour, risk and capabilities. This would not be done lightly.

Clause agreed to; clauses 2 to 4 agreed to.

Clause 5

Ms MIKAKOS (Northern Metropolitan) — I note that the provision on delegation in proposed paragraph (c) of section 17(1) of the principal act relates to paperwork being signed in respect of the delegation of power to approve security orders and allows for a period of seclusion of more than 24 hours to occur. Given that in response to another question I asked the minister on Tuesday she indicated to the committee that the average period for seclusion was, I think, 20 minutes, why did the government think it necessary to allow for periods of seclusion of more than 24 hours to be included in this bill?

Hon. W. A. LOVELL (Minister for Housing) — I am advised that this clause is only to provide for extremely rare and exceptional circumstances, which may include a child suffering from mental health issues where the child is unable to be transferred to another facility and those in charge are trying to bring the help that is needed for the child to the child. It would only be for the protection of the child.

Ms MIKAKOS (Northern Metropolitan) — I find that troubling because I would have thought that if a child was so seriously ill that they needed to be in seclusion for more than 24 hours they should not be in a secure welfare facility and they should be transferred to an appropriate medical facility.

I note that this clause talks about seclusion of more than 24 hours in relation to secure welfare services but also a period of isolation of more than 24 hours in respect of

youth justice facilities. I understand the provisions in relation to youth justice facilities were in the 2011 bill. Can the minister advise whether the previous legislation for youth justice facilities allowed for isolation of more than 24 hours?

Hon. W. A. LOVELL (Minister for Housing) — Yes, it did.

Ms HARTLAND (Western Metropolitan) — There will be a register of incidents regarding seclusion; will that be subject to an independent review?

Hon. W. A. LOVELL (Minister for Housing) — Yes.

Ms HARTLAND (Western Metropolitan) — Who will do that review?

Hon. W. A. LOVELL (Minister for Housing) — I am advised that it can be done by the Commission for Children and Young People, the Ombudsman or any other body that has the authority to request that information.

Ms HARTLAND (Western Metropolitan) — Is it an automatic thing that those organisations would come and review that register, or does that process need to be triggered? Is it the child who would ask for the review? How would that process occur?

Hon. W. A. LOVELL (Minister for Housing) — I am advised that would be subject to the commission, the Ombudsman or the other bodies requesting that information.

Ms HARTLAND (Western Metropolitan) — The question I actually asked the minister was: how would it be triggered? Would they do it automatically, or is it because someone asks them to do it? I am concerned that although they can review it, unless it is part of an automatic process these incidents could be registered but nobody would look at them for years and years.

Hon. W. A. LOVELL (Minister for Housing) — I am advised that when this bill passes the Commission for Children and Young People will put in place its requirements for reviewing these things. It may choose to review the register weekly or at different intervals, but it will be up to the commission.

Ms HARTLAND (Western Metropolitan) — If the commission decided not to have a process for review, we could literally have a situation where, yes, the incidents are being recorded but nobody is reviewing them.

Hon. W. A. LOVELL (Minister for Housing) — The department will have its own internal review processes around these registers. As your question went, it was about independent review. It is up to the independent reviewer to request that information.

Ms MIKAKOS (Northern Metropolitan) — In relation to youth justice facilities, can the minister advise whether the isolation will always be in the young person's cell, or will they be removed during that period and put in another isolation room?

Hon. W. A. LOVELL (Minister for Housing) — Isolation or seclusion?

Ms Mikakos — In youth justice facilities they are referred to as isolation.

Hon. W. A. LOVELL — Then you are talking about youth justice.

Ms Mikakos — Yes, youth justice.

Hon. W. A. LOVELL — In a youth justice facility it could be either their room or in a special facility.

Ms MIKAKOS (Northern Metropolitan) — On Tuesday the minister advised that in secure welfare children in seclusion are monitored every 15 minutes. In youth justice is there an equivalent requirement, or is there a CCTV live feed where the child is monitored?

Hon. W. A. LOVELL (Minister for Housing) — I am advised that both apply. They are monitored every 15 minutes as well as by CCTV.

Clause agreed to.

Clause 6

Ms MIKAKOS (Northern Metropolitan) — I note that new section 44 refers to gazettal of various services and it refers to secure welfare services, but it also refers to what is termed 'a service as a community service'. I note that on Tuesday I asked the minister about Hurstbridge Farm, and she indicated that was not a secure welfare service. Can the minister advise whether Hurstbridge Farm, which I understand is a Department of Human Services-run facility, falls into this category of a service as a community service?

Hon. W. A. LOVELL (Minister for Housing) — I am advised that Hurstbridge Farm is considered a community service facility that is run by the department.

Ms MIKAKOS (Northern Metropolitan) — If it is not a secure welfare service, can the minister indicate to

the committee the nature of this facility? Is it a 'step-down' type of secure facility, as you described these new beds that are going to come on stream?

Hon. W. A. LOVELL (Minister for Housing) — I am advised it is not a secure welfare service; it is a residential service for 10 to 14-year-olds. It has no lockup facilities, but it is used for some of those children who are at high risk.

Ms MIKAKOS (Northern Metropolitan) — These new secure beds that we were discussing earlier that are going to be included in the out-of-home care plan, will they also fall into this category of a service as a community service as well?

Hon. W. A. LOVELL (Minister for Housing) — As I advised earlier today, that is subject to the design. It is still to be decided whether they will be classified as secure welfare services or community services. It is subject to the design and will be decided over the next 12 months in consultation with the community sector.

Clause agreed to.

Clause 7

Ms MIKAKOS (Northern Metropolitan) — In relation to clause 7, I firstly come to the definition of 'staff member' in the new definitions included in proposed new section 72A. These new definitions all relate to secure welfare services, and as I understand them they are managed by the Department of Human Services. I am asking the minister whether the definition of 'staff member' extends beyond DHS employees? That is the way I read that particular definition.

Hon. W. A. LOVELL (Minister for Housing) — I am advised that only refers to people who are employed by DHS.

Ms MIKAKOS (Northern Metropolitan) — The bill refers to a person:

> … who is employed or directly engaged in the care of the child residents …

I would have thought that the reference to 'directly engaged' could suggest someone who is a contracted staff member. Could the minister clarify that they will be DHS employees?

Hon. W. A. LOVELL (Minister for Housing) — I am advised that they have to be employed by DHS, but they may be temporary contractors who are brought in or people who are employed by DHS under a temporary contract.

Ms MIKAKOS (Northern Metropolitan) — Can the minister advise, then, whether contract staff, including casual staff, are used routinely in secure welfare?

Hon. W. A. LOVELL (Minister for Housing) — I am advised that it is not uncommon but that they must be trained people and that it is for dealing with temporary absences of staff or with fluctuations in the number of young people in the facility.

Ms MIKAKOS (Northern Metropolitan) — Can the minister advise whether staff are being moved back and forth between youth justice facilities and secure welfare?

Hon. W. A. LOVELL (Minister for Housing) — Yes. I am advised that trained staff can be moved between facilities to cope with unexpected leave or with fluctuations in the numbers.

Ms MIKAKOS (Northern Metropolitan) — Given that secure welfare facilities are for children in the child protection system and not in the youth justice system, I find that an unusual state of affairs. Can the minister advise whether the government takes the view that it is appropriate to have staff who are trained to deal with young offenders looking after troubled children who are in the child protection system?

Hon. W. A. LOVELL (Minister for Housing) — I am advised that staff do move across the two, but they are selected on their capabilities of understanding the difference between the two and are separately trained in both levels of care.

Ms MIKAKOS (Northern Metropolitan) — On Tuesday I asked the minister about training issues, and she indicated that staff who work in secure welfare acquire a diploma in youth justice, which is what I believe the minister said. How is that an appropriate level of training for staff who are working with children in the child protection system?

Hon. W. A. LOVELL (Minister for Housing) — I am advised that the diploma of youth justice is the only national qualification available in this area and that it has been mapped against the requirements for secure welfare services. There is no diploma of secure welfare services, so the diploma of youth justice maps against the needs for secure welfare services and is deemed to be the appropriate level of qualification.

Ms MIKAKOS (Northern Metropolitan) — But there are qualifications available for child protection, so are the staff working in the secure welfare facilities required to have appropriate child protection qualifications as well?

Hon. W. A. LOVELL (Minister for Housing) — The other night we went through the training requirements for those who are working in secure welfare services, but I am happy to read those into the record again.

All new recruits undergo fitness and psychological testing and complete a four-week induction program, together with enrolment in a diploma of youth justice. This training includes increasing staff members' understanding of child and adolescent development and the impact of abuse, neglect and trauma, and their understanding of a therapeutic approach and behaviour management techniques appropriate to managing this client group. All staff are trained in preventing occupational violence, with regular refresher courses. This training emphasises early intervention strategies in order to minimise the use of force and restraint. All staff are certified in first aid, and all staff are encouraged to have, at a minimum, a certificate IV in community services, youth work or similar.

Ms MIKAKOS (Northern Metropolitan) — That is for recruits. Can the minister advise if all existing staff meet all those qualification requirements?

Hon. W. A. LOVELL (Minister for Housing) — I am advised that all current staff are already trained. Some of them actually have levels of qualification that are higher than this, and they are deemed to be meeting the appropriate standard. There are industrial implications for requiring them to undertake the additional training, but they are already trained to a commensurate level.

Ms MIKAKOS (Northern Metropolitan) — Do the contract staff and casual staff coming in meet all these training requirements, including qualifications in child protection or community services?

Hon. W. A. LOVELL (Minister for Housing) — I am advised that it would be desirable for them all to have those qualifications. At a minimum they have to undertake the four-week induction, and if they do not have the full qualifications, they would then be shadowed by an existing staff member.

Ms MIKAKOS (Northern Metropolitan) — I want to move on to some other issues. The principal act allows for the child to be placed into secure welfare for a maximum uninterrupted period of 21 days and then allows for an extension of a further 21 days. Can the minister advise whether the child would be able to leave the premises for any circumstances during that period, and what would be the circumstances?

Hon. W. A. LOVELL (Minister for Housing) — I am advised that in certain circumstances leave can be given. They would be accompanied by a suitable chaperone, and this would be for things like dental appointments, medical appointments, perhaps a funeral or something like that.

Ms MIKAKOS (Northern Metropolitan) — When the child re-enters the facility, are they then searched again?

Hon. W. A. LOVELL (Minister for Housing) — As they have remained in care, generally not and only in circumstances where it is suspected that they may have hidden something on their person or be trying to smuggle something back in.

Ms MIKAKOS (Northern Metropolitan) — As I have raised before, we are talking about very troubled, vulnerable children who in some cases have been victims of sexual assault, and I would hope that searches are only done where there is a strong and reasonable belief that they are bringing in contraband or something that is going to put them or others at risk.

I want to move on now to the seizure provisions. Can the minister advise whether the new seizure register to report items has already been implemented, or is the government waiting for the passage of this bill?

Hon. W. A. LOVELL (Minister for Housing) — It has already been implemented.

Ms MIKAKOS (Northern Metropolitan) — Sorry, I should have asked in relation to the searches. Are records kept of searches? Is there a register for them as well?

Hon. W. A. LOVELL (Minister for Housing) — There is a register.

Ms MIKAKOS (Northern Metropolitan) — Does the register record unclothed searches? Does it give a breakdown of the type of search that has occurred?

Hon. W. A. LOVELL (Minister for Housing) — Yes, it does.

Ms MIKAKOS (Northern Metropolitan) — Does it record, if there is an unclothed search, whether there was any objection or complaint recorded by the child? Essentially, if there are complaints made, do those get recorded as well?

Hon. W. A. LOVELL (Minister for Housing) — Yes, they do.

Ms MIKAKOS (Northern Metropolitan) — Turning to the issue of seclusion, the bill provides for a child in secure welfare to be locked in seclusion for up to 24 hours and, as I indicated in the delegation provisions, perhaps even beyond that time if that is authorised. That seems very excessive to me. I make the comparison with solitary confinement in an adult prison — and the minister might dispute this comparison — where the prisoners are allowed out for an hour a day. If a child were to be put into seclusion for such a long period of time, would they be given any time to go out into the yard to exercise or to see visitors?

Hon. W. A. LOVELL (Minister for Housing) — As I advised the other night, the average time for seclusion is only 20 to 30 minutes, and that is because children are let out the moment their situation de-escalates, but during that time staff would still be going into the room trying to calm the young person or taking them a glass of water. But if children were in a heightened state of anxiety and were still at risk of harming themselves, it would be a danger to let them out into any other area. The average time in seclusion is 20 to 30 minutes. They are released as soon as they the situation de-escalates.

Ms MIKAKOS (Northern Metropolitan) — I note that the provisional aid to seclusion in secure welfare also states that there is going to be a register established. Can the minister advise if that has already been established and whether it records the period of time for which the child is placed in seclusion?

Hon. W. A. LOVELL (Minister for Housing) — Yes to both.

Ms MIKAKOS (Northern Metropolitan) — I now want to come to the issue of damaging property, which is in the seclusion provision as well as the next part of the bill. I again indicate my concern that a child can be placed in seclusion because they have damaged property. The way I read this clause, as I explained in relation to the other clause which is in part 3, there are three alternative limbs or tests, if I could put it in those terms. If any of those tests have been satisfied, that then gives a legal basis for a child to be put in seclusion. The way I have read proposed section 72P(2)(a), it allows for a child to be placed in seclusion only because they have damaged property, even if that damaging of property does not pose a risk to themselves or to another person. Can the minister advise on that?

Hon. W. A. LOVELL (Minister for Housing) — I am advised that property damage alone would not be a basis for seclusion. In exceptional circumstances property damage may threaten or lead to an immediate risk to safety, such as a child breaking a window and using glass to harm himself or herself or others. In other circumstances damage to property, such as pulling off skirting boards, can be a precursor to a heightened and dissociative state. The staff will step in and remove a child from the situation and if necessary seclude them. The use of seclusion will be subject to strict monitoring and recording, and these records will be available for independent scrutiny by the Commission for Children and Young People. I would hope that the inclusion of that in the second-reading speech would clarify the interpretation to anybody who was later reading this bill, and they could look back on this committee stage and know that property damage alone is not a reason — it does have to be in direct correlation to concerns for the child's safety.

Ms MIKAKOS (Northern Metropolitan) — I am really pleased about this breakthrough and that the minister has put that on the record, because I think that is an important assurance — that property damage alone is not going to be sufficient basis for a child to be put in seclusion. However, I put it to the minister and the government that the section does at the moment allow for a child be put into seclusion for property damage alone. I urge the government to look at this and consider legislative change to remove that at a future opportunity.

Hon. W. A. LOVELL (Minister for Housing) — It disappoints me that as a lawyer the member opposite does not know how to read legislation. The bill does not provide for property damage alone — there is an 'and' after that. If the member reads proposed section 72P(2) properly she will see that it states:

> Seclusion may only be authorised under subsection (1) if —
>
> (a) all other reasonable steps have been taken to prevent the child resident from harming himself or herself or any other person or from damaging property; and
>
> (b) the child's behaviour presents an immediate threat to his or her safety or the safety of any other person or to property.

Ms MIKAKOS (Northern Metropolitan) — I thank the minister for that gratuitous advice. The language in part 3 is, however, different, and I will be coming to that in a moment. But I think it is important that the minister has given that assurance on the record that property damage alone will not be sufficient basis for a child to go into seclusion, because that would be a pretty drastic action to take.

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

Ms MIKAKOS (Northern Metropolitan) — I have one further matter. I make the point that some children would view being placed in seclusion as a punishment. For the record, can the minister give me assurance that there will be no circumstances in which a child will be placed in seclusion as a punishment?

Hon. W. A. LOVELL (Minister for Housing) — I am advised that new section 72O, introduced by clause 7 of the bill, specifically excludes that.

Clause agreed to.

Clause 8

Ms MIKAKOS (Northern Metropolitan) — I take the minister to new section 161B, introduced by clause 8 of the bill, which we were discussing earlier in relation to the use of reasonable force that applies to children in out-of-home care. As I was explaining earlier, there are three parts to this clause. They are expressed in the alternative — the wording is different to that in the clause we were just discussing. In this case it seems that reasonable force is able to be used where there is property damage alone, because this section does not require the other two tests of a child harming themselves or harming others to be satisfied before reasonable force can be used. Can the minister give me an assurance similar to the one she gave me in respect of the previous clause that property damage alone would not be a sufficient legal basis for reasonable force to be used?

Hon. W. A. LOVELL (Minister for Housing) — I am advised that in general the new section would apply to property damage in conjunction with harm to the child. It might be something like a child pulling a bookshelf down towards themselves. That would obviously be property damage in the initial stages, but there would also be a risk to the child. At Hurstbridge Farm, say, if a child tried to light a fire to damage property, reasonable force would be a reasonable response to stop that child lighting that fire, which could put everyone in danger.

Ms MIKAKOS (Northern Metropolitan) — I am very troubled by this because the minister is now conceding that property damage alone is a sufficient basis for reasonable force to be used against children in out-of-home care. A very large number of children attend out-of-home care. It is not just for those in secure welfare; we are talking about children in residential care and even children in foster care and kinship care. The prohibited actions that are set out here and what is allowed provides for reasonable force to be used because damage is occurring to property. I ask the minister whether there are circumstances, short of a building being set on fire, that would allow for reasonable force to be used against a child in out-of-home care.

Hon. W. A. LOVELL (Minister for Housing) — What we need to think about here is that each child is an individual and that the response has to be appropriate for the individual child and the individual circumstances. It is important to realise that this is not about punishment; this is about the safety of the child and providing for the child's safety.

Ms MIKAKOS (Northern Metropolitan) — Perhaps as a lawyer I got it right in respect of this clause. I think the minister has to concede that one to me. I would urge the government to consider amending this clause. It is very troubling that property damage alone is going to allow reasonable force to be used against a child in out-of-home care.

Hon. W. A. LOVELL (Minister for Housing) — I think it is very troubling that while I was talking about the very serious issue of child safety the member was sitting on the bench laughing.

Ms MIKAKOS (Northern Metropolitan) — It is quite ridiculous of the minister to be making these points. Earlier she tried to verbal me and tried to claim that the passage of this bill was the government's utmost priority, despite the fact that the bill sat in the Legislative Assembly for four weeks at the start of this year and despite the fact that that the government decided to debate a motion on carbon tax for 2 hours today before bringing this bill on for debate.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! Ms Mikakos is debating the issue. Does she have any questions?

Ms MIKAKOS — I do not have to ask a question. I can make comments in respect of clauses as well.

The ACTING PRESIDENT (**Mr Elasmar**) — Order! The member cannot debate matters.

Ms MIKAKOS — I can make comments. In conclusion, I am pleased that we have been able to get some answers in respect of this bill. It is a very important bill, and it has huge consequences for the most vulnerable children in our community. It is concerning that this clause allows for reasonable force to be used against children in out-of-home care. I make that point and I ask the government to reflect on that. I ask it to look at legislative change because we are talking about children who, in some cases, have been physically assaulted by trusted people in the past, which

is why they are in child protection in the first place. The last thing that needs to happen is for them to have further physical force used against them in these types of situations.

Hon. W. A. LOVELL (Minister for Housing) — That is why the response needs to be appropriate to the individual child and why there are appropriate safety plans put in place for each individual child.

Clause agreed to; clauses 9 to 14 agreed to.

Reported to house without amendment.

Reported adopted

Third reading

Motion agreed to.

Read third time.

Mr Lenders — On a point of order, President, I am seeking your guidance. I am a justice of the peace, as I believe a number of MPs are. I seek your guidance about whether that is a declaration that I and others need to make before we do the first reading on the Honorary Justices Bill 2014.

The PRESIDENT — Order! As we are talking about honorary justices, I am not sure that there is any impediment to members with that qualification participating in the debate. It is not as if there is a conflict of interest or any direct pecuniary interest in the matter.

HONORARY JUSTICES 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 Honorary Justices Bill 2014.

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

Overview

The bill will consolidate and modernise provisions relating to bail justices and justices of the peace (collectively referred to as honorary justices) into a stand-alone act. The bill provides a comprehensive regime governing the functions, powers, appointment, suspension, investigation and removal of honorary justices.

Human rights issues

Recognition and equality before the law (section 8)

Section 8(3) of the charter act provides that every person has the right to equal and effective protection against discrimination. This right is relevant to the eligibility provisions in the bill. Discrimination means discrimination on the basis of an attribute set out in section 6 of the Equal Opportunity Act such as age, disability or race.

The bill restricts eligibility for the appointment of a bail justice to a person who is under the age of 70 years and eligibility for the reappointment of a bail justice to a person who is under the age of 75 years. This is less restrictive than the current provisions of the Magistrates' Court Act 1989, where a person who is appointed as a bail justice must be under 65 years of age, a person who is reappointed as a bail justice must be under 70 years and a person who is appointed as an acting bail justice must be under 75 years of age.

This is arguably a limitation on the right to protection against discrimination on the grounds of age, but it is reasonable and justified by the inherent requirements of the office. The age limit is proposed in order to address the risk of people continuing to hold office despite impairments associated with ageing. The role of bail justice is a demanding one, requiring a high level of capacity and commitment. Bail justices are frequently called upon to conduct bail hearings out of usual business hours, in cases where serious criminal charges have been laid and where the liberty of the subject is at issue.

Issues of incapacity related to ageing are less likely to arise if bail justices are subject to an age limit. Although removal of bail justices on the grounds of incapacity is possible under the bill, this may be a complex and potentially lengthy process, and the age limit is therefore an appropriate means of addressing this issue.

An age limit for bail justices also enhances the independence of the role, as it reduces the need to monitor the mental and physical capacity of people holding this office.

The lack of an upper age limit for justices of the peace reflects the fact that the demanding aspects of the role of bail justice that have been referred to are not present in the role of justice of the peace, and there is more flexibility for justices of the peace to accommodate their duties to a range of age-related impairments.

The bill also imposes English language proficiency requirements in order to be eligible to be appointed or reappointed as an honorary justice. This requirement may result in a greater proportion of people of a racial background whose first language is not English being ineligible for

appointment as an honorary justice than people from an English-speaking background. However, proficiency in the English language is necessary to perform the duties of an honorary justice. For instance, a bail justice needs to understand submissions that are made during a hearing and justices of the peace need to witness statutory declarations, take affidavits and, in relation to a person who is making a power of attorney, assess a person's capacity. The requirement for English language proficiency is therefore reasonable and justified.

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

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

This bill undertakes important reforms to the law governing the role of bail justice and justice of the peace. For the first time, the law relating to honorary justices will be consolidated in a single, stand-alone act. This will underline the important contribution that honorary justices make to our community and provide a comprehensive framework for their roles.

The legislation will also implement government commitments to restore the standing, community recognition and independence of honorary justices, which regrettably were undermined by the previous government. Those commitments include providing legislative protection against arbitrary dismissal, allowing honorary justices to retain their title when they can no longer continue on active duty due to age, ill health or other good reason, and requiring all persons who accept appointment as an honorary justice to make themselves available on a reasonable basis to perform their duties, so that other hardworking honorary justices do not suffer because a minority shirk their responsibilities.

The office of justice of the peace is an old and honourable one dating back for many centuries. Originally, justices of the peace were law enforcement officers charged with keeping the king's peace. Over the years, the roles of justices of the peace have changed and evolved. These days, Victorian justices of the peace play a key role in witnessing the signing and making of statutory declarations and affidavits and certifying copies of documents.

Recent administrative changes have seen justices of the peace staff 'signing centres' established at police stations and local community facilities such as neighbourhood houses to witness documents. There are approximately 64 of these document-signing centres operating across Victoria, enhancing the visibility of the role justices of the peace play in the community and greatly increasing access to their services.

Statistics collected by the Department of Justice indicate that justices of the peace witness several million documents a year. This demonstrates just a part of the enormous contribution that justices of the peace make to the smooth running of our community.

The office of bail justice, which is unique to this state, was created more than two decades ago. A bail justice hears and determines the question of bail and applications for interim accommodation orders under the Children, Youth and Families Act 2005, where a magistrate is not available. The office of bail justice is highly specialised and training for bail justices is demanding, as bail justices are required to make important decisions relating to the protection of the community, the liberty of individuals who have been charged with serious offences and safeguarding children who are in need of protection. A bail justice, by virtue of his or her role, is on call and presides at hearings outside the usual hours that a court sits. Bail justices often have to travel some distance to conduct a hearing, particularly in the country. Bail justices play an important role in the effective running of the Victorian criminal justice system and child protection within the state.

There are approximately 200 Victorian bail justices, and the Department of Justice calculates that in the three years from June 2010 to June 2013, they conducted more than 20 000 hearings. The Victorian community is indebted to each of them for their enormous contribution to our community.

The current legislation for justices of the peace in the Magistrates' Court Act 1989 does not adequately support the work and standing of justices of the peace. The bill is a significant reform that introduces a broad range of innovations. For instance, the bill establishes eligibility criteria for justices of the peace and requires justices of the peace to comply with a code of conduct, undertake suitable training and be available and reasonably active. Further, the bill protects the integrity of the office by having a clear and transparent process regarding the investigation, and possible removal, of justices of the peace.

The reforms relating to bail justices also improve the support and oversight that is provided for bail justices, which will assist bail justices to perform their important functions in the justice system.

Another important innovation will allow retired honorary justices to retain use of their title if they have ceased to hold office and meet certain age and length of service criteria.

I turn now to the detail of the bill.

Part 1 of the bill sets out the main purposes of the bill and provides that the act comes into operation once proclaimed, with a forced commencement date of 1 September 2014.

Part 2 of the bill sets out the powers of a justice of the peace and provides protection from liability for a justice of the peace who acts in good faith, and exercises a power under the act or regulations or in the reasonable belief that their action was in the exercise of a power under the act or regulations. Part 2 also sets out the appointment criteria for a justice of the peace. Part 2 requires a justice of the peace to take an oath of office and provides that anything done by the justice of the peace in their capacity as such is not invalid if there is a

failure to take an oath, a defect in their appointment or if they continue to act while suspended.

Part 3 of the bill sets out the powers of a bail justice and provides protection from liability for a bail justice who acts in good faith, and exercises a power under the act or regulations or in the reasonable belief that his or her action was in the exercise of a power under the act or regulations. Part 3 also contains the appointment and reappointment criteria for a bail justice, provides for a bail justice to take an oath of office and provides that anything done by a bail justice in their capacity as such is not invalid if there is a failure to take an oath, a defect in their appointment or if they continue to act while suspended.

Bail justices may now be appointed up to the age of 70 and reappointed up to the age of 75 instead of the current regime which provides for bail justices being appointed at up to age 65 and reappointed up to the age of 70. The bill abolishes the office of acting bail justice which inappropriately provided for people who were aged between 70 and 75 being an acting bail justice for a maximum of 12 months.

The provisions for reappointment, combined with the provisions in part 4 regarding training, will ensure that people who are appointed bail justices are suitable to hold the role and that they continue to receive appropriate training.

Part 4 requires justices of the peace to provide specified information to the Secretary to the Department of Justice on request. This process will be known as status confirmation. The request will not be made more than once every five years, unless the secretary reasonably believes that the justice of the peace may have breached the act or there may be grounds for suspension or removal.

Part 4 also requires all honorary justices to notify the Secretary to the Department of Justice within 21 days of a change of circumstances. In particular, the provisions regarding justices of the peace advising the secretary of certain events and changes to their details will improve the accuracy of information provided to the public as to how to contact a justice of the peace and will ensure that the department is able to provide updates to all justices of the peace.

All honorary justices will also be required to undertake required training and to be reasonably available and active. This is an extension of the current requirement that bail justices who seek reappointment must demonstrate that they were reasonably available and active during their previous term.

These provisions will help ensure that justices of the peace continue to make themselves reasonably available to perform the duties, or else take the opportunity to step down if they find they are no longer in a position to continue to serve.

A code of conduct for honorary justices may also be prescribed under this part.

Part 5 of the bill relates to the suspension and removal of honorary justices. Given the significance of the role of honorary justices and the level of contribution that honorary justices make to the community, there should be a clear and fair process for the investigation of any concerns that are raised about the conduct or capacity of an honorary justice and for any decision to remove an honorary justice from office.

Part 5 sets out the circumstances when the Secretary may suspend an honorary justice, and empowers the secretary to appoint an investigator in specified circumstances. Part 5 also details the grounds for removal of an honorary justice, which include serious and repeated breaches of the code of conduct, a finding of guilt or conviction for an offence that has a maximum penalty of six months or more imprisonment or that the honorary justice no longer has the physical or mental capacity to discharge the duties of the office.

If the investigator finds that facts exist which could constitute grounds for removal, the Attorney-General may recommend to the Governor in Council that the honorary justice is removed.

Part 6 of the bill will enable recognition of those who give outstanding service as an honorary justice. Bail justices and justices of the peace who have served for 20 years or who have served for 10 years and attained 75 years of age or retired on the grounds of ill health will be able to apply to use the title BJ (Retired) or JP (Retired). This is an important acknowledgement of the contributions that are made by honorary justices to the justice system and members of the public.

Part 7 creates offences for impersonating an honorary justice, use of a title without authorisation and providing false or misleading information to the secretary, Attorney-General or an appointed investigator concerning an application for appointment, a person's capacity as an honorary justice or any change in circumstances. The bill will put beyond doubt that it is also an offence to demand, accept or take financial reward for performing the services of an honorary justice.

Part 8 provides for the making of guidelines and regulations governing honorary justices.

Part 9 deals with transitional issues.

Part 10 makes consequential amendments, including the repeal of the current provisions relating to honorary justices.

This bill restores and strengthens the community recognition of, and respect for, the offices of justice of the peace and bail justice that were weakened and undermined by the previous government. It assures those who take on an office of justice of the peace or bail justice of the regard and respect with which those offices are held, and it assures the community of the high standards and dedication of those who hold those offices.

I commend the bill to the house.

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

Debate adjourned until Thursday, 10 April.

STATE TAXATION LEGISLATION AMENDMENT BILL 2014

Introduction and first reading

Received from Assembly.

Read first time on motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer); by leave, ordered to be read second time forthwith.

Statement of compatibility

Hon. G. K. RICH-PHILLIPS (Assistant Treasurer) 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 State Taxation Legislation Amendment Bill 2014.

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

Overview of bill

The purpose of this bill is to amend the:

Congestion Levy Act 2005 to expand the congestion levy boundary at a concessional rate from 1 January 2015;

Gambling Regulation Act 2003 to increase the two top tax brackets for hotel and club venue operators by 4.2 percentage points and reduce the minimum return-to-player ratio from 87 per cent to 85 per cent from 1 April 2014;

Fire Services Property Levy Act 2012 (FSPL act) to reallocate, from the 2014–15 financial year, the land use classification assigned to residential investment flats, short-term holiday accommodation, water catchments, dams and reservoirs, industrial and commercial zoned land with derelict buildings and land that is used for outdoor sport; and

the FSPL act and Valuation of Land Act 1960 to make minor technical amendments, including aligning the eligibility requirements for the FSPL concession with the concession available for council rates.

Human rights issues

1. Human rights protected by the charter that are relevant to the bill

This bill engages the following human rights protected under the charter act:

Recognition and equality before the law

Section 8(3) of the charter act provides that every person is equal before the law and is entitled to equal protection of the law without discrimination within the meaning of the Equal Opportunity Act 2010 on the basis of an attribute set out in section 6 of that act.

Clause 20 amends section 29 of the FSPL act to extend the availability of the fire services property levy concession to a person who holds a residence right in a retirement village. To hold a residence right in a retirement village a person must have attained the age of 55 or retired from full-time employment or be the spouse of such a person.

Accordingly clause 20 may impact on the right to equality and discrimination under the charter to the extent that it provides a fire services property levy concession based on age, which is a protected attribute under the Equal Opportunity Act 2010.

Section 8(4) of the charter act provides that measures taken for the purpose of assisting or advancing persons disadvantaged because of discrimination do not constitute discrimination. This amendment is specifically targeted at assisting senior Victorians, with fixed or low incomes, to meet cost of living expenses.

Therefore, it is considered that this amendment falls within the exception in section 8(4) and does not limit the right to equality and discrimination under the charter.

Conclusion

I consider that the bill is compatible with the charter act.

The Hon. Gordon Rich-Phillips, MLC
Assistant Treasurer

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.

In doing so I advise members that the bill was amended in the other place with respect to section 27 to replace the operative date 1 April 2014 with 1 May 2014.

Incorporated speech as follows:

The State Taxation Legislation Amendment Bill 2014 makes amendments to the Congestion Levy Act 2005, Gambling Regulation Act 2003, Fire Services Property Levy Act 2012 (FSPL act), and Valuation of Land Act 1960 (VL act).

The Victorian coalition government is continuing to take the responsible steps needed to manage Victoria's finances and deliver record investment in infrastructure and services for Victorians.

The 2013–14 budget update continued this government's record of strong financial management. This bill implements key measures announced in the 2013–14 budget update to redraw inner Melbourne's congestion levy boundary and adjust electronic gaming machine taxes to ensure the appropriate return to the community from gaming activity. These measures are critical to maintaining the state's strong economic position, and set Victoria up for continued investment in schools, hospitals, public transport and roads to benefit all Victorians.

The current congestion levy boundary will be expanded to include areas contiguous to the existing inner Melbourne boundary. The new areas will be levied at a new concessional rate of $950 per car space from 1 January 2015, which is the equivalent of less than $2.70 per car space per day.

The levy will continue to be applied only to owners of non-residential, off-street car parking spaces. All existing exemptions will apply in the expansion area so that the levy will not be payable on visitor parking, disabled parking, hospital visitor parking, loading bays and residential parking. New exemptions will also be introduced for parking at the Melbourne Zoo and for temporary public parking at Yarra Park and Melbourne and Olympic parks in the heart of Melbourne's sports precinct.

Expanding the boundary recognises the impact of congestion in the areas surrounding the inner Melbourne area, and addresses the unfair commercial advantage gained by operators located close to, but just outside, the current boundary.

In line with the government's commitment to responsible economic management and building infrastructure to meet the needs of Victoria's growing population, revenue from the levy will be used to support public transport and road infrastructure initiatives which are vital to our state.

In the 2013–14 budget update, the government also announced changes to gaming machine tax rates. This announcement is consistent with the arrangements outlined in the lead-up to the sale of gaming machine entitlements concerning the intended share of revenue from gaming between venues and the state.

In the material provided to the industry ahead of the auction of entitlements, the then government advised that the new tax structure was designed to collect a share of gaming machine revenue broadly similar to that raised under the previous gaming operator licences.

The historical average government share was between 36 and 38 per cent.

The industry was also advised that tax rates would be regularly reviewed to ensure the government received a broadly similar share of gaming machine revenue to the historical average.

Since the new entitlements and tax rates commenced in August 2012, it has become clear that the tax rates legislated by the former Labor government have failed to recover a broadly similar share of revenue as under the previous arrangements.

The tax rates set by the former government were too low to recover the share of gaming revenue that had been intended for the state. As a consequence, the government's share of gaming machine revenue fell to 34 per cent in 2012–13 and was not expected to exceed 35 per cent in the foreseeable future; considerably less than the intended 36 to 38 per cent range.

To address this failure, the government is undertaking corrective action to restore its share of gaming machine revenue by adjusting the top two tax rates. The bottom tax rate will remain unchanged and the top two hotel and club tax rates will be increased by 4.2 percentage points as follows:

> for hotel venue operators, the rates increase from 50.83 per cent and 58.33 per cent to 55.03 per cent and 62.53 per cent respectively; and
>
> for club venue operators, the rates increase from 42.5 per cent and 50 per cent to 46.7 per cent and 54.2 per cent respectively.

As there is no change to the lowest tax rate for club and hotel venue operators, this means that club venue operators with machines returning a monthly average per EGM revenue of $2666 or less will continue to pay no gaming taxes on their earnings, while hotel venue operators in that position will pay a concessional rate of just 8.33 per cent.

In addition, the government is adjusting the legislated minimum return-to-player ratio that applies to hotels and clubs from 87 per cent to 85 per cent. This will bring the return-to-player ratio in Victoria in line with New South Wales and Queensland. It is noted that many venues have chosen to operate a return to player that is considerably in excess of the legislated minimum and it is open to venue operators to continue to do so.

It is also noted that these tax changes do not recoup any of the more than $3 billion the Auditor-General found the former government had failed to realise on the sale of lucrative 10-year gaming licences valued at over $4 billion for which the former government received less than $1 billion.

The gaming machine tax changes and adjustment to the minimum return-to-player ratio are being legislated to commence from 1 April 2014. They are essential to ensuring that gaming venues contribute the share of tax that was intended at the time of the industry restructure and that Victoria's schools, hospitals and essential infrastructure continue to be securely funded.

The strong economic management of this government has enabled the most significant state tax reform in decades with the introduction of the fire services property levy.

As a result Victoria now has a fairer fire services funding system which ensures all property owners contribute to the fire services, not just those who adequately insure their properties and contents. The government has also invested $21 million in concessions, which means that for the first time over 400 000 eligible pensioners and veterans receive a $50 discount on the levy for their principal place of residence.

This reform is also a direct recommendation of the Victorian bushfires royal commission. Crucially, these reforms have assisted to put Victoria's fire services on a more secure financial footing. This is reflected in the significant increases to the operational budgets of the Country Fire Authority and the Metropolitan Fire Brigade under the coalition government.

This bill makes amendments to the FSPL act and VL act, to further promote the key objectives of the fire services property levy and streamline the administration of the levy for local councils.

As the use of fire services can differ across properties, differential fire services property levy rates apply to different property types. This bill will improve the practical application of the levy for Victorians by reallocating certain properties to different land use classifications.

Most notably this bill will reallocate residential investment flats from the commercial to the residential land use classification. While it is appropriate commercial rates apply to properties that generate an income, or are an investment, this amendment will mean that, from the 2014–15 levy year, these residential investment properties are treated in the same way as other residential properties which currently fall into the residential land classification — whether owner occupied or rented.

This bill will also reallocate dams, reservoirs, water catchments, and outdoor sporting grounds to the public benefit classification, and commercial and industrial land with buildings that add no value to the vacant land classification. These classifications will better reflect the practical application of this land.

These amendments demonstrate that the government is delivering on its commitment to the fair and equitable operation of the fire services property levy.

The coalition government acknowledges the important role that local government has played in implementing and administering the fire services property levy. This bill will also make a number of minor technical amendments to the FSPL act and VL act, which will further streamline the administration of the levy and ensure the FSPL is supported by a dynamic and responsive valuation system.

A number of the amendments are intended to make it easier for local councils to administer the levy by ensuring that the administrative framework for rates and the fire services property levy are aligned. This includes amendments to allow the apportionment of the fire services property levy in the same circumstances that rates can be apportioned, and technically aligning the eligibility requirements for the fire services property levy and municipal rates concessions.

This bill will also make it easier for councils to apply the fire services property levy by allowing the councils to apply the lower Metropolitan Fire Brigade (MFB) rate where a parcel of land extends across the MFB and Country Fire Authority border.

This bill will also amend the VL act so that Victoria's valuation system can better support the administration of the fire services property levy. This includes amendments which provide the Valuer-General Victoria with authority to amend the Victorian best practice specifications guidelines during the biennial valuation period. These guidelines are prepared by the valuer-general to assist councils to prepare valuations. This amendment will allow the valuer-general to review the guidelines more regularly so that areas of uncertainty can be addressed during the valuation cycle, helping to maintain the quality of valuations and property databases, which are used to assess the fire services property levy.

This bill will also make amendments to ensure that supplementary valuations and adjustments can be made where a change of occupancy affects the use of the land, or the initial valuation incorrectly identified the use of the land. These amendments will ensure that the amount of fire services property levy collected is based on the current use of the land, and the integrity of valuations and property databases can be maintained.

Other amendments to the FSPL act and VL act made by this bill include minor technical improvements which were identified during implementation of the levy. These amendments will improve the quality of the legislation and provide greater clarity and certainty for local councils in administering the fire services property levy.

I commend the bill to the house.

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

Debate adjourned until Thursday, 10 April.

VEXATIOUS PROCEEDINGS 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 Vexatious Proceedings Bill 2014.

In my opinion, the Vexatious Proceedings 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 Vexatious Proceedings Bill 2014 introduces a comprehensive new regime for the management and prevention of vexatious litigation in Victorian courts and tribunals.

Human rights issues

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

The right to a fair hearing (section 24), the right not to have privacy unlawfully or arbitrarily interfered with (section 13) and the right for a person deprived of liberty to apply to a court for an order regarding the lawfulness of his or her detention (section 21(7)) are relevant to the bill.

Right to a fair hearing

Section 24 of the charter act provides that a party to a civil proceeding has the right to have the proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. This right is relevant to several clauses of the bill, including:

Clauses 11, 17, 19 and 29, which enable specified courts and VCAT to make various types of 'litigation restraint orders'. A limited litigation restraint order may prevent a person from making or continuing an interlocutory application in a proceeding without leave. An extended litigation restraint order may prevent a person from commencing or continuing proceedings against a specified person or in respect of a matter without leave. A general litigation restraint order may prevent a person from commencing or continuing any proceedings in a Victorian court or tribunal without leave. These orders can also be revoked or varied under clause 69.

Clauses 35 and 36, which enable specified courts and VCAT to make an order against a person who is acting in concert with a person who is subject to a litigation restraint order. For example, the court may strike out an interlocutory application made by the person or stay a proceeding commenced by the person.

Clauses 37 to 39, which enable specified courts and VCAT to make an order preventing a person from appealing against decisions refusing leave to make or continue an interlocutory application in a proceeding or refusing leave to commence or continue a proceeding.

Clause 74, which enables specified courts and VCAT to make an order preventing a person from seeking to have the litigation restraint order to which they are subject varied or revoked.

Decisions in other jurisdictions have held that the right to a fair hearing includes a right of access to the courts. The Victorian Court of Appeal has held that, to the extent that the fair hearing right in section 24 of the charter act includes a right of access to the courts, that right is not absolute but may be subject to reasonable restrictions aimed at achieving legitimate objectives. These legitimate objectives include restricting the access of vexatious litigants to prevent the overuse of court services by a few with consequent unavailability and cost consequences for the community and most litigants (*Kay v. Attorney-General (Vic) & Macintosh* (unreported, Court of Appeal, 19 May 2009); *Attorney-General (Vic) v. Kay* [2009] VSC 337).

The bill's regime for the making of litigation restraint orders serves the legitimate objectives of preventing abuse of the courts' and VCAT's processes, preventing vexatious litigants from bringing unmeritorious cases, and minimising the cost to the community of such behaviour. Clauses 35 and 36 enable the courts and VCAT to prevent the deliberate circumvention of litigation restraint orders. The provisions relating to appeal restriction orders and variation or revocation application prevention orders provided for by clauses 37 to 39 and 74 allow the courts and VCAT to prevent the repeated commencement of vexatious litigation by a person, ensuring that court and judicial resources are more efficiently and fairly allocated, reducing delays for meritorious matters and preventing repeated abuse of the courts' and VCAT's processes.

The bill does not remove the right of a person subject to a litigation restraint order to issue proceedings, and thus does not remove their access to the courts and VCAT. A person subject to a litigation restraint order will be required to seek leave before commencing proceedings or making an application; if a proceeding has reasonable grounds and is not vexatious, leave will be granted.

The bill also contains safeguards, including an express right to be heard before a litigation restraint order, acting-in-concert order or appeal restriction order is made, and express rights to appeal from the making of litigation restraint orders and acting-in-concert orders. A person subject to a litigation restraint order may also seek leave to apply for the variation or revocation of the order, unless the person is subject to a variation or revocation application prevention order. Finally, the bill also allows the court or VCAT to determine an application by conducting an oral hearing if there are exceptional circumstances and it is appropriate to do so in the interests of justice in order to ensure procedural fairness in a particular case.

Accordingly, the provisions of the bill do not limit the right set out in section 24 of the charter act.

Right not to have privacy unlawfully or arbitrarily interfered with

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. This right may be relevant to clause 85 of the bill, which requires the Attorney-General to cause a copy of any order given to the Attorney-General under the bill to be published in the *Government Gazette*. The Attorney-General may also publish the details of the orders in another way. This may result in the publication of the name of a person subject to an order, and in the case of an extended litigation restraint order, the name of a person protected by the order.

In my opinion, clause 85 of the bill does not limit the right to privacy as the publication of a person's name by the Attorney-General is not unlawful or arbitrary. Publication serves the important purposes of informing the public, the courts and VCAT, in order to ensure that the objectives of the bill are achieved. Further, the bill allows the Attorney-General, at his or her discretion, to remove the name of a person protected by an extended litigation restraint order prior to publication. Additionally, a copy of an order that relates to intervention order legislation must have removed from it the name of any person protected by the order, including his or her child, unless the court, when making the order, otherwise orders.

Right to liberty and security of person

Section 21(7) of the charter act provides that a person deprived of liberty by arrest or detention is entitled to apply to

a court for a declaration or order regarding the lawfulness of his or her detention. This right may be relevant to extended and general litigation restraint orders made under the bill (clauses 17, 29 and 30) insofar as the order may require a person deprived of liberty to obtain leave of the court before they can make an application regarding the lawfulness of their detention, including an application for a writ of habeas corpus.

In my opinion, the right to liberty and security of person is not limited by the bill. The bill requires a person in detention who is also subject to a general or extended litigation restraint order to seek leave of the court before seeking an order regarding the lawfulness of his or her detention. Leave will be granted if the proceeding is not vexatious and there are reasonable grounds for the proceeding. A genuine application for an order about the lawfulness of detention would meet this test and the application would be allowed to proceed. The bill does not prevent a person subject to a general or extended litigation restraint order from bringing a genuine application relating to the lawfulness of his or her detention.

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

Second reading

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

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

That the bill be now read a second time.

Incorporated speech as follows:

The effective management and control of vexatious litigation is important to ensure an efficient and effective justice system. Although small in number, some individuals use the mechanisms of the law to repeatedly bring unmeritorious actions against other individuals and against organisations. These litigants consume a disproportionate amount of court and tribunal time and resources, which creates delays in the courts and reduces access to justice for other members of the community who have meritorious claims. Vexatious litigants can also have a significant financial and emotional impact on the people they sue, as well as on themselves.

Section 21 of the Supreme Court Act 1986 currently enables the Supreme Court to declare a person to be a vexatious litigant, which prevents them from bringing further litigation in a Victorian court or tribunal without first obtaining leave. However, this regime has a number of serious limitations, as identified by the Victorian parliamentary Law Reform Committee in its report into vexatious litigants. For example, section 21 sets a very high threshold for the making of a declaration, which limits the extent to which the court can intervene at an early stage to manage less serious or less frequent vexatious behaviour. The bar on obtaining leave to bring new proceedings is also low and fails to act as a barrier to vexatious litigation. Further, courts and tribunals other than the Supreme Court do not have similar powers and are therefore unable to control vexatious behaviour in their own jurisdictions.

The current regime in section 21 has therefore been of limited utility in controlling vexatious behaviour in the courts and tribunals. The introduction of the bill aims to overcome these limitations by repealing section 21 and introducing a comprehensive new regime for the management and prevention of vexatious litigation. Specifically, the bill provides a range of new powers for the Supreme, County and Magistrates courts and VCAT to manage vexatious behaviour more effectively and at an earlier stage.

The bill also aligns the existing regimes in relation to vexatious litigants under the Family Violence Protection Act 2008 and the Personal Safety Intervention Orders Act 2010 (the intervention order legislation) with the new regime. The bill makes specific provision for the Magistrates Court and Children's Court to make orders in relation to vexatious litigation conducted under those acts, which will ensure that a single framework for managing vexatious litigation operates across Victoria.

The bill enables specified courts and VCAT to make various types of 'litigation restraint orders', which increase in restrictiveness in accordance with a person's litigation history and pattern of behaviour. This tiered approach ensures that a person's access to the courts can be appropriately limited to the extent necessary to deal with their behaviour.

The bill applies to proceedings where a litigant's conduct is so unreasonable as to trigger court action to prevent them continuing to engage in such conduct. A range of behaviours are covered by the term 'vexatious', including abuse of court process, proceedings that are commenced or conducted to harass or annoy another party, and proceedings that are commenced or pursued without reasonable grounds or to achieve another wrongful purpose.

At the lowest level, a limited litigation restraint order may be made where a person has made two or more vexatious applications in a proceeding. The order can prevent a person from continuing or making further interlocutory applications in the proceeding, without leave. This order encourages early intervention and sends a clear message that vexatious litigation of any kind will not be tolerated in the courts or VCAT.

The mid-level order, an extended litigation restraint order, can be made where a person has frequently commenced or conducted vexatious proceedings against a specified person or other entity, or in relation to a specified matter. This order applies more broadly than a limited order and may prevent a person from continuing or commencing any proceedings against a person specified in the order or in relation to the matter specified in the order, without leave. Extended orders can also be made in relation to vexatious litigation conducted under the intervention order legislation. An extended order aims to deal with a vexatious litigant who attempts to harass an individual or organisation by repeatedly bringing litigation against them, or alternatively seeks to repeatedly re-litigate the same matter.

The highest level order is a general litigation restraint order. This order can be made where a person has persistently and without reasonable grounds commenced or conducted vexatious proceedings. The order may prevent a person from continuing or commencing a proceeding in any Victorian

court or tribunal, without leave. This order is reserved for the most serious vexatious behaviour and circumstances in which a lower level order would be ineffective. Due to its gravity, the bill gives the Supreme Court exclusive power to make this order.

In deciding whether to make a litigation restraint order, a court or VCAT is able to take into account any matter it considers relevant, including a person's full litigation history (in both Victoria and in other Australian jurisdictions) and the manner in which the person has conducted litigation in the past. This overcomes a recognised limitation of the current system, which does not allow for consideration of some types of prior litigation such as interlocutory applications and appeals from interlocutory decisions.

Persons who are sued by vexatious litigants and other persons with a sufficient interest in the matter will for the first time be able to apply for limited and extended litigation restraint orders. This provides a mechanism for such persons to protect their own interests and prevent vexatious litigation against them. However, to ensure that the process is not abused, the person will be required to obtain leave from the relevant court or VCAT before they are able to make an application.

A new threshold test is provided for in relation to applications for leave by a person subject to a litigation restraint order who wishes to bring new proceedings. The litigant must establish that the proposed proceeding is not vexatious and that there are reasonable grounds for the proceeding. The person named in the proposed proceeding (e.g. the proposed defendant) will only be notified of the leave application if the court is proposing to grant leave, at which point they will be given an opportunity to oppose the grant of leave. This will allow the courts and VCAT to dispose of, or manage through the imposition of conditions, unmeritorious litigation before it commences, and will save time and money for both the courts and other litigants who would otherwise be required to prepare a defence in the vexatious proceeding. Leave applications will also ordinarily be determined 'on the papers' (that is, on the basis of written submissions rather than at an oral hearing), unless the court considers that there are exceptional circumstances and that an oral hearing is appropriate in the interests of justice.

The bill also enables specified courts and VCAT to make orders against persons who are acting in concert with a person who is subject to a litigation restraint order. The court will be able to make any order they consider appropriate in such circumstances, including a costs order or an order staying the proceeding. The court will also be able to make a limited or extended litigation restraint order (but not a general litigation restraint order) in relation to the person. These provisions prevent the deliberate circumvention of orders made under the regime, for example by preventing a vexatious litigant from commencing proceedings in the name of a company that they control rather than in their own name.

Specified courts and VCAT are also given powers to limit appeal rights from certain decisions and to limit a person's ability to apply for the variation or revocation of a litigation restraint order. These orders can be made where there is evidence that a person who is subject to a litigation restraint order has frequently brought vexatious applications seeking leave to commence new proceedings or seeking leave to vary or revoke the litigation restraint order.

The bill provides safeguards to protect the rights of persons subject to a litigation restraint order and other orders under the bill, including an express right to be heard before an order is made against them, and express rights to appeal from the making of an order and to seek variation or revocation of a litigation restraint order (both subject to leave).

The development of this bill has benefited from feedback and advice provided by the Civil Procedure Advisory Group, chaired by the Chief Justice of the Supreme Court, and I thank members for their input and contribution to the development of these reforms.

In creating a comprehensive new regime for the management and prevention of vexatious litigation in Victorian courts and tribunals, including the disposal of unmeritorious litigation at an earlier stage, the bill will improve the effectiveness of the justice system and allow the court and judicial resources to be more efficiently allocated to the determination of meritorious cases.

I commend the bill to the house.

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

Debate adjourned until Thursday, 10 April.

WITNESS PROTECTION 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 Witness Protection Amendment Bill 2014.

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

Overview

The bill amends the Witness Protection Act 1991 to improve the operation of the Victorian witness protection program and allow for urgent interim protection of witnesses while their formal entry into the program is assessed.

Human rights issues

Right to life and protection of children and families

By its very nature, the bill promotes the charter act's section 9 right to life and section 17 right to protection of families and children. The Victorian witness protection program allows the chief commissioner to protect witnesses and their families who are at risk of harm. Clause 29 of the bill also promotes the section 17(2) right by allowing the Supreme Court to order that children born to participants in the witness protection program may have an identity that aligns with their parents' following termination from the witness protection program.

Right to freedom of association and freedom of movement

Section 16 of the charter act provides that every person has the right to peaceful assembly and freedom of association with others. Section 12 of the charter act provides that every person lawfully within Victoria has the right to move freely within Victoria. Clauses 16 and 17 of the bill are relevant to these rights; however, for the reasons outlined below, clause 16 does not limit the right and clause 17's limitation on these rights is justified.

The process of formal entry into the program involves gathering information, conducting preliminary investigations, obtaining medical and psychological tests, undertaking a risk assessment and entering into a memorandum of understanding with a witness (and potentially their family). This process may take some weeks or months. This period of transition, however, may involve high risk to the witness and their family. Clause 16 allows the chief commissioner, with the consent of the person, to provide interim protection measures to a person and their family while that person is being considered for formal entry into the program. Protection measures during this time may include the person not associating with former associates or groups, or not travelling to certain places.

Interim protection, however, cannot be imposed on a person. Participation in interim protection requires the person's consent and a person may withdraw their consent to participate at any time. For this reason, clause 16 does not limit a person's right to peaceful assembly, freedom of association and free movement within Victoria.

In turn, clause 17 expands the current offences that protect disclosure of sensitive witness protection information with the effect that it is an offence for a person (including a participant) to disclose 'interim protection' related information. Indirectly, these offences may have the practical effect that a person subject to interim protection may not be able to associate with or contact former associates, if such contact may disclose themselves as a person subject to interim protection. The integrity of the witness protection program and the safety and wellbeing of participants, however, relies on this sensitive witness protection information not being disclosed. Clause 17's limitation of the charter act's section 16 right to freedom of association is balanced with the charter act rights contained in section 9 (right to life) and section 17 (protection of families and children). For this reason, the limitation is reasonable and justified.

Right to privacy

Section 13 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 and not to have their reputation unlawfully attacked. The right includes the right to respect for a person's 'personal identity'.

The right to privacy is relevant to the requirement in clause 10 for potential participants to disclose information to the chief commissioner and to the clause 15 temporary assumed identity scheme. The charter act only prohibits unlawful and arbitrary interferences with privacy. To the extent that the provisions in the bill may interfere with personal privacy, that interference will be neither unlawful nor arbitrary. The requirements for disclosure are clearly defined in the bill and disclosure serves a legitimate purpose, as discussed below.

Clause 10 requires a person seeking to be included in the Victorian witness protection program to disclose certain matters to the chief commissioner. Those matters may include, for instance, medical, psychological or psychiatric examination test results, if requested by the chief commissioner. The chief commissioner may only request and use the information for the purpose of making witness protection decisions (clause 8).

Clause 15 allows the chief commissioner to authorise the use of an assumed identity. The provision allows an authorised person, subject to supervision, to use an identity that is different to their own. An assumed identity authority, however, may only be used to protect the safety or welfare of a participant.

Participation in the program cannot be imposed on a person. Participation in the program requires the person's consent (clauses 10 and 16) and a person may withdraw their consent to be included in the program at any time.

Protection from torture and cruel, inhuman or degrading treatment

Section 10(c) of the charter act provides that a person has the right not to be subjected to medical treatment without full, free and informed consent. While clause 10 of the bill may be relevant to this right, the right is not limited because participation in the program cannot be imposed on a person. Participation in the program requires the person's consent (clauses 10 and 16) and a person may withdraw their consent to be included in the program at any time. Further, the chief commissioner may only request and use psychological or psychiatric examination for the purpose of making witness protection decisions.

Right to a fair hearing

Section 24(1) of the charter act provides that a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. This right is relevant to clauses 18, 21, 25 and 27 of the bill.

Clause 18 provides a presumption in favour of closed court hearings and non-publication orders in proceedings in which sensitive witness protection information may be disclosed. The sensitive information includes the original identity of a participant, the fact that a person is a participant and the fact

that a person has undergone or is undergoing assessment for inclusion as a participant.

Further, clause 21 clarifies that the following types of proceedings must be closed to the public:

application for authority to make an entry in the register (section 7);

application to cancel entry and revert to original identity (section 9);

application for authority to disclose information that would otherwise be unlawful (section 10); and

applications to make an entry in the register of births deaths and marriages for children born to participants (new section 20A).

The integrity of the witness protection program and the safety and wellbeing of participants relies on sensitive witness protection information not being disclosed. Clauses 18 and 21 appropriately balance the right to a fair and public hearing with the rights contained in section 9 of the charter act (right to life) and section 17 (protection of families and children) and on this basis, any limitation is justified.

Clauses 25 and 27 streamline the external review processes under the Witness Protection Act by removing the Independent Broad-based Anti-corruption Commission's (IBAC) merits review function over the chief commissioner's decision to terminate protection and assistance and restore former identity. However, clauses 25 and 27 are compatible with the section 24(1) right to a fair hearing because other review options remain available to participants. Specifically, the affected party's right to an internal review by a different review officer in Victoria Police and external judicial review to the Supreme Court remains.

Rights in criminal proceedings

The right to be presumed innocent is a longstanding right that is recognised in section 25(1) of the charter act. This right is relevant where a statutory provision shifts a burden of proof onto an accused in a criminal proceeding.

Clause 16 (9L and 9M) contains protections from criminal liability. While the provisions place an evidentiary burden on the accused, they are compatible with the right to be presumed innocent for the following reasons. The protections are required because the bill authorises conduct that, but for these protections, would constitute a criminal offence. For example, clause 16(9L) provides officers of issuing agencies who comply with the chief commissioner's request to create evidence of an assumed identity with a protection from criminal liability for creating the document (clause 16(9K)). Similarly, clause 16(9M) provides that it is not otherwise an offence (for example, fraud) for an authorised person to use his or her assumed identity document in accordance with the authority and the directions of their supervisor. If an accused person seeks to rely on the protections, they would need to point to evidence of the elements of the protections. This is, however, an evidentiary burden and not a legal burden. The protections are required in order to enable the assumed identities scheme to operate in practice and there is no other way to ensure the operation of the scheme.

The Honourable Kim Wells, MP
Minister for Police and Emergency Services

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:

Witnesses are an essential part of our criminal justice system. If there is no witness, there can often be no prosecution. The Witness Protection Act 1991 establishes the Victorian witness protection program and allows the chief commissioner to protect witnesses and families who are at high risk of harm. Protecting a witness and their family can remove a barrier to that witness coming forward, assisting police and ultimately giving evidence in a criminal prosecution. This bill will improve the operation of the Victorian witness protection program.

In 1991, Victoria enacted Australia's first Witness Protection Act. Since this time, all other Australian jurisdictions have followed Victoria's lead. Over time, the demands on the Victorian witness protection program have increased as police focus resources on investigating organised crime and outlaw motorcycle gang activity. This bill is the first step in implementing outstanding recommendations from OPI's 2005 review into Victoria's witness protection program and brings Victoria's act closer in line with the acts of other Australian jurisdictions.

Protection tools available under the act include change of identity and relocation. Police cannot force these sorts of measures on witnesses. The witness needs to consent and cooperate. This is one of the reasons why the chief commissioner can only protect a witness under the act if they enter into an MOU detailing the protection measures and obligations of each party. The MOU also provides certainty and supports the integrity of the witness protection program.

However, the assessment process prior to the chief commissioner entering into an MOU with a person may take some weeks or months. Victoria Police's specialist witness security unit must gather all the information required to conduct a full risk assessment and settle the details of the protection to be provided. This period of transition into the program may involve high risk to the witness and their family. The proposed bill will allow Victoria Police to provide urgent interim protection measures during this time ahead of formal entry into the witness protection program.

The proposed bill will also improve the operation of Victoria's witness protection program and better align Victoria's act with interstate acts by:

enabling the chief commissioner to authorise the use of temporary assumed identity documents;

formalising in legislation the administrative steps and considerations for the chief commissioner's decisions to admit and terminate a person from the program;

strengthening the information upon which witness protection decisions are made;

streamlining the review mechanism under the act. Affected people will continue to have a right to an internal review and external Supreme Court judicial review of the decision. IBAC can still investigate decisions using their complaints powers;

formalising the ability of the chief commissioner to suspend protection and assistance measures (for example, when someone goes into custody or overseas);

making clear that witness protection is not a way to avoid obligations associated with an original identity (for example, civil debts, a criminal record, parole obligations or sex offender register requirements);

introducing further measures to guard against the disclosure of identities of protected witnesses in court proceedings; and

making other minor and technical amendments.

Upholding the criminal law and maintaining civil order depends to a large extent on the preparedness of witnesses to assist police and ultimately give evidence in criminal trials. We need to encourage witnesses to cooperate with police and protect those who face risks in doing so. When enacted, in 1991, Victoria's Witness Protection Act led the way. While these reforms improve the existing framework, we need to ask is there anything more we can do? This is why, over the coming year, the Honourable Frank Vincent, AO, QC, will conduct a broad review into the Witness Protection Act. This review will examine outstanding recommendations of OPI's 2005 *Review of the Victoria Police Witness Protection Program*. The review represents an opportunity for Victoria to lead the way again and ensure the laws support this important tool in the fight against organised crime into the future.

I commend the bill to the house.

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

Debate adjourned until Thursday, 10 April.

FENCES AMENDMENT BILL 2013

Introduction and first reading

Received from Assembly.

Read first time for Hon. E. J. O'DONOHUE (Minister for Liquor and Gaming Regulation) on motion of Hon. G. K. Rich-Phillips.

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

That the bill be treated as an urgent bill.

Motion agreed to.

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 Fences Amendment Bill 2013.

In my opinion, the Fences Amendment Bill 2013, 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 (section 13)

Section 13(a) of the charter act provides that a person has the right not to have his or her privacy unlawfully or arbitrarily interfered with.

If an owner does not know the whereabouts of an adjoining owner for the purposes of giving a fencing notice under the bill, they must make reasonable inquiries to locate the adjoining owner, including asking the municipal council about the whereabouts of the adjoining owner. Section 9(1)(b) of the existing Fences Act contemplates that a person wishing to construct a fence will obtain the adjoining occupier's address details from council records in order to serve a fencing notice but does not expressly confer a power on councils to disclose such information. The amendments introduced by the bill provide that municipal councils may disclose to an owner the name and address of an adjoining owner, if satisfied that the owner will use the name and address for the purposes of giving the adjoining owner a fencing notice.

The information to be disclosed is limited to that which is necessary for the purpose of giving a fencing notice under the bill, namely the adjoining owner's name and address. Municipal councils are only permitted to make disclosure of this information where satisfied that the information will be used for the purposes of giving a fencing notice. For these reasons, such disclosures serve a legitimate and necessary purpose, are not arbitrary and are authorised by law. As a result, the bill does not limit the right set out in section 13(a) of the charter act.

Property rights (section 20)

Section 20 of the charter act provides that a person must not be deprived of his or her property other than in accordance with law.

The bill provides that owners may agree to locate a dividing fence off the common boundary if a waterway or other obstruction is on, or forms, the common boundary, which may result in an owner losing occupation of a small area of their land. These arrangements require the agreement of both

parties and the bill also provides that these fencing arrangements do not affect title to or possession of land.

Any deprivation of property is in accordance with law in clearly defined circumstances. For these reasons, the bill does not limit the right set out in section 20 of the charter act.

Fair hearing (section 24)

Section 24 of the charter act provides that a party to a civil proceeding has the right to have a proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

The bill provides that an owner of land who is unable to locate the adjoining owner after making reasonable inquiries may seek to recover a contribution from the adjoining owner by filing a complaint in the Magistrates Court in the absence of the adjoining owner (an ex parte application).

The bill includes a safeguard which allows an adjoining owner who has had an ex parte order made against them (requiring contribution to fencing works or any subsidiary works) and considers the order to be inequitable to seek a further order from the Magistrates Court.

It is doubtful that empowering the court to make ex parte orders only after the applicant has discharged a duty to make reasonable inquiries to locate the respondent is a limitation on the fair hearing right. Even if it is, such limitation is demonstrably justifiable and reasonable under section 7(2), noting that the absent respondent can seek a further order. These powers will enable the timely and efficient disposition of fencing disputes and will also ensure that land owners will not have to bear the entire cost of fencing works and any subsidiary works in circumstances where an adjoining owner cannot be located but the adjoining owner obtains a benefit from the fencing works undertaken.

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

Second reading

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

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

That the bill be now read a second time.

Pursuant to sessional orders, I make the following statement declaring that the bill is the same in substance as the Fences Amendment Bill 2014 previously read a second time by the Council in this session:

I inform the house that the Fences Amendment Bill 2013 as passed by the Legislative Assembly is a bill in identical terms to the Fences Amendment Bill 2014 that has been debated and read a second time in this house.

Incorporated speech as follows:

The Fences Amendment Bill 2013 contains a range of measures to facilitate fairer dealings between neighbours over shared dividing fences and to encourage resolution of fencing disputes.

The bill builds upon the work of the parliamentary Law Reform Committee, which in 1998 reviewed the Fences Act 1968. The committee's report made a number of recommendations to make fencing processes more comprehensive and transparent, and to give parties clearer guidance about their obligations. Informed by the committee's work, the government undertook a further review of the Fences Act in 2011 and conducted public consultation on a discussion paper in late 2012.

The Fences Act contains little guidance about how to initiate and seek contributions for fencing works, the type of fence to be built, the placement of fences and the resolution of fencing disputes. In addition, it has been more than 40 years since the Fences Act came into operation and aspects of it require modernising. It also contains separate processes for the construction and for the repair of dividing fences, resulting in unnecessary complexity and confusion.

Although the monetary amounts in dispute may be relatively small, fencing disagreements can create tension between neighbours. In 2012–13, fencing disputes represented the greatest number of calls to the Dispute Settlement Centre of Victoria, with 6611 inquiries made. The amount in dispute in a fencing matter is also likely to be significantly less than the cost of consulting legal representatives, pursuing court proceedings and enforcing small judgement debts. For these reasons, clear and streamlined processes that assist neighbours to undertake fencing works and resolve disputes are essential. The bill makes a number of amendments to provide for this.

While the bill provides guidance about fencing works for those who wish to use it, it retains flexibility for parties to enter agreements about fencing works outside of the act without being required to give notice or follow the time limits and processes set out in the act.

Contributing to a sufficient dividing fence

The bill shifts liability to contribute to dividing fences from occupiers of land to owners of land, in recognition that in most circumstances it is the owner of the land who benefits the most from the improvement to the land made by a dividing fence.

The bill provides guidance about what constitutes a 'sufficient dividing fence' and establishes the general principle that adjoining owners must contribute in equal proportions to a sufficient dividing fence for their adjoining lands. What constitutes a sufficient dividing fence is determined by reference to a range of factors, including the type of fence that was previously in existence (if any), types of fences used in the area and the purposes for which the adjoining lands are used.

Where a sufficient dividing fence would be different for adjoining owners, the lesser standard of fence is taken to be the sufficient dividing fence. If an owner wants or requires a fence that is of a standard greater than that of a sufficient dividing fence, that owner bears the cost of the fence so far as it exceeds the cost of a sufficient dividing fence. This principle applies where agricultural land adjoins residential

land. For example — the dividing fence that would be sufficient for the agricultural land is taken to be the sufficient dividing fence and if the owner of residential land wants a fence that exceeds what the owner of agricultural land requires, the owner of residential land will bear the additional cost for this.

In certain limited circumstances, where a tenant has an unexpired lease term of more than 5 years or more than 10 years, the tenant may be liable to contribute to fencing works.

Initiating fencing works

The current Fences Act does not contain any guidance on the process for commencing fencing works. The bill addresses this gap by providing that an owner who proposes to undertake fencing works in respect of a dividing fence must generally either reach agreement with or give notice to an adjoining owner, even if no contribution towards the fencing works is being sought. Such notice must be in writing and contain particular information about the proposed fencing works.

However, the bill allows fencing works to proceed if an owner cannot be located for the purposes of giving notice, or if fencing works need to be undertaken urgently. Fencing works may also be undertaken without the agreement of an adjoining owner if they are given notice but do not respond within 30 days. If fencing works are undertaken in circumstances where an adjoining owner could not be located or did not respond to the fencing notice, the owner who undertook the fencing works may recover contributions from the adjoining owner who could not be located or did not respond by filing a complaint and seeking an order in the Magistrates Court.

These processes strike an appropriate balance between notifying interested parties of proposed fencing works and permitting them to negotiate about the works, and ensuring that fencing works are not unduly delayed where they need to be undertaken urgently or where a party is unresponsive or cannot be located.

Facilitating agreement between the parties

The recipient of a fencing notice may either agree to the proposal in the fencing notice or object to any aspect of the proposed works. If 30 days have passed and the owners still do not agree about any aspect of the proposed fencing works, either owner may commence proceedings in the Magistrates Court seeking orders about the fencing works. The 30-day period gives neighbours the opportunity to resolve any disagreement before commencing court proceedings. In some circumstances, a tenant who is liable to contribute to the fencing works is also involved in the negotiation and court process.

The bill provides for a process to resolve disputes over the common boundary when it relates to a fencing matter. It gives owners an opportunity to state their view about the location of the common boundary, negotiate about this and, if they do not agree, engage a licensed surveyor to define the common boundary. The time after which either owner may seek orders in the Magistrates Court is suspended until the boundary dispute process is complete.

Clarifying the powers of the Magistrates Court to hear and determine fencing disputes

If neighbours are unable to agree about any aspect of their fencing works, the bill clarifies the power of the Magistrates Court to hear and determine the dispute and make orders. The court may make a range of orders in respect of fencing works, including in relation to: the line on which fencing works are to be carried out; whether or not a dividing fence is required; the nature of the fencing works to be carried out; contributions; and that any party cease an activity or conduct that is unreasonably damaging a dividing fence.

The bill also clarifies the jurisdiction of the Magistrates Court to hear and determine claims in adverse possession that may arise in the context of a fencing dispute. This removes uncertainty and ensures that, if an adverse possession claim arises as the result of proposed fencing works, the matter can be determined by the Magistrates Court, saving the parties from costs associated with additional court proceedings. If the common boundary changes as a result of an agreement or order under the bill, parties may apply to the registrar of titles to amend the register.

Repeal of outdated provisions

The bill repeals part III of the Fences Act, which deals with vermin-proof fencing. This part contains historical provisions that are no longer used and there are now other enactments that provide for the management of pest animals in rural areas.

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

I commend the bill to the house.

Mr LENDERS (Southern Metropolitan) — The Labor Party clearly supports this bill. We have supported it in both houses, and we have no issue with the substance of it. We understand what the minister is doing. He is reconciling sessional order 6 with what is happening. The only point I will make in supporting the motion is to say it is quite extraordinary that due to, I guess, the antics of the Leader of the Government in bringing in this sessional order we are going through this charade to declare urgent a bill which is anything but urgent so we can reconcile this procedure between the two houses. Any citizen who has tried to follow this procedure would be puzzled. Having said that, we support the motion moved by the minister because we support the legislation.

The PRESIDENT — Order! It would probably be more in order for me to hear from Ms Pennicuik at this point before I declare my position on the bill.

Ms PENNICUIK (Southern Metropolitan) — Thank you, President. Because you had your head down you did not see me stand up. I want to make

some remarks on behalf of the Greens. The sessional order that was rushed into this place by Mr Davis earlier this year was not supported by us because we thought it would result in shambolic and haphazard occurrences, of which I think this is one, and absurdities such as calling this an urgent bill when clearly it is not. I outlined at that time what an urgent bill is — one that is needed to fix an urgent problem of governance in the state of Victoria — and this bill does not fit into that category. I made the point that the Greens have always been cooperative when a genuine urgent bill has been put before us. That is not the case here.

We regret that this series of events is happening with bills being introduced, debated and passed in both houses at the same time. We have a bill coming into the Legislative Council in this really disingenuous way, as I would see it, when it has already been debated and the second reading passed in the Legislative Council. As Mr Lenders has said, it is very confusing and unnecessarily so to everybody. However, having said that, in this particular instance I will not oppose the motion, but I do not want it to be seen as a precedent that we will not oppose further motions of the same ilk.

The PRESIDENT — Order! I might also comment that the presentations that have just been made by the Leader of the Opposition and Ms Pennicuik really ought to have been dealt with in terms of the minister's motion that this be treated as an urgent bill. I did look to see if there were any speakers to that procedural motion, and there were not at that time. Anyway, we have covered the bases, so that is fine. There is no problem.

I indicate to the house that I am also of the opinion that the bill is the same in substance as the Fences Amendment Bill 2014 previously read a second time by the Council in this session. Pursuant to standing order 14.33, the remaining questions will be put without amendment or debate.

Motion agreed to.

Read second time.

Third reading

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

That the bill be now read a third time.

I thank Mr Lenders and Ms Pennicuik for their contributions to the second-reading debate.

Motion agreed to.

Read third time.

FENCES AMENDMENT BILL 2014 and VEXATIOUS PROCEEDINGS BILL 2014

Withdrawn

Withdrawn on motion of Hon. G. K. RICH-PHILLIPS (Assistant Treasurer).

ADJOURNMENT

Hon. D. K. DRUM (Minister for Sport and Recreation) — I move:

That the house do now adjourn.

Job losses

Ms TIERNEY (Western Victoria) — My adjournment matter is for the attention of the Premier, and it is in relation to the jobs crisis in this state. I draw the attention of the Premier to an article in the *Age* today which says:

> Victoria has become the hardest place on the mainland to find a job. The latest vacancy count from the Australian Bureau of Statistics puts the chance of an unemployed Victorian landing a vacant job in the state at close to one in nine.
>
> That means there are about nine unemployed Victorians scrambling for each vacant job.

I remind the Premier that yesterday in this very house we debated for some time the issue of the jobs crisis facing the state and I proposed a parliamentary inquiry to investigate the crisis and the reasons for it, to look at the economy in general and to create some potential for job creation. Of course government members spoke against that motion and voted against participation in such a parliamentary inquiry.

Since that debate, even in the last 24 hours, we have seen further bad news on the horizon, with the announcement of 300 jobs to go at Boeing in Port Melbourne and another 180 jobs to go at Philip Morris, as well as some other smaller announcements — and that was just in the last 24 hours. The action I seek from the Premier is that he provide me with a written explanation as to why the government is refusing to acknowledge the jobs crisis in Victoria and why government members refused to participate in a parliamentary inquiry on this matter of public importance.

Rosebud aquatic centre

Ms PENNICUIK (Southern Metropolitan) — My adjournment matter is for the attention of the Minister for Environment and Climate Change, Ryan Smith. It concerns the proposed use of the Rosebud foreshore

reserve for the location of the southern peninsula aquatic centre. I first raised this with the minister on 16 August 2012, and Mr Scheffer has also raised it a number of times. When I first raised this matter I pointed out to the minister that I took issue with the basis on which he had granted coastal consent for the use of the Rosebud foreshore, and I asked him to publicly explain that consent, given that the then Department of Sustainability and Environment had consistently advised against such use as it would be inconsistent with the Victorian coastal strategy.

On 12 September that year the minister replied to that adjournment item, saying by way of his explanation that his consent was given with regard to:

> … the Victorian coastal strategy, the Central Coastal Board's Mount Eliza to Point Nepean coastal action plan, the recommendations of the Victorian Environment Assessment Council and the purpose for which the land is reserved, as is required under section 40 of the act.

I do not really accept any of those as explanations; that is just a list of documents. I take as an example the Central Coastal Board's Mount Eliza to Point Nepean coastal action plan. At the time the minister said the plan was:

> … applicable to the land and the proposal is considered consistent with the planning principles of a major activity node such as Rosebud.

One would have to say, however, that nothing of that sort is mentioned in the Central Coastal Board's Mount Eliza to Point Nepean coastal action plan, so I do not think we got an explanation at the time.

The minister pointed out that the existing consent is for use and that any further development would have to go through the council. Subsequently, in September 2013, Mornington Peninsula Shire Council purchased a site at Wannaeue Place in Rosebud. It is a site I have had a look at, and it seems to me to be one that is preferable to the Rosebud foreshore. Just this week I also referred to the findings of the Victorian National Parks Association report *The Coast Is Unclear — An Uncertain Future for Nature along the Victorian Coast*, in which the Victorian National Parks Association also calls for the abandonment of the construction of the proposed southern peninsula aquatic centre on the coastal reserve at Rosebud. I therefore further ask the minister to reconsider his coastal consent for use of the Rosebud foreshore for any type of development and to preserve that land for public open space use.

Meat processing

Mr D. R. J. O'BRIEN (Western Victoria) — My adjournment matter is for the attention of the Minister for Agriculture and Food Security. I seek information from the minister as to the options available for a farm business near Avoca in Western Victoria Region, which I represent, to allow it to market its meat and game products. The situation has been brought to my attention by the head chef of the Avoca Hotel, who my colleague Mr Barber may recall has been and still is an advocate for the processing of kangaroo carcasses for not only pet food but human consumption. The matter he has raised on this occasion is that one of the hotel's local suppliers — —

Ms Pulford interjected.

Mr D. R. J. O'BRIEN — It is a good place. Thank you. I compliment you too, but I will return to my matter. One of the local suppliers is a business called Spa Venison, which is run by a husband and wife who raise quality venison, goats, geese and pigs on their property in Evansford. They have successfully run a retail outlet and butchery in Daylesford which sells their excellent produce to the public and to many restaurants throughout the region. Unfortunately the shop is at this stage closed. This has come about as the only abattoir in the region capable of processing both venison and goat, in Wycheproof, has changed owners and will now only process the new owner's stock, being emus. Whilst there are other processing options in Bordertown and Myrtleford, Spa Venison is understandably not willing to subject its stock to the amount of travel required to reach these services, and the extra transport makes the exercise cost prohibitive.

Spa Venison is not the only business affected by this change. A number of specialised meat processors and producers across western and central Victoria are also affected, including those in the area represented by Mr Drum, a member for Northern Victorian Region, who is in the chamber.

I am aware that the minister and his department have been working with the regulator, PrimeSafe, to ensure that regulatory practices ensure public safety while allowing businesses the flexibility they need to innovate, particularly in terms of supplying local markets and suppliers and in relation to both food quality and food security. I ask the minister what assistance is available to assist those who wish to become licensed mobile butchers to ensure that services are available to Spa Venison to have venison and goat slaughtered and butchered on site by a skilled, specially registered and licensed professional in a manner that

satisfies regulations for commercial preparation of the meat.

The availability of such a service would increase the development of other businesses supplying specialised meat products throughout rural Victoria, providing much-needed employment, investment and diversity. I ask the minister for his assistance in this matter. I also compliment him and the department on their active involvement and the resolution of that longstanding, unfortunate regulatory block in relation to the processing of kangaroos for pet food in this state.

Gender identity

Ms PULFORD (Western Victoria) — The matter I raise in this evening's adjournment debate is in response to the Norrie High Court decision and is for the attention of the Attorney-General, Robert Clark. Norrie was born male in Scotland and underwent a sex affirmation procedure in 1989. Surgery did not resolve Norrie's sexual identity questions. Such questions are faced by many in the lesbian, gay, bisexual, transgender and intersex community. As a result, Norrie sought to be registered as being of non-specific gender with the New South Wales Registry of Births, Deaths and Marriages.

Despite the registrar arguing that unacceptable confusion would be caused by Norrie not identifying as either male or female, the High Court ruled this week that a person can indeed register as neither male nor female. Finally our highest court has acknowledged that in this day and age the concepts of sex and gender are broader and more diverse than they were thought to be in the past when it was determined that a birth certificate could only register a person as male or female.

This is an important decision for the lesbian, gay, bisexual, transgender and intersex community. It means gender diverse people in New South Wales now have control over how they are classified in the eyes of the law. We in Victoria need to establish how best to apply this decision in our state. An opportunity exists to ensure that Victoria applies the High Court principles of treating everyone equally under the law; the High Court has opened the way for this to happen. The path for equality for all Victorians, especially intersex and transgender people, has been set out by the High Court. Victoria must follow, and it must do so quickly.

I urge the Attorney-General to avoid the necessity of costly and lengthy High Court cases having to be prosecuted state by state insofar as this relates to Victoria. This could only delay the path to resolution of this issue for Victorians. I call on the Attorney-General to quickly respond to this High Court decision, and the action I seek is that he urgently consult with the lesbian, gay, bisexual, transgender and intersex community and the Office of Births, Deaths and Marriages, and report to the Parliament on how to apply the High Court principle to Victorian legislation to ensure that gender diverse people are recognised and treated equally in relation to not only birth certificates but also the wider operation of Victorian laws and administrative actions.

National disability insurance scheme

Ms MIKAKOS (Northern Metropolitan) — My matter is for the Minister for Community Services. I wish to express my deep concerns over comments made this week by the federal Treasurer, Joe Hockey, that the national disability insurance scheme (NDIS) is likely to face changes in the upcoming federal budget. Mr Hockey told the ABC's *AM* program on 31 March that:

> If we don't get on top of the proper management of the NDIS —

it —

> would … not be sustainable …

Last year he warned that the NDIS 'has to be affordable'. His comments are of great concern to the thousands of Victorians living with a disability who are expecting to move to this new system when the complete rollout occurs in 2019. The NDIS was a groundbreaking initiative of the Gillard federal Labor government. It will transform the way disability services are delivered in Australia. I note that the legislation for it was passed in the federal Parliament with bipartisan support.

I am concerned also that the attitude of the Napthine government to date has been to leave many people on the disability support register waiting for individual support packages. In some cases these people are told to wait until the NDIS is here. As I said, that is many years away. Whilst the trial is happening in the Barwon region, which is a terrific thing for people in Geelong, many others around Victoria are waiting for this to roll out to their part of the state.

I refer the minister to comments made by the federal Assistant Minister for Social Services, Mitch Fifield, on the ABC's *7.30* program on 31 March that the time line for the delivery of the NDIS 'could only be changed by way of renegotiating the bilateral agreements' with the states. He seemed to be suggesting that he is leaving this path open and that he may well seek to renegotiate

the time lines and delay the commencement of the full rollout of the NDIS in Victoria and other states.

Given her rhetoric in the past about supporting Victorians living with a disability, I call on Minister Wooldridge to rule out the Victorian government agreeing to any cuts or delays to the full rollout of the NDIS in Victoria and to say no to Joe Hockey and Mitch Fifield, who may seek to renegotiate the bilateral agreement with Victoria.

Responses

Hon. D. K. DRUM (Minister for Sport and Recreation) — I have five adjournment matters this evening. Ms Tierney raised a matter for the Premier in relation to unemployment issues and asked why there will be no parliamentary inquiry. I will pass that on to the Premier.

Ms Pennicuik raised a matter for the Minister for Environment and Climate Change, Ryan Smith, in relation to the Rosebud foreshore and a proposed aquatic centre. I will pass that matter on to Minister Smith.

Mr David O'Brien raised an issue for the Minister for Agriculture and Food Security, Peter Walsh, in relation to a game products business in Avoca that specialises in venison and goat, and I will pass that matter on to Minister Walsh.

Ms Pulford raised an issue for the Attorney-General, Robert Clark, in relation to people who are gender non-specific and their status in Victoria. I will pass those concerns on to the Attorney-General.

Ms Mikakos — President, I draw your attention to the state of the house.

Quorum formed.

Hon. D. K. DRUM — Ms Mikakos raised an issue for the Minister for Community Services, Mary Wooldridge, in relation to supposed comments made by the federal Treasurer, Joe Hockey. Ms Mikakos spoke about the trial of the national disability insurance scheme that is taking place in Geelong, and it is interesting that the Napthine government created the environment for that trial to take place and the Baillieu government secured the national disability insurance scheme headquarters for Geelong. I will take the issue forward to the Minister for Community Services.

I have a written response to an adjournment matter raised by Mr Eideh on 28 November 2013, and I will make that response available to him.

The PRESIDENT — Order! The house stands adjourned.

House adjourned 6.08 p.m. until Tuesday, 6 May.